Block
No.
Shelf No.
Serial No. 22
General No.

124

Saturday the 15th day of March

Present

Sir Charles Oakeley Baronet

Ernst William Fallofield and George Wis

To the Honorable John Holland Esqr.

President and Governor &c. in Council

Fort Saint Geor

In the Honble

the Court of Appeals

Between Juldoo Singanah

Chitty Administrator of Juldoo Pole Chi

Deceased by his Attorney Augustine Ba

Complainant and Attoolory Cuddooma

=badoo Chitty Defendant &c. &c. Contra

The humble Petition and appeal of the abov

named Defendant -

Sheweth

That some time on or about the thirtieth day of Novemb

in the year of Christ One thousand Seven hundred and Eighty

Filed in my office
the 10th July 1789
Chas W. White
Clk.

Six the above named Complainant Juldoo Singanah Chitty

died by his Attorney the above named Augustine Beatson fil

a Bill in the Honourable the Mayors Court for the Sun

a

One thousand Six hundred and Fifty four Pagodas and two fanam
Pretended to be due to the Estate of the said Deceased Cole Chitty by
your Petitioner, But your Petitioner conscious that he was not
indebted to the said Estate but on the Contrary that the said Estate
was indebted unto him did in his Answer to the said Bill of
Complaint deny the said pretended debt and did file a Cross Bill
thereon Against the Complainant for the Sum of One thousand
and Seventeen Pagodas, Sixteen fanams and Twenty Cash as
Justly due and owing from the said Estate to your Petitioner, that
the said Suit and Cross Suit going through the usual Law process
ysue did Join and several Rules did pass for the Examination
of Witnesses and Witnesses having been Examined in consequence
on the part of the Complainant he did by his Attorney on the
fifth day of May last pray Publication might pass to which
your Petitioner did object and pray leave to file an Affidavit setting
forth that Iuldoo Condapah Chitty and Iuldoo Singanah Chitty
were material Witnesses on the part of your Petitioner that as one was
the Brother and the other the Nephew to the Deceased he firmly
believed they would not depose to the truth of the several Matters to be
proposed to them if Sworn in the common form of Mint and Water
and that the only means which could be persued to the furtherance
of Justice would be to Cause the parties to be Sworn at the Pagoda
at Treplicane Whereupon the Attorney for the said Complainant did
pray

pray a time of One Week to Shew Cause why the purport of your
Petitioners said Application should not be complied with. That to be
on the Twelfth day of the same Month of May Mr. Stephen Le
Caphorn and Mr. Henry Dupuy in Conjunction with Messrs
Peter Walker did Appear on the part of the said Complainant an
did file sundry Affidavits setting forth that to swear at the Pagoda
would be Detrimental and disgraceful to their Cast and charging
ye Petitioners with having Acknowledged the said pretended debt
and did thereon pray that the Prayer of your Petitioner for the
Examination of the said Iuldoo Singanah Chitty and Iuldoo
Condapah Chitty might be over Ruled and that the Witnesses might
be examined in the common form the said Honorable the Mayors
Court taking the same into their Consideration were pleased to Order
that your Petitioners motion might be over Ruled and that the
Witnesses should be examined in the common form Mr. Alderman
Ross dissenting to the Resolution of the Court being of Opinion
there were not sufficient Reasons setforth in the Affidavits why the
Witnesses should not be examined at Treplicane Pagoda — Your
Petitioners Sheweth that thus deprived of the only meant whereby
he might be enabled to prove the injustice of the demand set up
Against him by the Complainant and establish his own claims
is setforth in his said Cross Bill, cut off from the only evidence
that lay in his power to produce or what Amounted to the
sa

same thing prevented from pursuing a mode by which he might with safety proceed to Examine them he saw his property in most dangerous Situation and all hopes of Justice from the Depositions of the said Juldos Singanah Chitty and Juldoo Condapah Chitty entirely frustrated and left Totally Remediless unless the said Honble the Mayors Court might extend their Indulgence and on a Reconsideration of the matter grant your Petitioner his Equitable and Reasonable Request therefore and under such Circumstances and Considerations – your Petitioner did on the Nineteenth day of the same Month of May Petition the said Honorable the Mayors Court for a Rehearing of the Order of the Twelfth preceding – That the said Honble the Mayors Court granting the prayer of your Petitioners said Petition the said Order of the said Twelfth day of May did come on to be Reheard on the Twenty Seventh day of June last past When the said Honble the Mayors Court were Again pleased to Order (three of the Aldermen dissenting therefrom) that the said Order of said Twelfth day of May should stand confirmed and that Juldos Singanah Chitty and Juldos Cundapah Chitty should be examined and Attest their Depositions in the common form and that your Petitioner should pay all Costs as Appears by a Copy of the said Order hereunto annexed for the inspection of this Honble Court to which your Petitioner begs leave to Refer and prays the same

same may be taken as part of this his Petition and Appeal the Original Whereof is in your Petitioners possession and Ready to be produced at the hearing – by which said Order of the Honorable the Mayors Court your Petitioner is much Aggrieved and therefore appeals therefrom to this Honorable Court for the following Amongst other Reasons –

First ..... Because it is Agreeable to the Letter and Spirit of Charter that an Oath shall be administered to the natives in the manner that is conceived to be the most binding upon their consciencies and it is well known that the Swearing before the Pagoda is held the most sacred, consequently the most binding upon their consciences and because the depositions in the common form upon mint and Water is Regarded as trifling when compared with the more solemn manner in which the Oath is Administered before the Pagoda –

Secondly Because that it has long been the practice of the different Courts in this Country to Wit this Honorable Court the said Honble the Mayors Court and the Choultry Court that upon special cause and under particular Reasons Assigned to comply with a prayer for the Examination of Witnesses at the Pagoda as Appears by the Extract of Precidents hereunto annexed for the inspection of this Honble Court and which your Petitioner prays may be Received as part of this his Petition and Appeal the Attested Copies whereof are in your Petitioners possession and Ready to be produced at the

the hearing –

Thirdly ..... Because your Petitioners Situation is so very particular that it Requires the utmost Caution how to prevent Total Ruin for the said Iuldoo Singanah Chitty the Complainant and Iuldoo Cundapah Chitty who are Relations to the Deceased Iuldoo Pole Chitty the one the Brother and the other the Nephew are the only two Witnesses that your Petitioner is enabled to produce in support of his Rights and conceiving that from their near Relationship to the Deceased and particularly as one of them is the Complainant in the Cause they may be biased in their Sentiments and not speak the truth even upon Oath in a matter that is Dramatically Against the Estate of their Deceased Relation and indeed Against themselves unless such Oath be Administered in the most sacred and Solemn manner that is before the Pagoda of Triplicane –

Your Petitioner therefore most humbly prays that this Honble Court will graciously be pleased to take into their benevolent consideration the alarming Predicament in which your Petitioner is placed that they will be pleased to have in their Recollection that all he Requires is that an Oath may be Administered in the most Solemn manner to people who by the ties of Blood and Interest may be so much under the influence of Prejudice and predelection as to disregard and speak contrary to the truth whilst deposing on the part of your Petitioner were they allowed to depose in the common form upon Mint and Water and that therefore and thereupon they will be pleased to Reverse the said Order of the said Honble the Mayors Court and Order that the said Iuldoo Singanah Chitty and Iuldoo Cundapah Chitty may depose upon Oath before the Pagoda at Triplicane so will the truth be Manifested the dictates of Justice be fulfilled And your Petitioner saved from the impending Ruin with Which Artifice and design now threaten him – and further that this Honble Court will be pleased to grant such other General Relief as in their Wisdom and Justice may Seem Meet –

[Signed] Charles Inglis
James Stuart Hall
Solicitors for the Appellant

Extract

Extract from the Minutes of a Court Held at the Town Hall on Saturday the 27th. day of June Anno Domini 1789

Present

William Webb Esquire Mayor

James Call Edw.d Garrow George Savage

Josias DuPre Porcher Andrew Ross

Robt. Milford James Landon and John Milford

Aldermen

Juldoo Singanah Chitty Administrator to the Estate and Effects of Juldoo Dole Chitty Deceased by his Attorney Augustine Burton Evans

Attaloorg Padmanaba Chitty.

Ex. C. Contra.

Petition of Attaloorg Padmanaba Chitty for Rehearing the Order of Court of the 2.d May last Read—

Minutes made in these Causes of the 12.th & 19.th May last Read—

Affidavits of Attaloorg Padmanaba Chitty, Vencatachellum Kistnamah Chitty, Comarapah Chitty and Cheddambaram Read—

Bill of Complaint Read—

Answer Read

Cross Bill Read

Cross Answer Read

The Court having Reconsidered the Order of Court made in these Causes the 12.th May last see no Cause for over Ruling the same it is therefore Ordered that the same do stand Confirmed, and that Juldoo Singanah Chitty and Juldoo Condapah Chitty be examined and do Attest their Depositions in the common form, and it is further Ordered that the Petitioner Attaloorg Padmanaba Chitty do pay all Costs attending this Application—

A true Extract
/Signed/ G. Taylor Dy Regr.

/Signed/ Chas Inglis

A true Copy
/Signed/ I. Stuart Hall
Solicitor for Appellant

Mssrs. Aldermen Savage and Porcher Dissent to the Resolution of the Court Mr. Alderman Ross Dissents to the Resolution of the Court being of Opinion that in all Cases where the Court shall of their own Accord think proper and either of the parties desire it that the Oath ought to be Administered in the most Solemn manner this Appearing to him to be Conformable to the standing Orders of practice of the Court the Court Approving thereof—

A true Extract /Signed/

A true Copy
/Signed/ Chas. Inglis

/Signed/ I. Stuart Hall
Solicitor for Appellant

The

The Honorable the Mayors Court 8th June 1773

Narrain Chitty
vers
Paul Benfield
Et Contra

Mr. Daniel Shaw the Attorney for the Respondent Narrain Chitty prays that a Commission may issue to the Examiner to Examine Singiah and Sreenevasa Verdasharon two Braminies at Treplicane Pagoda on the part of his Client Ordred Accordingly –

The 7th Day of April 1786

John Sutter
vers
Suncoo Chinna
Kistnaraah Sutter

The Petitioner of Suldoo Singanah Pasah Moorty Shesha-chellum Pauperty Narrain Chitty Morda Balla Kistnamah Chinnadu Lutchmarsoo and Chinnadu Ramah-jelloo coming on to be Argued this Day in the Presence of the Attornies on both sides and the Court having had due Consideration it is Ordered that the Petitioners be thrown out with Costs –

The 9th Day of November 1779

Marina Permaul Pillah
by his Attorney Albano Druem
vers
Gundavady Sawmey Chitty

Amended Answer upon payment of Costs filed and Sworn to before the Mayor the 8th Instant Petition of the Complainant filed this Day praying that the Defendant may be Obliged to Swear to his Amended Answer at Treplicane Pagoda Affidavit of Soobroyloo Chitty and Venayagam Moodelly had and filed, The Attorney for the Defendant prays that he may allowed to Answer the above Petition, The Court having taken the same into Consideration Ordered that the Defendant do Swear to his Answer at Treplicane Pagoda, The Attorney for the Complainant prays that a Commission may issue Directed to John Sykes and Stephen Popham Esqr. to Swear the Defendant to the truth of his Answer at Treplicane Pagoda – Ordered Accordingly –

Court of Appeals 3 May 1781

Gundavaddy Sawmy Chitty
vers
Manna Permaul Pilla
by his Attorney Albano Druem

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 Honorable the Mayors Court together with the Order of the said Court given in this Cause on Tuesday the 9th Day of November Anno Domini 1779 and 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 Order of the Honorable the Mayors Court be affirmed with Single Costs in this Court –

Chaultry Court

The 9th Day of June 1759

John

John Smith
John Pybus
Richard Fairfield } Justices

N.543. The Petition of Tellisingah and Tanja Against Audy and Roodrapah Complaining that they suspect the Defendants of having concealed some of their Jewells and begs that they may take the solemn Oath that they are Innocent of the Accusation laid to their charge which they are Ordered to do before the next Choultry -

Choultry Court
the 16th Day of June 1759

Charles Bourchier
Henery Vansittart
Samuel Ardley } Justices

N.544. The Town Coniseply Acquaints the Bench that Agreeable to the Order of the Last Choultry Audy and Roodrapah have taken the Solemn Oath they are therefore Ordered to be discharged

Choultry Court
the 23d Day of June 1759
John Smith
John Pybus
Charles Turner } Justices

N.545 Soondero and Bagoo Dancing Girls Complain Against Natchapah they having delivered Sundry Jewells to him before the Seize to take care of which has not Redelivered to them the said Natchapah Alledging that they were Stole out of the Sorting Godown where he had deposited them with his own Effects and he brings two of the Export Ware house Coniseplys to prove that there was no Jewels in the Chest When it was delivered to him after the raising of the Seize the Complainants therefore desirous that the said Natchapah may take the Solemn Oath that he does not know what is become of the said Jewels which he is Ordered to do in the presence of the Complainants -

True Copy from the Extracts
/ Signed / Chas. Inglis
/ Signed / J. Stuart Hall
Solicitor for Appellant -

To

To the Honorable John Holland Esq.r
President and Governor &c.a in Council
Fort St. George

In the Honble. }
the Court of Appeals }

Between Saldoo Singanah Chitty
Administrator of Suldoo Poley Chitty
Deceased by his Attorney Augustine Burton
Complainant and Attatoony Paddoomanaw=
=boodoo Chitty Defendant & C. Contra-

The Answer of the above named Original Complainant and Cross Defendant

This Respondent Admits that he did some time on or about the Thirtieth Day of November in the Year of Christ One thousand Seven hundred and Eighty Six file his Bill in the Honourable the Mayors Court for the Sum of One thousand Six hundred and fifty four Pagodas and two fanams the same being really due upon Bond to the Estate of the Deceased Poley Chitty by the Appellant and this Respondent insists that the Appellant knows the same to be really due and Repeatedly promised since the Suit has been Commenced as well as Constantly before to Satisfy the said Debt which he never pretended to dispute till he put in

Filed in my office the 31st August 1787
Chas N. White Actg

in his Answer - This Respondent says that to this Answer this Respondent filed a Replications fully refuting all pretences whatever that the Appellant could suggest to avoid the payment of the said Bond and other Papers being also filed Issue was Joined thereon on the Twelfth Day of February One thousand Seven hundred and Eighty Eight and this Respondent Proceeded to Examine his Witnesses and did accordingly Examine many Different Witnesses proving the Justness of this Respondents Demand and after having Examined the same he did frequently pray the Honourable the Mayors Court that Publication might pass to which the Appellant Constantly objected under pretence of not having been able to Examine his Witnesses but in fact for no other Reason than to Delay the said Suit and Consequently the payment of a Just Debt which he was conscious he owed - This Respondent further Sheweth that the Honble the Mayors Court being unwilling to deprive him of any Opportunity to Examine his Witnesses did from time to time indulge the Appellant with further Rules for that purpose from the said Twelfth Day of February One thousand Seven hundred and Eighty Eight until the 5th Day of May last past being a year and nearly three Months when the Appellant being Apprehensive that he could not take any further Advantage of the Court indulgence

indulgence of the Court and being fearfull that Publication would pass he thought proper to file the Affidavit mentioned in the Appellants Petition and to pray the Court thereon that this Respondent Juldoo Singanah Chitty and Juldoo Cundapah Chitty might be Examined at the Pagoda of Triplicane this Respondent says that the Court Ordered the same for further Consideration until the Court Day following and allowed this Respondent then to Appear and Shew Cause why the same should not be granted and this Respondent further saith that on the next Court Day this Respondent Appeared and prayed Leave to file Several Affidavits as Sufficient Cause why this Respondent and the said Juldoo Cundapah Chitty ought not be Examined at the Pagoda of Tripliane — This Respondent further saith that Three of there Affidavits were of Respectable Merchants and each of them severally Swore "that they had long known this Respondent and the said Juldoo Cundapah Chitty as well as their Family and Connection, that they had always been Considered as Respectable Merchants and honest Man, and that they were the Principal Family of their Cast — They further Swore that their Cast is of the Banion or Vysia Cast a Cast always Considered as a Superior Cast Among the Natives of India, they also Swore that to the best of their belief they never had been required to take Oath in any other manner than the usual Form and that it was considered Among the natives in general but particularly Among the Banian Cast as very disagracefull for any Family of Credit to be Required to make Oath at a Pagoda and is a Considerable disparagement of their Character and Credit — they also Swore that they verily believed that this Respondent and the said Juldoo Cundapah Chitty would equally declare the truth upon their being Sworn in the Common way as they would if they were Sworn at the Pagoda and they also Swore that they verily believed that the Appellant had no other Reason for Applying to the Honble the Mayors Court that this Respondent and the said Juldoo Cundapah Chitty might be Sworn at the Pagoda but in the hope that they might Refuse so to do and that thereby the Suit against him might be Stopped" and the other Affidavit being also of a Respectable Merchant Testifyed "that some time in the beginning of the year One thousand Seven hundred and Eighty Seven the Appellant had come to the Dwelling House of the Deponent and informed him that this Respondent had Commenced a Suit against him upon his Bond, that he could not pay the Money and this Respondent having Refused to allow him a longer time he was advised to carry on the Suit and to Require this Respondent to be Sworn at Tripliane Pagoda which he would Refuse to do because it would be a disagrace and th

"the Suit would be Stopped and he also Swore that the being
"Sworn at a Pagoda is Considered so discreditable Among the
"Cast to which this Respondent belongs that he verily believed
" that the Respondent would rather loose the money Sued for
"than undergo the Disgrace and the same Deponent did
" also Swear that he verily believed the Appellant had made
" his present Application to the Honourable the Mayors
"Court for no other Reason but from a hope that this Respon-
" dent would Refuse so to do and thereby the Suit would be
"Stopped" This Respondent says that upon this Cause being
Sworn and it being further Urged by the Attornies Employed
by this Respondent that the Respondent was himself a Party
and therefore ought not to be Examined at all - That the
Affidavit on which the motion was founded had not stated
any Reason more than Relationships for Applying for such
Order the same too after so long a Delay as Fifteen Months
and it being also urged how wide a field for Litigation would
be gained by allowing such motion the Court thought proper
to overrule the Appellants Application but the Appellant
not Satisfied therewith and only Contriving how he might
most Delay the Proceedings and prevent the payment of
the Debt which he knows to be Justly Due to this
Respondent thought proper to Apply for a Rehearing at a
full

full Court which the Honorable Court were also pleased to
indulge him with and Accordingly the same having been
Debated by a full Court they were pleased to Confirm their
Former Order but the Appellant Still having a View to the
Delay he has Constantly meditated has thought proper since
to Appeal to this Honourable Court (being the first instance
as this Respondent is informed of a Rehearing and an Appeal
in the same Cause) under pretence that he has been Aggrieved
by the said Order but in fact from no other motive that
system of Litigiousness and Obstinacy in disputing a plain
Bond Debt first by filing a Cross Bill and since continued
on under Different pretences for the Space now of near Three
years And this Respondent says that so far from the Appellant
having been Aggrieved by the Proceedings of the Honourable
the Mayors Court he has been indulged in almost every
prayer he has made which has Occasioned the Suit to have
been so long Delayed And this Respondent humbly insists
that the practice of the Honorable the Mayors Court has been
almost Constantly to overrule such Applications and particularly
where the facts Sworn to were so Strong and the Circumstance
attending the Suit so fully Corroborated the Litigious
Disposition of the Appellant the Honourable the Mayors
Court could not Agreeably to their own practice or the principle

Equity and Justice have done otherwise than Overrule so Vexatious and Litigious an Application and in Regard to the Reason Stated by the Appellant for his present Application this Respondent says that by the letter and Spirit of the Charter the Persons first Appointed to Superintend the Mayors Court were to fix upon such manner of Administering Oaths to Native Witnesses as they might conceive most binding upon their Consciences which they did Accordingly and fixed upon a Certain form which has been long Established in the Mayors Court of Swearing Native Witnesses if they are Hindoos by Mint and Water Which is Strictly conformable to the Words and intention of the Charter and Agreeable to the Constant practice of the Court and were this otherwise no possible Reason can be given why every Witness that is produced should not be also Sworn at a Pagoda Which would occasion such Difficulties in collecting Evidences as would lend greatly to the Delay of Justice and injury of the Suitors — This Respondent further saith that he denies it to be the practice of the Honorable the Mayors Court to Order Witnesses to be examined in the way he Contends for this Respondent says that there are numberless instances upon their Records of such Applications being denied and there are some upon the Records of this Honble Court

Court in which Appeals for the same Reason have been dismissed and the Order of the Honorable the Mayors Court Confirmed and there are also instances upon the Records of this Honorable Court in which the Orders of the Mayors Court to Examine Witnesses at the Pagoda have been Reversed One instance of which is the first produced by the Appellant of Narain Chitty against Paul Benfield in which it appears by the Extract hereunto annexed that Poonicoty who was Ordered to be Examined at the Pagoda Appealed therefrom to this Honorable Court and his Appeal was allowed and the Order of the Mayors Court Reversed with Costs this Respondent says that the Second Extract produced by the Appellant was Appealed from to this Honble Court and the Suit in the Mayors Court was soon afterwards with drawn so that no Determination was had upon it — This Respondent further saith that the 3d Extract appears to have been in the Case of a Defendants Swearing to his Answer Which is Totally Different from the present Case and the other Extracts adduced by the Appellant are all taken from the Choultry Court so that the Appellant has by no means proved what he has Asserted that the practice of the Mayors Court is in support of his Appeal whereas this Respondent says that there are the Strongest Reasons why the Order of the Mayors Court should

be Affirmed and Among others he humbly Submits the following-

First ..... Because of the great Delay there Appears to have been already in the present Suit-

Secondly ..... Because the Appellant might have made his present Application near fifteen Months before he did-

Thirdly ..... Because one of the Witnesses is the Complainant and ought not to be Examined at all-

Fourthly ..... Because the other Witness is only a Nephew and no other Reason given but his being, such Which by no means implies such an Interest as to impeach his Evidence - and if it did his Evidence ought not to be taken at all-

Fifthly ..... Because of the Strong Facts Sworn to in the Affidavits filed by this Respondent-

Sixthly ..... Because the Application on the part of the Appellant is only founded upon his own Affidavit-

Seventhly ..... Because of the Mischievious tendency of opening a New Door to lengthening Suits of Law-

Eighthly ..... Because every Court must be Competent to collect its Evidences in such manner as it may think proper-

Ninthly ..... Because the Reason given by Mr. Ross's Dissent allows that these Orders are subject to the Approbation of the Court by the very Words he makes use of" the Court Approving thereof" and the Court it is plain did not in this Instance Approve of the Respondents and the said Saldoo Sundapah Chitty being Examined at Triplicane Pagoda-

Tenthly ..... Because the Matters has not only been Determined once by a Rotation Court but also upon a Rehearing by a full Court-

For all Which Reasons and for such other as may be urged at the hearing this Respondent humbly prays that the said Order so passed by the Honourable the Mayors Court in this Cause may be affirmed and that the said Appellant may be Ordered to pay exampleny Costs for his litigious and Appressive Proceedings-

/Signed/ C. Walker
Solicitor for Respt.

Extract

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 31st Day of August Anno Domini 1773

Present

George Baker Esqr. Mayor
Thomas Cowney and John Renton
Aldermen

Narrain Chitty
Paul Benfield & Co. Contra

Petition of Cowneja Cooty Read

Answer of the Respondent Read

Interrogatories on the part of the Petitioner Read

Three Depositions taken thereunto Read

Interrogatories on the part of the Respondent Read

Two Depositions taken thereunto Read

Additional Interrogatories on the part of the Respondent Read

One Deposition taken thereunto Read - Appiah the ——
1st Witness did not appear to Sign his Deposition The Attorney for the Petitioner Objects to the Deposition of Appiah a Witness produced on the part and behalf of the Respondent in this Affair as he has not Signed his Deposition Which is Contrary to the Rule laid down by the Book of Instructions relative to Cases of that Nature - The Court having taken the same into Consideration it is Ordered that the said Deposition be Quashed -

The Matter in Dispute between the Petitioner and the Respondent Coming on to be Determined this Day in the Presence of the Attornies on both sides on Reading the Petition the Respondents Answer the Interrogatories and Depositions on the part of the Petitioner The Interrogatories and Depositions on the part of the Respondent on hearing the Pleading made use of, by the Attornies on both sides and on due Consideration had thereon - This Court doth think fit to Order and Doth Accordingly Order that the Petition do stand Dismissed with Costs to be paid by the Petitioner and that the Order of Court of the 21st Day of March 1772 do Stand Confirmed It is further Ordered that Another Commission do issue directed to the Examiner to Examine the Petitioner at Triplicane Pagoda -

A true Extract
/Signed/ James Taylor
Register

A true Copy
/Signed/ Chas. N. White
Secy

A true Copy
/Signed/ P. Walker
Solicitor for Respondt

of the 1st

Court of Appeals
at
Madraspatnam } Friday the 22d April 1774

Between Poonya Cooty of Madras
Braminy Appellant and Narrain
Chitty 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 Honourable the Mayors Court together with an Extract from the Minutes of the said Court on Tuesday the 31st Day of August Anno Domini 1773 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 Order of the Honourable the Mayors Court passed in this Cause be Reversed and set a side and all Costs in both Courts paid by the Respondent -

A true Copie - by
/ Signed / By / Chas N. White
Secy

/ Sig / Thos Oakeley
Clerk

A true Copie
/ Signed / P. Walker
Solicitor for Respt.

Extract

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 8th Day of May Anno Domini 1787

Present

James Call Esquire Mayor
Edward John Hollond Robert Ewing
and
Andrew Ross Aldermen -

Vincenti Goozman
Tillanaigum Moodely Soobaroya Moodely Soobna=
=maney Moodely and Rocken Soobnamonya Moodely
Mr Charles Baker Attorney for the Petitioner Comes
Moodoo Kistnah Naick Appears and prays that all the Witnesses to be Examined on the part of the Petitioner as well as on the part of the Respondent may be Sworn in Trevatore Pagoda the same being Considered more Solemn and binding on their Consciences than the Common method of Administering the Oath by Mint and Water to which Mr Edward Ellis the attorney for the Respondent objects and prays that the Witnesses taken produced on the part of the Petitioner and the Respondent may be Sworn in the Common Form by Mint and Water no names of the Witnesses having been mentioned or any especial Cause Shewn why the usual mode should not be Observed on this Occasion The Court having taken the same into Considera=
=tion and the motion being too General It is Ordered that

the same be overruled—

Attrue Extract
/Signed/ G. Taylor
Depty Regr

Attrue Copy
/Signed/ P. Walker
Solicitor for Respondt

John Lewin Smith vers Gocul Turwady

Bill filed the 25th May 1762 — Answer filed the 13th July and prayed to be Sworn at Triplicane Pagoda Granted on the 27th July the Defendant refused to Swear — 17th August a Decree to passed by Default — 7th September Appeal Lodged — on the 19th June 1764 Decree of Court Reversed and an Answer filed —

John Deboneire vers Nella Cautaucker

Bill filed the 27th October 1761 —

26th October Answer filed prayed to be Admitted upon Solemn Oath Granted Appealed 6th December Reversed 11th January 62 —

I have Examined the Record I find them Agreeably to the above —

/Signed/ P. Walker
Solicitor for Respondt

Court

Court of Appeals
at
Madraspatnam

Saturday the 15th day of March
Anno Domini 1794

Between Attaloory Paddoomanaulo Doo Chitty appellant and Juldoosingah Chitty Administrator of Juldoo Pole Chitty Deceased by his Attorney Augustine Burton Respondent

This Cause coming on this day to be heard and debated before this Court by the Attornies on both sides upon hearing the Petition of Appeal and Answer and the several Exhibits of the Honble the Mayors Court together with the order of the said Court given in this Cause on Saturday the 25th day of June Anno Domini 1763 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 do stand affirmed and that the appellant Petition be hence dismissed with Costs —

Attest /Signed/ Chas. N. White
Clk

To

To the Kings Most Excellent Majesty in Counal

Between Suldoo Singanah Chitty
Administrator of Suldoo Polley Chitty
Deceased by his Attorney Augustine Burton
Complainant and Attaloory Caddamanabdo
Chitty Defendant &c. &c. Contra.

The Humble Petition and Appeal of the above
named Defendant

Most humbly Sheweth

That some time on or about the Day of
Novamber in the year of Christ One thousand Seven hundred and
Eighty Six the above named Suldoo Singanah Chitty did by
his Attorney the above named Augustine Burton file a Bill
in the Mayors Court at Madraspatnam for the Sum of One
thousand Six hundred and fifty four Pagodas and two fanams
pretended to be due to the Estate of the said Deceased Poley
Chitty by your Petitioner, but your Petitioner conscious that he
was not indebted to the said Estate but on the Contrary, that the
said Estate was indebted unto him did in his Answer to the said
Bill of Complaint deny the said pretended Debt and did file
a Cross Bill thereon Against the Complainant for the Sum of
One thousand and Seventeen Pagodas Sixteen fanams and
Twenty

Filed in my Office
the 28th March 1793
Chas N. White Esq.

Twenty Cash as Justly due and Owing from the said Estate to
your Petitioner, that the said Suit and Cross Suit going through
the usual Law process issue did Join and Rules did pass for the
Examination of Witnesses and Witnesses having been Examined
in Consequence on the part of the Complainant he did by his
Attorney on the 5th Day of May last, pray publication
might pass, to which your Petitioner did Object and pray leave
to file an Affidavit setting forth that Suldoo Cundapah Chitty
and Suldoo Singanah Chitty were material Witnesses on the
part of your Petitioner, That as one was the Brother and the
other the Nephew to the Deceased he firmly believed they
would not Depose to the truth of the several Matters to be
proposed to them if Sworn in the Common form of Mint and
Water and that the only means which could be procured to the
furtherance of Justice would be to Cause the parties to be Sworn
at the Pagoda of Triplicane Whereupon the Attorney for the
Complainant did pray a time of One Week to Shew Cause
Why the purport of your Petitioners said Application should
not be Complied with. That on the twelfth Day of the same
Month of May Mr. Stephen Popham, Mr. Henry
Dupuy in Conjunction with Mr. Peter Walker did appear
on the part of the said Complainant and did file sundry
Affidavits setting forth that to Swear at the Pagoda would

be Detrimental and Disgraceful to their Cast, and charging with your Petitioners having Acknowledged the said pretended Debt and did thereon pray, that the prayer of your Petitioner for the Examination of the said Suldoo Singanah Chitty, and Suldoo Condapah Chitty might be over Ruled, and that the Witnesses might be Examined in the Common form the said Honourable the Mayors Court taking the same into their Consideration were pleased to Order that your Petitioners Motion might be over Ruled and that the Witnesses should be Examined in the Common form Mr. Alderman Ross Dissenting, to the Resolution of the Court being, of Opinion there were not sufficient Reasons set forth in the Affidavits why the Witnesses should not be Examined at Tripliane Pagoda— Your Petitioner Sheweth that thus deprived of the only means Whereby he could be enabled to prove the injustice of the Demand set up against him by the Complainant and Establisher his own Claim as set forth in his said Cross Bill, cut off from the only Evidence that lay in his power to produce or what Amounted to the same thing, prevented from pursuing a mode by which he might with safety proceed to Examine them, he saw his property in the most Dangerous situation and all hopes of Justice from the Depositions of the said Suldoo Singanah Chitty and Suldoo Condapah Chitty

Entirely frustrated and left Remedeless unless the said Mayors Court might extend their indulgence, and on a Reconsideration of the Matter grant your Petitioner his Equitable and Reasonable Request therefore, and under such Circumstances and Considerations your Petitioner did on the Nineteenth Day of the same Month of May Petition the said Mayors Court for a Rehearing of the Order of the twelfth preceding — That the said Mayors Court granting the prayer of your Petitioners said Petition the said Order of the Twelfth Day of May did come on to be Reheard on the Twenty Seventh Day of June last past when the said Mayors Court were again pleased to Order (three of the Aldermen Dissenting therefrom) That the said Order of the said Twelfth Day of May should stand Confirmed and that Suldoo Singanah Chitty and Suldoo Condapah Chitty should be Examined and attest their Depositions in the Common form. And that your Petitioner should pay all Costs— By which said Order of the said Mayors Court your Petitioner did conceive himself much Aggrieved and therefore did Appeal therefrom to the Court of Appeals at Madraspatnam for the following Amongst other Reasons First Because it was Agreeable to the Letter and Spirit of the Charter that an Oath should be Administered to the Natives in the manner that was conceived to be the most Binding upon their consciencies the Pagoda

and it was well known that Swearing before the Pagoda was held the most sacred Consequently the most binding upon their consciencies and because the Depasing in the Common form upon Mint and Water was Regarded as Trifling When Compared with the more solemn manner in which the Oath was Administered before the Pagoda — Secondly Because That it had been the practice of the Different Courts in India to wit the said Court of Appeals the said Mayors Court and the Choultry Court that upon Especial Cause and under particular Reasons assigned to Comply with a prayer for the Examination of Witnesses at the Pagoda as your Petitioner did pray might Appear by the Extracts of Purudent to your Petitioners said Petition of Appeal annexed for the inspection of the said Court of Appeals and which your Petitioner did pray might be Received as part of his Petition and Appeal the Attested Copies Whereof were in your Petitioners posession and Ready to be produced at the hearing Thirdly Because your Petitioners situation was so very particular that it Required the utmost Caution how to prevent Total Ruin, for that the said Suldoo Singanah Chitty the Complainant and Suldoo Cundapah Chitty who are Relations to the Deceased Suldoo Soley Chitty, the one the Brother and the other the Nephew, were the only two Witnesses that your Petitioner was enabled to produce in support of his Rights and

conceiving from their near Relationship to the Deceased and particularly as one of them, was the Complainant in the Cause that they might be biased and not speak to the truth even upon Oath in a matter that was Diametrically Against the Estate of their Deceased Relation and indeed Against themselves unless such Oath, should be Administered in the most sacred and Solemn manner that is before the Pagoda at Triplicane your Petitioner did therefore pray that the said Court of Appeals would be pleased to take into their benevolent Consideration the Alarming predicament in which your Petitioner was placed, that they would be pleased to have in their Recollection, that all he Required was that an Oath might be Administered in the most Solemn manner to people who by the ties of Blood and interest might be so much under the influence of prejudice and predilection so as to disregard and speak contrary to the truth whilst Deposing on the part of your Petitioner were they allowed to Depose in the common form upon Mint and Water that therefore the said Court would be pleased to Reverse the said Order of the said Mayors Court and Order that the said Suldoo Singanah Chitty, and Suldoo Cundapah Chitty might Depose upon Oath before the Pagoda at Triplicane, so your Petitioner did say would truth be manifested, the Dictates of Justice be fulfilled and your Petitio

Pag

sai

saved from the impending ruin, with which Artifice and Designed threatened him—

And your Petitioner Sheweth to your Most Excellent Majesty in Council that to your Petitioners said Petition and Appeal the above named Juldoo Singanah Chitty did on or about the thirty first day of August in the year of Christ One thousand Seven hundred and Eighty Nine Exhibit and file his Answer and therein and thereby amongst other things did insist that your Petitioner inserted did stand unto him the Respondent in the Sum Sued for. and that after Issue had Joined in the Cause on the Twelfth Day of February One thousand Seven hundred and Eighty Eight many different Witnesses had been Examined proving the Justness thereof he did frequently pray the said Mayors Court that publication might pass, to which your Petitioner Constantly objected under pretence of not having been able to Examine his Witnesses, but that it was in fact for no other Reason than to Delay the said Suit that the said Mayors Court did from time to time indulge your Petitioner with further Rules from the said Twelfth Day of February One thousand Seven hundred and Eighty Eight until the fifth Day of May then following being a year and nearly three Months When your Petitioner did file the affidavit

affidavit mentioned in his said Petition of Appeal and pray thereon that the Respondent Juldoo Singanah Chitty and Juldoo Cundapah Chitty might be Examined at the Pagoda of Triplicane, that the Court Ordered the same for further Consideration until the Court Day following and allowed him then to Appear and Shew Cause why the same should not be granted that on the next Day the Respondent Appeared and prayed leave to file several Affidavits as sufficient Cause why himself and the said Juldoo Cundapah Chitty ought not to be Examined at the Pagoda of Triplicane for that the said Affidavits amongst other things did Shew that it was Considered among the Natives in general, but particularly among the Banian Cast as very Disgraceful for any family of Credit to be Required to make Oath at a Pagoda and was a Considerable disparagements of their Character and Credit they also Swore that they verily believed that the Respondent and the said Juldoo Cundapah Chitty would equally declare the truth upon their being Sworn in the Common way as they would if they were Sworn at the Pagodas, and they also Swore that they verily believed that your Petitioner had no other Reason for Applying to the said Mayors Court that the Respondent and the said Juldoo Cundapah Chitty might be Sworn at the

Pagodas

Pagoda but in the hope that they might Refuse so to do, and that thereby the Suit Against him might be stopped, and that the other Affidavit testified that some time in the begining of the year One thousand Seven hundred and Eighty Seven the Appellant had come to the Dwelling House of the Deponent and informed him that the Respondent had Commenced a Suit Against him upon his Bond, that he could not pay the Money and the Respondent having Refused to allow him a longer time, he was advised to carry on the Suit, and to Require the Respondent to be Sworn at Triplicane Pagoda which he would Refuse to do, because it would be a disgrace and then the Suit would be stopped and that the being Sworn at a Pagoda was Considered so discreditable Among the Cast to which the Respondent belonged that he verily believed that the Respondent would rather loose the Money Sued for than undergo the disgrace and the same Deponent did also Swear that he Verily believed that your Petitioner had made his present Application to the said Mayors Court for no other Reason but from a hope that the Respondent would Refuse so to do, and thereby the Suit would be stopped that upon the Cause Shewn the said Mayors Court thought proper to over Rule your Petitioners said Application, that thereupon your Petitioner did Apply for a Rehearing at a full

full Court, which being granted the same did come on to be debated by a full Court, when the former Order was Confirmed, and did deny that your Petitioner was thereby any wise Aggrieved, or that he had Cause of Appeal therefrom to the said Court of Appeals and the Respondent did say that in Regard to the Reason stated by your Petitioner as Cause of Appeal that by the Letter and Spirit of the Charter the Persons first Appointed to Superintend the Mayors Court were to fix upon such manner of administering Oaths to Native Witnesses as they might conceiving most binding upon their consciencies Which they did Accordingly, and fixed upon a Certain form Which had been long Established in the said Mayors Court of Swearing Native Witnesses, if they were Hindoos by Mint and Water Which was strictly Conformable to the words and intention of the Charter, and Agreeable to the Constant practice of the Court and were it otherwise no possible Reason could be given why every Witness that was produced should not be also Sworn at a Pagoda, which would occasion such Difficulties in Collecting Evidence as would tend greatly to the Delay of Justice and injury of the Suitors — that he denied it to be the practice of the said Mayors Court to Order Witnesses to be exami

in the way your Petitioner had stated for that were numberless instances upon the Records of such Applications being denied, and that there were some upon the Records of the said Court of Appeals in which Appeals for the same Reason had been dismissed and the Order of the said Mayors Court Confirmed, and there where the Orders of the said Mayors Court to Examine Witnesses at the Pagoda had been Reversed, one instance of which the Respondent did say was the first produced by the Appellant of Narrain Chitty Against Paul Benfield in which it Appeared by the Extract to the Respondents said Answer annexed that Coomaroty, who was Ordered to be Examined at the Pagoda Appealed therefrom to the said Court of Appeals and his Appeal was allowed and the Order of the said Mayors Court Reversed, that the Second Extract produced by your Petitioner was Appealed from to the said Court of Appeals and the Suit in the said Mayors Court was soon afterwards with drawn that the said third Extract Appeared to have been in the Case of a Defendants Swearing to his answer which the Respondent did say was Totally different from the present Case and that the other Extracts adduced by your Petitioner were all taken from the Pleadings so that your Petitioner had by no means proved what he had asserted that the practice of the said

said Mayors Court was in support of his said Appeal — Whereas the Respondent did say that there were the strongest Reasons why the Order of the said Mayors Court should be Affirmed, and Among them did Submit the following Because of the great Delay there Appeared to have been already in the Suit That your Petitioner might have made his Application near Fifteen Months before he did that one of the Witnesses was the Complainant and ought not to be Examined at all — That the other Witness was only a Nephew and no other Reason given but his being such which the Respondent did say by no means implied such an Interest as to impeach his Evidence and that if it did his Evidence ought not to be taken at all and Because of the Strong facts Sworn to in the Affidavits filed by the Respondent also Because the Application on the part of your Petitioner was only founded upon his own Affidavit and Because the Reason given by Mr Ross's Dissent did allow that those Orders were subject to the Approbation of the Court by the very Words he made use of and because the matters had not only been determined once by a Rotation Court but also upon a Rehearing by a full Court — For all which Reasons and for such other as might be urged at the hearing the Respondent did pray that the said Order so

pro

passed by the said Mayors Court might be affirmed and that your Petitioner might be Ordered to pay Exemplary Costs for his litigious and oppressive proceedings—

And your Petitioner humbly Sheweth to your Most Excellent Majesty in Council that the said Petition and Answer did come on to be heard before the said Court of Appeals on the Fourteenth Day of the present Month of March When the said Court of Appeals was pleased to affirm the said Order of the said Mayors Court with Costs to be paid by your Petitioner as may more fully appear by the Directal Order of the said Court of Appeals hereunto annexed and to which your Petitioner humbly craves leave to Refer and that the same may be taken as part of this his Petition of Appeal—

By which said Directal Orders of the said Mayors Court and of the said Court of Appeals your Petitioner doth conceive himself much Aggrieved and doth therefore Appeal therefrom to your Most Excellent Majesty in Council for the following Amongst other Reasons—

First..... Because the peculiarity of your Petitioners case takes the Matter in Question out of a General Rule and therefore your Petitioner humbly Submits to your Most Excellent Majesty in Council that it Requires a particular Application in Order that your Petitioner might be Enabled to Obtain Justice, which is all he Requires to guard himself and his fortunes Against the oppressive conduct of the Respondent for your Petitioner humbly Submits to your Most Excellent Majesty in Council that the Suit out of which your Petitioners Petition of Appeal has arisen is brought by the Respondent as Administrator of Suldoo Poley Chitty Deceased that the Respondent who is one of your Petitioners Witnesses was Brother to the said Deceased and that the other Witness Suldoo Cundapah Chitty was Nephew to the Deceased and therefore your Petitioner submits to your Most Excellent Majesty in Council that they have so strong a predilection in favour of the said Estate of the said Suldoo Poley Chitty Deceased Interested as they are therein that they will not depose the truth unless they are sworn to do so in the most Solemn form and your Petitioner is so particularly situated that it is the parties thus interested that he is under the necessity of bringing forward in support of his Rights and it was upon such Reasons he prayed the Oath most binding upon their consciences might be administered to them, and which your Petitioner humbly Submits to your Most Excellent Majesty in Council is Agreeable both to the Letter and Spirit of the Charter by your Most Excellent Majesty granted to the United Company of Merchants of England trading

Trading to the East Indies and your Petitioner humbly —
Sheweth to your Most Excellent Majesty in Council that the
Oath most binding upon the consciencies of the Natives of this
Country is that which is Administered before the Pagoda and
that the Common form of Mint and Water is trifling and not
binding upon the conscience of the party deposing thereon —

Secondly ..... Because in particular Cases and upon particular
occasions it has been the practice of Courts Established in India
to comply with the prayer of a party that an Oath might be
Administered to persons deposing in a Cause at the Pagoda
that the said Mayors Court and Court of Appeals have ben
induced to conform thereto as may Appear by the Extracts
annexed to your Petitioners said Petition of Appeal to the said
Court of Appeals to which your Petitioner humbly Craves —
Leave and that the same may be Received as part of this his
Petition of Appeal to your Most Excellent Majesty in Council
and although the Respondent has attempted to throw a blur
upon the Records of the Choultry Court to which your Petitioners
has Referred your Petitioner humbly Submits to your Most
Excellent Majesty in Council that the said Court being more immee-
diately Relative to Natives who are the best Judges of their own
Customs and of the Oath most binding upon the consciencies of
their cast the Records thereof were the best proof your Petitioner
could

could adduce; that in particular Cases it has been held —
indispensably necessary to Administer an Oath before the
Pagoda — And your Petitioner humbly Submits to your
Most Excellent Majesty in Council that the Reasons adduced
by the Respondent in his said Answer in the said Court of
Appeals are very insufficient and this Respondent submits
to your Most Excellent Majesty in Council that if as the
Respondent in his said Reason states one of your Petitioners
Witnesses being the Complainant ought not to have been
Examined at all, he should have excepted thereto in the
said Mayors Court, but it Appears by the Records thereof he
had no objection to be Examined as a Witness, so that the
Oath had been Administered to him in the Common form —
And your Petitioner humbly Submits to your Most Excellent
Majesty in Council that Notwithstanding the Assertion of the
Respondent in his said Answer Contained that Suldoo Condapah
Chitty as Nephew to the Deceased is so far Interested that
he might not Depose to the truth on the part of your —
Petitioner unless Sworn in the manner most binding upon
his Consciencies; and if your Petitioner should be deprived
of his Testimony delivered upon Oath before the Pagoda
your Petitioner must sink under his misfortunes deprived
of that Justice which alone he has Contended for, and which

to

the Respondent by every means in his power has Attempted to withhold from him and although as the Respondent says that your Petitioners Application to the said Mayors Court was upon his own Affidavit only yet your Petitioner humbly Submits to your Most Excellent Majesty in Council that such an Affidavits was sufficient, and that it is the peculiar Circumstances of your Petitioners Case and the Rules that have prevailed in similar Cases as Shewn by your Petitioner that formed the criterion upon which the said Mayors Court and Court of Appeals were to Determine And your Petitioner humbly Submits to your Most Excellent Majesty in Council that even if such Rules Extended to your Petitioner it could not be Answers as the Respondent has Suggested in his said Answer in the said Court of Appeals of Opening a new Door to lengthening suits at law but on the Contrary to the means of Obtaining the truth from an unwilling or interested witness and thereby promote the ends of Justice and Although as the Respondent has Asserted in his said Answer that every Court must be Competent to Collect its Evidence in such Manner as it may think proper yet your Petitioner &c humbly Submits to your Most Excellent Majesty in Council that the Evidence required in the present Case is of an Extraordinary Nature and Courts in Similar instances

Instances your Petitioner has shewn have Departed from their general Rules and Adopted that Mode which your Petitioner Submitted to the said Mayors Court and Court of Appeals — and the defect of Mr Alderman Rolfs your Petitioner humbly Submits to your Majesty in Council is founded upon those Considerations — And your Petitioner Submits to your Most Excellent Majesty in Council that the Extracts of the Respondents said Answer in the said Court of Appeals Annexed did Support his said Petition of Appeal before the said Court of Appeals inasmuch as that they shew that the said Mayors Court did in particular Cases Order that Witnesses should be sworn before the Pagoda Although the said Court of Appeals did reverse the Order of the Mayors Court therein Contained and Your Petitioner Submits to your Most Excellent Majesty in Council that it is the said Mayors Court that Collects Evidence in a Cause and not the said Court of Appeals and that therefore the Eighth Reason of the Respondent Contained in his Answer to the said Court of Appeals did Apply in Support of your Petitioners said Petition of &c Appeal to the said Court of Appeals — And Your &c Petitioner Humbly Submits to your Most Excellent Majesty in Council that the Extract of the Eighth day of

Mr As

May one thousand Seven hundred and Eighty seven to the Respondents said Answer Annexed Evidently Shews that the said Mayors Court Refused the prayer therein made merely because the same was too general and your Petitioner Submits to your Most Excellent Majesty in Council that the two last Extracts to the Respondents said Answer Annexed further shew the practice of the said Mayors Court to Order parties to be Sworn before the Pagoda upon a Requesteon made and cause shewn for that purpose and lastly your Petitioner humbly Submits to your Most Excellent Majesty in Council that he has not been enabled to Obtain the Oath of the Respondent to his cross Answer to the Cross Bill filed by your Petitioner in the said Mayors Court but that the same is Sworn to by one Augustine Burton said to be the Assignee of the Respondent and who therein swears that your Petitioner doth stand Justly and truely indebted to him the Defendant in the Sum sued for Although in an Affedavit in the Cause to hold your Petitioner to Bail the said Augustine Burton doth swear that your Petitioner is Indebted to him as by the said Answer and Affidavit to which Your Petitioner humbly Craves Reference may Appear

For

For all which Reasons and such others as may be Offered at the Hearing your Petitioner Most humbly prays that your Majesty in Council will be pleased to Reverse the said Order of the said Mayors Court and the Decreed Order of the said Court of Appeals and to grant such Relief as to Your Most Excellent Majesty in Council May seem Meet

/Signed/ James Stuart Hall
Solicitor for Appellant

Court of

Court of Appeals
at
Madraspatnam

Saturday the 15th day of March Anno Domini 1794

Between Attaloory Puddoomanaboodoo Chitty Appellant and Suldoosingah Chitty Administrator of Suldoo Pole Chitty Deceased by his Attorney Augustine Burton 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 Saturday the 20th day of June Anno Domini 1789. upon due Consideration had of the matters therein severally Contained and of the Pleadings and Arguments used by the Attornies on both sides This Court doth think fit to Order and Decree and doth Accordingly Order and Decree that the said Order of the Hon'ble the Mayors Court do stand Affirmed and that the Appellants Petition be hence dismissed with Costs—

(Signed) Chas N White
Clk

A true Copy
(Signed) James Stuart Hall
Solicitor for Appellant—

To the Kings Most Excellent Majesty in Council

Between Suldoo Linganah Chitty Administrator of Suldoo Polley Chitty deceased by his Attorney Augustine Burton Complainant and Atooloory Puddamanaboodoo Chitty Defendant

E. C. Contray—

The Answer to the Petition and Appeal of the Above named Defendant

The said Respondent Admits that he did on or About the time in the Appellants Petition and Appeal mentioned file a Bill in the Mayors Court at Madraspatnam against the said Appellant for Recovery of the Sum of One thousand Six hundred and fifty four Pagodas and two fanams and that the said Appellant did by his Answer to the said Bill of Complaint deny the said debt and did file a Cross Bill thereon for Recovery of the Sum of One hundred and Seventeen Pagodas six fanams and twenty Cash but not for the Sum of one thousand and Seventeen Pagodas Sixteen fanams and twenty Cash

Filed in my office the 21st April 1794
Chas N White Clk

As

as by the said Petitioners Petition and Appeal is untruly &c
alledged and this Respondent Admits that such proceedings were
had in the said Original and Cross Cause as in the said
Petition and Appeal is particularly setforth and that Rules
did pass for the Examination of Witnesses and that Witnesses
were Accordingly examined in the said Causes and that it was
on the fifth day of May Last prayed that Publication might
thereupon pass to which the Appellant Objected and filed an
Affidavit merely for delay setting forth that Juldoo Cundapah
Chitty and the said Administrator Juldoo Linganah Chitty
were material Witnesses on the part of the said Appellant
and that the said Appellant believed they would not depose
to the truth of the Several Matters to be proposed to them
if sworn in the common form of Moor and Water and
that the only means as the said Appellant pretended for
the furtherance of Justice would be to cause the parties
to be sworn at the Pagoda of Triplicane and that on the
twelfth day of the same Month of May the said Respondent
caused Affidavits to be filed shewing cause against the said
Motion and setting forth that to swear at the Pagoda would be
detrimental and disgraceful to their Cast and that the said
Appellant had Acknowledged the said pretended debt and
did thereon pray that the prayer for the Examination of the
said

said Administrator Juldoo Linganah Chitty and Juldoo
Cundapah Chitty might be over Ruled and that the said
Hon'ble the Mayors Court taking the same into their &c
Consideration were pleased to Order that the said motion
might be over Ruled And this Respondent Admits that the
said Appellant in Order to procrastinate the said Original
and Cross Cause and for no other motive whatever did on the
Nineteenth day of the same month of may Petition the said
Mayors Court for a Rehearing of the Order of the twelfth
Proceeding and that the said Order of the twelfth day may
did come on to be Reheard on the twenty seventh day of June
last past when the said Mayors Court was Again pleased
to Order that the said Order of the said twelfth day of
May should stand Confirmed and that the said &c
Appellant should pay all Costs Attending the said
Motion and the Rehearing thereof And this Respondent
Admits that the said appellant still pursuing the
same litigious motives by which he was actuated when he
made the said Motion did Appeal from the said Order of
the said Mayors Court to the Court of Appeals at &c
Madraspatanam and as a pretext for so doing did
Alledge that it was Agreeable to the letter and Spirit
of the Charter that an Oath should be Administered to the

Natives

natives in the manner that was conceived to be the most binding upon their Consciencies and it was well known that swearing before the Pagoda was held the most sacred and Consequently the most binding upon their consciencies and because the o[illegible] deposing in the Common form upon mint and Water was as the said Appellants untruly Alledged Regarded as trifling when Compared with the more Solemn manner in which the Oath was Administered before the Pagoda and because that it had long been the practice of the said Court of Appeals and the said Mayors Court as the said Appellant also pretended that upon especial cause to comply with a prayer for the Examination of Witnesses at the Pagoda and which the said Appellant did say might Appear by the extracts of president to his said Petition of Appeal annexed and that the said Administrator the said Sulloo Singanah Chitty and Sulloo Condapah Chitty were the only two Witnesses that the Appellant was enabled to produce in or Support of his Rights and conceiving from their Near Relationship to the deceased and particularly as one of them was the Complainant in the cause that they might be biassed and not speak to the truth on upon Oath in a matter that was diametrically against the estate of the Deceased unless such Oath should be Administered in the Most

most sacred and Solemn manner before the Pagoda the said Appellant did therefore pray that the said Court of Appeals would be pleased to Reverse the said Order of the said Mayors Court and Order that the said Sulloo Singanah Chitty and Sulloo Condapah Chitty might depose upon Oath before the Pagoda at Triplicane And this Respondent Admits that the Appellants said Petition and Appeal he this Respondent did on or About the thirty first day of August in the year of Christ One thousand Seven hundred and eighty nine exhibit and file his Answer and did therein and thereby humbly insist that the Appellant did stand indebted unto him the Respondent in the sum sued for and that after Issue had joined in the cause on the twelfth day February one thousand Seven hundred and eighty eight many different Witnesses had been examined this Respondent did frequently pray the said Mayors Court that Publication might pass but to which the Appellant constantly Objected under pretence of not having been able to Examine his Witnesses but that it was in fact for no other Reason than to delay the said Suit that the said Mayors Court did from time to time indulge the Appellant with further Rules from the said twelfth day of February One thousand Seven hundred and eighty eight under the fifth day of may then following being a Year and Nearly

th

three Months when the Appellant at length filed the Affidavit mentioned in his said Petition of Appeal and prayed thereon that the said Administrator Juldos Linganah Chitty and the said Juldos Condapa Chitty might be examined at the Pagoda of Triplicane and that the said Administrator Juldos Linganah Chitty appeared by his Attorney at Law and filed Several Affidavits as cause why himself and the said Juldos Condapah Chitty ought not be examined at the Pagoda of Triplicane and that the said Affidavits did shew that it was Considered Among the Natives in general but particularly among the Banian Cast as very disgraceful for any family of credit to be required to make Oath at a Pagoda and was a Considerable disparagement of their Character and Credit they also swore that they Verily believed that the said Juldos Linganah Chitty and the said Juldos Condapah Chitty would equally declare the truth upon their being Sworn in the Common way as they would if they were Sworn at the Pagoda and that they also sworn that they verily believed that your Petitioner had no other Reason for Applying to the said Mayors Court that the Respondent and the said Juldos Condapah Chitty might be sworn at the Pagoda but in the hope that they might Refuse so to do and that thereby the Suit Against him might be stopped and this Respondent Admits that the

Other

Other Affidavit testified that some time in the beginning of the year one thousand Seven hundred and Eighty seven the Appellant had come to the dwelling house of the Deponent and informed him that he could not pay the Money for which his said Bond had been put in Suit and that the said Appellant was therefore Advised to Carry on the Suit and to Require the said Juldos Linganah Chitty to be sworn at Triplicane Pagoda which he would Refuse to do because it would be a disgrace and that than the Suit would be stopped and that the being sworn at a Pagoda was Considered so discreditable among the Cast to which the said Juldos Linganah Chitty belonged that he the Deponent verily believed that the Respondent would not under go the disgrace and the same Deponent did also swear that he verily believed that the said Appellant had made his said Applications to the said Mayors Court for no other Reason but from a hope that the said Juldos Linganah Chitty would Refuse so to do and thereby the suit would be stopped and this Respondent did deny that the said Appellant was in any wise Aggrieved by the said Order of the said Mayors Court or that he had cause of Appeal therefrom to the said Court of Appeals and this Respondent in Regard to the Reason stated by the said Appellant as cause of Appeal did say that by the letter and Spirit of the Charter the Aldermen who were first Appointed and who composed the said Mayors Court were to fix upon such Manner of Administering Oaths to Native Witnesses

as

As they might conceive most binding upon their Consciences which they Accordingly did and fixed upon a certain form which had been long Established in the said Mayors Court of swearing Native Witnesses if they were indoos by Mint and Water which was strictly conformable to the words and intention of the Charter and Agreable to the Constant & practice of the Court and that were it otherwise no possible Reason could be given why every Witness that was produced should not be Also sworn at a Pagoda which would occasion such difficulties in Collecting evidence as would tend greatly to the delay of Justice and injury of the Suitors and this Respondent denied it to be the practice of the said Mayors Court to Order Witnesses to be examined in the way the R. Respondent had stated for that there were numberless instances upon the Records of such Applications being denied and that there were some upon the Records of the said Court of Appeals in which Appeals for the same Reason as these offered by the said Appellant had been dismissed and the Order of the said Mayors Court confirmed and others where the Order of the said Mayors Court to Examine Witnesses at the Pagoda had been Reversed one instance of which this Respondent did say was the first produced by the Appellant of Narrain Chitty Against Paul Benfield in which it Appeared by the extract to the Respondents said Answer Annexed that

Pennia Chitty

Pennia Chitty who was Ordered to be examined at the Pagoda & appealed therefrom to the said Court of Appeals and his Appeal was Allowed and the Order of the said Mayors Court Reversed and that the second extract produced by the Appellant was Appealed from to the said Court of Appeals and the suit in the said Mayors Court was soon afterward withdrawn and that the said third Extract Appeared to have been in the case of a Defendants swearing to his Answer which this Respondent said was totally different from the present case and that the other extracts adduced by the said Appellant were all taken from the Chaultry so that the said Appellant had by no means proved what he had Asserted that the practice of the said Mayors Court was in Support of his said Appeal whereas this Respondent did say and submit that the said Order of the Mayors Court should be Affirmed by Reason of the great delay there Appeared to have been already in the suit and that if the said Appellants Application had not been merely for delay he might have made such Application near fifteen Months before he so made the same and that one of the Witnesses being this Respondent ought not to be examined at all that the other Witness was only a Nephew and no other Reason given but his being such which this Respondent did say by no means implied such an & interest as to impeach his evidence and that if it did his evidence ought not to be taken at all and because of the strong facts

Sworn

Sworn to in the Affidavit filed by this Respondent and
Also because the Application on the part of the said
Appellant was only founded upon his own Affidavit and
because the said motion had not only been determined
once by a Rotation Court but also upon a Rehearing by
a full Court and this Respondent did therefore pray that
the said Order so passed by the said Mayors Court might
be Affirmed and that the Appellant might be ordered
to pay exemplary Costs for his litigious and Oppressive
proceedings and this Respondent admits that the said
Petition of Appeal and Answer did come on to be heard
before the said Court of Appeals at the time in the
said Appellants Petition and Appeal particularly
Mentioned and that the said Court of Appeals was
pleased to Affirm the said Order of the said Mayors
Court with Costs to be paid by the said Appellant but
this Respondent denies that the said Appellant is any
wise Aggrieved by the Confirmation of the said Order of
the Mayors Court but that on the Contrary the Confirmation
of the said order of the Mayors Court was an Act of
Justice and such as the said Appellant must have
expected as the Result of an Appeal so unfounded in every
principle of law and Equity as the said Appellants o.
Petition and Appeal evidently Appears to be—

The

The said Respondent in Answer to the first cause or
Reason by the said Appellant in Support of his said Petition
and Appeal Assigned saith that the Appellants case hath
only become a particular one from the unparalleled irregularity
of the said Appellants Application to the Court below that
this Respondent should be examined as a Witness in the
said suit Contrary to the established Rules of all Courts of Justice
and the principle and policy of the Law which Rejects the evidence
of parties interested in the issue of the suit not only to prevent
their sliding into perjury but also from their being presumed
to have such Abias on their minds and predelection towards
their own interest that the evidence of such interested persons
independent of other irregularities with which the said o.
Application to the Court below is embarrassed Saith that
Although he has Assigned the said Bond to the said
Augustine Burton Yet as Respondent Nevertheless most
humbly Submits to your Most Excellent Majesty in Council
that this Respondent hath such an interest in the event of
the said suit as to exclude him from being examined as
a Witness therein for that in case the said suit should
be dismissed upon the final hearing this Respondent
would in such event be obliged to Refund and Reimburse the
said Augustine Burton the Assignee of the said Bonds and

this

this Respondent so far from Admitting the Assertion of the Appellant that his only Object was to Obtain Justice doth verily believe that the said Appellant is Actuated in this Respect by principles diametrically opposite to these which he hath ascribed to himself for that the only object of the said Appellant who is a person in very Affluent Circumstances is to procrastinate the final hearing of the said Cause and to Multiply expence and this Respondent saith that he is Advised that the only mode by which the said Appellant could legally or duty obtain a discovery from this Respondent respecting any matter or thing which the said Appellant might have Conceived to have Arisen or lain within the Knowledge of this Respondent as Relating to the merits of the said Original Cause was by preferring his said Cross Bill of Complaint against this Respondent in the said Mayors Court and which mode the said Appellant hath Accordingly pursued

This Respondent in Answer to the second Cause or Reason by the said Appellant in his said Petition and Appeal Assigned saith that although the said Mayors Court did storth so far in the cause of Narsain Chitty Against Paul Benfield as to order that Certain Witnesses should be examined in the said Cause at Trepliquane Pagoda yet this Respondent Nevertheless

Saith

Saith that an appeal having been Lodged from the said Order to the Court of Appeals the said Court of Appeals on or About the twenty Second day of April which was in the year of Our Lord one thousand Seven hundred and Twenty four was pleased to Reverse the said Order of the Mayors Court with costs and this Respondent saith that Oaths are Always and invariably Administered to such Indian Native Witnesses as Appears to prosecute or give evidence on behalf of your most Excellent Majesty at the Quarter Sessions of Oyer and Terminer and general Jail delivery holden in and for the said Town of Madraspatnam and the Districts thereof in all cases whether capital or otherwise and as the Judges who Compose the Bench at the said Quarter Sessions are the same Judges who preside in the said Court of Appeals Your Petitioner therefore most humbly Conceives that your most Excellent Majesty in Council will of Consequence intend that the said Court of Appeals is fully Competent in every Respect to Judge of the form and Manner of Administering an Oath to an Indian Native and that the mode pursued in Criminal Cases should be Considered as being fully binding in Cases merely Temporal and which must have weighed Considerably with the said Court of Appeals when the said Court determined upon the said Petition and Appeal and this Respondent saith that the said Order of the Mayors Court so far as it Relates to the examination of this Respondent in any wise whatsoever is illegal and that the

desent

dissent of Mr Alderman Ross in the said Appellants &c
Petition Appeal mentioned and Alluded to and the Opinion
of the said learned Alderman as therein expressed cannot
as this Respondent most humbly conceives be of any weight
whatever In as much as the said Opinion is misconceived
and erroneous

And as to the Extracts which the said Appellant
hath Annexed to this Petition and Appeal to the President
in Council and which the said Appellant stiles extracts
from the Chaultry Court this Respondent positively saith
that there is not under this Presidency nor else where to the
Knowledge of this Respondent any such Court of Record
as the Chaultry Court and therefore the said Extracts
Cannot in any wise be Considered as Presidents or of any
weight in the present Case —

For all which Reasons and for
Such others as may be urged at the hearing this Respondent
humbly prays that the said Order so passed by the
Honble the Mayors Court and the Court of Appeals
at Madraspatnam in this cause may be affirmed
and that the said Appellant may be ordered to pay
exemplary Costs for his litigious and Oppressive
Proceedings —

John White
Gilbt Ricketts
Solicitors for Respondent

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

In the Honble
the Court of Appeals

Between Samuel Chaplin by
his Attorney Alexander Melvin &c
Complainant and James West &c
Defendant —

The Humble Petition of Appeal of the
Above Named Defendant

Sheweth

That the Above named Complainant did on the
Sixth day of February in the Present year of Our Lord one thousand
Seven hundred and Ninety by his Attorney Above named exhibit and
file a Bill of Complaint in the Honble the Mayors Court for the
Sum of Two hundred and Twenty Eight Pagodas Thirty three fanams
and Twenty Cash pretending to be due and Owing to him upon a
Bond Copy of which is annexed to his said Bill of Complaint
to which said Bill of Complaint your Petitioner did on the
Twenty third day of March following file his Answer and did
therein shew upon Oath that the Complainant was not entitled
to the Recovery of the Amount thereof as prayed for in and by
his

Filed in my Office
this 17th May 1790
Chas N. White
Cler

his said Bill of Complaint for that he had entered into an Agreement which your Petitioner in liquidation thereof to Accept a sett of Bills on England provided Your Petitioner could shew an authority to draw the same which your Petitioner in his said Answer did shew he had fully done but that the Complainant did then refuse to Accept the same and to take Advantage of the unhappy Situation of this your Petitioner and the Distresses into which Misfortunes had placed him to institute the said Suit and on your Petitioner filing his said Answer did pray that the matter might be set down upon Bill and Answer and it being ordered accordingly and the same coming on to be heard on the fourth day of this present Month of May the said Hon^ble the Mayors Court were pleased to Order and Decree and did Accordingly order and Decree that your Petitioner should pay unto the Complainant the said Sum of Tow hundred and Twenty Eight Pagodas Thirty three fanams and Sixty Cash together with all Costs of Suit as more fully Appears by a Copy of the said order and Decree hereunto Annexed the Original whereof being in your Petitioners Possession and ready to be produced at the hearing by which said Decree your Petitioner does think himself Aggrieved and doth therefore Appeal therefrom to this Hon^ble Court for the following Amongst other Reasons

Because although your Petitioner might have executed the said Bond yet the Complainant having entered into a Subsequent Agreement for the liquidation thereof he was Compelled to take Notice of his own Act and not to take Advantage of his own wrongs and the Complainant having confessed such agreement by praying the Cause might be set down upon Bill and Answer and the Answer being upon Oath was the only evidence before the said Mayors Court he was not entitled to Any Equity on the said Bond but having made his selection was bound thereby

Your Petitioner therefore humbly prays this Hon^ble Court may be pleased to reverse the said Decree of the said Mayors Court and to Order that the Complainant do take Bills on England for the Amount of his said demand Against your Pet^r Agreable to his said Agreement and that he may pay all Costs of Suit

/Signed/ James Stuart Hall
Solicitor for Appellant

Mayors

Mayors Court at
Madraspatnam

Tuesday the 4th day of may
Anno Domini 1790

Present

Vincentio Corbett Esqr Mayor
William Webb Andrew Ross
& James Landon Aldermen

Between Samuel Chaplin by
his Attorney Alexander Melvin of Fort St George Inhabitant Merchant
Complainant and James West also of
the same Place Inhabitant
Defendant

This Cause Coming on to be heard and debated
this day in the presence of the Attorneys on both sides on Reading
the Complainants Bill with Copies of an Account Current
Bond & Power of Attorney Annexed the Affidavit the
Defendants Answer & hearing the Readings made use
of by the Attorneys and on due Consideration had thereon
this Court doth think fit to Order & Decree and doth so
accordingly order & Decree that the Defendant Shall pay
unto

Mayors Court

unto the Complainant the full and Just Sum of Two hundred
and Twenty Eight Pagodas Thirty three fanams & Seventy Cash
(Pags. 228. 33. 70.) together with all such Interest as now is
or shall hereafter become due thereon until full Payment is
made also all Costs of this Suit

J. Cur
(Signed) G Taylor Regr
A true Copy
(Signed) James Stuart Hall
Solicitor for Appellant

6 1
security

To the Honble Major General William Medows
Governor in Council
In the Honorable
The Court of Appeals
Fort Saint George

Between Samuel Chaplin by
his Attorney Alexander Melvin &c
Complainant and James West &c
Defendant

The Answer of the Above Named Samuell
Chaplin by his Attorney Alexander Melvin to the Petition
and Appeal of the Above Named James West Defendant

Filed in my office
the 9th June 1795
Chas. N. White
Clk

This Respondent by his Attorney for
Answer to the said Petition and Appeal or unto so much
thereof as Concerns this Respondent by his said Attorney to make
Answer unto Saith that he Admits that he did on the Sixth day
of February in the Present year of Our Lord one thousand Seven
hundred and Ninety by his Attorney above named Exhibit and
file a Bill of Complaint in the Honble the Mayors Court
Against the Appellant for the Recovery of the Sum of Two hundred
and twenty Eight Star Pagodas thirty three fanams and
Seventy Cash Current Money of Madras Charged to be Justly
due and Owing to this Respondent upon Bond Copy whereof
together with an Account Current and letter of Attorney were
Annexed to this Respondents said Bill of Complaint and to
which he prayed a Reference might be had To which said
Bill of Complaint this Respondent Admits that the &c
Appellant by his said Attorney did on the Twenty first day
of May following file an Answer wherein Amongst other
things He the said Appellant Setforth that although he
might have Executed the Bond Copy whereof was Annexed
to this Respondents Bill of Complaint yet He could not
Admit that this Respondent by his said Attorney had any
manner of right whereby to Call him the Appellant in
question before the said Honble Mayors Court He the &c
Appellant Alledging in his said Answer, that this Respondent
by his said Attorney in Liquidation of the debt in question had
agreed to Receive from the Appellant a sett of Bills upon
England for one Hundred pound Sterling, provided He
could shew He was entitled to draw for that Sum And the
Appellant in his said Answer did further Setforth that
being entitled to half pay as a Lieut. in his Majestys Service
and to a Pension from the Honble East India Company
he had thereby Shewn to this Respondent he was fully &c
empowered to Draw a Set of Bills for the said Sum of
one Hundred pounds or in Current Money of Madras the
Sum

Sum of Two Hundred and fifty Pagodas and that He was
Ready to grant the same And the said Appellant did in
his said Answer further state that this Respondent
by his said Attorney from Motives unknown to him had
Refused to fulfill and Abide by his said Agreement and
did decline Accepting the said Set of Bills For the said
Sum of One Hundred Pounds or Pagodas Two Hundred
and fifty Whereby the said Appellant humbly Conceived
that he was injured that this Respondent by his said
Attorney Ought not to have Commenced his Action and
that he was not Relievable thereby And this Respondent
further Admits that the said Appellant did in his said
Answer Submit the Premisses to the said Honble Mayors
Court and hoped that this Respondent by his said Attorney
might not be permitted to take an Advantage of his the
Appellants distresses by an Act of this Respondent in his
own wrong And this Respondent admits that on the
proceedings then had having Sufficient matter by the
Defendants own Confession whereon to ground a Decree
He did by his said Attorney pray that the said Cause
might be heard on Bill and Answer which was
Accordingly ordered and the same Coming on to be heard
on the fourth day of may last past The said Mayors
Court Convinced of the Rectitude of this Respondents demand

were

were pleased to order and Decree and did Accordingly order and
Decree that the said Appellant should pay unto this Respondent
the full and Just Sum of Two hundred and twenty Eight
Pagodas thirty three fanams and Seventy Cash together with
all Cost of Suit as More fully and at large Appears by a Copy
of the said Order and Decree Annexed to the said Appellants
Petition And this Respondent denies that the Appellant Is
Aggrieved by such Order or Decree or that there is any Just
Cause of Appeal therefrom Because the Appellant in his said
Answer having Acknowledged and Confessed that he had duely
and truely Executed the Bond upon which the Action was brought
It was only a bare Compliance with the Rules of Common
Justice for the said Mayors Court to grant a Decree in favor
of this Respondent and with Regard to the pretended Subsequent
Agreement Stated by the Appellant in his said Answer as
also in his Petition of Appeal This Respondent by his said
Attorney says that Admitting such words did pass as as to
promise from him to Accept of Bills on England for one Hundred
Pounds in lieu of his debt Provided the Appellant could shew that
he was entitled to draw for the same Yet it did not follow that
this Respondent was to be Convinced from the Assurance of the
Appellant being a half pay Lieut in his majestys Service and
a Pensioner of the Honble the East India Company that he had a
right to Draw for such a Sum of Money or that such Bills

would

would meet due honor Because the very Circumstance of his being a half pay Officer and Pensioner was in itself a Convincing proof of his inability or rather want of right to draw for such a Sum as It is to be Supposed that a person in that Situation would require the little income arising therefrom to Supply him with the Common Necessaries of life Consequently as this Respondent by his said Attorney was not Convinced of the Appellant right to Draw for such a Sum it of Course followed He was not bound to Accept of such Bills in liquidation of his debt &c.

And this Respondent by his said Attorney further says that the Appellant has no Subject of grievance to Complain of. Because he never made any tender into Court of the Bills in question and no loss has Arisen to him thereby. Because he may still &c. pass them whenever he can Convince people of the Certainty of their being Answered — And Lastly this Respondent by his said Attorney says that the Appellant in this Case has evinced a &c. most litigious Spirit In his repeated Attempts by dilatory &c. pleadings and a Vexatious Appeal to Deprive this Respondent by his said Attorney of his Just right and property which Conduct this Respondent by his said Attorney Humbly Hopes this Honble Court will mark with their Severest Reprehension —

For all which Reasons and such Others as may be offered at the hearing this Respondent hopes this Honble Court will be pleased to Confirm the Decree of the said Mayors Court

Court and that the Appellants Petition and Appeal be &c. dismissed with Exemplary Costs to be paid by the Appellants —

Signed G. Palmer
Solicitor for Respondent

Court
unity

Court of Appeals
at
Madraspatnam

Saturday the 15th day of March
Anno Domini 1794

Between James West of Fort St George Inhabitant Appellant and Samuel Chaplin by his Attorney &c Alexander Milsen also of the same place Inhabitant Respondent—

This Cause coming on this day to be heard and Debated before this Court by the Attornies on both sides upon hearing the Petition of Appeal and Answer and the several Exhibits of the Honble the Mayors Court together with the Decree of the said Court given in this Cause on Tuesday the 15th day of May 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—

Wm [Signed] Chas N White &c

To the Honorable Major General William Meadows
President and Governor &c. Council of Fort Saint George

In the Court of Appeals
at Madraspatnam

Between Columday Comaraspen Talsingen Nyneaspen and Tandaven Petitioners and Vincente Gozzmen Respondent In the cause of Vincente Gozzman Complainant and Tellenigem Moodaliar Loobroya Moodaliar Loobramoney Moodaliar and Rooken Loobramoneya Moodliar Defendants—

The Humble Petition and Appeal of the above Named Vincente Gozzman Respondent to the above mentioned

Sheweth

That Your Petitioner did on or About the Twenty third day of June which was in the year of Our Lord one thousand Seven hundred and Eighty Six exhibit his Bill of Complaint in the Honorable the Mayors Court of Madraspatnam against Tellenigem Moodaliar Loobaroya & Loobramoney Moodaliar Loobramoney moodaliar and Rooken Loobramoney Moodaliar the Defendants above Named for the Recovery of the Sum of Four Hundred and Seventy three Star Pags

Filed in my office the 26th August 1790
Chas N White &c

Twenty

Twenty four Janams and thirty Cash due and owing by the said Defendants upon a Mortgage Bond by them executed to your Petitioner bearing date the Twenty fifth day of october which was in the year of Our Lord one thousand Seven hundred and Eighty five and which is in the words and figures following to wit We Tellaneiga Moodelliar Lobbarya Moodelliar Loobbramoneya Moodelliar and Rochen Loobbramoneya Moodelliar Inhabitants of Tundiarpettah Village do Jointly give this Mortgage Bond to Vencente Goazmin that is to say We have Mortgaged to you Our Ground situated on the Northside to Munro Mody Moodelliars Garden and on the south side to the burning place which Ground Containing 150 pieces of Ground at 60 fat in lenth and 40 fat in Breadth & a piece likewise on the South side to Verdarajah Moodelliars Garden on the North side to the old Hill of Burning Place on the East side to the Road of Cadichemgley and on the West side to the Road leads by Vencatachella Moodelliars Ground Containing 200 Pieces of Ground and borrowed and Received of You the Sum of /450/ four hundred and fifty Star Pagodas which Sum we promise to pay you on the 15th of Chittery month in the Year Called parapavah or 25th April 1786 with such Interest as may become due thereon at the rate of 9 per Cent P Annum Indefault of the said payment then You are Empowered to sue the said promises in the Court and Shall the same and pay your self after Deducting

Deducting the Principal and Interest due to you [illegible] be any overplus You are to Return to us and if any deficiency should happen we are to make good to you Thus we do give this Mortgage Bond by our Consent Witnesses Arromachella Moodelliar and Yagapah Moodelliar by their knowledge drawen by Naudear Lucian (Signed) Tellanaiguon Loobbarayan Loobbaramoneyan Rochin Loobbaramoneyan Witnessed (Signed) Dauson Arromachellum Yagapen (And your Petitioner Sheweth unto this Hon'ble Court that such proceedings were thereupon had in the said Honorable the Mayors Court that on the 27th day of June which was in the said Year of Our Lord one thousand Seven hundred and Eighty Six Your Petitioner obtained a Decree in the said Court for the said Sum of four hundred and Twenty three Star Pagodas Twenty four Janams and thirty Cash And your Petitioner Sheweth unto this Hon'ble Court that the term of fourteen Days allowed by his Majestys Charter granted to the united Company of merchants of England trading to the East Indies having elapsed and the said Defendants having Neglected to Pay your Petitioner the Monies so Decreed by them to be paid to Your Petitioner or to Appeal from the said Decree an execution did on the Eleventh day of July which was in the said Year one thousand Seven hundred and Eighty Six issue fourth of the Court upon the foot of the said Decree and Directed to the then Sheriff of Fort Saint George Town of & to Madraspatnam

Madraspatnam and the districts thereof requiring and Commanding him the said Sheriff to seize and Sequester the said premises &c. mentioned and setforth in the said Mortgage Bond and by sale thereof to levy the Amount of your Petitioners said debt and your Petitioner further sheweth unto this Honble Court that the said Sheriff did under and by virtue of the said writ of Execution seize upon Certain ground and premises the property of the said Defendants situate in the village of Tondiar puttoo and bounded on the North side thereof by the burying place on the East side thereof by Narrain Tanks on the south side thereof by Munro &c. Moodue Moodelys Ground and on the West side thereof by the Road leading to Tirruvatoore as by the said writ of Execution and the said Sheriffs Return thereon remaining of Record &c. in the said Honble the Mayors Court relation being thereunto had it doth and will thereby more fully and at large Appear

Your Petitioner further Sheweth unto this Honble Court that after the said Premises were so seized and before the same were sold under the said writ of Execution the Above Named Colunda Comarapen Tellesingen Nyneapen and Co Tandaven pretending to be copartners and proprietors of the Co Village called Tondiar Puttoo did on the Eighth day of August which was in the year of Our Lord one thousand Seven hundred and Eighty six prefer their Petition to the said Honble the Mayors Court stating the several Matters and things therein before Mentioned and further stating that the said premises

which

which were so seized by the said Sheriff under the said Writ of Execution were not the property of the said Defendants the said Tellenugum Modaliar Lobbenaya Modaliar Subramony Modaliar and Rocken Subramony Modaliar but that the said premises were the property of them the said Petitioners and further &c. Stating that they the said Petitioners sold the said premises to one Andeapah of Madras Inhabitant and that a Bill of sale thereof was granted by them the said Petitioners at the Request of the said Andeapah in the Name of one Mylay Vencatatha Modaliar but for the use of the said Andeapen and that the said Andeapen did as the said Petitioners pretended possess himself of the said Premises under the said bill of Sale as did other purchasers who began to Inhabit the same by a Lodge but were interrupted by the Defendants and that thereupon one of them the said Petitioners Applied to Alexander Davidson Esquire the then Master of the Rolls who having fully Examined into the Right of the said Defendants and of the said Andeapen and the other pretended purchasers from the Petitioners determined it to be the property of the said petitioners as the said Petitioners in and by their said petition Alledged

Your Petitioner further sheweth unto this Honble Court that the said Petitioners by their said Petition further stated that the said Andeapens Right to the said Premises as a purchaser from the said Petitioners and that the said Defendants not having any Right thereto would as the said Petitioners Alledged Also Appear

by

by the Copy of the translation of an Agreement between Tellanigum one of the Defendants and Tandaven one of the Petitioners respecting certain Grounds belonging to the said Village which he thereby Agreed to rent for four years and Afterwards to deliver up to the said Tandaven which the said Petitioners Alledged he the said Tellanigum would not have Consented to if he Claimed it as his own property and which Agreement is by the said Petition stated to bear date the Tenth day of July one thousand Seven hundred and Sixty Seven and to be in the words and figures following to wit I Tellyranigum Mongdeban of Tandaverpatta do give this agreement to Tandaven of Tandaverpatta that is to say you have desired me to Cultivate your ground for the space of 4 years exclusive of Vettiveelandys share the one half of Tandavens ground I am to Cultivate for the said Term of 4 years and be Answerable to the Pircar that they may not want with 10/ After the expiration of the said 4 years I am to deliver up your ground the money due for Annandangal or rent Rup. three Fanams for gross to Cannegoe for Canneruppen and 1/2 Pagodas for Anne dangal Further I am to give the Sirkar one half Cadies for the Company

And your Petitioner further sheweth unto this Honble Court the Petitioners by their said Petition further stated that the said Defendants finding themselves baffled in their Attempts to dispossess the said Andrapan of what the Petitioners by their said Petition pretended to be the just right of the said Andrapan endeavoured in a Collusive Manner as the said Petitioners stated to have the said premises sold under a Decree of the said Honble the Mayors Court and did thereupon execute a Mortgage Bond to the Complainants on which the said Suit was commenced and having Confessed the debt suffered a Decree thereon to pass and directed the Sheriff to seal up the premises and to sell the same for Satisfaction of the said Debt which the Petitioners by their said Petition charged to be a pretended debt and the said Petitioners by their said petition further charged that the said Andrapan endeavouring with your Petitioners direction to defend his right to the premises and Effects as the said Petitioners Alledged to make good the purchase Money to the said Petitioners or to have any thing to do therewith and the said Petitioners by their said Petition prayed that they might be allowed to prove their right to the premises and that in the mean time the Sheriff might be restrained from selling the same and that he the said Sheriff might take his seals off the said premises

Your Petitioners further shewth unto this Honble Court that your Petitioners on the Sixth day of March which was in the year of Our Lord one thousand Seven hundred & Eighty one did exhibit to the said Honble the Mayors Court to the said Petition and thereby requested that the Sheriff of Fort Saint George might be ordered and by virtue of the execution herein before Mentioned enter upon a certain piece or parcel of Ground Situate

by

Situate in the districts of Tandiar Puttoo Bounded on the South
east side thereof by one Manjah Moodelly's Garden on the North
side by village grounds on the west side by the road leading up
to Trincomalee and on the East side thereof by Tisamany's Garden
and that the said premises which were so seized upon by the
said Sheriff were the sole property of the said Defendants
Subject to the Mortgage thereof so executed by them to your
Petitioner

Your Petitioner by his Answer to the said Petition
further stated that the Bill of Sale which the said Petitioners
alledged to have been by them granted to the said Andreapah
and under which they claimed their title to the said premises
could not convey away the property of the Defendants who
were not parties to the same nor was it with their Consent
or knowledge of which the pretended purchaser seemed sensible
by his not claiming under such vague title and that if such
Bill of sale was ever executed it was so executed by parties
unable to Transfer the property and Contrary to the rules or
observed Amongst the natives in Obtaining Bills of sale nor
did it appear that the persons selling the same had any or
right title or Interest therein or the consent of the rightful
owners for that the right and title in and to the said or
grounds was in the Defendants and in no other person or
persons whomsoever and that the Bill of sale in the
Petitioners

petitioners said Petition mentioned is a fictitious one and fabricated
to defraud the Defendants of their property who are the real proprietors
of the said ground and that the Gramum or village called or
Tandiarputtoo is the real and absolute property of the defendants who
are the Moodelly Cast and descended to them from their ancestors
from time Immemorial and which said village has been held
and enjoyed fully and Absolutely by them without any let or
Molestation from the Toddy people who are the said petitioners
or from any other person or persons whomsoever and that they
were introduced by the Defendants Ancestors in Tandiar puttoo
for their immediate Convenience and as a Matter of Great favor
and not under any other sense and that the Defendants Ancestors
have for aught the Defendants know to the Contrary Allotted and
granted unto the said Toddy people several small spots of Ground
for them to build huts or small houses upon as well as to Convert
into Kitchen Gardens to Alleviate their indigent Circumstances as
is usual and Customary in all other villages and in the or
neighbouring village of Tandiar puttoo and that the said or
Toddy People have heretofore lived in Obedience to the Defendants
without Raising any strifes contentions Controuessies or disputes
untill lately when the said Toddy people in a Clandestine
and unwarrantable manner began to sell and incumber several
small spots of Ground belonging to the Defendants in or
Consequence of which the Defendants pulled down the Hedges
planted

planted by the Respective Purchasers of the said Grounds and prevented them from enjoying the same and that the said Defendants are the only persons intitled to the village of Ot Tandaar Pettoo and that they are the sole proprietors thereof and all and every the piece and parcells of Ground whereon Garden houses Charity houses Choultries &c are erected by the Respective persons inhabiting the said Village and that their Ancestors have uninterruptedly enjoyed the same from so far back as the Year one thousand Six hundred and forty nine which time the Right has been in the Defendants and their Ancestors and not in the Petitioners or any other person or persons whatsoever other than the said Defendants

Your Petitioner by his said Answer further stated that if the said Petitioness had aright to the said Village or any part thereof or to sell Mortgage a lien or incumber the same they would not be under the Control of the Defendants Regarding the premises and pay them such rents and Taxes as are imposed upon them by the Defendants to wit The Paddy rent ummeni Rent Pidaven Rent and Several other Rents or Taxes and that some of the Toddy people having Refused to pay the said Rents and Taxes the said Mondelly Cast upon lodging a Complaint Against them to Mr Stracy then one of his Majestys Justice of the peace for the Town of Madraspatnam and the districts thereof

thereof he caused them to be severely punished and obliged them to pay the said Rent and Taxes to the Defendants and that had the Toddy people been the proprietors of the said village they would not pay unto the Defendants the several Marasa or the Ground Allotted them but would on the Contrary oblige the Defendants to pay them such Marasa and Taxes and that it therefrom evidently Appeared that the Toddy people had no Title to the said Village but that the same was vested in the Defendants who are the real Proprietors thereof

And Your Petitioner by his said Answer further stated that the Exhibit Copy of the Translation whereof is herein before Set forth and is Also Annexed to the Petitioness said Petition could not any ways Affect the Defendants for that it was the private act and deed of the Defendant Tillanayum in his private Capacity as an Individual and without the Concurrence of the other Defendants and at the particular Instance and desire of the said Tandavan merely to serve him in his distress and to Save him from being Confined to prison by one Mondor Mondelly the then renter of the said Village for the said Tandavans Inability or Remissness in not Cultivating the said piece of land which had been Allotted him by the Defendants Ancestors and that the said Tandavan desired the Defendant Tillanayum to Cultivate the same for him which he had done and that the Land Mentioned

in

Mentioned in the said Exhibit is a land fit for Cultivation and that it was upon that principal only that the same was taken by the said Tellineigum whereas the Ground in Question is a sandy and Barren ground and fit for no other use than Building on the same on enclosing it for rich manure for a Garden which Could not be Afforded to Ground for Common Cultivation and that Consequently the land mentioned in the said Exhibit could not be the Identical one now in Question and could have no Relation to the said Ground in Dispute—

Your Petitioner further sheweth unto this Hon^ble Court that Witnesses having been examined in the said Matter as well on the part of the Petitioners the Taddy people as of your Petitioner the Respondents and publication having passed thereon in the said Hon^ble the Mayors Court it Appeared Amongst other things from the evidence of one Cadapauchum Veeragavah Iyer a witness examined on the part of the said Petitioners that he the said Witness was Appointed by M^r Justice Strachey an Arbitrator in the Year One thousand Seven hundred and Seventy five to investigate a dispute that subsisted between the Defendants and the Petitioners Disputing the Right each of them claimed to the Village of Tandiar Pettee and that the Arbitrators on the part of the Petitioners were of Opinion that the right to the village was in the Petitioners and that the Arbitrators on the part of the Defendants did pointedly object to such Award and that they gave their award in favor of the Defendants and that Umpires were afterwards chosen who also made different awards each in favor of the party who elected them—

Your Petitioner further sheweth unto this Hon^ble Court that the said Petitioners having introduced and given in Evidence Eight Cadjan leaves purporting to be the said illegal Award Mentioned in the said deposition of the said Cadapauchum Veeragavah Iyer and the said award or cadjans not having been put in Issue or mentioned in the Petitioners said Petition or in your Petitioners Answer thereto and it having also Appeared by the evidence of the said witness that the said illegal award if it ever existed was done away by the said parties having referred the said matters to the Determination of umpires who also made contrary awards in the said matters and it not having Appeared that the parties who were to have been bound by the said Award had ever Submitted the matter which the said Arbitrators and umpires so took upon themselves Voluntarily and partially to Determine your Petitioner did for the aforesaid Reasons except to the said Award and to the said Petitioners giving the same in evidence upon the hearing of the said Matter in the said Hon^ble the Mayors Court it being Contrary

Contrary to every principle of Law or Equity to Admit or to Receive the said Award in Evidence—

Your Petitioners further sheweth that the said Petitioners did answer the said exceptions and that they did thereby assert their Regularity in giveing the said Award in to Evidence in the said Matter and your Petitioner sheweth that there were many other Witnesses examined on the part of the said Petitioners such as washermen Barbers and grave Diggers who endeavoured to prove that the said premises were not the property of or belonging to the said Defendants but that the same were the property of the said Petitioners and your Petitioner also Sheweth that there were Many witnesses Examined on the part of Your Petitioner in the said Matter who proved that the said premises were Always Considered as the party of the said Defendants by inheritance and that their Ancestors had enjoyed the said premises as the said witnesses understood time immemorial and that the Defendants had to the knowledge of the said Witnesses enjoyed the said premises forty years and upwards without Molestation and that the said Petitioners were introduced by the Defendants ancestors into the said Village of Tondiar Patter for their immediate Convenience and as a Matter of great favor and that Many of the said Witnesses who lived on the said Premises held and enjoyed the ground whereon they lived being part of the

Said

said premises under the said Defendants some thirty years some forty years some fifty years and others of them Twenty years and Your Petitioner also sheweth unto this Honble Court that it was also proved on the part of Your Petitioner that the said Defendants enjoyed the priviledges Allowances and immunities of the said Village of Tiruatoor in such manner as the proprietors of other Villages do and that all orders or sanads from the Cutcha are sent in the Name of the said Defendants and that the said Petitioners were only tenants belonging to the said Village of Tiruatoor and your Petitioner further sheweth unto this Honble Court that it was Also proved on the part of Your Petitioner that the said Defendants heretofore sold one tenth of the said Village of Tiruatoor and that the several persons to whom the said Defendants so sold the same Enjoyed the said premises without Molestation—

And Your Petitioner further Sheweth that the Matter of the Petitioners said Petition was set down to be heard and the same came on to be heard Accordingly before the said Honble the Mayors Court on Friday the thirteenth day of this present Month of August when the said Court over Ruled your Petitioners said exceptions and did Also order that the Petitioners said Petition should be held good and that the Sheriffs seal should be taken off the premises in dispute and that Your Petitioner should pay all costs attending this Matter and your Petitioner Sheweth unto this Court that Mr Alderson Amos being one of the

Members

Members of the said Mayors Court who then presided on the Bench of the said Court dissented from the said Order of the Mayors Court as well Manfully and at large Appears by the Copy of an Extract hereunto Annexed for the inspection of this Honble Court and by the Order of the said Court duly Attested by the proper Officer which comes herewith Also for the Inspection of this Honble Court and which Your Petitioner prays may be Admitted as part of this his Petition of Appeal —

From which said Order of the said Honorable the Mayors Court Your Petitioner doth Appeal to this Honorable Court the said Order being Contrary to Law and to the weight of Evidence which was produced to the said Mayors Court upon the hearing of the said Matter and that Your Petitioner is particularly Aggrieved thereby —

For which reasons and such other as may be Offered at the hearing of his matter Your Petitioner Most humbly prays that the said order of the Mayors Court may be Reversed and set aside and that the said Mortgaged premises may be sold in Satisfaction of Your Petitioners said demand and that your Petitioner may be further and otherwise relieved in the premises According to Equity and good conscience and as the Nature Merits and Circumstances of Your Petitioners case shall Require —

And Your Petitioner will Pray

[Signed] John White Solicitor
for the Petitioner

Extract

Extract from the Minutes of a Court Held at the Town Hall on Friday the 13th day of August Anno Domini 1790

Present

Venuntio Corbett Esqr. Mayor
Josias Dupre Porcher Andrew Pros
& James Innes Aldermen

Venuntio Gozmen
Clerk

Tellanagam Moodelliar Sooberoy Moodelliar
Soobramoneya Moodeliar & Crishen Soobramoneya
Moodelliar Petition of Colunda Comarapen Tellesingan
Nyneapin & Tandaven with Copies of two Exhibits Annexed Read

Answer Read

Exceptions of the Respondent to the eight Cadjan leaves and translation thereof delivered in as Exhibits as also to the third Interrogatory Exhibited to and the Deposition of Edapaulam Veeraragavagalu produced as a witness on the part of the Petitioners Read

Answer thereto Read

The Exceptions of the Respondent to the eight Cadjan leaves Delivered in as Exhibits as also to the third Interrogatory exhibited to and the Deposition of Edapaulam Veeraragavalu and the Answer thereto Coming on to be Argued and Determined this day in the Presence of

of the attornies on both sides and the Court having had due Consideration thereon are of Opinion that the Respondents Exeption are insuffuient It is therefore ordered that the Exceptions be over ruled and that the Respondent do pay all Costs Attending the Exceptions

Interrogatories on the part of the Petitioness with eight Cadjan leaves and translate thereof Marked A & A and Another Cadjan and a Translate Marked B & B annexed Read

Six Depositions taken thereunto Read The Witnesses N 2. 3. 6. 7. 8. 9. 11. 12. 13. did not Appear for Examination

Interrogatories on the Part of the Respondent Read

Four Depositions taken thereunto Read The Witnesses N 3. 4. 9. 10. 14. did not Appear for Examination

The Matter in Despute between the Petitioners Colunda Comarapin Tellesingan Nayneapin and Saundaren and the Respondent Vincente Goozman 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 This Court doth think fit to order and doth Accordingly order that the Petitioners Petition be held Good that the Sheriffs Seals be taken off the Premises in dispute and that the Respondent do pay All Costs Attending this Matter

A true Extract

(Signed) G Taylor Regr.

95

Extract

Extract from the Minutes of a Court Held at the Town Hall
on Friday the 13th Day of August Anno Domini 1790

Present

Vincentius Corbett Esqr Mayor
Isaias Dupre Porcher Andrew Ross
and
James Amos — Aldermen

Vincente Goozman
vers
Tellanaigum Moodelliar Soobbarayah Moodelliar Soobramoneya
Moodelliar and Rochen Soobramoneya Moodelliar —

Petition of Colunda Comarapen Tellesingen Nenapen and
Taundauen with Copies of two Exhibits Annexed Read —

Answer Read

Exceptions of the Respondent to the eight Cadjan leaves and &c
Translates thereof delivered in as Exhibits as also to the third &c
Interrogatory Exhibited to and the Deposition of Cadapaukam
Veeragovayah produced as a Witness on the part of the &c
Petitioners Read

Answer thereto Read

The Exceptions of the Respondent to the eight Cadjan leaves delivered in as Exhibits as Also to the third Interrogatory exhibited to and the Deposition of Cadapaukam Veeragovayah and the Answer thereto Coming on to be Argued and Deter=mined this day in the presence of the attornies on both sides and the Court having had due Consideration thereon are of Opinion

Opinion that the Respondents Exceptions are insufficient It is therefore ordered that the Exception be over-ruled and that the Respondent do pay all Costs attending the Exceptions —

Interrogatories on the part of the Petitioners with eight Cadjan leaves and Translates thereof marked A 1 & A and another Cadjan and a Translate marked B & B Annexed Read —

Six Depositions taken thereunto Read — The Witnesses N. 2. 3. 6. 7. 8. 9. 11. 12. 13. did not appear for Examination

Interrogatories on the part of the Respondent Read —

Sixteen Depositions taken thereunto Read — The Witnesses N. 5. 7. 9. 16. 18. did not Appear for Examination

Interrogatories on the part of the Respondent Read —

Four Depositions taken thereunto Read — The Witness N 3. did not Appear for Examination

The Matter in Dispute between the Petitioners Colunda Comarapen Tellesingan Nynapen and Taundauen and the Respondent Vincente Goozman Coming on to be Argued and &c Determined this day in the Presence of the Attornies on both sides and the Court having had due Consideration thereon This Court doth think fit to order and doth Accordingly Order that the &c Petitioners Petition be held good that the Sheriffs Seals be taken off the premises in dispute and that the Respondent do pay all Costs Attending this Matter —

Mr. Alderman Amos Dissents to the Resolution of the Court

A True Extract
(Signed) G. Taylor
Regr

To

To the Honble Morgan Williams Esqr.

President in Council

In the Honorable Court of Appeals } ... Fort Saint George

Between Colunday Comaraper Talesingen Nyneapen and Tandavan Petitioners and Vencente Gozzman Respondent in the Cause of Vencente Gozzman Complainant and Tellenegum Mondaliar Soobroya Mondaliar Soobramonya Mondaliar and Rachin Soobramonya Mondaliar Defendants

The Answer of the above Named Colunda Comaraper Tellesingen Nynaapen and Tandavan to the Petition and Appeal of the Above Named Vencente Gozzman —

Filed in my Office the 19th September 1780 Chas N White Clk

This Respondent Admits that the Appellant did on or about the Twenty third day of June in the year of Our Lord one thousand Seven hundred and Eighty Six exhibit his Bill of Complaint in the Honorable the Mayors Court Against Tellenegum Mondeliar Soobroya Mondellyar Soobramony Mondellyar and Rachen Soobramonya Mondeliar the Defendants Above Named for the Recovery of the Sum Stated in the Appeal But this Defendants by no means Admits that the Money was really due by the Defendant to the Complainant or that any Value whatever was ever given for the Mortgage Bond on which the suit is brought the whole being a Matter of Contrivance and collusion between the Appellant and Defendant to get the property Levied on and sold by the Sheriff and thereby to Deprive these Respondents of their lawful property for which purpose these Respondents humbly shew that the Defendants procured the Appellant a Portuguese man then Perhaps Resident at Madras but who since is Either dead or has long since Withdrawn himself from Madras and its Neighbourhood and is no where now to be found or heard of Notwithstanding the most deligent Search has been made for him to serve him with Notice to employ an Attorney in Another this suits To this End the Defendants gave the Mortgage Bond in question and upon his failing a Bill of Complaint upon the Bond they Confessed the Debt upon which of course a Decree passed and a Warrant of execution issued and upon this Execution the Defendants directed the Sheriffs to levy upon certain Lands not even in their Possession at the time in Order to have the same sold and thereby get it publickly Acknowledged that they were entitled thereto These Respondents say that in Order to prevent such Unwarrantable and unjust Proceedings and to Defend themselves from being Deprived of their property they had no other Remedy but to Petition the Honble the Mayors Court for redress stating therein the Matters above Specified and also stating that they had Sold

Sold the piece of Ground in question to one Andiapah who took
possession thereof and they further Stated that upon the said &c
Andiapah enclosing in the Ground the Defendants had Attempted
to interrupt him on a Complaint being made to Mr. Davidson
the then Monthly Justice he had given orders that the Defendants
should not interrupt the said Andiapah in enclosing the Ground
having first fully enquired into the said Andiapah's right and
Approval thereof and he Accordingly sent Tellians to see that the
hedge was Again planted and the said Andiapah No further
Disturbed in his possession all which is Admitted by the &c
Appellant he also Admits that the Petition went on to state
that the Defendants had found means to bring over the said
Andiapah to their Interest and in Consequence he had refused
to pay the purchase Money or to defend their his right to the &c
premises or to have Any thing to do therewith so that these
Respondents were under the Necessity of Applying to the
Hon'ble Court for their interferance to Order the Sheriff to
proceed No further in the Levy made on their property and to
take off his Seals therefrom Then Respondents Admit that to
this their Petition the Appellant did file an Answer therein
stating the several particulars Mentioned in the Appellants
Appeal and particularly insisting that the Village of
Tandiar Pettah of which the Land in question is part was the
property of the Defendants who were of the Mondally Cast and
had descended to them from their Ancestors from time &c to

Immemorial

Immemorial and that the Ancestors of these Respondents who were of the Toddy people cast had no other possession thereof but by the permission of the Defendants Ancestors who Allotted them several small spots of Ground to live on and that they had lived for a Considerable time without raising any controversies or Disputes untill lately when they endeavoured to disturb the Defendants in their possession — the Defendants Also insisted in their Answer that some time since a Complaint having been made to Mr Stracey then the Monthly Justice he severely punished one of the Toddy people — they Also Wished to make it Appear that though they Admitted that the Exhibit Annexed to these Respondents Petition was signed and executed by one of the Defendants yet that it not bind the others nor &c would they allow it to be any Proof of the Acknowledged Rights of these Respondents These Respondents further Admit that issue was Joined and Witnesses examined on these Proceedings and these Respondents Admit that they did examine one Codampaulum Veeragavah Iyer who had been Appointed an Arbitrator to determine the matter in Dispute and who has positively swore to his having very Minutely and &c laboratedly examined the Rights of the Different Claimants when it Appeared by a Number of Concurrent circumstances that these Respondents and their Ancestors had been the Old Inhabitants of the Country from time immemorial and that the Mondally Cast had not had any Claim or pretence thereto but for About these thirty or forty Years past and they

State

State that the way they came to be Admitted into the village was in the Nature of Pyacarries or Subordinate Renters of unaccupied Lands but becoming in process of time possessed of Considerable Riches they Obtained a considerable influence and Set up their Claims to the Inheritance of the Village these Respondents say that this Award was signed by two of the Arbitrators and carries very full internal Evidence as well of the Deligence of the Persons Appointed to enquire into the respective rights of the Contending parties as of the strong Corroborating facts that unite in the Clearest Conviction that these Respondents are the descendants of the Old Inhabitants and that the Defendants have no other Right or pretence thereto than the influence of Riches do sometimes give where the Opponents as is the case of these Respondents are poor and indigent these Respondents Admit that the Nature of their defence Requiring them to produce the best Evidence they could of their Right to the property in Question they did produce Among other Evidence the Award that had been given by the two Arbitrators to which the Petitioner excepted and these Respondents in Answer to his exceptions stated that they did not produce this writing as an Award which must have been Conclusive and binding upon all parties but as the written Sentiments of two men who had been employed to examine and had particularly examined into the matter in Question that the court would of course Consider it under these Circumstances and give it that Degree of Credibility which under such Circumstances it might Appear to Deserve which Reasons the Court approved of and over ruled the Appellants exceptions — These Respondents Also say that to his exception the Appellant did very irregularly introduce a Paper Writing pretended to be a Copy of an Award signed by one of the Arbitrators but produced no proof whatever of its Authenticity and though these Respondents Suggested that they had no Objections to the Person who is said to have signed this Paper being examined at the hearing of the cause yet the Appellant did not think proper to make any use of so fair and Reasonable a proposal — These Respondents further Admit that many different Witnesses were Examined by each party and those on the Appellants side who says any thing in favor of the claims of the Defendants for some of them speak in favor of the other parties All Repeat Almost the same words and Which is indeed an Echo to the Interrogatory that is put to them and presume solemnly to take their Oath that the Lands in Question Are the Absolutely Property of the Defendants Although it must be Notorious to every body that the Absolute Property of the Lands is frequently a Question of a very Intricate Nature Depending often as much upon Law as upon Fact so that Scarce any person

can

can swear positively to another's Rights but the way to prove these Rights is by bringing Evidences of different facts within their Knowledge which may infer a belief of the Rights intended to be established Exactly in this Manner have these Respondents proceeded in Collecting their evidence they have produced no witness who swears Absolutely to their property but they have produced a greatmany Witnesses proving a great variety of different Facts that all tend to Support their Claims they have first &c. produced and proved the agreement of which a Copy is Annexed to their Petition and which Clearly evinces an Acknowledgment of their Rights by one of the Defendants who now Appears to Contest them which as far as he is Concerned is Conclusive and as their Rights are stated to be Joined it seems equally conclusive upon the others the act of one Copartner being Sufficient to bind his Associates but however this be It is certainly inconsistent with and being Admitted by the Appellant entirely does away the presumptions Oaths of the Defendants Witnesses who swear positively to the Absoluteness of their property - the Next Circumstance which the Respondents Witnesses have proved is the Removal by the Defendants of a certain Ancient Stone on which was inscribed a proof of the Rights of these Respondents to the &c. Village in Question again they have proved that the custom throughout the Carnatic to Ascertain the Rights of Individuals to the proprietorships of different Villages has Constantly been by the

the Village Accounts which have been publickly kept by the Respective Conicopolies who at Stated times Returned these &c. Accounts to the Circar and they produce Evidence of the existence of such Accounts for One hundred and fifty Years in which the Ancestors of these Respondents are Mentioned as the proprietors and no Notice whatever is taken of the Defendants Ancestors or of any of the Moodelly Cast to which they belonged they also produced as the Appellant Admits the different public Servants of the village who proved that they and their Ancestors performed their Respective Duties to these Respondents Ancestors on certain Solemn Occasions the Barbars who on their Death it seems performed the ceremony of shaving them the Washermen who performed some other Ceremony upon the like mornful &c. Occasion other Servants who tied a String About their heads and prostrated themselves before the Body of their deceased Lord - others who Attended his last Funeral Rites and prepared the vessel which was to receive his ashes and which the &c. Appellant being a Portuguese and of course not Acquainted With the Customs of his Country Mistakenly calls his Grave diggers others again who Assisted on more Cheerful &c. Occasions and Destributed the Betle at the Marriage Feasts all these men positively and individually swear that they and their Ancestors as far as they could ever learn had Always performed these Respective Offices to the &c. Ancestors of these Respondents and None to the Ancestors

J.

Ancestors of the Defendants they also proved that there is still existing a Chanity House or Chauttry at Tiruvatore which was built by their Ancestors and endowed by them out of the produce of the Village in Question and the same still Continues to be paid to the present time they also proved by the Maughan Concopolies of the neighbouring Villages of Tiruvatore and Pondamalay as well as by the Concopoly of the village itself that it Appeared by very old Accounts in their possession and they had always understood from their Ancestors that the Ancestors of these Respondents had been the old Proprietors of the village and that the Names of the Defendants Ancestors had not Appeared but within About thirty years — The Poligars also on being Examined gives testimony in favor of these Respondents and they have Ob produced a great Number of old people who all swear that in their Youth these Respondents Ancestors were in the Possession and reckoned to be the proprietors of the village Another Circumstance in favor these Respondents is the Testimony of Apachee Pillay who having been Examined in the Common form signed a Deposition in favor the Defendants but when the Depositions were published and he was informed of it he presented a Petition to the Court stating that his deposition had been Erroneously taken and that being in the English Language he had signed it without knowing the Contents and therefore he prayed the Court

Court that his depositions might be corrected and that to add greater Authenticity to what he should depose he offered to be first sworn at Triplicane Pagoda which the Court ordered him to do and he then deposed in favor of these Respondents as will Appear by his Depositions — This being one of the principal Evidences Examined on the part of the Ob Defendants being also the head Accomplaint and principal Officer of the village and the Solemnity and Superstitious Veneration with which this Oath is Always Considered being taken into the Account This fact is a very Striking Circumstance in Support of the Respondents claims — it is indeed almost conclusive for it is hardly possible from his situation but that this men must be competent to Judge who had the best Right and it is Almost equally incredible but that when called upon in so solemn a manner he has spoken the truth these were the principal Facts Adduced by these Respondents and much outweighed the general and bold Assertions of the Defendants Witnesses one of whom Govinda Pillay first swears in his deposition that the Defendants Ancestors had been in possession of the Village as descended from their Ancestors by Rights of Ob Inheritance and in the very next time he says that they have possed it About thirty Years which last fact is Also Confirmed by Another Respectable Evidence Pedda Naick the Polygar of the Black Town who says the Defendants

Law

have been known in the said village About thirty years which is really the fact — and being as these Respondents have already suggested supported by their Riches they have encroached upon the Rights of these Respondents and these encroachments they have Attempted to get sanctioned by the Hontble the Mayors Court they cannot however presume to say but they had very Justice done them there that they could require but the weight of the Evidence so strong by preponderated in favor of these Respondents and the depositions taken were so simple plain and natural on the part of these Respondents and those on the part of the Defendants Attended with such inconsistencies such round Assertions internally indueing rather a doubt and Suspician of what they assert than a Belief thereof — so that these Respondents say that the said Order of the said Honble Court was not contrary to law but in Strict Conformity therewith nor was it contrary to the weight of Evidence as these Respondents have Already shewn they therefore humbly say and insist that the Appellant has by no means been Aggrieved thereby nor has he any reason whatever to Appeal therefrom but that Spirit of litigation and Oppression which their Riches enable them to exercise over these Respondents who are very poor and indigent — With this Spirit and by these Means have the Defendants now depended Another Suit for another part of the same property in the name of the

Appellant

Appellant which these Respondents have not been able to bring to a hearing, because they have not been able to find out or get any short of knowledge of the Appellant and the Attorney Who Appeared for him in the present Suit refused to Appear for him in the other —

For which Reasons and for such others as may be offered at the hearing these Respondents humbly pray that the said Order of the Hontble the Mayors Court may be affirmed as they find it impossible to get any intelligence of the Nominal Appellant who probably if found would not be able to pay the costs they further pray that the Defendants in the Original Suit who are the real Actors and plotters in the whole Business and from their Affluent Circumstances well able to pay may be Ordered to discharge all costs of Suit as well in the Hontble the Mayors Court as in this Honorable Court —

[Signed] Peter Walker.
James Stuart Hall
Solicitors for Respondent

Court

Court of Appeals
at
Madraspatnam

Saturday the 15th day of March
Anno Domini 1794

Between Vencinte Goozmain appellant
Colinda Camarapan Tellisengan Nyneapen
and Taundavan 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 Hanble the Mayors Court together with the order of the said Court given in this Cause on Friday the 13th 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 Order of the Hanble the Mayors Court do stand affirmed and that the Appellants Petition behence dismissed and that the Costs incurred in this Court be paid by Tellenugum Moodeliar Soobroya Moodeliar Soobaramanya Moodeliar and Rocken Soobraymanya Moodeliar the Defendants be the Original Suit in the said Mayors Court

Wm
Signed Chas. N. White
Clk

To

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

In the Honorable
the Court of Appeals

Between Gabriel Dawton by his Attorney Sir John Menzies Baronet by his Attornies Thomas Chase and Thomas Parry of Fort Saint George Merchants Complainant and Cunneapore Ramiah Pillay of Madras Inhabitant Defendant

Filed in my Office the 18th Octr 1790
Chas N White
Clk

The Humble Petition and Appeal of Cunneapore Ramiah Pillay the above named Defendant

Sheweth

That Gabriel Dawton the above named Complainant by his Attorney Sir John Menzies Baronet by his Attorneys viz. Thomas Chase and Thomas Parry did Some time on or about the Sixteenth day of May which was in the year of Christ one thousand Seven hundred and Eighty Nine Exhibit and file a Bill of Complaint in the Honorable the Mayors Court at Madraspatnam Against Your Petitioner for the Recovery of the Sum of One thousand one hundred and forty five Star Pagodas Current Money of Madras the Amount for principal and Interest of a Certain Bond

&
Said

Said to have been Executed by Your Petitioner in favor of the Complainants a Copy of which said Bond together with an Account Current thereon were to the Complainants said Bill annexed And Your Petitioner sheweth that to such the Complainants said Bill your Petitioner did Appear and thereto on or About the Sixth day of October in the said Year of Christ One thousand Seven hundred and Eighty Nine file his Answer and therein state that Although he might have signed the Bond Copy of which was to the Complai=nants said Bill annexed Yet he could not Admit to be indebted to the Complainant in the Sum of one thousand one hundred and forty five Star Pagodas or any part thereof as was charged and setforth in the Complainants said Bill of Complaint and the Account thereunto annexed to be due and owing from your Petitioner to the said Complai=nant and your Petitioner in his said Answer did state that one Vadamally Pillay and not Your Petitioner was the person indebted unto the Complainant and to establish such Assertion and the several Matters depending thereon Your Petitioner did further state that the said Vadamally pillay had applied to your Petitioner, and Entreated his &c "d Assistance towards enabling him to fulfill certain &c "igements entered into by him the said Vadamally Pillay w.t the Honble Company for the renting of certain

Measuring

measuring duties and which from his then much &c "embarrassed Situation in life he was unable to perform and that in order to give some Weight to his Arguments and to prevail with your Petitioner he the said Vadamally Pillay did propose to Mortgage or otherwise secure to Your Pet.r All the Monies that might arise from the said engagement by leaving your Petitioner in the whole Management thereof until he your Petitioner should have reimbursed himself any Sums he should Advance to the said Vadamally Pillah and Your Petitioner did further shew that in Conse=quence of such the Solicitations of the said Vadamally Pillah he did Advance him About the Sum of Three Thousand and five hundred pagodas your Petitioner conceiving by &c "having the Management of the said duties which he then took upon himself he would run no great Risk in the said Loan. Your Petitioner in his said Answer did further State that shortly after the Advance of the said Sums of three Thousand and five hundred pagodas as Aforesaid the said Vadamally pillay Again Applied to him and After manifesting great Distress did urge his total inability to pay a Sum of money from him due to the Complainant who was very pressing on Account thereof and being Anxious for the Security of his money and in liquidation of the debt so due to him did insist that he should also share in the Collections Arising from the

the said Engagement that the said Vadamally Pillay prevailing
with your Petitioner to comply with the wishes of the Complainant
your Petitioner did Execute in favor of the Complainant the
Bond copy of which was annexed to the Complainants said Bill
and Your Petitioner did further shew that he did Afterwards
continue his exertions in the management of the said C.
Collections to evince how desirous he was to Accomplish his the
Complainants Views as far as in his power lay and to
Demonstrate his Disposition of serving him did long
before he himself could clear any part of the said Sum of
three Thousand and five hundred Pagodas pay unto the
Complainant from the first monies arising from the said
Collections the Sum of Two hundred Pagodas and which your
Petitioner charged the Complainant well knew to be true
Although he had not given him Credit for the Same or any
part thereof in the Account Current Annexed to his said
Bill Notwithstanding your Petitioner had in his possession
the Complainants receipt for the Amount thereof a copy of
which said Receipt Your Petitioner did Annex for the inspection
of the said Mayors Court and to which Your Petitioner did
beg leave to refer and pray the same might be taken as part of
his said Answer the Original whereof Your Petitioner did state
was in his possession and ready to be produced when &c
Required From which Circumstances Your Petitioner did hope
it would Appears to the said Mayors Court that he was not

Indebted

Indebted to the Complainant in the Sum of one thousand
one hundred and forty five Pagodas as in his said Bill
was unjustly charged or in any Sum or Sums of Money
Whatever and your Petitioner further stated that the
Complainant well knew that the said Bond granted as
Aforesaid depended on the Monies arising from the
Engagement Entered into by the said Vadamally Pillay
with the Honble Company as Aforesaid and that as
the said Engagement had been dissolved and the
Emoluments arising therefrom taken Away from the
said Vadamally Pillay so that Neither he the Complai-
-nant nor Your Petitioner could desire any the least
further Advantage therefrom the said Bond granted
As Aforesaid by Your Petitioner depending thereon
of Course fell to the Ground For your Petitioner did
shew that if a Bond depended upon some other deed
and that such deed became Void the Bond becomes
Void Also and therefore your Petitioner did insist that
the Complainant in common with Your Petitioner
should Sustain an Equal loss from having Embarked
Equally with him on the same undertaking and
not come upon Your Petitioner as he had unjustly
done for the Amount of a debt which he had never
Contracted and Your Petitioner Sheweth that to such
Your Petitioners answer the Complainant did on

on

or About the twenty fifth day of November file his Replication and did therein pretend that Your Petitioners Answer was Evasive and Insufficient in the law and that the same was so Contrived and made to the end to give some feigned Colour to evade the payment of a Just debt and the Complainant by his said Attornies Thomas Chase and Thomas Parry did pretend that they were Entirely uninformed as to the Deed on which Your Petitioners said the Bond in question depended — but the said Thomas Chase and Thomas Parry did say that the Bond in question clearly — Seemed to be fair Bond and that they were Authorised by their Constituent to enforce the payment thereof and which they had Accordingly done and they further stated that from the Circumstances passed previous to the filing of the said Bill of Complaint they were fully Satisfied in their own Conscience that the Bond in Question was a fair one and which Circumstances they pretended were that previous to the filing the said Bill of Complaint the said Thomas Chase and Thomas Parry did very often demand payment of the said Bond from Your Petitioner who had as often promised to discharge the same in a few days that he had Never to the Knowledge of the said Thomas Chase and Thomas Parry made any pretention or Usual whatever that he had any Account or Deed on which the said Bond depended as Your Petitioner had in his said Answer shewn and further that when Your Petitioner had

had heard that the said Thomas Chase and Thomas Parry were about to Commence their Action Your Petitioner had sent a Person to intercede for a few days longer and that therefore It was Natural to Suppose that if Your Petitioner had any Deed on which the Bond in Question became Void he would then have Declared the same / besides all which the Complainant conceived it would be of dangerous prejudice to the mutual dealings of Men Among each other if the Oa. Testimony of written documents was to be invalidated by such false / groundless Assertion as they would have insinuated Your Petitioner had stated in his said Answer and the Oa. Complainant did say that the Sum of Two hundred Pagodas which Your Petitioner had paid towards the payment of the said Bond was not Endorsed on the back thereof but that if Your Petitioner would produce the Original Receipt Copy whereof was Annexed to Your Petitioners Amended Answer of Course the Same Should be deducted from the Ballance of the said Bond and the Complainant did further beg leave to Observe as to the tenor of the Receipt Copy whereof was Annexed to your Petitioners said Answer that the same implied a full and clear conviction on the part of your Oa. Petitioner that he owed the ballance of the Money due by the Virtue of the said Bond Otherwise the Complainant did interrogate why your Petitioner Received a Receipt specifying

that

that the Sum of two hundred Pagodas was in part of
payment of the said Bond — And Your Petitioner sheweth
that to the Complainants said Replication Your Petr.
did on or About the Second day of February in the present
Year of Christ one thousand Seven hundred and Ninety file
his Rejoinder and therein state that he positively denied
any matter or thing in his said Answer contained could
or ought to be taken or Construed or urged as setforth by the
Complainant for the purpose of giving some or any the
least Sugned colour to evade the payment of a Just debt for
Your Petitioner denied as in and by his said Answer —
had before denied that he was indebted to the Complainant
in the Sum of one thousand one hundred and forty five
Star Pagodas as setforth in the Complainants said Bill
or in any other Sum or Sums of Money whatever and Your
Petitioner did shew that if the Complainant had not given
the Necessary information to his Attornies the said Thomas
Chase and Thomas Parry Relative to his Transactions with
Your Petitioner he ought to have done so before he had
given them Authority to call Your Petitioner in question
before the said Mayors Court and that the Confession of
the said Thomas Chase and Thomas Parry of such Neglect
on the part of the Complainant far from being serviceable
to

to him absolutely constituted a Culpability and that Although
the said Thomas Chase and Thomas Parry were Entirely
Uninformed as in and by the Complainants said Replication
they so declared themselves to be as to the Deed on which the Bond
Executed by Your Petitioner to the Complainant depended Yet
Your Petitioner solemnly did aver as in and by his said answer
he had already averred that such Deed did Exist and that the
said Bond did depend thereon and Your Petitioner did
further say that it was in Satisfaction to Your Petitioner
for the Injury done to him nor an Argument in favor of
the Complainant in Commencing such his unfounded and
Vexatious action that the said Thomas Chase and Thomas
Parry after declaring their Entire ignorance of Matters
Relative to the pretended ground of Action should plead they
were Authorised by their Constituents to Enforce the payment
of the said Bond and that they had Accordingly done so —
And Your Petitioner did shew that the Reference to a or
Conversation pretended to have passed between Your
Petitioner and the said Thomas Chase and Thomas Parry was
impertinent to the Right of Action of the Complainant
against Your Petitioner as it was irregular to be introduced in
the Body of the Complainants said Replication nor could
Your Petitioner Admit any Conversation ever took place between
him and the said Thomas Chase and Thomas Parry other than that
he

he was Always ready to pay a Just debt but that the debt in question was not of that discription because that Your Petitioner had Neither borrowed nor Received from the Complainant or from any one for him the said Sum of one thousand one hundred and forty five Pagodas or any part thereof or any Valuable Consideration on account thereof and &c. therefore it stood to Reason that your Petitioner Never could have made the promise of payment of the said Bond as the said Thomas Chase and Thomas Parry had insinuated but on the Contrary that he must at all times have Refused and that so the fact really was to pay the said Bond and your Petitioner stated that even Admitting as the said Thomas Chase and Thomas Parry had shewn in and by the Complainants said Replication that Your Petitioner when the present Suit was About to be Commenced had Sent a person to entreate for few days longer yet the Same was impertinent to the Complainants right of Action Against Your Petitioner nor were the Conclusions which the said Thomas Chase and Thomas Parry had Drawn therefrom either Consistent with Reason or Conformable to Equity— And Your Petitioner did insist it very often occurred that the Testimony of written Documents were proved Unjust and Untrue and therefore that Your Petitioners Efforts in the present

present Instance to protect his fortunes Against the undue and unfounded measures of the Complainant did not merit the Expressions of false and groundless Assertions and false and malicious Statements but that the same of right belonged and Attached themselves to the proceedings of the Complainant and your Petitioner for further Rejoinder stated it was a matter of no Consequence whether an Endorsement was or was not made on the back of the said Bond of the Sum paid by your &c. Petitioner to the Complainant on Account thereof it was &c. Sufficient to Your Petitioners purposes that he had in his possession and ready to be produced when requested the Complainants Receipt for that Sum and your Petitioner did shew it Appeared more as a piece of wantonness and levity in the said Thomas Chase and Thomas Parry than an upright and impartial Conduct merely to say that if Your Petitioner would produce the Original Receipt of the Complainant that they would deduct the Amount thereof from the pretended Balance of the said Bond and then to pretend to shew by implication from the Receipt itself a clear conviction on the part of your Petitioner that the Ballance on the said Bond was due and owing and your Petitioner in and by his said Rejoinder did say that it was common to take a Receipt for Money paid and that the Receipt in question whilst it displayed the litigious and unjust Conduct of the &c. Complainant

Complainant in Commencing an Action Against Your
Petitioner for a Sum Confessedly not due did not in the
least invalidate the Assertions of Your Petitioner relative to
the Condition upon which the said Bond was obtained
from him nor give it any kind of Validity force or
Virtue and Your Petitioner did set forth a Variety of other
matters and things in his said Rejoinder Reference being
thereunto had may Appear —

And Your Petitioner Sheweth that issue
did Join that Rules did pass for the Examination of
Witnesses that Witnesses were Examined by both
parties and that Publication did duly pass and Your
Petitioner Sheweth that the Witnesses by him produced
did clearly establish the several matters and things in his
said answer and Rejoinder Set forth that is to Say —
Yagapillay Narrain Pilly and Arnachellum Pilly to the
second Interrogatory did prove the said Engagement entered
into between the said Vadamaly Pilly and the Honorable
Company the Monies to him Advanced by your Petitioner
and the Mortgage Granted in Consequence and the
written Agreement Entered into between him and the said
Vadamaly Pilly and Yagapilly Arnachellum Pillay and
Narrain pilly to the Sixth Interrogatory did prove that
the said Engagement Entered into between the said Vadamaly
Pilly

Pilly and the Honble Company had been broken and had become
Null and Void and Arnachellum Pilly Yagapilly Narrain pilly
Arnachellum pilly and Aurungatha pilly to the fourth Interrogatory
did prove that the said Sum of one thousand Pagodas for which
Your Petitioner had Executed the said Bond to the Complainant
was to be paid out of the monies arising from the said Agreement
entered into between the said Vadamaly pilly and the Honble
Company and the said Aurungatha pilly did to that point
depose as follows to wit " And this deponent saith that the
Sum for which the said Bond was so Executed by the Defendant
was to be paid by him out of the Collections Arising from the
said Measuring duties and further that no Valuable Consideration
was ever given to the Defendant by the Complainant for
the said Bond and Yagapilly Narrain pilly and
Arnachellum pilly to the fifth Interrogatory proved the
payment of the Sum of two hundred Pagodas on Account of the
said Bond Narrain pilly in particular did declare that he
himself paid the same to the Complainant and Your
Petitioner sheweth that although he did thus in Addition
to the proof contained in his said Answer upon oath Adduce
the Testimony of several Credible Witnesses to Shew the
Complainant had no cause of Action Against him and
that he had no right in law or Equity wherein to call
Your Petitioner in question before the said Mayors Court

or

or any other Court yet the Complainant Examined only one Witness Sashachellum Chitty who to the Second Interrogatory deposed as follows to wit "And this Deponent saith that he did by the order of the above Named Thomas Chase and Thomas Parry frequently demand payment of the Bond in question without having the Bond produced to him or Specifying what Bond he meant or the Amount thereof an irregularity and insufficiency which your Petitioner doubt not will meet due Consideration from the Honble Court and the said Sashachellum Chitty to the third Interrogatory did further depose "this Deponent saith that the Defendant did request of him to Solicit Messrs. Chase and Parry to intercede for a few days longer Declaring, that he would then faithfully discharge the whole Amount of the Complainants demand" And thus Your Petitioner sheweth that the Complainant instead of proving a valuable Consideration by him given to Your Petitioner for and an Account of the said Bond and other Circumstances Necessary to the Support thereof quitted his Original pretended ground of Action and resorted to a pretended Assumsit and Your Petitioner Sheweth that upon the proceedings hereinbefore stated the said Cause come on to be heard and Determined on the fifth day of the present Month of

of October and year of Christ One thousand Seven hundred and Ninety before the said Mayors Court when the said Mayors Court was pleased to Order and Decree and did Accordingly Order and Decree that your Petitioner shall pay unto the Complainant the full and Just Sum of One thousand One hundred and forty five Star Pagodas together with all such Interest as now is or shall hereafter become due thereon until full payment is made deducting therefrom the Sum of Two hundred Star Pagodas upon the Original Receipt Copy of which was annexed to your Petitioners Answer being produced with all Costs of Suit as by the Copy of the said Decree hereto annexed and the Original Ready to be produced may Appear By which said Order and Decree of the said Mayors Court your Petitioner doth conceive himself much Aggrieved and doth therefore Appeal therefrom to this Honourable Court for the following amongst other Reasons—

First—Because your Petitioner is advised

advised and thereupon humbly insists that the said Decree of the said Mayors Court is not warranted by the proceedings upon which the same is grounded and is therefore contrary to Law

Secondly Because the Action was by the Complainant brought upon a Bond which your Petitioner in and by his said Answer upon Oath did Declare depended upon another Deed and that such Deed had become Void and your Petitioner did submit the same by a due of course of uncon=troverted Evidence and therefore and for as much as where a Bond depends upon some other Deed and that Deed becomes Void the Bond becomes Void also the Complainants said Bill Ought to have been dismissed with Costs—

Thirdly

Thirdly Because your Petitioner in and by his said Answer upon Oath did declare that he never received any Consideration whatever on Account of the Money in and by the said Bond Conditioned to be paid by your Petitioner to the Complainant and did Corroborate the same by a due course of Uncontrowsted Evidence Whereupon and as the Complainant by refraining from producing any Witnesses in Oppasition thereto and Evidently Abandoning that object by resorting to a pretended Assumpsit upon the Evidence of the only Witness by him brought forward tacitly Admitted the fact as insisted on by your Petitioner and for as much as where there is an Agreement to do or pay any thing on one side without any Compensation on the other is totally void in Law and as man cannot be compelled to perform it the Complainants said Bill Ought to have been dismissed with Costs—

For all which Reasons and such others as may be offered at the hearing Your Petitioner prays that this Honble Court will be pleased to Reverse the said Decree of the said mayors Court and to Order that the Complainants said Bill be dismissed with Costs and that this Honble Court be further pleased to Grant to your Petitioner such other relief in the Premises as to this Honble Court shall seem Meet —

/Signed/ James Stuart Hall
Solicitor for Appellant
Mayor

Mayors Court at
Madraspatnam

Tuesday the 5th day of October
Anno Domini 1790
Present
Mr. James Call Senior Alderman
Andrew Ross John Mitford
& James Amos Aldermen

L.S.

Court
Mayors

Between Gabriel Doveton Captain of Infantry in the Service of the Honble Company by his attorney Sir John Menzies late of Fort Saint George Baronet by his attornies Thomas Chase and Thomas Parry of the same place Merchants and Copartners Complainant and Cunnacparro Ramiah Pillay of Madras Inhabitant Defendant

This Cause Coming on to be heard and debated this day in the Presence of the Attornies on both sides on Reading the Complainants Bill with Copies of an Account Current Bond or obligation and two powers of Attorney annexed the Defendants Amended Answer the Replication the Rejoinder the Interrogatories and Deposition on the part of the Complainant the Interrogatories and Depositions on the part of the Defendant — 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 order Accordingly

Accordingly order and Decree that the Defendant shall pay unto the Complainant the full and Just Sum of one thousand One hundred and forty five Star Pagodas / Star Pagodas 1145 /- together with all such Interest as now is or shall hereafter become due thereon untill full payment is Made deducting therefrom the Sum of Two hundred Star Pagodas / Star Pagodas 200 .. -/ upon the Original Receipt Copy of which is Annexed to the Defendants answer being produced and its further ordered and Decreed that the Defendant do pay all Costs of this Suit

A True Copy
/Signed/ G. Taylor
Regr

/Signed/ James Stuart Hall
Solicitor for Appellant

To

To the Honorable Major General William Medows
President in Council

In the Honble the
Court of Appeals

Fort Saint George

Between Gabriel Dawlton by his Attorney Sir John Menzies Baronet by his Attornies Thomas Chase and Thomas Parry of Fort Saint George Merchants Complainant and Cunneapore Ramiah Pillah of Madras Inhabitant Defendant —

The Answer of the Above Named Cunneapore Ramiah Pillah Defendant to the Bill of Complaint of Gabriel Dawlton by his Attorney Sir John Menzies by his Attorneys Thomas Chase and Thomas Parry, to the Petition and Appeal of the Above Named Cunneapore Ramiah Pillah —

This Respondent for answer to the said Petition and Appeal or unto so much thereof as Concerns this Respondent to make Answer unto Saith that he Admits to be true that this Respondent did at the time mentioned in the Appellants Petition and Appeal by his Attorney Sir John Menzies Baronet by his said Attornies Thomas Chase and Thomas Parry file a Bill of Complaint in the Mayors Court at Madraspatnam against the Appellant for the Recovery of the Sum of one Thousand one hundred and forty

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

forty five star Pagodas Current Money of Madras the Amount Principal and Interest of a certain Bond executed by the said Appellant in favor of this Respondent a Copy whereof with an Account Current thereof was Annexed to this Respondents said Bill of Complaint to which said Bill of Complaint this Respondent Admits that the Appellant did at the time Mentioned in the said Petition and Appeal file an Answer wherein he observed that although he might have signed the said Bond yet he could not Admit that he stood indebted to the Complainant in the Sum of one Thousand one Hundred and forty five Star Pagodas or any part thereof as was charged and Set forth in this Respondents said &c Bill of Complaint and that the Sum of Money mentioned to be due and owing from the Appellant to the Respondent and this Respondent Admits that the Appellant in his said Answer did state that one Cadamaly Pillah and not the Appellant was the person indebted unto this Respondent and that with an intent to establish such Assertion and the several Matters depending thereon the Appellant did further state that the said Cadamaly Pillah had applied to the Appellant and intreated he did and Assistance towards enabling him to fulfill certain Engagements entered into by him the said Cadamaly Pillah with the Honble Company for the renting of certain Measuring Duties And this Respondent doth

doth also admit that the Appellant did in his said Answer setforth such further matters as in his said Petition and Appeal are recited To which said Answer this Respondent Admits that he filed his Replication on or about the time in the said Appeal mentioned Wherein this Respondent stated that the said Answer was so Contrived and made to the End to give some feigned Colour to evade the &c. payment of a Just debt And this Respondent by his said Attornies Thomas Chase and Thomas Parry said that they were entirely &c. Uninformed as to the Deed on which the Appellant pretended that the said Bond in Question depended and the said Thomas Chase and Thomas Parry further said that the Bond in Question clearly seemed to be a fair Bond and they were Authorized by their Constituent to enforce the Payment thereof which they had Accordingly done and they further stated that from the Circumstances which passed previous to the filing the said Bill of Complaint they were fully Satisfied in their own Conscience that the Bond in Question is a fair one which Circumstances were as follows that previous to the filing of the said Bill of Complaint the said Thomas Chase and Thomas Parry did very often demand Payment of the said Bond from the Appellant who had often promised to discharge the same in a few days but Never to the Knowledge of the said Thomas Chase and Thomas Parry made any Pretend or Refusal whatever that he had any Account or Deed on which the said Bond depended as he had falsely Asserted in his Answer and further

further that when the Appellants heard that the said Thomas Chase and Thomas Parry were about to Commence the present Suit the Appellant sent a Person to intercede for a few days longer and therefore it was Natural to Suppose that if the Appellant had any deed on which the Bond in Question became void he would have declared the same at the time beside all which this Respondent conceived that it would be of dangerous Prejudice to the mutual dealings of Men among each other if the Testimony of written Documents was to be invalidated by such false and groundless Assertions as the Appellant had stated in his amended Answer – and this Respondent by his said Attornies Thomas Chase and Thomas Parry admits this having stated in their Replication that the two hundred pagodas which the Appellant said he had paid towards the Discharge of the said Bond was not enclosed in the back of the Bond but that if the Appellant would produce the Original Receipt copy whereof was annexed to his amended Answer of course the same should be &c. deducted from the Balance of the said Bond and this Respondent by his said Attornies Thomas Chase and Thomas Parry begg leave to Answer as to the Tenor of the said Receipt Copy whereof was annexed to the Appellants amended answer as aforesaid that the same implied a full and clear Conviction on the part of the Appellant that he owed the Balance of the Money due by Virtue of the said Bond Otherwise why did he receive a Receipt specifying that the said

Sum

Sum of Two hundred Pagodas was in part payment of the said
Bond To which said Replication this Respondents admits that the 6th
Appellant did on or about the time in the appeal mentioned file
his Rejoinder wherein he denied that any matter or thing in his said
Answer contained could or ought to be taken or construed as setforth
by this Respondent And the Appellant did also deny as by his said
answer he had before denied his being indebted to this Respondent
in the Sum of one thousand one hundred and forty five Star Pagodas
as setforth in this Respondents said Bill or in any other Sum or
Sums of Money whatever and the Appellant did setforth such other
frivolous and evasive Matters as he hath stated in his said 6th
Petition and Appeal This Respondent admits that Issue was
thereupon joined and Rules passed for the Examination of witnesses
and that Witnesses were examined by both parties and this 6th
Respondents admits that the several Witnesses examined on the part
of the Appellant deposed as stated in the Appellants Petition and
Appeal And this Respondent admits that he examined only one
Witness to wit the said Shashachellum Chetty who to the Second
Interrogatory deposed as stated in the said Petition and Appeal
Namely that he did by the order of the above Named Thomas Chase
and Thomas Parry frequently demand Payment of the Bond in
Question of the said Cannapore Ramiah Pillah but did not recollect
the precise Number of times and he did Also further depose altho the
Appellant has wilfully Neglected to state the same namely that the
Answer given by the Defendant at the respective times was that he
would

would discharge the same meaning the said Bond now in suit and
this Respondent also saith that the said Shashachellum to the third
Interrogatory did further depose as follows to wit that the Defendant
did request of him to Solicit Messrs Chase & Parry to intercede for
a few days longer declaring that he would then faithfully discharge
the whole Amount of the Complainants Demand And this 6th
Respondent admits that upon the Aforesaid Proceedings the said
cause came on to be heard and determined on the fifth day of
october now last past when the said Mayors Court were pleased
to order and Decree and did Accordingly order and decree that the
Appellant Should pay unto this Respondent the said Sum of
one thousand one hundred and forty five Pagodas together with
such interest as thro was or should thereafter become due thereon
untill full payment was made deducting therefrom the Sum of
Two Hundred Pagodas upon the Orygenal Receipt Copy of which
was Annexed to the Appellants answer being produced with all
Costs of Suit From which said Decree of the said Mayors Court
the Appellant hath Appealed to this Honble Court as he hath
Conceived himself aggrieved by the said Decree for the Reasons
Among others which he hath stated in his said Petition and
Appeal But this Respondent doth humbly insist that the 6th
Appellant hath No Cause to Consider himself Aggrieved by the
Decree of the said Mayors Court and that the Same ought to
be confirmed by this Honble Court for the following among
other Reasons

First

First Because the said Decree of the said Mayors Court was well warranted by the Proceedings before them for by such Proceedings it Appeared that the Appellant had not only executed the Bond on which the Action was brought but had Also Admitted the Justness of the Demand not only by Consenting to Discharge the Amount of the Bond in Question of the said Thomas Chase and Thomas Parry would grant a few days longer time to the Appellant but by annexing to his Amended answer a Copy of a Peticipt for Two hundred Pagodas which he said he had paid in part Discharge of the said Bond —

Secondly Because the present Action was brought by this Respondent Against the Appellant upon a Bond which this Respondent humbly Conceives is unconnected with and independent of any Deed whatever and of all the pretended Negociations and Dealings between the Appellant and the said Vadamallay to non of which hath it been informed that this Respondent was a party or in any wise interested therein —

Thirdly Because it appears clear by the said Peticipt for Two Hundred Pagodas in part payment of the said Bond that the same was given as a Security for a Valuable Consideration due to this Respondent at the time of the Execution thereof and as to what the Appellant hath Advanced about his not having received a Valuable Consideration for the said Bond this Respondent humbly hopes that this Hontle Court will conceive the Same as frivalous and insufficient —

For all which Reasons and such others as May be offered at the Hearing this Respondent humbly prays that the said Decree of the Mayors Court may be Affirmed by this Hontle Court and that the Appellants Petition and Appeal May be dismissed with Exemplary Costs to be paid by the Appellant for the evident evasion which he hath Manifested in the Course of his Pleadings and Proceedings in the said Cause —

/ Signed / Popham

Atty for Respondent

Court —

Court of Appeals
at
Madraspatnam

Saturday the 15th day of March
Anno Domini 1794

Between Cunneapoor Ramiah Pillay of Madras Inhabitant Appellant and Gabriel Doveton Captn of Infantry in the Service of the Honble Company by his Attorney Sir John Menzies Baronet late of Fort St George by his Attornies Thomas Chase and Thomas Carry of the same place Merchants Rispondents—

This Cause coming on this day to be heard and Debated before this Court by the Attornies on both sides upon hearing the Petition of Appeal and Answer and the several Exhibits of the Honble the Mayors Court together with the Decree of the said Court given in this Cause on Tuesday the 5th day of 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—

Wm /Signed/ Chas. H. White Clk

To

The Honorable Major General William Medows
President in Council
Fort Saint George

In the Court of Appeals
at
Madraspatnam

Between Mordovramalinga Chitty by his Attorney Stephen Cravenzar Complainant and Seenivasa Pondith Son and Heir of Narsana Pondith Deceased Defendant

In the matter in dispute wherein

Adyah the Son of Velungam Pauleum Seenuviah Petitioner and the said Mordovrama linga Chitty by his attorney Stephen Cravenzar Respondent

Filed in my Office the 15th November 1790
Chas. H. White Clk

Sheweth The Humble Petition and Appeal of the above Named Complainant—

That your Petitioner did on or about the Month of November which was in the year of Our Lord one thousand Seven hundred and Eighty three exhibit a Bill of Complaint in the Honorable the Mayors Court for the recovery the Sum of one thousand two hundred and forty Pagodas from the above Named Defendant upon the balance of an Account Current Arising upon Principal and Interest of and upon a Mortgage Bond or Obligation from Narsanah the father of the said Defendant dated the Twenty Eight February one thousand Seven hundred and Eighty one Conditioned for the Payment

Payment of the Sum of one thousand Pagodas and Interest at twelve per cent per annum for the Securing the payment whereof the said Narasanah did Assign and Mortgage over unto your Petitioner certain premisses therein [illegible] Your Petitioner sheweth that Copy of the said Account Current and Copy of a Translation of the said Mortgage Bond were annexed unto your Petitioners said Bill of Complaint for the inspection of the said Court both which your Petitioner prayed might be admitted as part of his said Bill And your Petitioner Sheweth that the Defendant not appearing to the Summons issued thereon Your Petitioner did procure a Sequestration to issue Against the Defendant to Compell him to appear in Consequence whereof the above premisses were seized that Six Months after the day of the Return of the said Warrant of Sequestration no appearance having been made by the said Defendant or by any one on his Behalf your Petitioner [illegible] did on the thirtieth September one thousand Seven hundred and Eighty three pray a Decree Accordingly to the Course and practice of the said Mayors Court which was Awarded Accordingly and thereupon an order to Sell the said Sequestered premisses After the expiration of fifteen Days directed to the Sheriff of Madraspatnam and the Dubashs thereof that in Consequence thereof the Sheriff do Advertize the said Sequestered premisses for sale and did Accordingly sell the same but did omit to

to Advertize and sell a Parcell of Ground and a tank thereon which omission of the Sheriff obliged Your Petitioner afterwards to take out a Warrant of Execution by virtue whereof the Sheriff did seize the said Parcell of ground and Tank being part of the Defendants property Mortgaged to Your Petitioner by the Defendant and included and described in the Bills of sale deliver'd at the time of executing the said Mortgage Bond And your Petitioner Sheweth that the said Adeyah as son of Valangiam Pauthum Seneva nah as Aforesaid did on the twenty third January one thousand Seven hundred and Eighty seven file a Petition against the said Seigne Alledging that the said Sheriff instead of Seizing the property of the said Defendant did Seize a Certain Tank and a piece of Ground Situated lying and being at Triplican between the houses of Ramanaya Cheriar and Gedema Veerapermaul under pretence that the said premisses were the property of and belonged unto the said the Defendant And the said Adeyah did further pretend that the said premisses were his property as would appear to the said Mayors Court by Copy of a Bill of sale thereunto annexed which prayed might be Admitted as part of his said Petition the Original whereof was in his Custody and ready to be produced whenever he shall be thereunto required And the said Adeyah further prayed the Aid and Assistance of the said Mayors Court in the Aforegoing premisses to order the said Warrant of Execution be rescinded as far as related to the seizure of the said premisses and the Sheriffs seal to be taken from of the said

premisses

premisses and that he be restored to the quiet and peaceable possession and Enjoyment of the same

To which Petition your Petitioner did on or about the Twenty ninth day of May past in his answer admitting that he did file his said Bill of Complaint Against the Defendant in the manner as before setforth as would appear by Copy of the said Mortgage Bond thereunto annexed N.1. for the Inspection of the said Mayors Court and further admitted that the Defendant for not appearing to the Summons issued thereon to have procured a Sequestration to issue Against the said Defendant to Compell him to appear In Consequence whereof the Above premisses were Seized that Six Months after the day of the return of the said Warrant of Sequestration no appearance being made by the said Defendant or by any one on his behalf that your Petitioner did on the thirtieth September one thousand Seven hundred and Eighty three obtain a Decree According to the Course and practice of the said Mayors Court and thereupon Your Petitioner did procure an order to sell the said Sequestered premisses after the expiration of fifteen days directed to the Sheriff of Madraspatnam and the District thereof that in Consequence thereof the said Sheriff did Advertize the said Sequestered premisses for sale and did Accordingly sell the same but did omit to Advertize and sell a Parcell of ground and a Tank thereon which omission of the said Sheriff Obliged Your Petitioner Afterwards to take out a Warrant of Execution by vertue whereof the said Sheriff did Seize the

the said Parcell of Ground and Tank being part of the Defendants property Mortgaged to your Petitioner by the Defendant and included and discribed in the Bills of Sale delivered at the time of Executing the said Mortgage Bond And your Petitioner further said that the said Ground and Tanks never were the property of the said Adayah but were the sole property of the Defendant and of your Petitioner under the said Mortgage Bond and Execution as might More fully appear first by a Bill of Sale of the first piece of Ground discribed in the said Mortgage Bond given by one Allatrah to Lunca Rama being Sixty six feet by one hundred and fifty six two wells one large and one small Twenty feet whereof have been since sold by some the latter possessors Secondly by a Bill of sale from Lunca paddah Venkattah Chitty to Allasingery in One thousand seven hundred and fifty six in which is included another piece of Ground and a Tank being thereon Particularly discribed as Also a Well and the same premises were sold by Allasingery to Condapilla Narasanah pandeth one thousand Seven hundred and fifty Seven and by him Mortgaged to your Petitioner as might more particularly Appear by Copies of one Bill of sale in the English Language and Copies of Translations of two others marked N. 2. 3. & 4. the Originals whereof were in your Petitioners possession and ready to be produced when properly called for And Your Petitioner further said that he denied that he did resist or that the Sheriff had Seized any ground belonging to the said

Adayah

Adeyaks — And your Petitioner said that he had not any thing to do with the Premisses described by the Bill of Sale annexed to the said Addeyahs Petition which were quite different from those described in the Bills of Sale annexed unto your Petitioners answer to the said Adeyahs Petition And your Petitioner further said that he did not ever Dispute with the said Adeyah about the Ground to them Belonging but would Readily agree to his freely quietly and peaceably enjoying the same —

And your Petitioner therefore prayed that the prayer of the said Adeyah might be over Ruled and that the Order to Restrain the Sheriff in the sale of the Premises Seized by Vintue of the Aforegoing Warrant of Execution might be Superseded and that the said Adeyahs Petition might be Dismissed and that he might be Directed to pay Exemplary Costs for his litigiousness in presuming to Oppose the Course of Justice without any Colourable Right or cause thereto —

And thereupon Issue did Join and your Petitioner sheweth that notwithstanding the said Petitioner Adeyah had Referred the Mayors Court in his said Petition wherein Exhibited to a Copy of a Bill of Sale as a Testimony of his Right in the Premises he Pretended to be his property and also Notwithstanding your Petitioner in his Answer did disclaim all Right to the premises described in the said Bill of Sale so Exhibited by the said Petitioner by your Petitioner Declaring that he would Readily agree to his quietly and peaceably enjoying the same which is all that the

Petitioner

Petitioner did or Could Demand Because the said Bill of Sale so Exhibited was the Scale produced by the Petitioner by which he wished his property should be measurred and he was allowed by your Petitioner so to do your Petitioner therefore sheweth that the Examination of Witnesses to the proof of his property under the said Bill of Sale was not in any shape Requisite But your Petitioner sheweth that as the Object of the said Petitioners Petition was not to be quieted in his property but to Disquit other persons in the Possession of their Property the Petitioner did not withstanding Render the Matter in question which was plainly and Clearly Defined perplexed and intricate by the Examination of o.. Witnesses to what was in no sense Necessary For your Petitioner sheweth that the said Petitioner did produce three Witnesses in the said Matter who depose Verbatim to the Second and third Interrogatory Respecting the said Petitioners Right in the said Premisses Described in the Bill of Sale under which the Pet.r Grounds his Claim in his Petition which your Petitioner Sheweth was irregular and unnecessary the said Property described in the said Bill of Sale is fully admitted and your Petitioner Sheweth that the said Persons depose to the fourth Interrogatory Exhibited to them that the Sheriff or his Officers when measuring out the Ground of the Defendant Mortgaged to your Petitioner as aforesaid encroached upon the Ground of the Petitioner forty feet from East to West and from North to South Twenty feet But the said Deponents nor any

Other

Other Witnesses deposes to the Seizure of a Tank and piece of Ground nor do they Determine whether this Ground they pretended to have been Seized was part of the Bill of Sale Exhibited as a proof of his property or whether it was a part of any other Property Whereby your Petitioner sheweth the said Evidence Could not be Applied to any of the matters in Issue whether upon the Issue of the Tanks or of the Bill of Sale because the Evidence doth not tend to support Either and Cannot therefore be applied as Evidence to any of the matters in question in this Cause which therefore Remains as if there was not any Evidence at all to support any part of it And your Petitioner sheweth that the Evident Combination of the said Witnesses to give their deposition in Almost the same direct Words shews that the Whole of the said Depositions was a Studied Combination also to perplex and harrass your Petitioner and to mislead the Judgement of the Mayors Court and if possible thereby to obtain some Order favorable to his said Views And your Petitioner moreover sheweth that one of the said Witnesses namely Vencatachanry aged Twenty five years or thereabouts / so that the said person must have been born in the year One Thousand seven hundred and Sixty five or thereabouts Absolutely deposes to the purchase from Pagalaubarmeum & Ramanoojen Chariar in the year one Thousand Seven hundred and Sixty four of a House and Ground at Trepliccane which Appears by the further Discription thereof to be that set forth in the Bill of Sale annexed to the Petition And the same Witness

Deposes

deposes to the said purchase to his Certain Knowledge altho he doth not know the Dimensions which inconsistencies your Petitioner saith are not much in favor of the Credibility of the said Witness and the other Two Remaining Witnesses altho under the Opposite appearance of Litteral uniformity are nevertheless Equally unworthy of belief which matters your Petitioner hath observed not from any possibility of the said Evidence being prejudicial to them further than by putting your Petitioner to an unnecessary Expense as from a hope that this Honourable Court will be pleased to mark the same at the hearing by taxing the Petitioner with Exemplary Costs And your Petitioner Sheweth that he did urge the said Matters before the said Mayors Court at the hearing of the said Petition and Answer on Friday the Ninth day of July Last past When your Petitioner sheweth that the said Court did unanimously Order that the said Petition should stand Dismissed with Costs But the said Petitioner did Petition the said Court for a Rehearing And your Petitioner sheweth that the said Petition and Answer Coming on again to be heard by the said Court on Tuesday the Second day of this present Month of November the said Court were pleased to Order and did Accordingly Order that the aforesaid Order made in this Matter on the Ninth day of July should stand Reversed and that the Petitioners Petition be held good and that the Sheriffs Seals be taken off the Premises in Dispute and that each party do pay their own Costs as may appear by Copies

of

of the said several Orders of the said Court hereto annexed —
By which order of the said Mayors Court of the Second day of November
Reversing their order of the Ninth day of July your Petitioner
doth find himself aggrieved and doth therefore Appeal therefrom
unto this Honourable Court and for Cause of Appeal your Petitioner
Sheweth that the said Order is not warranted by the Complainant
nor by the prayer of the said Petitioner both which are different
nor is it moreover warranted by the Evidence Produced which is
totally foreign to either — For your Petitioner sheweth that the
said Complainant of the said Petition is that the Sheriff had
seized a Certain Tanks and a piece of Ground without mentioning
the Demensions Limit or Extent of the said Tanks and piece
of Ground which your Petitioner sheweth was irregular in the
first instance Because the Petitioner by leaving the Demensions
of those Premisses undefined did put it out of the power of the
said Court to Determine in favour of the said Complainant as
they Could not pass an order against the Seizure without knowing
first whether any Seizure was made of a Tank &c. the property
of the Petitioner and if there was without knowing the Extent of
the Tank and Land Seized In like manner as they Could
not possibly give a Decree in favor of a Debt Simply as a
Debt complained to be owing without knowing the Specificke sum
And your Petitioner sheweth that altho it appears by the said
Petition as if the Petitioner did mean to supply any want of
description of the Premisses by the Seizure whereof he Complained
he was injured by Referring the Court to the Bill of Sale annexed

to

To this Petition the Petitioner should never the Less have shewn
what part of the said Premisses he Complained to have been Seized
otherwise the Issue to be Tried was left uncertain as it now Really
is and the order of the said Court for the Sheriff to take the Seals
off the Seized premisses is irregular Because your Petitioner
sheweth that the Seizure of the Tanks and Ground as the property
of the Petitioner is absolutely denied And there is no Evidence
of any Tanks having been Seized at all except by the Warrant
of Execution and by the Sheriffs publicke Advertisement Copy
whereof your Petitioner prays to annex hereunto whereby it appears
that the Tanks Measures in Length from East to West Ninety feet
and in Breadth from North to South seventy three feet and
the Ground Adjoining in Length from north to South Seventy
feet and in Breadth from East to West Twenty five feet And
your Petitioner sheweth that the Petitioners Right in the said
Tanks and Ground having been absolutely denied and not
being any way proved your Petitioner is humbly of opinion that
the said Court could not have in Contemplation at the time of
making their said order that the Sheriffs Seals were to be taken
off the Tanks and Ground but that their Judgement Could only
go to the affirmance of the Petitioners Right under his Bill of
Sale upon the Ground of that Right having been admitted
by your Petitioner. It being evident that the said Court could not
go further than they were led into the said Matter by the said
Bill of Sale and by the Evidence that spoke to it Because if

the

the said Court had intended that their Judgement should extend further than the said Bill of Sale or the Forty feet by Twenty thereof that two of the Evidence depose to have been Seized such Judgement whould have been Erroneous because not warranted by Evidence your Petitioner further prays to observe that the Petitioner hath Grounded his Right in the Bill of Sale annexed to this Petition That this Right under that Bill of Sale hath been admitted and no Evidence was therefore Required to Confirm it But if the Petitioner had been advised that the proof of the whole was Requisite in order to prove the part that was seized your Petr Conceives that upon an admission of the said Evidence as to Regularity and Credibility the same can Extend no further than to what they had proved to have been Seized which was Forty by Twenty without describing any Tanks to be included therein Consequently the Court could not intend that the Sheriffs Seals should be taken off the Tanks and Ground without knowing that they were included in the said Forty by Twenty and under an uncertainty of the measurement of the said Tanks and Ground being no more or ten times that Measurement and it is evident from the said advertisement and by the original Bills of Sale produced as Evidence of your Petitioners Right that the Tanks in question could not be a part of the Premisses described in the Petitioners Bill of Sale And your Petitioner further sheweth that he did since the hearing of the said Matter on the Second day of this Month of November to Wit the Fifth day of the said Month by his Attorney at Law address the Attorney for the Petitioner agreeing to allow the Petitioner his Right according as he had sett it forth in his Petition by the Bills of Sale thereto annexed Copy whereof your Petitioner prayeth to subjoin hereto But your Petitioner nor his Attorney not having Received any Answer to the said amicable address your Petr is therefore Obliged to appeal to this Honourable Court your Petitioner having very Just Reason to Apprehend that as the Petitioner knows that he is Certain of having every part of his Property secured to him by the admission of the said Bills of Sale that he will make use of the said Order of the Mayors Court to harrass and perplex your Petitioner by applying the Same to the purpose of dispossessing your Petitioner not only of the said Tanks but of whatever other additional part of the premisses thereto adjoining that he may pretend to be implied in the said Order Notwithstanding that it is Evident that the Petitioner hath not proved any property in a Tank or Ground Seized either by his Bills of Sale or by his Evidence or that any part of his property was Seized without that it may be implied from the deposition to the fourth Interrogatory that Forty by Twenty of the premisses described in the Bills of Sale annexed to his Petition were Seized And your Petitioner sheweth that he hath acted fairly and candidly towards the Petitioner in declaring all Dispute by the Admission of the Issue on which the Petitioner would try his Right namely his said Bills of Sale and by Exhibiting the Originals of the Bills of Sale that were Mortgaged

day

Mortgaged to him the Sale of the premisses therein Described and no other was the Object of your Petitioner and which is all that your Petitioner did ever Require — And your Petitioner sheweth that the Respective Claims and Title Deeds thereof being before the said Court and those of the Petitioner not being Denied the said Court in their Said order Could only have passed an order for the quietting of the Petitioner in the Premisses described in his Bill of Sale which your Petitioner hath shewn he was always Ready to allow of and not by Ordering that the Seals should be taken off the premisses seized Because the said Order is indefinite and uncertain and is not productive of the Sole Object of Justice of putting a final end to Disputes between Contending parties your Petitioner therefore humbly prays that this Honourable Court will be pleased to take the premisses into their Serious Consideration and as it appears therefrom that the Petitioner hath Rested his Right on the Bill of Sale Copy whereof is annexed to his Petition and upon no other right and as your Petitioner hath upon a View thereof Voluntarily admitted the Same so as to obviate the Necessity of any further Dispute and as the Petitioner hath notwithstanding without Cause entered into a proof of the said Matters so admitted whereby the hearing of the matter in Question hath been Retarded and procrastinated to the great Vexation and expense of your Petitioner And as the Petitioner hath not proved any further Right than what he appeared to have under the said Bill of Sale your Petitioner prays that the said Petitioners Petition may stand dismissed with Costs in the Mayors Court and in this Honourable Court and that if for the quieting of Disputes between the parties this Honourable Court should deem it Competent and Consistent with their Justice and Equity to pass any further Order therein that they will be pleased to Order that the Petitioner do Continue to hold quit and peaceable possession of his Right According to the said Bill of Sale and further to give your Petitioner such further Relief in the Premisses as to them may be seem Meet

/ Signed / H. Dupuy
Attorney Petitioner

Extract

Extract from the Minutes of a Court Held at the Town Hall on Friday the 9th day of July Anno Domini 1790

Present

Vincentio Corbett Esquire Mayor
James Call & Andrew Ross
Aldermen

Moodoo Ramalinga Chetty by his Attorney Stephen Avanjohn
Seenevasa vers Pundeeth

Petition of Adeiyah with Copy of a Bill of Sale annexed Read
Answer with Copies of four Exhibits annexed Read
Interrogatories on the part of the Petitioner Read
Three Depositions taken thereunto Read
Four Exhibits on the part of the Respondent with Translates thereof Marked A A B B C C & D Read

The Matter in dispute between the Petitioner Adeiyah and the Respondent Moodooramalinga Chetty by his Attorney Stephen Avanjohn Coming on to be Argued and Determined this Day in the Presence of the Attornies on both Sides on Hearing the Pleadings made use of by the Attornies and on due Consideration had thereon This Court doth think fit to Order and doth Accordingly Order that the Petitioners Petition do Stand Dismissed with Costs —

A true Extract
Sig[d] / G. Taylor Reg[r]

True Copy
Sig[d] M. Dussuyau
Attorney Petitioner

Extract

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 2[d] day of November Anno Domini 1790

Present

James Call Esquire Mayor
William Webb Josias Dupre Porcher
Andrew Ross John Mitford
Hy Chy Michell James Amos
Hy Readhead and Benjamin Roebuck
Aldermen

Moodooramalinga Chetty by his Attorney Stephen Avanjohn
Seenevasa vers Pundeeth

Petition of Adeiyah with Copy of a Bill of Sale annexed Read
Answer with Copies of four Exhibits Annexed Read
Interrogatories on the part and Behalf of the Petitioner Read
Three Depositions taken thereunto Read
Four Exhibits on the Part of the Respondent with Translates thereof marked A A B B C C & D Read
Petition of Adeiyah for Rehearing Read
Order of Court of the 9th July last Read

The Matter in Dispute between the Petitioner Adeiyah and the Respondent Moodooramalinga Chetty by his Attorney Stephen Avanjohn Coming on to be Reheard and Determined this Day in the Presence of the Attornies on both sides and the Court having had due Consideration thereon doth think fit to order and doth Accordingly order that the Order made in this Matter on the 9th July last whereby the Petitioners Petition was Dismissed do stand Reversed that the Petitioners Petition be held good and that the Sheriffs Seal be taken off the Premisses in Dispute and it is further ordered that each Party do pay their own Costs —

A true Extract
Sig[d] / G. Taylor Reg[r]

True Copy
signed / M. Dussuyau
attorney Petitioner

Moodoo

Moodu Ramalinga Chetty by his Attorney Stephen Oranjohn

vers

Seenevasa Pundeeth Son and Heir of Narasana Pundeeth Deceased

Fort St George 13th January 1787

Publick Notice is hereby given that on the 23d Instant will be sold by public Outcry on the Premises between the hours of 4 & 6 in the Afternoon a Tank with a Piece of Ground Adjoining Situated at Triplicane on the West Street adjoining to the Garden of Moodoo Ramalinga Chetty the Tank Measuring in Length from East to West 90 feet and in Breadth from North to South 73 feet or thereabouts the Ground adjoining Measuring in Length from North to South 70 feet and in Breadth from East to West 25 feet or thereabouts being late the property of Seenevasah Pundeeth Son of Narasanah Pundeeth Deceased but have been Seized by order of the Honourable the Mayors Court —

/ Signed / Neil. Campbell
Sheriff

True Copy
/ Signed / Henry Dupuy
Attorney Respondent

To Messrs James Stewart Hall
& George Chalmer
Gentlemen

You will oblige me if you will direct your Client the Petitioner against Mooduramalinga Chetty to shew the Sheriff the Ground that was indispute Between them in order that this busines may be settled if possible for I really am not able to give any directions in it without that of allowing of the Petitioners —

Property

Property According to the Bill of Sale annexed to this Petition —

I have spoken to the Dupuity Sheriff who Labors — under the same Difficulty and Requires the same Satisfaction &c has informed me that he will attend you for that purpose —

I am
Gentlemen
Your Most Obt Servant
/ Signed / Henry Dupuy

5th November 1790

True Copy
/ Signed / Henry Dupuy
Attorney Petitioner

To

To the Honourable Major General William Medows

President and Governor &c. in Council

Fort St George

In the Hon.ble

Court of Appeals

Between Mooduramalinga Chetty by his Attorney Stephen Owan Jan appellant and Audeyah Respondent —

In the Cause

Mooduramalinga Chetty by his attorney Stephen Owan Jan Complainant & Seneevasah Pundeeth Son and Heir of Nanseema Pundeeth deceased Defendant Wherein the above named Audeyah was Petitioner and the said Mooduma Linga Chetty by his Attorney Stephen owan Jan Respondent —

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

Filed in my Office the 15th December 1790
Chas N. White Clk

This Respondent admits that the abovenamed Appellant did on or about the Time in his said Petition of appeal setforth Exhibit a Bill of Complaint in the Mayors Court against the Defendant above named for the Recovery of the sum of one thousand Two hundred and forty Pagodas the Balance of an account Current said to have arisen upon a Mortgage Bond or obligation from one Narasanah the Father of the said Defendant and pretended to have been Executed on the Twenty Eighth day of February one thousand Seven hundred and Eighty one Conditioned for the payment of the Sum of one thousand Pagodas and Interest at Twelve per Cent per annum and that for securing the payment thereof the said Narasanah had assigned and Mortgaged over unto the appellant certain Premises therein Described and this Respondent admits that a Copy of the said account Current and of a Translation of the said Mortgaged Bond were unto the appellants said Bill annexed and by him prayed to be admitted as part thereof and this Respondent admits that for the Reasons in the appellants said Petition setforth he the appellant might have obtained a Warrant of Sequestration against the Defendant that in Consequence thereof the said Premises were Sequestered and that at the Expiration of the Time and for the Reason and on or about the period in the appellants said Petition setforth the appellant did obtain a Decree and thereupon an order Directed to the Sheriff of Madraspatnam and the Districts thereof to sell the premises aforesaid and who in Consequence thereof did sell the same accordingly and this Respondent admits that the appellant did sometime afterwards take out a Warrant of Execution against the Goods Chattles and Effects of the said Defendant and that by Vertue thereof the said Sheriff did seize a parcel of Ground and a Tank as and for the property of the said Defendant pretending that the same was by him Secured to the appellants by the Mortgage aforesaid and included and Described in a Bill of Sale Delivered at the Time of the Execution thereof and this

this Respondent admits that he did at the Time in the appellants said Petition setforth Exhibit and file a Petition in the said Mayors Court against the said Seizure and did therein and thereby shew that the said Sheriff instead of seizing the property of the said Defendant had Seized a Certain Tank and piece of Ground situated lying and being at Treplicane between the Houses of Ramanaja Charear and Gadama Veerapermal under pretence that the same was the property of and belonging to the said Defendant which this Respondent in and by his said Petition and shew were his this Respondents property and that the same would so appear by a Copy of a Bill of Sale to his said Petition annexed and prayed to be admitted as part thereof and this Respondent admits that in and by his said Petition he did setforth and pray the aid and assistance of the said Mayors Court that the said Warrant of Execution might be superceded as far as Related to the said Seizure of the said premises that the said Sheriffs seals might be taken from off the same and that he this Respondent might be Restored to the quiet and peaceable possession and Enjoyment thereof

And this Respondent admits that to such the Petition of this Respondent the appellant did on or about the Time in his said Petition of appeal for that purpose setforth put in his answer and thereunto annex a Copy Translate of a Mortgage Bond and pray that the same

Might

Might be taken as part thereof and this Respondent admits that the appellant did in and by his said answer state as in and by his said Petition of appeal is setforth and this Respondent admits that thereupon issue did Join and that Rules did issue for the Examination of Witnesses and that Witnesses were accordingly Examined on the part of this Respondent and this Respondent says Notwithstanding the assertion of the appellant to the Contrary that he was under the necessity of adducing such Testimony in order to support the several matters and things in his this Respondents said Petition alledged for this Respon-
dent says that although he had Referred the said Mayors Court to a Copy of a Bill of sale as a Testimony of his right in the premises yet that from the Equivocal and ambiguous manner in which the answer of the appellant to this Res-
pondents said Petition was worded it became absolutely
Necessary for this Respondent to Examine Witnesses because although the appellant did in and by his said answer to the said Petition of this Respondent say that he had nothing to do with the Premises described in the Bills of Sale to this Respondents said Petition annexed yet he did attempt to shew and thereon insist that the parcel of Ground and Tank in this Respondents said Petition setforth as his property was the property of the said Defendant and by him property mortgaged to the appellant and that the said Ground and Tank never were the property of this Respondent This Respondent therefore

Examined

Examined Witnesses to shew that the said Ground and Tanks were his property that they never were the property of the said Defendant and that the Seizure thereof was illegal and oppres=sive — and this Respondent says notwithstanding the assertion of the appellant in his said Petition Contained to the Contrary that the sole object of this Respondent in Exhibiting his said Petition was to secure his property which had been seized as aforesaid by the appellant as the property of the said Defendant and this Respondent denies that the Examination of Witnesses was meant nor was it in the nature of things that it could have a tendency to under the matter in Dispute either perplexed or intricate and this Respondent says that annunda Chairyar and Cashadry Breming to the fourth Interrogatory Exhibited in the part of this Respondent do fully and sufficiently maintain and prove the allegations in this Respondents said Petition setforth to wit that the sheriff instead of levying upon and seizing the property of the Defendant did seize on a piece of Ground the property of this Respondent for the said annunda Chairyer and Cashadry Breming do therein and thereby depose that they were present when the Sheriff or his officers came to seize on a Certain Garden belonging to the said Defendant and that in measuring out the same they did encroach upon the Ground and prosperity of this Respondent forty feet from East to West and from north to south Twenty five feet and that the

Appellant

Appellant was particularly active in Pointing out to the Sheriff the Ground which he was to seize on that they the Deponents did Remark to them that they were Encroaching upon the Ground of this Respondent and did Remonstrate with them on the impropriety of doing so and they the Deponents did further prove that the said Portion of Grounds so seized on was in the professian of this Respondents Father during his Life time and after his death quietly and peaceably professed by this Respondent unmolested by any person whatever and this Respondent says and thereupon humbly insists that he has not only substantiated by Evidence the matter of allegation in his said Petition Contained and duly proved the Exact quantum of his Property seized upon as aforesaid to wit from East to West forty feet and from North to South Twenty five feet but has also proved the same to have been so Seized by the appellant in full Conviction of the Wrong and injury he was doing and causing to be done to this Respondent and this Respon=dent and this Respondent says that the said Tanks on which the appellant so much insists is in the said Bill of Sale and the said Measurement Contained although the same is not specifically setforth and Notwithstanding the appellant in his said Petition of appeal would insinuate that it was incumbent on the part of this Respondent by Evidence so to have done this Respondent says and thereon humbly insists that in proving the Ground to be his property it followed of Course that a Tank or Canal upon such Ground was his property also and the more particularly as

as this Respondent is advised that in legal proceedings all
pieces of Water are Considered as Land and so set forth and
declared upon and this Respondent is advised and thereon
humbly insists that the appellant has Erred both in Law
and in fact in asserting that the Witnesses produced on the
part of this Respondent have not Determined whether the
Ground Seized on was part of the Bill of Sale Exhibited as
a proof of this Respondents property or whether it was a part
of any other property so that their Evidence Cannot be applied
to any of the matters in Issue and therefore this Cause Remains
as if no Witnesses had been produced by this Respondent for this
Respondent says the fact is that the Witnesses by him produced
have proved the Bill of Sale by this Respondent Exhibited
and that the Ground Seized on by the appellant as the property
of the Defendant as the property of this Respondent and
this Respondent says that the matter in Issue is the Seizure
of Certain premises by the appellant as the property of the Defen-
dant and which in and by the said Petition is alledged to be
the property of this Respondent and therefore this Respondent
says that the Depositions of the Witnesses produced on the
part of this Respondent which prove that the Premises seized
by the appellant as the property of the said Defendant was
the property of this Respondent apply Clearly to the Matter
at Issue and as Clearly support and Establishes this
Respondents right and Title therein and this Respondent
denying the suggestion by the appellant in his said Petition of

Appeal

Appeal set forth of Combination on the part of his this Respondents
Witnesses say that it is Contrary to the Course and practice of this
Honourable Court for a party before it to offer Exceptions to Evidence
produced in the Court below for this Respondent says if good and
sufficient Cause Appeared therefor Exceptions should have
been Exhibited in the said Mayors Court on publication passing
and previous to the hearing and the appellant not having done
so it is highly irregular in attempting to induce a Belief in this
Honourable Court that the Evidence on the part of this Respondent
is any wise insufficient in point of legal precision Even if such
were the Case but which this Respondent denies and says
that the Witnesses by him produced as aforesaid are people of
Reputations worthy of good Credit and totally disinterested
men who by their Situation having Lived many Years in the
neighbourhood of the Premises in Dispute and of a Competent
Knowledge of the parties were the best Enabled to Discover
the Truth and which they have done merely to serve the Cause
of Justice and not as the Appellant Endeavours unfairly and
irregularly to insinuate to mislead the Judgement of the said
Mayors Court and this Respondent says that the Circumstance
introduced by the appellant in his said Petition of Appeal
Relative to the age of Vencatachary is a Mistake which must
have originated in the Examiners office and this Respondent
says that as the said Vencatachary in his said Deposition
could not take upon himself to speake to the Dimensions of this

Respondents

Respondents property as he was not present when the said Serjeant was made thereon as aforesaid this Respondent could derive no advantage from and therefore made no manner of use of his the said Venkatachurry's Evidence at the hearing and this Respondent says the illegal irregular and unfair attempts made use of by the appellant to injure the Evidence of this Respondent &c. instead of injuring assists the Cause of this Respondent for it shews the Conviction of the appellant that the matter in Dispute Rests upon Evidence adduced in support thereof and so the fact is Notwithstanding he Endeavours to insinuate that such attempts have not been made from a Consideration of the possibility that the said Evidence can be prejudicial to him the appellant further than by putting him to unnessary Expense which this Respondent says is no Consideration and used merely as a Color of Evasion because were the Appellant to secured in the prayer of his Petition this Respondent would be obligied to pay the Costs and therefore the Expence of the Witnesses Examined would fall upon this Respondent and not on the appellant and this Respondent says that the appellant being unable to support his Cause by Evidence did abandon it to the Chance of Succes upon the inequitious principle of an Endeavour to impeach by unfair means and thereby injure the Evidence brought forward by this Respondent and this Respondent says that the appellant having so abandoned his Cause he did not attempt to prove by a due Course of Witnesses

Witnesses not Even by a Single Witness what he denominates the Mortgage Bonds and Bills of Sale of which he has annexed Copies to his said answer to this Respondents said Petition the one of which pretended Bills of Sale No 2. has no Date either of Month nor year nor does it appear any way Relevant or pertinent to the matters in question another No 3 is not attested by Witnesses nor does it bear any mark of Public authenticity and the third No 4 is also Different with Respect to any mark of Publick authenticity and therefore the appellant has nothing to urge in support of his pretended right than his upon deceit in opposition to facts Established by Witnesses —

And this Respondent admits that the said Petition and Answer Coming on to be heard on Tuesday the Ninth day of July last past before a Rotation Court composed of the Mayor and two alderman the said Court did unanimously order that this Respondents said Petition should stand Dismissed with Costs and this Respondent admits that he did Petition the said Court for a Rehearing and that the said matter Coming on to be Reheard on Tuesday the second day of November last past before a full Court Composed of the Mayors and Eight alderman the said Court upon hearing the arguments and Reasonings offered on the part of this Respondent was pleased to reverse the order of the rotation Court of the said Ninth day of July and to order and did Accordingly order this Respondents said Petition to stand good that the Sheriffs seals should be taken off

off the premisses and that Each party should pay their own Costs and this Respondent admits that the same might appear as the appellant in and by his said Petition of appeal asserts by the Copies of the Several orders of the said Mayors Court to his said Petition of Appeal annexed But this Respondent denies that the appellant was by the said order of the said Mayors Court any wise aggrieved or that he has any Cause or Ground of appeal therefrom to this Honble Court and thereupon and in answer to the Reasons adduced by the Appellant as Cause of appeal this Respondent says that the said order of the said Mayors Court of the second day of November last past is warranted by the prayer of this Respondents said Petition and by the Witnesses produced by this Respondent for this Respondent says that the prayer of his said Petition is that the Sheriffs Seals might be taken of the Premisses seized as aforesaid and that he this Respondent might be restored the quiet and peaceable Possession and Enjoyment of the same and the said Witnesses prove his right and Title to the Possession and Enjoyment so prayed and this Respondent says that his Property in the said Premisses seized on as aforesaid is regularly setforth in his said Petition to wit that the said Sheriff instead of seizing the property of the said Defendant had seized on a Certain Tanks and piece of Ground situate lying and being at Triplicane between the Houses of Ramanooja Chavar and Godama Veeraperumaul the property of him this Respondent and which this Respondent says was a Sufficient

Description

Description of the premisses for the said Mayors Court to Determine thereon if the appellant had not Litigated the same by filing an answer thereto because this Respondent would have pointed out to the said Sheriff the Premisses seized on in order to have enabled him to take his Seals therefrom and which this Respondent says is all that is Requisite or that is done in similar Cases but this Respondent says that the appellant having Litigated the matter setforth in this Respondents said Petition by filing his answer thereto this Respondent did then as is the Practice observed in similar Cases Examine Witnesses who did prove this Respondents right to the premises seized on as aforesaid and did describe the dimensions limits and Extent thereof and therefore the Issue to be Tried was Clearly defined and perfectly Decided to wit that the Sheriff instead of Levying on the property of the said Defendant had Seized the property of this Respondent the situation of which property was setforth in and by his this Respondents said Petition and the dimensions Limit and Extent thereof was proved by Witnesses Examined on his behalf and therefore the said order of the said Mayors Court was not only perfectly Regular but was such as it was bound to give upon the Evidence produced and this Respondent says the argument of the Appellant in objection thereto is fallacious and inconsistent to wit because the Seizure of the Tanks and Ground as the property of the Petitioner is absolutely denied for this Respondent says it was upon such denial that Issue Joined because this Respondent says

unless

unless there be a Denial by the one party of the matters Charged by the other There can be no Issue for Tryal and the prayer of the party Complaining will be taken proconfesso but where issue Joint and such Issue is an Issue on facts the Court determines According to the Evidence before it and this Respondent says that the only Evidence before the said Mayors Court to Determine the matter at Issue between the appellant and this Respondent was adduced by this Respondent as aforesaid for this Respondent says that the said answer of the said appellant to the said Petition of this Respondent not being upon Oath Could be considered in no other wise than as a naked unsupported assertion abandoned as it would seem by the appellant from a Conviction of its being without foundation in Truth — and this Respondent says that it is Contrary to the Course of this Honourable Court to introduce in the pleadings thereof any matters that do not appear to have been regularly at Issue in the Court below and therefore this Respondent says that the appellant in annexing to this said Petition of appeal a writing purporting to be the Copy of an advertisement for the Sale of Certain premises said to have been Seized on by order of the said Mayors Court is irregular and Contrary to practice and this Respondent thereupon prays that the said Writing together with the Reference made thereto and observations therein by the appellant in his said Petition of Appeal may be Expunged with Costs to be paid by the Appellant — and this Respondent says that the said Mayors Court notwithstanding the opinion of the appellant thereon and in opposition thereto did by its said Order Directing that the Sheriffs Seals should be taken off the said Premises Determine that the said Seals should be taken off the Premises situated as in this Respondents said Petition is setforth and as the dimensions Limits and Extent thereof are ascertained and proved by the Testimony of the Witnesses produced by this Respondent and to which there was no opposition by the appellant who did not shew any right or Title whatever to the premises Except by unsupported assertion not having attempted to prove Even the Exhibits to his said answer annexed and by him pretended to be the Copies of Title Deeds but did abandon the same as aforesaid and this Respondent says that the appellant in repeatedly introducing the said Tanks and attempting to create Difficulties relative thereto has no other object than that of Confusing a Clear case and rendering the same Complex and intricate for this Respondent says that he this Respondent has proved his right and Title to the premises seized as aforesaid first by his said Bill of Sale and secondly by the Testimony of Witnesses produced on his behalf and which is all that is granted by the said Judgment of the said Mayors Court to this Respondent and all that this Respondent Ever Required under and by Virtue thereof nor is there any Legal or Equitable objection thereto on the part of the Appellant who Conscious of his inability to Destroy this Respondent Right as aforesaid in such manner and form as the Law Requires and as Equity Demands has attempted so to do by the introduction

introduction of an advertisement that has never before appeared in the Course of and that has no Connection with or Relation to the proceedings upon which he the appellant has grounded his said Petition of appeal.

And this Respondent says that it is Contrary to the Course of this Honourable Court to introduce in the pleadings thereof any matter or thing not at issue in the Court below and therefore this Respondent says that the introduction of the paper Writing to the appellants said Petition of appeal annexed purporting to be the Copy of a Letter which the appellant in and by his said Petition of Appeal declares to have been addressed by him to the attornies at Law of this Respondent is highly irregular and Contrary to practice and this Respondent thereupon prays that the said Writing together with the Reference made thereto and observations thereon by the appellant in his said Petition of Appeal may be Expunged with Costs to be paid by the appellant ——

And this Respondent says that it appears by the appellants own shewing that he has no ground of appeal from the said order of the said Mayors Court of the said second day of November last past but that his present appeal is grounded upon a pretended private Transaction between him the Appellant and this Respondent subsequent thereto for the appellant in and by his said Petition of appeal and Referring to the said pretended Letter aforesaid says "But your Petitioner nor his attorney not having Received an answer to the said amicable address your Petitioner is therefore obliged to appeal to this Honourable Court" and this Respondent

Respondent says that the Reason by the appellant adduced in support thereof is not agreeable for this Honourable Court for this Respondent says that were this Respondent as the appellant in and by his said Petition of appeal would insinuate to attempt under the said order of the said Mayors Court to dispossess the Appellant of any part of his the appellants property or in any degree Trespass thereon an action upon the Case would lie against this Respondent which Could only come before this Honourable Court upon appeal from a Decree that might be given thereon and lastly this Respondent says that the prayer of the appellant in his said Petition of appeal Contained is as unusual and irregular as the appeal itself is Litigious and Oppressive

For all which Reasons and such others as may be offered at the hearing this Respondent prays that this Honourable Court will be pleased to affirm the order of the said Mayors Court of the said second day of November last past that the Petitioners said Petition of Appeal be dismissed with Exemplary costs as Litigious and Vexatious and that this Respondent be allowed such further and other relief in the premises as in the Wisdom of this Honble Court shall seem most Meet —

/ Signed / J. Stewart Wall.
J. Chalmer
Solicitors for Respondent

Court

Court of Appeals
at
Madraspatnam

Saturday the 15th day of March
Anno Domini 1794

Between Moodooramalinga Chitty by his Attorney Stephen Evanjohn Appellant and Sudeyah the Son of Valungeampaukum Seenevasiah Respondent

This Cause coming on this day to be heard and debated before this Court by the Attornies on both sides on the motion of the solicitors for the Respondent that two Exhibits annexed to the Appellants Petition the one entitled a public notice of the Sheriff the other a letter from Mr Henry Dupuy addressed to Messrs James Stuart Wall & Geo. Chalmer be expunged from the proceedings of this Court Because it does not appear that they formed any part of the proceedings in the Mayors Court this Court taking the same into Consideration ordered accordingly And 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 2nd day of November 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

Fur
/Signed/ Chas. N. White Clk

To

In the Honble Major General William Medows
Governor &c in Council
Fort St George

In the Honourable
the Court of Appeals

Between alavoocaura Padmanaba Mastry Vengana Mastry Kehtheo Mastry and Veneatasha Mastry of Madras Inhabitants by their Attorney William Jowey of the same place Inhabitant Complainants and Eunneapore Veneatarauma Pillay also of the same place Inhabitant Defendant —

Sheweth That Petition and Appeals of the above named Defendant

That on or about the Twenty Eighth day of august in the present year of Christ one thousand Seven hundred and Ninety the above named Complainants by their said Attorney the above named William Jowey did file and Exhibit this said Bill of Complaint in the Mayors Court against your Petitioner for the Recovery of the sum of Six hundred and Eleven Pagodas and Twenty Eight fanams pretended to be due and owing on a certain Bond and Account Current Copies whereof were to this said Bill annexed and your Petitioner sheweth that a Summons did issue from the said Mayors Court to your Petitioner directing him to appear to and answer the said Bill of Complaint and that your Petitioner did Accordingly appear

Filed in my Office
the 15th November 1790
Chas. N White Clerk

Appear But before your Petitioner was enabled to give in his answer to the said Bill of Compliant he was obliged to leave Madras upon the most pressing emergency and before he Could return again the Rules for Answering the Complainants said Bill had Expired wherefore your Petitioner did by his attorney at Law humbly pray an indulgence of one Week because that your Petitioner had special matter to setforth in Opposition to the Charges of the Complai: nant and such as in Equity and Justice would be sufficient to Exonerate your Petitioner from the payment of the said sum of Six hundred and Eleven Pagodas and Twenty Eight fanams and every part thereof and your Petitioner well hoped that the said Mayors Court would have Complyed with such the prayer of your Petitioner because your Petitioner sheweth it is the course of the said Mayors Court to grant extension of the Rule for answering on a prayer being made for that purpose and particularly when the matter before it is a Transaction between two natives who by the Charter Cannot sue in the said Mayors Court and the action is therefore brought by a Transfer But your Petitioner Sheweth that the said Mayors Court were pleased to refuse the prayer of your Petitioner and to Order and Decree and did accordingly order order and Decree that your Petitioner should pay unto the Complainant the full and Just Sum of Six hundred and Eleven Pagodas and Twenty Eight fanams together with such Interest as might be due thereon as also all Costs of Suit as will more fully and at large Appear by the Copy of the said Decree hereunto annexed for the Inspection of this Honourable Court the original whereof is in your Petitioners possession and Ready to be produced at the hearing by which said Decree of the said Mayors Court your Petitioner doth Conceive himself much aggrieved and doth therefore appeal therefrom to this Honourable Court for the following amongst other Reasons —

First... Because your Petitioner having been under the indispensable necessity of leaving Madras before he could put in his Answer to the Complainants said Bill and because he did not return before the rules for answering had Expired

Secondly Because it is the Course of the said Mayors Court to extend the Rules for answering and the more particularly when the matter is between two natives who by the Charter cannot sue each other in the said Mayors Court and the action therefore is brought upon a Transfer as in the Case in the present Instance —

For which Reasons and such other as may be offered at the hearing your Petitioner humbly prays

That this Honourable Court will be pleased to set aside the said Decree of the said Mayors Court of the Second day of November in the present year of Christ one thousand Seven hundred and Ninety and to order that your Petitioner be permitted to Come in and answer the Complainants said Bill and that this Honourable Court will be pleased to grant such further and other General relief as in its Wisdom may seem Meet —

[Sig^d] J Stewart Hall
Solicitor for Appellant

Extract

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 2nd Day of November Anno Domini 1790

Present

James Call Esquire Mayor

William Webb Andrew Ross and John Mitford Aldermen

Alavaucara Padmanauba Mastry Vengana Mastry Kitchoo Mastry and Vencatasha Mastry by their Attorney William Soovey

Cunnyyaparoo ..... Vencatarauma Pillah

Their Attorney for the Complainants Produces to the Court a Certificate from the Register Setting forth that the usual Rules have been issued for the Defendant to Answer the Complainants Bill which he has Neglected doing he therefore prays that a Decree may now 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 thinks 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 Six hundred and Eleven Pagodas and Twenty Eight fanams Pag.s 611. 28 -

together

together with all such Interest as now is or shall hereafter become due thereon until full Payment is made also all Costs of this Suit

A true Extract

(Signed) J. Taylor Regr

a True Copy

(Signed) J. Stuart Wall

Solicitor for Appellant

To

To the Honourable Major General William Medows

President in Council

Fort Saint George

In the Honble the Court of

Appeals at Madraspatnam

Between Alawocaura Padmanauba Mastry Vengana Mastry Kitticha Mastry and Venceatasha Mastry of Madras Inhabitants by their Attorney William Josvey of the same place Inhabitant Complainant and Eunneyapore Venctaraiuma Pillay also of the same Inhabitant Defendant

The Answer of the above named Complainants by their said Attorney William Josvey to the Petition and appeal of the above named Defendant —

These Respondents by their said Attorney William Josvey admit that they did on or about the Time in the said Petition and appeal mentioned by their said Attorney file a Bill of Complaint in the Honourable the Mayors Court at Madraspatnam against the said appellant for the Recovery of the sum of Six hundred and Eleven Star Pagodas and Twenty Eight fanams due and owing to these Respondents on a Bond and Account Current Copies whereof were annexed to these Respondents said Bill of Complaint And these Respondents also

Admit

Filed in my Office the 11th December 1790
Chas. N. White Clerk

admit that a Summons did issue from the said Mayors Court to the said appellant directing him to appear to and answer to these Respondents said Bill of Complaint to which said Bill of Complaint these Respondents admit that the said appellant did by his attorney appear and might if he had thought proper have given in an answer to the said Bill of Complaint before the Rules for answering the same Expired he the said appellant being as these Respondents have been Credibly informed at Madras at the Time of filing the said Bill of Complaint and also previous to the Time the Rules for Answering Expired altho he has given out in his said Petition and Appeal that he was obliged to leave Madras before he could put in his answer and that the Rules for answering Expired before he Returned And these Respondents also admit it to be true as in the said Petition and Appeal is Setforth that the action against the said Appellant is brought upon a Transfer but these Respondents assert that such Transfer is a Bona fide Assignment and made According to the usual forms in the Like Cases And they Say that had not the said Bill of Complaint Appeared legal and in due form the Mayors Court on Reading the same which is always done previous to passing a Decree would have dismissed the same instead of granting a Decree thereon And these Respondents further Admit that the said Mayors Court did on the Second Day of November now last past order and Decree that the said Appellant should pay unto these Respondents the full and Just Sum of Six hundred and Eleven Pagodas and Twenty Eight fanams together with all such

such Interest as there was or should thereafter become due thereon
untill full Payment was made also all Costs of the Suit—

From which said Decree of the said
Mayors Court the said appellant did appeal to this Honourable
Court of appeals under pretence that he is much aggrieved
thereby but these Respondents say that the Appellant hath no
Cause or Ground to think himself aggrieved thereby Because
that the said appellant did not altho he hath alledged in his said
Petition and appeal that he did by his Attorney pray the said
Mayors Court to grant a further time to put in his answer and
for that the appellant did not during all the time from the
filing of the said Bill to the passing of the said Decree of the
said Mayors Court give Instructions to his said Attorney to
prepare and file his answer before the said Rules for Answering
Expired and these Respondents Say that the appellant had
no Cause to think himself aggrieved by the said Decree inasmuch
as he had on the day he ought to have filed his answer prayed
for the Production of the original Bond and which these Res-
pondents by their attorney grounded their Right of action
and the same was produced accordingly as by the Copies of the
Extracts of the Minutes of the said Mayors Court of the Nineteenth
and Twenty Sixth day of October hereunto annexed May appear
and the appellant was afterwards allowed a Week to answer the said
Bill of Complaint of these Respondents by their said attorney which
he Neglected to do or to shew any Cause why a Decree should
not

not pass against him—

Wherefore these Respondents humbly hope
that the said Decree of the Mayors Court will be affirmed and that
the Appeal of the appellant be Dismissed with Exemplary Costs
to be paid by the appellant for his litigious and vexatious Appeal—

/Signed/ L. Popham
Solicitor for Respondent

Extract

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 19th Day of October Anno Domini 1790

Present

James Call Esquire Mayor Andrew Ross Henry Shirley Michell and Henry Redhead Aldermen

Allavacara Padmanaba Mestry Vengana Mestry Kitthoo Mestry and Vencatasha Mestry by their Attorney William Joovey

vers

Cunneyaparoo Vencatarama Pillah

The Attorney for the Defendant prays that the Complainants may be next Court Day deliver into Court the Original Bond Copy of which is annexed to the Complainants Bill of Complaint for the Inspection of this Court Ordered Accordingly —

Attrue Extract

[Sig.] J. Taylor Regr

attrue Copy

[Sig.] L. Popham

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 26th Day of October Anno Domini 1790

Present

James Call Esquire Mayor Andrew Ross John Mitford and James Amos Aldermen —

Allavacara Padmanaba Mestry Vengana Mestry Kitthoo Mestry and Vencatasha Mestry by their Attorney William Joovey

vers

Cunneyaparoo Vencatarama Pillay

The Attorney for the Complainant delivers into Court the Original Bond with a Translate thereof as prayed for by the opposite Attorney —

Further Day is given the Defendant till the 2d November next to Answer the Complainants Bill indefault of which Judgment will be given for the Complainants —

Attrue Extract

Sig.d J. Taylor Regr

attrue Copy

[Sig.d] L. Popham

Court

Court of Appeals
at
Madraspatnam } of Saturday the 15th day of March
Anno Domini 1794.

Between Cunneapoor Vencata =
=ramiah Pillay of Madras Inhabitant
Appellant and Alavaucara Padmanaba
Mastry Vencanah Mastry and Kitchoo
Mastry and Vencatasha Mastry of
Madras Inhabitants by their Attorney
William Toovey of the same place Inhabitant
Respondent —

This Cause coming on this day to be heard and Debated before this Court by the Attornies on both sides upon hearing the Petition of Appeal and Answer and the several Exhibits of the Honble the Mayors Court together with the Decree of the said Court given in this Cause on Tuesday the 2nd day of November 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 of 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 Cler Court

Court of Appeals
at
Madraspatnam } of Saturday the 15th day of March
Anno Domini 1794.

Between James Taylor
George Moubray Josias Dupre
Porcher Thomas Cockburn of
Fort St George Esqrs Executors
named in the last Will and
Testament of George Savage
late of the same place Esqr
deceased Appellants — and
Ann Beaumont otherwise
Collins formerly of Bombay
in the East Indies but now
of the City of London in the
Kingdom of Great Britain
Widow of her former Husband
Major William Collins and
Administratrix of all and
every the Goods Chattles Rights
and Credits of the said Major
William Collins deceased by
her Attorney William Collins
Jackson of Fort St George
Esqr Respondent —

The

The Attorney for the appellants having
Moved for leave to withdraw their appeal to the Kingin
Council from a Decree of this Court dated the 24th day of December
Anno Domini 1791 And the attorney for the
Respondent having Consented thereto. —

Ordered accordingly. —

Hur.

/Signed/ Chas N White
Clk

Saturday

Saturday the 22d Day of March 1794

Present

Sir Charles Oakeley Baronet

Ernst William Fallofield and George Westcott

To the Honble Major General William Meadows

President and Governor &c Council of

Fort St George

In the Court of Appeals

at Madraspatnam } Between Sir John Menzies Baronet

late of Madras but now of London by his

Attornies Thomas Chase and Thomas Parry

of Fort Saint George Merchants Complainant

and

Sashia Pillay of Madras Inhabitant

Defendant

The humble Petition and Appeal of the above named

Defendant —

Humbly Sheweth

Filed in my Office
the 15th Nov. 1790
Chas N White
Clk

That same time in or about the Twenty Eighth day of
August in the present year of Christ one thousand Seven hundred and Ninety
the abovenamed Complainant by his Attornies as aforesaid did file his Bill
of Complaint in the Honble the Mayors Court against your Petitioner for the
Recovery

Recovery of the sum of Six hundred and forty four Pagodas thirty seven fanams and Sixty Cash pretended to have arisen and so to have become due and owing to the said Complainant on the Balance of an Account Current said to have been settled on the Twelfth day of March one thousand seven hundred and Eighty seven and which is so setforth in An Account Current whereof a Copy was annexed to the Complainants said Bill and your Petitioner sheweth that a Summons did Issue out of the said Mayors Court to your Petitioner directing him to appear to and answer the said Bill to which Summons your Petitioner did by his Attorney at Law appear and and did mean and intend to have put in a special Answer to the said Complainants said Bill within the time limitted for that purpose but your Petitioner sheweth that he was in the interim taken dangerously ill and was thereby &c. prevented from looking over his Books and Papers to furnish the necessary documents and Vouchers which your Petitioner had against the Complainant and whereby your Petitioner would have clearly established and amply proved that the Complainant was indebted to your Petitioner in a much larger sum than the Sum pretended to be due by your Petitioner on the said pretended Account Current upon which the Action was

brought

brought but your Petitioner was by his said Attorney prevented from giving his said Attorney at Law any instructions except that of praying a further time for Answering the Complainants said Bill and your Petitioner sheweth that the said Account Current annexed to the Complainants said Bill is on the face of it uncertain and insufficient for notwithstanding that the same is signed only by the Complainants said Attornies with whom your Petitioner never had the least Transaction or Settlement of any Account Current belonging to their said Constituent yet the amount thereof is stated to have arisen and become due on the pretended Balance of some other Accounts as if the same had been settled with them upon a certain day in the said Account Current specified and long since passed but which Account Current your Petitioner solemnly declares never was settled as pretended in and by the Complainants said Bill nor was the sum sued for ever acknowledged by your Petitioner to be due and owing to the Complainant nor any other sum whatsoever on the Contrary your Petitioner most solemnly declares and carefully establish by credible and unexceptionable Witnesses and by Vouchers and Documents in his possession that so far from being indebted unto the Complainant that the Complainant is Absolutely indebted unto him in a very Considerable amount and from

All

all which matters and things your Petitioner well hoped that the said Mayors Court would upon the prayer for that purpose made by your Petitioner Attorney in Court have granted a further time thereby to have enabled your Petitioner to fyle his answer to the Complainants said Bill and by such means to have defended his property against the unjust measures pursued by the Complainant and to have obtained that Justice which the merits of his Case might appear intitled to but your Petitioner sheweth that the said Mayors Court were pleased to refuse to grant as aforesaid and to order and Decree and did accordingly Order and Decree that your Petitioner should pay unto the Complainant the sum of Sixhundred and forty four Pagodas thirty seven fanams and Sixty Cash with Interest and Costs as by a Copy of the said Decree hereunto Annexed for the inspection of this Honourable Court the original whereof is in your Petitioners possession and ready to be produced at the hearing by which said order and Decree of the said Mayors Court your Petitioner is much aggrieved and doth therefore Appeal therefrom to this Honble Court for the following amongst other Reasons —

First .... Because your Petitioner being rendered incapable by Illness from transacting any Business could not in the time allowed for answering the Complainants said Bill of Complaint furnish his Attorney at Law with the Vouchers and documents in his possession for the purpose of Drawing his Answer or even to furnish his said Attorney with any kind of Instructions whatever further than to pray an extension of the Rule for Answering —

Secondly Because it is the Course of the said Mayors Court to extend the rules for answering even when the action is commenced upon a Bond and more particularly when the action is brought upon an account Current as in the present Instance for which reasons and such other as may be offered at the hearing your Petitioner humbly prays —

That this Honble Court will be pleased to set aside the said Decree of the said Mayors Court of the Second day of November in the present year One thousand Seven hundred and Ninety and to order that your Petitioner be permitted to come in and answer the Complainants said Bill and that this Honble Court will be pleased to grant such further and other general Relief as in its Wisdom may seem meet —

(Signed) J Stuart Hall
Solicitor for Appellant

Extract

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 2d Day of November Anno Domini 1790

Present

James Call Esquire Mayor
William Webb Andrew Rofs and
John Mitford Aldermen.

Sir John Menzies Baronet by his Attornies Thomas Chase and Thomas Parry

Vs

Thashapilly

The Attorney for the Complainant produces to the Court a Certificate from the Register Setting forth that the Usual Rules have been Issued for the Defendant to Answer the Complainants Bill which he has Neglected doing He therefore prays 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 not having as yet Received Instructions from his Client Ordered that a Decree do pass Bill read

It Appearing by the Records of this Court that the usual Rules have issued for the Defendants to Answer the Complainants Bill which he has neglected doing This Court doth therefore think fit to order and Decree and doth Accordingly order and Decree that the Defendant shall pay unto the Complainant the full and Just Sum of Six hundred and Sixty four Pagodas Thirty seven Fanams and Sixty Cash Pagodas 664. 37. 60 together with all such Interest as now is or shall hereafter become due thereon until full Payment is made also all Costs of this Suit

A true Extract
(Signed) J. Taylor Regr

A true Copy
(Signed) J. Stuart Hall
Solicitor for Appellant

To

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

In the Honble the Court
of Appeals at Madraspatnam

Between Sir John Menzies Baronet
late of Madras but now of London by his
Attornies Thomas Chase and Thomas
Parry of Fort St George Merchants Complainant
and Shaik Pillay of Madras Inhabitant
Defendant

The Answer of the above named Complainant by
his said Attornies Thomas Chase and Thomas Parry to the
Petition and Appeal of the above named Defendant

Filed in my Office
the 11th December 1790
Sha. N White
Clk

This Respondent by his said Attornies
Thomas Chase and Thomas Parry in Answer to the said
Petition and Appeal or unto so much thereof as Concerns
this Respondent to make Answer unto Saith that he
admits to be true that this Respondent did at the time
mentioned in the said Petition and Appeal by his said
Attornies Thomas Chase and Thomas Parry file a Bill of
Complaint in the Mayors Court at Madraspatnam against the
Appellant for the Recovery of the Sum of Six hundred and forty four
Star

Star Pagodas thirty seven Fanams and Sixty Cash due and
owing to this Respondent on the Ballance of an Account Current
settled on the Twelfth Day of March one Thousand Seven hundred
and Eighty seven a Copy whereof was annexed to this Respon-
dents said Bill of Complaint And this Respondent admits
that a Summons did issue for the Appellant to appear to and
answer this Respondents said Bill as in the said Petition and
Appeal is mentioned to which Summons the Appellant
did by his Attorney appear but as to his meaning and
Intention to answer this Respondents Bill and the several
Pretences and Excuses of the Appellant for not answering the same
this Respondent humbly hopes that this Honble Court will look
upon the same as only evasive and Dilatory and Advanced
for the purpose of delaying the Payment of a Debt which the
said Mayors Court hath Justly decreed to be due and owing
by the Appellant to this Respondent And by way of Answer to
that part of the said Petition and Appeal whereby the Appellant
pretends that the Account Current whereupon this Respondent
formed the Balance Appearing due on the Account Annexed
to his Bill of Complaint had never been settled this
Respondent by his said Attornies saith that the former Accounts
containing the Transactions between this Respondent and the
Appellant have been taken from this Respondent Books
of Account and are as follows

Dr. Shasha Pillay In Account Current with John Menzies Cr.

1785								1785							
February	16	To Amount of 530 Bags of Wheat per your account			1630	39	35	February	23	By Charges on 530 Bags Wheat p Account			32	20	40
March	31	To Do Do			439	25	-			By Cash Received			446	-	-
May	31	To Do Do			360	30	40		29	By Do			400	-	-
June	29	To Do Do			199	3	30	March	6	By Do			250	-	-
July	10	To Do Do			305	39	60		31	By Charges on Wheat per Account			10	1	20
								May	31	By Do Do			8	4	20
								June	30	By Do Do			9	22	30
								July	10	By Do Do			8	9	-
													1164	14	30
										By Balance			1771	39	75
		Pagodas			2936	12	25				Pagodas		2936	12	25

Madras 31st July 1785

Errors Excepted

(Signed) Chase and Parry

Attorneys to Est. John Menzies

Dr

Dr Sashapillay in Account Current with John Menzies Cr

1786					1786				
Janr.	1	To Balance brought from Last Account Current	747	7 70	January	31	By Company's Bond for 1000 Pagodas at 43 ℔ cent	570 .. ..
	7	To Cash Sent you ℔ Note	600	.. ..	Febry	20	By a Certificate for Bengal Bond № 11 brought to your Credit	3615. 24. 32	
	10	To Do on Account of a Company's Bonds	400	.. ..			Discount at 20 ℔ cent	784. 24 32	1831 .. ..
Febr.	10	To Do paid	40	.. ..	June	30	By Sundry Charges for Cotton Sold ℔ Account		7 .. 20
		To Do paid	300	.. ..	Decembr	31	By 41 Chitts Amounting	763. 11 45	
March	1	To 28 Bags Rice ℔ Account	31	32 20			Discount at 26 ℔ cent	198. 20 ..	564 36 25
		To 2 Pieces Taffeties	5	19 .			By 24 Chitts Amounting	326 13 .	
	14	To Cash paid	100	.. ..	1787		Discount at 25 ℔ cent	81. 25 30	244 32 50
April.	25	To Do paid you ℔ Receipts	200	.. ..	March	12	By 28 Chitts Amounting	484. 4. 32.	
Novr.	1	To Do paid you to purchase Certificates	100	.. ..			Discount at 22 ℔ Cent	106. 28 32.	377 2.1 ..
	3	To Do Do	145	.. ..			By Commission on purchasing Chitts for Rgs 1177. 5. 75		
	4	To Do Do	55	.. ..			at 1 ℔ cent		11 32 25
	6	To Do Do	200	.. ..	1787				3606 38 40
	16	To Do Do	140	.. ..	March	12	By Balance		455 31 70
	20	To Do Do	120	.. ..					
	22	To Do Do	100	.. ..					
Decr	25	To Do	245	.. ..					
	31	To Do paid you the 15th July Last	30	.. ..					
		To 99 Mercalls of Paddy	8	11 20					
1787		To 120 Mercalls of Do	10	.. ..					
Janr.	17	To Cash paid you ℔ Note	100	.. ..					
Febry	22	To Do paid you to purchase Certificates	215	.. ..					
	26	To Do Do	20	.. ..					
March	12	To Do Do	70	.. ..					
	13	To Do Do	80	.. ..					
		Pagodas	4062	28 30			Pagodas	4062	28 30

Madras 12th March 1787

Errors Excepted

(Sgd) Shaw and Parry

Atty's to Sir John. Menzies

W Smith

Which Balance of Four Hundred and fifty five Pagodas thirty one fanams and Seventy Cash as in the last of the foregoing Account is stated Constitutes the first Item of the Account Current on which its Interest this Respondent by his Attornies hath filed his said Bill of Complaint. And the said Thomas Chase and Thomas Parry as the Attornies of this Respondent say that the above Accounts as so taken from the Books of Account of this Respondent were ready to be produced to the Mayors Court if called for and could have been proved in every part thereof if the Appellant had prayed for their being produced or had given this Respondent an Opportunity of proving the same by Joining Issue in the Cause on the Merits thereof instead of which the Appellant applied only for the Production of the Account Current on which the Bill was filed which this Respondents Attorney at Law produced in Court on the same Day to wit the Nineteenth Day of October last past as appears by the Copy of the Extract of the Minutes of the Mayors Court held that Day hereunto annexed after which the Appellant had fourteen Days to Answer for this Respondent saith that the Decree did not pass till the second Day of November last in all which times as well as from the first Day of appearing in Court to answer this Respondents Bill of Complaint he had a Right to have prayed for the several Accounts above specified and in the Expectation he would have prayed

prayed for them they have been in the hands of this Respondents Attorney at Law in order to produce in Court or to shew to the Appellant of the same required - This Respondent by his Attornies hopes that the above plain Explanation of the Fact will do away the imputed Charge of the Appellant against this Respondent for having unjustly brought his action in founding the same on Accounts as settled which the Appellant presumes to Declare solemnly in his Appeal never were settled. And this Respondent by his said Attornies admits that the Appellants Attorney did pray the said Mayors Court for a further Time of one Week to answer this Respondents Bill which the said Mayors Court would not allow but did as in the Appellants Petition and Appeal is stated order and Decree that the Appellant should pay unto this Respondent the Sum of Six Hundred and forty four Pagodas thirty seven Fanams and Sixty Cash together with all such Interest as there was or should thereafter become due thereon until full Payment was made also all Costs of the Suit -

From which said Decree of the said Mayors Court the said Appellant hath Appealed to this Honble Court of Appeals under Pretence that he is much Aggrieved thereby but this Respondent by his said Attornies Thomas

Chase

Chase and Thomas Parry saith that the said Appellant can have no Reason to think himself Aggrieved for the Reasons above Stated —

Wherefore and for such other Reasons as this Respondent may offer at the Hearing he humbly prays by his said Attornies that the said Decree of the said Mayors Court of the Second Day of November last may stand affirmed and that the Appellant maybe Decreed to pay all Costs of this Appeal —

/ Signed / R. Popham

Solicitor for Appellant

Extract from the Minutes of a Court held at the Town Hall on Tuesday the 19th Day of October Anno Domini 1790

Present

James Ball Esqr. Mayor

Andrew Ross Henry Chichley

Mitchell and Henry Readhead

Aldermen

Sir John Menzies by his Attornies Thomas Chase & Thos Parry

vers

Shashapillay

The Attorney for the Defendant prays that the Complainant may by next Court Day delivered into Court the Original Account Current Copy of which is annexed to the Complainants Bill of Complaint for the Inspection of this Client ordered accordingly That Attorney for the Complainant Delivers into Court the original Account Current prayed for —

Further Day is given the Defendant till the 26th Instant to answer the Complainants Bill in default of which Judgement will be given for the Complainant —

A true Extract

/ Signd / G. Taylor Regr

A true Copy

/ Signd / R. Popham

Court

Court of Appeals
at
Madraspatnam

Saturday the 22nd day of Ma
Anno Domini 1791

Between Shacha Pillay of Madra
tant Appellant and Sir John Meng
late of Madras but now of London by hi
Thomas Chase and Thomas Parry of Fort
Merchants Respondents

This Cause coming on this day to be heard and debated
this Court by the Attornies on both sides upon hearing the Pe
Appeal and Answer and the several Exhibits of the Honble
Mayors Court together with the Decree of the said Court g
this Cause on Tuesday the 2d day of November Anno Dom
1790 upon due Consideration had of the Matters therein Sever
Contained and of the Pleadings and Arguments Used by the Au
on both sides This Court doth think fit to Order and Decree an
doth Accordingly order and Decree that the said Decree of th
Honble the Mayors Court do stand Affirmed and that the
Appellants Petition be hence dismissed with Costs — And th
Court did further Order that the Account Current introduced in
Respondents Answer and what relates to it in the Petition of App
beginning with the words — And your Petitioner Sheweth that
said Account Current Annexed — and ending with the words — is
absolutely indebted unto him in a very Considerable Amount
be expunged with Costs —

By Cur
/Signed/ Cha.s K. White
Clk

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

Between Canacapilly Sawmy
Naicker Complainant and Boother and
Vyraven Defendants

To the Honble
Court of Appeals

The Petition and Appeal of the abovenamed Defendants

Sheweth

That Canacapilly Sawmy Naicker the Complainant
above named did on about the [illegible] day of July in the
year of Christ one thousand Seven hundred and Eighty Nine
Exhibit and file his Bill of Complaint in the Mayors Court against
your Petitioners for the recovery of the Sum of Two hundred and
fifty Pagodas [illegible] and Twenty five Cash being the Balance
of an Account [illegible] the Complainants said Bill annexed
and pretended to have arisen upon a Bond said to have been
Executed by your Petitioners to the Complainant and whereof
a Copy was annexed to his said Bill and did pray that
your Petitioners might be Decreed to pay the same together
with the Interest due and to grow due thereon and that process
might Issue against your Petitioners and your Petitioners shew
that a Summons did accordingly issue and of the said Mayors
Court

Filed in my Office
the 22d Nov.r 1790
Cha.s K. White
Clk

Court Requiring your Petitioners to be and appear before the said Mayors Court on a certain day in the said Writ Specified then and thereto answer the Complainants said Bill and your Petitioners shew that your Petitioner Vyraven being then out of the Jurisdiction of the said Mayors Court your Petitioner Boother did appear to the said Summons and did on or about the Eleventh Day of August in the said year of Christ one thousand Seven hundred and Eighty nine Exhibit and file his Seperate answer to the Complainants said Bill and did therein amongst other things state that Although he might in Conjunction with your said other Petitioner Vyraven have signed the said Bond yet he could not admit that your Petitioners were endebted to the Complainant in the said Sum of Two hundred and forty Pagodas three fanams and Twenty five Cash or in any other Sum or Sums of Money whatever for your Petitioner Boother did for himself aver that he never had and as he had heard and believed that your Petitioner Vyraven never had any Dealings with the Complainant in money matters otherwise but that he was a total Stranger both to the one and the other that on or about the time mentioned in the said Bond your Petitioners did Apply to one Gnyalakistna with whom they had Carried on Sundry dealings in Trade for the Loan of the

the Sum of Eight hundred Pagodas and that the said Gnyala Kistna did thereupon inform your Petitioners that he had not Eight hundred Pagodas by him but that he would lend them the Sum of Seven hundred Pagodas provided they would purchase of him Seven hundred pieces of Palmeris that lay on his hands for the Sum of one hundred and nineteen Pagodas and your Petitioner Boother did in his said answer state that your Petitioners did at first agree to such the proposal of the said Gnyala Kistnen but that on enquiry unto the market price of the Palmir they found the same had been greatly over Charged that the said Palmeris would not sell for more than Seventy nine Pagodas and that in consequence thereof they refused to take the said palmeris that such the refusal of your Petitioner induced the said Gnyala Kistnen to promise that he would not Charge any Interest on the said Sum of one hundred and Nineteen Pagodas the price of the said Palmeiris and that your Petitioners might pay the amount thereof when Convenient that under such Consideration and being pressed for money your Petitioners did agree to receive the said Palmeiris and that the said Gnyala Kistnen did in Consequence thereof lend unto your Petitioners the Sum of Seven hundred Pagodas in Cash and did thereunto add the amount of the said seven hundred pieces of Palmeiris that after the receipt of the said money and palmeiris he the said Gnyala Kistnen did draw out the Bond in question for the Sum of Eight hundred and nineteen Pagodas and did tender the same to your Petitioners for Execution including as aforesaid the amount of the said Palmeiris

and

and the said answer did further state that an objection founded upon the said promise of the said Gaujala Kistnen to the said Sum of one hundred and nineteen Pagodas being included on the said Bond was made by your Petitioners that thereupon the said Gaujala Kistnen did repeat his said promise and did assure your Petitioners that altho the amount of the said palmeirs was included in the said Bond yet that he would not Charge any Interest thereon and that in the full faith and Confidence of such promise and Assurance your Petitioners did without taking any notice in whose name the same was drawn / Execute and deliver the said Bond to the said Gaujala Kistnen and not to the Complainant and the said answer did further state that all monies paid on Account of the said Bond by your Petitioners were actually paid to the said Gaujala Kistnen who received the same and gave your Petitioners receipts in his own hand writing on Account thereof and that such Monies so paid amounted to the Sum of Seven hundred and Eight Pagodas that there was a Sum of Eight Pagodas and forty one fanams for which your Petitioners did not obtain any receipt yet your Petitioner Boother did in his said answer state that he was Confident that the said Gaujala Kistnen could not take upon him to deny the same and your Petitioners Boother did in his said answer state that the Sums so paid together with Interest thereon to the thirty first Day of may in the year of Christ one thousand

Thousand Seven hundred and Eighty nine the day the said Complainant Closed his Account did amount to Eight hundred and fifty Six Pagodas and forty five Cash and that there only remained a Balance of Seventeen Pagodas Eleven fanams and fifty five Cash due to the said Gaujala Kistnen as your Petitioners in his said answer did say would fully Appear by a Just and true Account Current to his said answer annexed and which said Sum of Seventeen Pagodas Eleven fanams and fifty five Cash your Petitioner Boother did in and by his said answer then tender to the said Mayors Court in full satisfaction of the said Bond ~

To which answer of your Petitioner Boother the Complainant did file a general Rejoinder and thereupon Issue did Join and rules did pass for the Examination of Witnesses and Witnesses were examined Accordingly on both Sides and your Petitioners shew that the Witnesses on the part of the Complainant did not support the Complainants said Bill nor make the least attempt to deny the several matters and things Set forth in the said answer of your Petitioner Boother one of the said Witnesses Vedarayadoo says that he was present when the Complainant paid Eight hundred and nineteen Pagodas to your Petitioners and that your Petitioners did Execute a Bond for the Amount thereof but does not say for what or on what account such Sum was so paid nor does he say that the Bond so pretended

to

to have been Executed was the Bond in question nor is the same produced and shewn to him at the time of his Examination and although he further says he did frequently Demand from your Petitioners the payment of their Bond and that he did receive a small proportion of the sum in question he did not shew by what authority he so Demanded payment nor the specifice proportion pretended to have been by him so received and therefore your Petitioners humbly insist that the Evidence of the said Vedrajaloo do not amount to that Certainty which the Law requires or which the nature of the thing would have admitted of but that the whole is Vague insufficient and invalid and your Petitioners shew that the other Witness produced on the part of the Complainant is the man so frequently referred to and spoken of in the said answer of your Petitioner Boother that is to say Gajala Kistnen and who although Charged in the said answer with being the person from whom your Petitioners borrowed the amount of the Bond in question and with a breach of faith and Confidence in procuring the Execution of the said Bond under the Circumstances and in manner and form as in the said answer is shewn reference being thereunto had may Appear yet he deposes no further than to the Execution of the said Bond that the same was drawn by himself and that the two subscribing Witnesses thereto were at Jaffrapatnam and

Therefore

Therefore your Petitioners humbly insist that as the special matters in the said answer of your Petitioner Boother is not even Denied by the Complainant in and by his said Replication which your Petitioners have hereinbefore shewn was no more than a general paper and as such special matters stand uncontroverted by the Witnesses produced by the Complainant the several matters and things in the said answer of your Petitioner Boother must be taken and received as fully admitted and Confessed by the Complainant in manner and form as the same is therein and thereby stated and setforth and your Petitioners further shew that the Witnesses produced on the part of your Petitioners did Corroborate ascertain and Establish the said answer of your Petitioner Boother and the account Current thereunto Annexed Morgapen to the Sixth Interrogatory Shews the transaction as insisted on in the said answer between your Petitioners and the said Gaugala Kistnen and proves the two last Items of the said Account Current Mauther another Witness produced on the part of your Petitioners proves as in the said answer upon oath is Asserted that your Petitioners Applied to the said Gajala Kistnen for the loan of Eight hundred Pagodas that the said Gajala Kistnen did advance and lend your Petitioners the Sum of Seven hundred Pagodas in ready money ~~and~~ and one hundred and nineteen Pagodas in palmeira that no Interest was to be Charged on the said Sum of one hundred and nineteen Pagodas that

that your Petitioners did Execute and Deliver a Bond to the said Gayala Kistnen for the Sum of Eight hundred and Nineteen Pagodas that the paper writing produced and shewen to him at the time of his Examination was the Bond so Executed that he was present when the said Gayala Kistnen did promise that no Interest should be charged on the said Sum of one hundred and Nineteen Pagodas that such promise was made by the said Gayala Kistnen on Account of his having obliged your Petitioners to purchase from him Palmiers to the amount of one hundred and Nineteen Pagodas at a very Exorbitant rate Knowing the distressed situation of your Petitioners which Compelled them to Execute the Bond in question that the said Gayaloo Kistnen did declare to your Petitioners that the Bond in question was in his owne name that he the Deponent did in Conjunction with your Petitioner Boother pay several Sums of Money in part payment of the said Bond to Gayaloo Kistnen that memorandums by way of Receipts was given by the said Gayaloo Kistnen on Account thereof that the Codjan Writting produced and shewn to him at the time of his Examination marked A was given as the said memorandum or Receipts for the said Several Sums so paid as aforesaid and that the same was in the proper hand Writing of the said Gayaloo Kistnen that the ready Cash and goods Composing the first fives Items contained in the Exhibit B produced and Shewn to him at the Time of his Examination were in goods and money paid and Delivered to Gayaloo Kistnen in part Discharge of the said Bond which said Exhibits A and B are now of Record and to which your Petitioners beg leave to refer and your Petitioners shew that upon such proceedings the said Cause came on to be heard before the said Mayors Court on Tuesday the Ninth day of the present Month of November 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 Sum of Two hundred and forty Pagodas three fanams and Twenty five Cash together with all such Interest as then was or as should thereafter become due thereon as by a Copy of the said Decree hereunto annexed for the inspection of this honourable Court the original whereof is in your Petitioners possession ready to be produced at the hearing reference being thereunto had may appear by which said Decree of the said Mayors Court your Petitioners do think themselves much aggrieved and do therefore appeal therefrom to this Honourable Court for the following amongst other Reasons

First..... Because the said Mayors Court did by such order and Decree depart from the course of Courts and the Law by which they are bound to Judge and Determine according to the Evidence before them for your Petitioners shew that the said Mayors Court did not regard or pay any attention to the Witnesses produced by your Petitioners nor to the answer of your Petitioner Boother or it must have given a Decree in favor of your Petitioners

Secondly

Secondly... Because it is a rule in Law which admits of few Exceptions that where there is only one Witness examined in opposition to the answer of the Defendant a Decree cannot be given in favor of the Complainant and your Petitioners have hereinbefore shewn that the Complainant so far from examining a single Witness to disprove the matters and things setforth in your Petitioner Brothers said answer has not in and by his Replication were denied the same so that the said several matters and things in your Petitioners said answer Contained and the account Current thereunto annexed ought to have been taken and received by the said Mayors Court as admitted and Confessed by the Complainant and because notwithstanding the Complainant did so abandon his said Cause your Petitioners did Examine two Witnesses in support of the said answer and which said two Witnesses did Clearly ascertain pointedly prove and firmly establish the several matters therein Contained and the Account Current thereunto annexed and therefore the said Mayors Court ought not to have given a Decree in favor of the Complainant as aforesaid —

For all which Reasons and such others as may be offered at the Hearing your Petitioners pray that the said Decree of the said Mayors Court may be reversed and that this Honourable Court will be pleased to grant them such other and further Relief in the premises as in their Wisdom may seem most Meet —

Sig^d J. Stewart Wall
Solicitor for Petitioners

Mayors

Mayors Court at
Madraspatnam

Tuesday the 9th Day of November
Anno Domini 1790

L S

Present
James Call Esquire Mayor
Andrew Ross H^r Ch^s J. Michell
& Henry Readhead Aldermen

Between Conacapully Sawrey
Naicker of Madras Inhabitant Com-
plainant and Brother and Vyravan of
the same place Inhabitant Defendants

Mayors Court

This Cause Coming on to be heard and Debated this Day in the presence of the Attornies on both sides on Reading the Complainants Bill with Copy of the Translation of a Bond and an Account Current annexed the Affidavit the Defendant Brothers Seperate Answer the General Replication the General Rejoinder the Interrogatories and Depositions on the part of the Complainant with a Codjawn Bond and a Translate thereof Annexed the Interrogatories and Depositions on the part of the Defendant Brother with two Codjawn and Translates thereof annexed an Hearing the pleadings made use of by the Attornies and on due Consideration had thereon this Court doth think fit to order and Decree and Doth Accordingly order and decree that the Defendants do pay unto the Complainant the full and Just Sum of

Two

Two Hundred and fifty Pagodas three fanams and Seventy five
Cash Pagodas 240..3..25 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

Per Cur

(Signed) G. Taylor Regr.

A true Copy

(Signed) I Stuart Hall

Solicitor for Appellant

To the Honble Major General William Medows

President in Council

Fort Saint George

In the Court of Appeals
at Madraspatnam

Between Coneeoply Sawmy Naicken
of Madras Inhabitant Complainant and
Boother and Vyraven Defendants

The Answer of the above named Complainant
to the Petition and Appeal of the above named Boother and Vyraven

This Respondent for Answer to the
said Petition and Appeal or unto so much thereof as Concerns this
Respondent to make answer unto saith that he admits it to be
true that this Respondents did on or about the time mentioned in
the appellants said Petition and appeal file a Bill of Complaint
in the Honourable the Mayors Court at Madraspatnam against
the said appellants for the Recovery of the Sum of Two Hundred
and forty Star Pagodas Three Fanams and Twenty five Cash due
and owing by the said Appellants by Virtue of a Bond executed
by them unto this Respondent a Copy whereof as also of an
Account Current founded thereon were annexed to this Res-
pondents said Bill of Complaint And this Respondent also admits
that the said appellant Boother did on or about the time mentioned
in the said Petition and Appeal file his answer to this Respondents
said Bill of Complaint wherein this Respondent admits the said Boother

stated

Filed in my Office
the 18th Decr 1790
Chas N. White
Clk

Stated that altho he might in Conjunction with the said other Appellant Vyraven give the Bond Copy whereof was annexed as aforesaid to this Respondents said Bill of Complaint yet he could not admit that either he or Vyraven was indebted to this Respondents in the sum of Two hundred and forty Pagodas three fanams and Twenty five Cash or in any other Sum or Sums of Money whatever and the said Appellant Boother did for himself aver that he never had and said that he believed that Vyraven never had any Dealings with this Respondents in Money Matters or otherwise but that he was a total Stranger to them both And this Respondents also admits that the said Appellant Boother did set forth such other Matters and things as in the Petition and Appeal are Stated And this Respondent also admits that he did to the said answer file a General Replication to which this Respondent Admits the said Appellants Boother filed a General Rejoinder and that upon such the said proceedings Issue was Joined and Rules passed for the Examination of Witnesses and Witnesses were examined on the part and Behalf as well of this Respondent as of the said Appellant Boother and this Respondent saith that Gayala Kistnen and Verdarayjoloo Witnesses for this Respondent did prove the Execution of the said Bond by the Appellants to this Respondent and the said Deponent Verdarayjoloo did further depose that he had often demanded payment of the Sum of Money in the said Bond Specified and that he did receive from the Appellants a small proportion thereof with a promise of liquidating the whole amount when they should be enabled. And

this

this Respondent says that the Witnesses for the Appellants might have deposed such matters and things as in the said Petition and Appeal are stated. And this Respondent also admits that upon the aforesaid proceedings the said Cause came on to be heard on Tuesday the Ninth Day of November last when the said Mayors Court were pleased to order and Decree and did Accordingly Order and Decree that the Appellants should pay unto this Respondents the Sum of Two hundred and forty Pagodas three fanams and Twenty five Cash together with all such Interest as then was or should thereafter become due thereon until full payment was made also all Costs of the Suit From which said Decree the said Appellants have appealed to this Honble Court as they Conceive themselves aggrieved thereby but your Petitrs say that the appellants can have no Cause to think themselves aggrieved by such Decree for the following Reasons

First..... Because this Respondent having as aforesaid proved by his Witnesses the Examination of the said Bond By the Appellants their paying a part thereof and Acknowledging they would liquidate the whole when enabled was good Cause for the said Mayors Court to given a Decree in favour of this Respondents in manner aforesaid and which it is fair to presume the said Mayors Court would not have done had they Conceived that any thing advanced by the

Appellant

Appellant Boother was Corroborated by his Witnesses sufficiently to annul the Right of this Respondent to recover of the Appellants the Sum sued for in and by their said Bill of Complaint

Secondly ---- Because the pretence of the Appellants disavowing any knowledge of this Respondent and that they gave the Bond to Gauyala Ristnen instead of this Respondent cannot Affect this Respondents Rights as long as the Consideration stated in the said Bond is Acknowledged to have been received or proved to have been paid

Thirdly ---- Because the very Objection Stated by the Appellants namely a pretended promise of a Remission of Interest on Account of an imputed overcharge in the price of the Paloy proves that there was no surprise in the Transaction and the execution of the Bond unconditionally as appears on the face thereof after such discussion of the Merits is the best answer to any pretence which can be offered against its validity for the amount stated therein

For all which Reasons and for such others as may be offered at the Hearing this Respondent prays that the said Decree of the said Mayors Court may stand affirmed and that the said Petition and Appeal may be Dismissed with Costs to be paid by the Appellants

/Signed/ J. Popham
Solicitor for Respondent

Court

Court of Appeals at Madraspatnam } Saturday the 22nd. day of March Anno Domini 1794

Between Boother and Vyraven of Madras Inhabitant Appellants and Conocopully Sawmy Naicken of the same place Inhabitant Respondent

This Cause coming on this day to be heard and debated before this Court by the Attornies on both sides upon hearing the Petition of Appeal and Answer and the several Exhibits of the Honble the Mayors Court together with the Decree of the said Court given in this Cause on Tuesday the 9th. day of November 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 behince dismissed with Costs

/Signed/ Chas. S. White clk

To

To the Honble Major General William Medows

President and Governor &c. in Council

For St George

In the Honble
Court of Appeals

Between John Whitehill by his Attorney
William Sydenham Complainants and Juggapah
Puntalue alias Condraigula Juggapah of
Madras Inhabitant Defendant

The Petition and Appeal of the above named Defendant

Sheweth

That the Above named Complainant John Whitehill by his Attorney the Abovenamed William Sydenham did on or About the Eighth day of September in the year of Christ one thousand Seven hundred and Eighty nine Exhibit and file his Bill of Complaint against your Petitioner in the Mayors Court for the Recovery of the Sum of Twenty Eight thousand one hundred and Ninety Pagodas Sixteen fanams and Sixty four Cash the Ballance of an Account Current pretended to have arisen upon a Bond said to have been executed by your Petitioner to the Complainant Copies of which said Bond and Account Current were to the said Bill annexed to which said Bill your Petitioner did appear and did thereunto on or about the fifteenth day of December Exhibit and file his Plea and answer and your Petitioner Sheweth that he did in and by his said

Filed in my Office
the 26th Nov.r 1790
Sp.d S. White
Clk

said Plea plead an Account of parliament made in the thirteenth year of the reign of his present Majesty King George Entitled an act for the establishing certain Regulations for the better Management of the Affairs of the East India Company as well in India as in Europe and your Petitioner sheweth that he did in and by his said Plea shew that in and by the said act it was Enacted that no Subject of his Majesty his Heirs and Successors in the East Indies should upon any Contract which should be made from and after the first Day of August one thousand Seven hundred and Seventy four take directly or indirectly for the Loan of any monies Wares Merchandized or other Commodities whatsoever above the Value of Twelve Pounds for the forbearance of one hundred Pounds for a year and so after that rate for a greater or Lesser Sum as for a Longer or shorter Time and all Bonds Contracts and Assurances whatsoever made after the time aforesaid for payment of any principal or money to be lent or Covenanted to be performed upon or for any usury whereby or whereupon there should be reserved or taken above the rate of Twelve Pounds in the Hundred as aforesaid should be utterly Void and your Petitioner did shew that forasmuch as the Scope of the Complainants Bill was to procure the payment of the sum of Twenty Eight thousand one hundred and ninety Pagodas Sixteen fanams and Sixty four Cash the amount principal and Interest pretended to be due and owing upon a Bond Executed on the Sixth day of May one thousand Seven hundred and Eighty Six Conditioned for the payment

of

of the Sum of Twenty thousand one hundred and Sixty Pagodas in the Words following to wit "Now the Condition of this obligation is "such that if the above bound Juggapah Puntaloo his Heirs Executors or "administrators shall well and truly pay or cause to be paid unto "John Whitehill his Heirs Executors administrators or Assigns the full "and Just Sum of Twenty thousand one hundred and Sixty Pagodas "together with all such Interest as shall or may become due thereupon "then this obligation to be Void otherwise to remain in full force and Virtue — And your Petitioner did say that he ought not be charged with the Debt aforesaid by Virtue of the Condition aforesaid for that some time in the year of Christ one thousand Seven hundred and Seventy five the Complainant was then Chief of Masulipatnam and John Sulivan then in the Civil Service of the Honourable East India Company under their presidency of Fort St George but at the time of filing your Petitioners said Plea and answer of Great Britain orelse where was Secretary to the Chief and Council of Masulipatnam aforesaid at which time Apperow Remainder of Noorzeed had as tributary to the said Honourable the East India Company Engaged to pay unto the Treasury of Masulipatnam aforesaid for the use of the said Honble the East India Company the Sum of Ninety two thousand Pagodas annually by different payments but the said Apperow either from enability to make good such payments in due time or from a desire of being on Terms of intimacy with European Gentlemen in power or from being pressed or

importuned

importuned thereto or from some other Cause or for some other Reason to himself best known he the said Apperow entered into certain Engagements with the said John Sulivan who did in Consequence thereof and in the name of the said Apperow pay into the Treasury of the said Honble the East India Company at Masulipatnam aforesaid the said Sum or Annual Tribute of Ninety two thousand Pagodas by instalments Charging and "receiving from the said Apperow a Commission thereon of five per Cent that the said Apperow for the said Sum or amount Tribute of Ninety two Thousand Pagodas either to the whole amount or in certain quantums making together the whole amount thereof did Execute a Bond or Bonds to the said John Sulivan to run at Interest of Twelve per Cent per annum in the same manner as if the said John Sulivan had advanced and Lent to the said Apperow the said Sum of Ninety two thousand Pagodas and at the same time that the said John Sulivan did Exact a further Sum of Twelve per Cent over and above the said Sums of five per Cent Commission and the said Sum of Twelve per Cent per annum and for the amount thereof as Calculated to some particular future period another Bond was granted by the said Apperow to the said John Sulivan as for so much money lent of all which Corrupt and usurious dealings and Transactions of the said John Sulivan your Petitioner did state he had been well informed and verily believed and if Required could

prove

prove the same to be true That sometime on or about the year one thousand Seven hundred and Eighty five and whilst in the Transaction of the usurious and Corrupt practices aforesaid the said John Sulivan was Succeeded in his office of Secretary to the Chief and Council of Masulipatnam aforesaid by Alexander Pringle then also in the Civil Service of the said Honourable Company but at the Time of filing your Petitioners said Plea and answer of Great Britain oplse where and did some short time afterwards depart for Madras but that previous thereto pretending that the said Appareow stood indebted unto him in the Sum of Forty five thousand Pagodas or some other Sum of Money to a considerable amount he prevailed upon James Hodges then Chief and Council of Masulipatnam aforesaid the said Alexander Pringle and Vencataroyaloo your Petitioners late uncle to take the said pretended debt upon themselves and grant their seperate Bonds for the amount thereof That the Bond granted by the said Vencataroyaloo in the name for and on account of the said John Sulivan for and on account of the part he the said Vencataroyaloo took of the said pretended debt was dated on the first day of January one thousand Seven hundred and Seventy Six and conditioned for the payment of the Sum of Fifteen Thousand Pagodas with Interest at the rate of Twelve per Cent per annum and payable in Twelve Months and at the same time the said Vencataroyaloo did Execute another Bond for an additional and usurious Interest of Eight per Cent per Annum

Annum on the said Sum of Fifteen Thousand Pagodas that on the said Two several Bonds becoming due the said Bond for the additional and usurious Interest of Eight per cent together with an Interest thereon at the rate of Twelve per cent per annum and amounting in the whole to the Sum of one thousand and two hundred Pagodas was paid by the said Vencataroyaloo into the hands of the said Alexander Pringle as the Attorney to and for and on account of the said John Sulivan but that the said Vencataroyaloo being unable to pay the amount of the said Bond Executed as aforesaid for the said Sum of Fifteen thousand Pagodas he did Execute another Bond in the name and for and on account of the said John Sulivan for that Sum together with the Interest due thereon amounting in the whole to the Sum of Sixteen Thousand Eight hundred Pagodas bearing date the first Day of January one thousand Seven hundred and Seventy seven and payable in Twelve Months and that at the same time he the said Vencataroyaloo did grant in the name and for and on account of the said John Sulivan another Bond for the additional and usurious Interest of Eight per cent on the said Sum of Sixteen thousand Eight hundred Pagodas in Like manner as hereinbefore setforth that on the said two several Bonds becoming due the said Bond for the additional and usuriaces Interest of Eight per cent on the said Sum of Sixteen thousand Eight hundred Pagodas together with an Interest thereon at the rate of Twelve per cent per annum and Amounting in the

whole

whole to the Sum of one thousand three hundred and forty four Pagodas was paid by the said Vencatarayaloo in the hands of the said Alexander Pringle as the Attorney to and for and on account of the said John Sulivan but that the said Vencatarayloo being unable to pay the said Bond Executed as aforesaid for the said Sum of Sixteen thousand Eight hundred Pagodas did Execute a Bond for the amount thereof together with the Interest due thereon and amounting in the whole to the Sum of Eighteen thousand Eight hundred and Sixteen Pagodas bearing date the first day of January one thousand Seven hundred and Seventy Eight and payable in Twelve Months and that at the same time and in the same manner as above setforth the said Vencatarayaloo did Execute another Bond in the name and for and on account of the said John Sulivan for the additional and usurious Interest of Eight per Cent on the said Sum of Eighteen thousand Eight hundred and Sixteen Pagodas and amounting to the Sum of one thousand three hundred and forty four Pagodas That some time in the year of Christ one thousand Seven hundred and Eighty three the said Vencatarayaloo departed this Life and sometime in the year one thousand Seven hundred and Eighty five Benjamin Sulivan of Fort Saint George Esqr did as Attorney to the said John Sulivan Assign over the said two Last mentioned Bonds Executed as aforesaid by the said Vencatarayaloo together with all Interest due thereon to the sole use

use and benefit of the Complainant That some time in the year of Christ one thousand Seven hundred and Eighty Six Thomas Lewin Esqr of Fort St George Esquire did prevail upon your Petitioner to take up the said two several Bonds of the said Vencatarayaloo as they stood in the year one thousand Seven hundred and Seventy Eight that your Petitioner did Comply therewith and did in Consequence thereof grant the Bond in question That your Petitioner having Arrived at a Compleatent Knowledge of the several Corrupt Bargains and usurious transactions of the said John Sulivan as in his said Plea and answer Setforth and on which the Complainant had grounded his action against your Petitioner your Petitioner did therefore plead the said act of the Thirteenth year of the Reign of his present Majesty in Bar to the said action and did humbly claim the benefit thereof and pray the Judgement of the said Mayors Court thereon whether he should be compelled to make any further or other Answer to so much and such part of the said Bill as he had pleaded unto as aforesaid and your Petitioner not waiving his said Plea but wholly relying and insisting thereon for answer to the residue of the Complainants said Bill not before pleaded unto or unto so much thereof as he your Petitioner was advised was material or necessary for him to make answer unto did answer and say that although he might have Executed the Bond in question yet he could not admit that he was thereby indebted unto the Complainant in the Sum of Twenty Eight thousand one hundred and ninety Pagodas Sixteen

fanams

fanams and Sixty four Cash or in any part thereof because your Petitioner never did borrow or receive the said Sum or any part thereof either from the Complainant or from any one for him but that your Petitioner did receive a Reassignment of two Bonds Executed by Condraigula Vencatarayaloo to John Sulivan Esquire bearing date the first day of January one thousand Seven hundred and Seventy Eight Conditioned for the payment of the Sum of Eighteen thousand Eight hundred and Sixteen Pagodas and the Sum of one thousand three hundred and forty four Pagodas and which Bonds had been Assigned over to the Complainant by Benjamin Sulivan Esquire as attorney to the said John Sulivan but which said assignment was drawn out of Extortion inequity and injustice which your Petitioners did say he would if Obliged thereto in due time fully prove to the Satisfaction of the said Mayors Court and for asmuch as an Assignee must take a Bond Subject to the same Equity that it was subject to in the hands of the Obligee and that as the Obligee the said John Sulivan had no Equity in the said Two Several Bonds assigned over by the said Benjamin Sulivan to the Complainant the Complainant had no right to call your Petitioner in question before the said Mayors Court for the amount thereof or any part thereof but that the said Bonds were at the discretion of the said Mayors Court and therefore ready to be delivered by your Petitioner when required to be cancelled or otherwise disposed

disposed of as in their Wisdom might seem meet — All which Matters and things your Petitioner did state he was ready and willing to Verify maintain and prove as the said Mayors Court should direct and humbly prayed to be dismissed with his Reasonable Costs and Charges

And your Petitioner sheweth that to such the Plea and answer of your Petitioner the Complainant did Exhibit and file his Replication and therein say that notwithstanding the said Plea of your Petitioner to the Complainants said Bill the several Matters and things pleaded by your Petitioner in Bar to the Complainants right to the said Sum of Twenty Eight thousand One hundred and Ninety Pagodas Sixteen fanams and Seventy four Cash the Complainant did say that he ought not to be barred on Account thereof from recovering the said Sum of Twenty Eight thousand one hundred and Ninety Pagodas Sixteen fanams and Seventy four Cash of your Petitioner because that the Bond which was duly Executed and given by your Petitioner to the Complainant was a good and sufficient Bond Valid in the Law for Securing unto him the principal and Interest therein specified that he was Entirely uninformed as to the several Engage- ments mentioned in your Petitioners said Answer and that all which pretences the said William Lydenham Knew not nor was he any ways informed of the same save and Except by your Petitioners said Plea and answer and did humbly submit that the said Bond seemed to be a clear and fair bond and that no other Conditions are therein expressed than such as are usual where Bonds are Executed for payment of Sums of Money Borrowed or the Balances

Appearing

Appearing due on Accounts Current and that if your Petitioner had been Conscious that he did not owe the money he should not have executed the Bond and that his having Executed it was upon the face of the Transaction a Presumption that the Debt was due especially as he presumed not to say he was Surprised into the Signing thereof or forced thereto or any unfair Advantage taken of him or was underage or Insane or in Confinement and the Complainants said Attorney did say that having been authorised by his Constituent to Demand the payment of the said Bond as well as of other Claims due to the Complainant he the said William Sydenham in Discharge of his Duty as attorney as aforesaid had accordingly done so and that from the year one thousand Seven hundred and Eighty Six to the Day of filing the said Bill of Complaint he did often demand payment of the said Bond from your Petitioner who promised from time to time Discharge the same as soon as his Circumstances would admit but that he never to the Knowledge of the said William Sydenham did pretend those matters and things which he had stated in his Plea and answer and the Complainant in and by his said Replication did say that it would be of dangerous prejudice to the mutual dealings of men one with another if the Testimony of written documents was to be invalidated by such false and groundless asseations as your Petitioner had stated in his said Plea and Answer

And

And your Petitioner Sheweth that to the said Replication of the Complainant he did fill his Rejoinder and did therein humbly insist that the act of Parliament of the Thirteenth year of the Reign of his present Majesty and setforth and referred to and pleaded in your Petitioners said Plea and answer is a full and sufficient Bar to the Complainants actions and therefore and thereupon your Petitioner did say he was not indebted unto the Complainant in the Sum of Twenty Eight thousand one hundred and ninety Pagodas Sixteen fanams and Seventy four Cash or in any other Sum or Sums of Money whatever that although the said Bond might have been Executed According to Common form he did not by any means admit a Legal Execution for independent of the usurious Contract particularly stated in his said Several Plea and Answer no Consideration whatever had been granted to him for or on Account of the said Bond nor did he your Petitioner ever benefit thereby either directly or indirectly that the pretended ignorance of the Complainants said attorney of the several Engagements mentioned in your Petitioners said several Plea and answer could not avail him in a Court of Justice that it was an Evasion where positive affirmative or negative was required and that he ought to have shewn if it in his power lay that such engagements did not Exist that the Complainant instead of submitting to the Court that the said Bond seemed to be a fair and Clear Bond should have shewn that it positively was a Clear and fair Bond because that it was to be presumed that the said

Mayors

Mayors Court could not ascertain that which the Complainant himself was not certain of that it was not sufficient barely to say the Conditions of the said Bond were no other than such as were usual where Bonds were Executed for payment of sums of money borrowed or the ballances Appearing due on accounts Current but that he should have shewn in a fair clear and distinct manner if he had the power so to do that the Conditions were Legal and bonafides to wit that the sum of Money Conditioned to be paid had absolutely been borrowed and received by your Petitioner or that the pretended Account Current upon which the same was said to have arisen and become due was a Just and true Account Current growing out of a fair and Legal Transaction and your Petitioner in and by his said Rejoinder did further say that having never Received a Pagoda directly or indirectly of the pretended Consideration Money setforth in the said Bond he could not have been Conscious that he was indebted to the Complainant in the amount thereof and did positively declare that the Complainants Attorneys took an unfair advantage when they persuaded him to Execute the said Bond and therefore the presumption Drawn from the premises by the Complainant that the debt was due was without any Just foundation That he had nothing to do with the motives of the Complainant for instituting the said Suit further than thereon to remark that such Shavings whilst they were superfluous were altogether fallacious and tended greatly so strengthen the Cause and aid the Just purposes of your Petitioner that no advantage could accrue from any promise

of

of payment which your Petitioner might have made to the Complainants said Attorney William Sydenham for that the motive which induced him to Execute the Bond prevailed in the promise of Discharging the Conditions thereof that the Complainants said Attorney William Sydenham might recollect when he threatened a prosecution on the said Bond your Petitioner assured him that were he to pursue Coercive measures he your Petitioner would be under the Necessity of submitting to the said Mayors Court every particular of the foundation on which the pretended debt arose and which particulars your Petitioner did then fully explain to the said William Sydenham and your Petitioner did further say that taking the reverse of the strange Doctrine laid down by the Complainants that it would be of Dangerous prejudice to the mutual dealings of men among each other if the Testimoney of written documents were not to be invalidated by such assertions as those made use of by your Petitioner in his said several Plea and answer upon oath because that a written document might be obtained by fraudulent or unfair means or as in the instance before the said Mayors Court might be founded in Extortion speculation illegality and inequity —

And your Petitioner Sheweth that upon such proceedings your Suit and Rules did pass for Examining Witnesses and that publication passing thereon the Cause came on to be heard before the said Mayors Court on the Thirteenth day of this present Month of November and year of Christ one thousand Seven hundred and Ninety when the said Mayors Court were pleased to order and Decree and did

Accordingly

accordingly order and Decree that your Petitioner should pay unto the Complainant the Sum of Twenty Eight Thousand one hundred and Ninety Pagodas Sixteen fanams and Sixty four Cash together with all such Interest as there was or should thereafter become due thereon with Costs of Suit as may morefully appear by a Copy of the said Decree hereunto annexed for the Inspection of this honble Court the Original whereof is in your Petitioners possession and ready to be produced at the hearing

By which said Decree of the said Mayors Court your Petitioner does conceive himself greatly Aggrieved and doth therefore appeal therefrom to this honble Court for the following amongst other Reasons

First ... Because the said Decree of the said Mayors Court is Contrary to Evidence and to the Law for that the Complainant not having produced any Witness in support of his said Bill and your Petitioners said Plea and answer being upon oath the said Plea and answer of your Petitioner was the only Evidence before the said Mayors Court and the Law directs that Judgement shall be given according to the Evidence produced by the parties Complainant and Defendant in support of their respective prayers and as your Petitioner in and by his said Plea and answer did plead in bar to the Complainants right of action and specially deny being indebted unto the Complainant in the Sum sued for or in any other Sum or Sums of money whatever the said Mayors Court ought not to have decreed in favor of the Complainant

Secondly

Secondly Because where there is one Evidence against a Defendants answer a Decree cannot be given for the Complainant therefore as the Complainant did not Examine even one Witness against the Plea and answer of your Petitioner the said Mayors Court had no foundation whatever whereon to ground a Decree in favor of the Complainant

Thirdly .... Because your Petitioner in and by his said Plea did shew the usurious Contract specially upon which the Bond put in Suit by the Complainant was Executed and how much more than the legal Interest was given and which was all the Law required and did thereon plead the said act of the Thirteenth year of the Reign of his present Majesty King George in due form and as the several matters so pleaded by your Petitioner was not denied by the Complainant even by a bare assertion and as any thing shewn in pleading and afterwards not traversed or averred specially to the Contrary will be taken to be Confessed and for as much as that if the original agreement is Corrupt the Subsequent Agreement must be Corrupt also and no color will take it out of the Statute of usury and for as much as the assignee of a Bond must take it subject to the same Equity as it was in the hands of the obligee and as the said Bond assigned by the said Benjamin Sulivan as Attorney to the said John Sulivan to the Complainant and by him Reassigned to your Petitioner was founded in a Corrupt and usurious Contract as aforesaid Contrary to the said Statute of the said thirteenth year of the Reign of his present Majesty King George by your Petitioner pleaded as aforesaid the Bond upon which the Complainant grounded his action against your Petitioner being granted upon such Reassignment and

growing

growing out of such Corrupt and usurious Contract as charged in your Petitioners said plea and answer and Admitted because not Denied by the Complainant in and by his said Replication becomes null and void the said Decree of the said Mayors Court is &c.
Contrary to Law

Fourthly Because your Petitioner in and by his said answer did deny to stand indebted to the Complainant in the Sum sued for or any part thereof and did deny that he did Ever receive any Consideration on account of the Obligation on which the Complainant had grounded his action against your Petitioner and therefore the onces probandi resting with the Complainant he should have shewn that your Petitioner was and how and in what manner bonafide indebted to him the Complainant in the sum sued for and should have setforth the Consideration upon which the said Obligation was given by your Petitioner and have Established the several Facts by Legal and sufficient Evidence and the Complainant having neglected so to do the said Decree of the said Mayors Court is erroneous and Contrary to Law

For all which reasons and such others as may be Offered at the Hearing your Petitioner prays that this Honourable Court will be pleased to reverse the said Decree of the said Mayors Court and grant unto your Petitioner such general and further Relief in the premises as in their Wisdom may seem most meet

Signed J Stuart Hall
Solicitor for Appellant

Extract

Extract from the Minutes of a Court Held at the Town Hall on Saturday the 13th day of November Anno Domini 1790

Present

James Cáll Esquire Mayor
William Webb Andrew Ross
John Mitford Henry Chichley Michell
James Amos Henry Readhead and
Benjamin Roebuck Aldermen

John Whitehill by his Attorney William Sydenham
vers
Duggapah puntalee Alias Condraigula Duggapah

Bill with Copies of a Bond and of an Account Annexed Read
Affidavit of William Sydenham Read
Several Plea and Answer Read
Replication Read
Amended Rejoinder Read
Interrogatories on the part of the Defendant with Two Exhibits Marked A and B Read
Two Depositions taken thereto Read
One Exhibit on the part of the Complainant marked B Read

This Cause Coming on to be heard and Debated this Day in the presence of the Attornies on both sides

On

on Reading the Complainants Bill with Copies of a Bond and an account Annexed The Affidavit of William Sydenham The Defendants Several Plea and answer The Replication The amended Rejoinder The Interrogatories and Depositions on the part of the Defendants with two Exhibits marked A and B annexed one Exhibit on the part of the Complainant marked B on Hearing the Pleadings made use of by the Attornies and an 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 Twenty Eight thousand one hundred ~~one hundred and ninety~~ and Ninety Star Pagodas Sixteen fanams and Sixty four Cash Star Pagodas 28190 16. 64/ together with all such Interest as now is or shall hereafter became due thereon until full payment is made also all Costs of this Suit

A true Extract

/ Signed / J. Taylor Regr

a true Copy

/ Signed / J Steuart Hall.

Solicitor for Appellant

To the Honble. Major General William Medows

President in Council Fort St George

In the Honble the Court of }
Appeals at Madraspatnam . . . }

Between John Whitehill of Queen Anne Street East in the City of London in the Kingdom of Great Britain Esqr by his acting Attorney William Sydenham Esqr Coll of the Corps of Artillery in the Service of the united Company of Merchants of England trading to the East Indies under their Presidency of Fort St George Complainant and Juggapah Ouvtaloo alias Condravgula Juggapah of Madras Inhabitant Defendant

Filed in my Office
the 18th December 1790
Chas N. White
Clk

The Answer of the said Complainant John Whitehill by his said Attorney William Sydenham to the Petition and Appeal of the above named Defendant

This Respondent by his said Attorney for Answer to the said Petition and appeal or unto so much thereof as concerns this Respondent to make answer unto saith he admits to be true that this Respondent by his said Attorney did on or about the time mentioned in the Appellants Petition and Appeal file a Bill of Complaint in the Mayors Court at Madraspatnam against the Appellant for the Recovery

Recovery of the Sum of Twenty Eight Thousand one hundred and Ninety Star Pagodas Sixteen fanams and Sixty four Cash the amount Principal and Interest of a Certain Bond executed by the said Appellant unto this Respondent a Copy whereof with an account Current founded thereon was annexed to the said Bill of Complaint of this Respondent as is stated in the said Petition and Appeal To which said Bill of Complaint this Respondent admits that the said Appellant did on or about the time mentioned in his said Petition and Appeal file a Plea and answer thereto and that as a Plea to this Respondent said Bill this Respondent admits that the said Appellant did plead an act of Parliament made in the Thirteenth year of his present Majestys Reign intitled an act for establishing certain Regulations for the better Management of the affairs of the East India Company as well in India as in Europe And this Respondent doth also admit that the Appellant did in and by his said Plea setforth such other Matters as in his said Petition and Appeal are mentioned And this Respondent also admits that the said Appellant did as and for an Answer to this Respondents said Bill of Complaint say that although he might have executed the Bond in Question yet he could not admit that he was thereby indebted unto the Complainant in the sum of Twenty Eight Thousand one hundred and Ninety Pagodas Sixteen fanams and Sixty four Cash or in any part thereof pretending that he never did borrow or receive the said Sum or any part thereof either from this Respondent or from any one for him but that the Appellant did receive a Reassignment of Two Bonds executed by Condraigula Vencatanyaloo in favor of John Sulivan Esquire bearing date the first Day of January One Thousand Seven hundred and Eighty Six conditioned for the payment of the Sum of Eighteen Thousand Eight hundred and Sixteen Pagodas and the Sum of one Thousand Three hundred and forty four Pagodas and which Bonds had been assigned over to this Respondent by Benjamin Sulivan Esquire as Attorney to the said John Sulivan but which the Appellant pretends to say had arisen and grown out of Extortion iniquity and Injustice and which the Appellant would if alleged thereto in due time fully prove to the Satisfaction of the said Mayors Court and this Respondent admits that the Appellant did further State in his said answer that forasmuch as an Assignee must take a Bond subject to the same Equity that it was subject to in the hands of the Obligee and as the Obligee the said John Sulivan had no Equity in the said two Several Bonds assigned over by the said Benjamin Sulivan to this Respondent this Respondent had no Right to Call the Appellant in Question before the said Mayors Court for the amount thereof or any part thereof but that the said Bonds were at the Discretion of the Court and therefore Ready to be Delivered by the Appellant when required to be Cancelled or otherwise disposed of as in their

their Wisdoms might seem meet To which said Plea and answer this Respondent admits that he did on or about the times in the said Petition and Appeal mentioned file by his said attorney a Replication and did thereon say that notwithstanding the said Plea of the Appellant to this Respondents said Bill and the several Matters and things pleaded by the said Appellant in Bar to this Respondents Right to the said Sum of Twenty Eight Thousand One hundred and Ninety Pagodas Sixteen fanams and Sixty four Cash this Respondent ought not to be barred on account thereof from Recovering the said Sum of Twenty Eight Thousand One hundred and Ninety Pagodas Sixteen fanams and Sixty four Cash of the Appellant because the Bond which was duly Executed and given by the Appellant to this Respondent was a good and Sufficient Bond valid in the Law for securing unto him the Principal and Interest therein specified that this Respondent was entirely uninformed as to the several Engagements mentioned in the Appellants said answer and that all such Pretenses this Respondents attorney the said William Sydenham knew not nor was he any ways informed of the same save and except by the Appellants said Plea and answer and did humbly submit that the said Bond seemed to be a clear and fair Bond and that no other Conditions are therein expressed than such as are usual where Bonds are executed for Payment of Sums of Money borrowed or for Securing the

the Payment of the Balances appearing due on Accounts Current and that if the Appellant had been Conscious that he did not owe the Money he should not have Executed the Bond and that his having executed it was upon the face of the Transaction a Presumption that the Debt was due especially as he presumed not to say he was Surprized into the signing thereof or forced thereto or any unfair Advantage taken of him or was under age or Insane or in Confinement and this Respondents said Attorney did say that having been authorized by this Respondents Constituent to Demand the payment of the said Bond as well as of others Claims due to this Respondent this Respondents said Attorney in Discharge of his Duty as attorney as aforesaid had accordingly done so and that from the year One Thousand Seven hundred and Eighty Six to the Day of filing the said Bill of Complaint this Respondents said attorney had often Demanded Payment of the said Bond from the Appellant who promised from time to time to Discharge the same as soon as his Circumstances would admit but that he never to the Knowledge of this Respondents said Attorney William Sydenham did presume to urge those Matters and things which he had stated in his Plea and answer and this Respondent in and by his said Replication did say that it would be of dangerous Prejudice to the Mutual Dealings of Men among each other if the Testimony of written Documents was to be invalidated by such false and groundless Assertions as the

appellant

Appellant had stated in his said Plea and Answer To which said Replication this Respondent admits that the Appellant did on or about the time mentioned in the said Petition and Appeal file his Rejoinder wherein he did humbly insist that the act of Parliament of the Thirteenth year of the Reign of his present Majesty and setforth and referred to and pleaded in the Appellants said Plea and answer was a full and sufficient Bar to this Respondents Action and therefore and thereupon the appellant did say he was not indebted unto the Complainant in the Sum of Twenty Eight Thousand One hundred and Ninety Pagodas Sixteen fanams and Sixty four Cash or in any other Sum or Sums of Money whatever And this Respondent also admits that the said Appellant did in and by his said Rejoinder setforth such other matters and things as in and by his said Petition and Appeal are stated And this Respondent also admits that upon the aforesaid Proceedings Issue was Joined and Rules passed for the Examination of Witnesses and the Appellant did Examine two Witnesses on his Behalf and that Publication having passed thereon the Cause came on to be heard before the said Mayors Court on the Thirteenth day of November Last when the said Mayors Court were pleased to order and Decree and did accordingly order and Decree that the Appellant

Appellant should pay unto this Respondent the said Sum of Twenty Eight Thousand one hundred and Ninety Pagodas Sixteen fanams and Sixty four Cash with all such Interest as there was or should thereafter become due thereon with Costs of Suit—

From which said Decree of the said Mayors Court the Appellant hath appealed to this Honourable Court as he conceives himself to be aggrieved by the said Decree but this Respondent by his said Attorney says that the said Appellant can have no Cause to think himself aggrieved by the said Decree of the said Mayors Court by reason of the several matters above Setforth as the Pleadings used by this Respondent by his said Attorney in his Replication and Because the Appellant hath not adduced any adequate Testimoney to support the pretences urged by him in his said Plea Answer and Rejoinder respectively

Wherefore this Respondent humbly prays That this Honourable Court will be pleased to Confirm the said Decree of the said Mayors Court of the Thirteenth day of November Last and dismiss the Appellants said Petition and Appeal with Costs to be paid by the Appellant and this Respondent by his said Attorney further prays that the Appellant may be taxed with Exemplary Costs for having attempted to support a Litigious Evasion of a Just Debt by charging Persons in no wise Parties to the Suit or Appearing on the face of the Appellants Bond which was the Cause of

Action

action with Extortion iniquity and injustice and afterwards failing to support even the said Evasion by any Testimony whatever

(Signed) S. Popham

Solicitor for Respondent

Court

Court of appeals at Madraspatnam

Saturday the 22d day of March Anno Domini 1794

Between Jagapah Puntalu alias Conaraigula Juggapah at Present of Madras Inhabitant appellant and John Whitehill by his acting attorney William Lydenham Respondent

This Cause coming on this day to be heard and debated before this Court by the attornies on both sides upon hearing the Petition of appeal and answer and the several Exhibits of the Honble the Mayors Court together with the Decree of the said Court given in this Cause on Saturday the 13th day of November Anno Domino 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 Double Costs in this Court

By Court (Signed) Chas H. White Clk

To

To the Kings Most Excellent Majesty in Council

Between John Whitehill by his Attorney William Sydenham Complainant and Juggapah Buntaloo Alias Condrigula Juggapah of Madras Inhabitant Defendant

The Petition and Appeal of the above named Defendant

Humbly Sheweth

That the above named Respondent John Whitehill by his attorney named William Sydenham did on or about the Eighth day of September in the year of Christ one Thousand Seven hundred and Eighty nine Exhibit and file his Bill of Complaint against your Petitioner in the Mayors Court of Madraspatnam for the recovery of the Sum of Twenty Eight thousand one hundred and Ninety Pagodas Sixteen fanams and Sixty Cash the balance of an Account Current pretended to have arisen upon a Bond said to have been executed by your Petitioner to the Complainant Copies of which said Bond and Account Current were to the said Bill Annexed to which said Bill your Petitioner did appear thereto and did on or about the fifteenth day of December Exhibit and file his Plea and answer and your Petitioner Sheweth unto your Most Excellent Majesty in Council that he did in and by his said

Filed in my Office the 4th April 1794
Chas. N. White Clerk

said Plea plead an act of Parliament made in the thirteenth year of Reign of your most excellent Majesty intitled an Act for the establishing certain Regulations for the better Management of the affairs of the East India Company as well in India as in Europe and in and by his said Plea did Shew that by the said act it was Enacted that no Subject of your Most Excellent Majesty in the East Indies should upon any Contract which should be made from and after the first day of august One Thousand Seven hundred and Seventy four take directly or indirectly for the loan of any Monies Wares Merchandizes or other Commodities whatsoever above the Value of Twelve pounds for the forbearance of one hundred Pounds for a year and so after that rate for a greater or lesser Sum as for a larger or shorter Time and all Bonds Contracts and Assurances whatsoever made after the Time aforesaid for payment of any principal or Money to be lent or Covenanted to be performed upon or for any usury whereby or Whereupon there should be reserved or taken above the rate of Twelve Pounds in the Hundred as aforesaid should be utterly Void and your Petitioner did Shew that for as much as the Scope of the Complainants Bill was to procure the payment of the Sum of Twenty Eight Thousand One hundred and Ninety Pagodas Sixteen fanams and Sixty four Cash the amount principal and Interest pretended to be due and Owing upon a Bond executed on the Sixth day of May One Thousand Seven hundred

hundred and Eighty Six Conditioned for the payment of the Sum of Twenty Thousand One hundred and Sixty Pagodas in the Words following to wit Now the Condition of this Obligation is such that if the above bound Juggapah Puntaloo his Heirs Executors or administrators Shall well and truly pay or cause to be paid unto John Whitehill heirs Executors administrators or Assigns the full and Just Sum of Twenty Thousand one hundred and Sixty Pagodas together with all such Interest as shall or may become due thereupon then this Obligation to be Void other wise to Remain in full force and Vertue and your Petitioner did Say that he ought not be Charged with the Debt aforesaid by Virtue of the Condition aforesaid for that some time in the year of Christ one thousand Seven hundred and Seventy five the Complainant was then Chief of Masulipatnam and John Sulivan then in the Civil Service of the Honourable East India Company under their Presidency of Fort Saint George but at the time of filing your Petitioners said Plea and answer of Great Britain orelse elsewhere was Secretary to the Chief and Council of Masulipatnam aforesaid at which time Appirow Zemendar of Noorzeed had as tributary to the said Honourable the East India Company Engaged to pay unto the Treasury of Masulipatnam aforesaid for the use of the said Honble the East India Company the Sum of Ninety two Thousand Pag.ᵈˢ Annually by different payments but the said Appirow either from

from enability to make good such payments in due time or from a desire of being on terms of intimacy with European Gentlemen in power or from being pressed or importuned thereto or from some other Cause or for some other Reason to himself best known did enter into Certain Engagements with the said John Sulivan who did in consequence thereof and in the name of the said Appirow pay unto the Treasury of the said Honourable the East India Company at Masulipat- -nam aforesaid the said Sum or Annual Tribute of Ninety Two Thousand Pagodas by instalments Charging and receiving from the said Appirow a Commission thereon of five per Cent that the said Appirow for the said Sum or amount Tribute of Ninety two Thousand Pagodas either to the whole Amount or in Certain quantities making together the whole amount thereof did Execute a Bond or Bonds to the said John Sulivan to run at Interest of Twelve per Cent per Annum in the same manner as if the said John Sulivan had advanced and lent to the said Appirow the said Sum of Ninety two thousand Pagodas and at the same time that the said John Sulivan did Exact a further Sum of Twelve per Cent over and above the said Sum of five per Cent Commission and the said Sum of Twelve per Cent per Annum and for the amount thereof as Calculated to some particular future period another Bond was granted by the said Appirow to the said John Sulivan as for so much Money Lent of all which usurious Dealings and transactions your Petitioner did State he had been well informed and verily believed

and

and if required could prove the same to be True that some time
over About the year One thousand Seven hundred and Eighty
five and whilst in the transaction of the usurious practices
aforesaid the said John Sulivan was succeeded in his Office
of Secretary to the Chief and Council of Masulipatnam aforesaid
by alexander Pringle then also in the Civil Service of the said
Honble Company but at the Time of filing your Petitioner
said Plea and answer of Britain orelse where and did Som
Short time afterwards depart of Madras but that previous
thereto pretending that the said Opperow stood indebted
unto him in the Sum of Forty five Thousand Pagodas or
Some other Sum of Money to a Considerable amount [illegible]
upon James Hodges then of Council at Masulipatnam
aforesaid the said Alexander Pringle and Vencatayaraloo your
Petitioners late uncle to take the said pretended debt upon
themselves and grant their separate Bonds for the Amount
thereof that the Bond granted by the said Vencatarayaloo in
the name for and an account of the said John Sulivan for and
on Account of the part he the said Vencatarayaloo took of the
said pretended debt was dated on the first day of January
One thousand Seven hundred and Seventy Six and
Conditioned for the payment of the Sum of Fifteen Thousand
Pagodas with Interest at the rate of Twelve per Cent per
Annum and payable in Twelve Months and at the Same
time

time the said Vencatarayaloo did Execute another Bond for an additional and usurious Interest of Eight per Cent per Annum on the said Sum of Fifteen Thousand Pagodas that on the said two several Bonds becoming due the said Bond for the additional and usurious Interest of Eight per Cent together with an Intereat thereon at the rate of Twelve per Cent per Annum and Amounting in the whole to the Sum of One thousand and two hundred Pagodas was paid by the said Vencatarayaloo into the hands of the said alexander Pringle as the Attorney to and for and an Account of the said John Sulivan but that the said Vencatarayaloo being unable to pay the amount of the said Bond Executed as aforesaid for the said Sum of Fifteen thousand Pagodas he did Execute and other Bond in the name and for and an Account of the said John Sulivan for that Sum together with the Interest due thereon Amounting in the whole to the Sum of Sixteen thousand Eight hundred Pagodas bearing date the first day of January One thousand Seven hundred and Seventy Seven and payable in Twelve Months and that at the same time he the said Vencatarayaloo did grant in the name and for and an account of the said John Sulivan another Bond for the additional and usurious Interest of Eight per Cent on the said Sum of Sixteen thousand Eight hundred Pagodas in Like Manner as hereinbefore Setforth that on the said two Several Bonds becoming due the said Bond for the additional and usurious Interest of Eight

per Cent

per Cent on the said Sum of Sixteen Thousand Eight hundred Pagodas together with on Interest thereon at the rate of Twelve per Cent per Annum and amounting in the whole to the Sum of One thousand three hundred and forty four Pagodas was paid by the said Vencatarayaloo into the hands of the alexander Pringle as the Attorney to and for and on Account of the said John Sulivan but that the said Vencatarayaloo being unable to pay the said Bond Executed as Aforesaid for the Sum of Sixteen thousand Eight hundred Pagodas did Execute a Bond for the Amount thereof together with the Interest due thereon and amounting in the whole to the Sum of Eighteen thousand Eight hundred and Sixteen Pagodas bearing date the first day of January one thousand Seven hundred and Seventy Eight and payable in Twelve Months and that at the Same time and in the same manner as above Set forth the said Vencataray= =aloo did execute another Bond in the name and for and on account of the said John Sulivan for the additional and usurious Interest of Eight per Cent on the said Sum of Eighteen thousand Eight hundred and Sixteen Pagodas and amounting to the Sum of One thousand three hundred and forty four Pagodas that some time in the year of Christ one thousand Seven hundred and Eighty three the said Vencatarayaloo departed this Life and some time in the year One thousand Seven hundred and Eighty five Benjamin Sulivan of Fort Saint George Esquire did as Attorney

Attorney to the said John Sulivan Assign over the said two last Mentioned Bonds Executed as aforesaid by the said Vencatayaraloo together with all Interest due thereon to the sole use and benefit of the Respondent that some time in the year of Christ one thousand Seven hundred and Eighty Six Thomas Lewin then of Fort Saint George did prevail upon your Petitioner to take up the said two Several Bonds of the said Vencatarayaloo as they stood in the year One thousand Seven hundred and Seventy Eight that your Petitioner did Comply therewith and did in Consequence thereof grant the Bond in question that your Petitioner having arrived at a Competent Knowledge of the several Corrupt & Bargains and usurious Transactions as in his said Plea and answer was set forth and on which the Complainant had Grounded his action against your Petitioner your Petitioner did therefore plead the said act of the Thirteenth year of the Reign of his present Majesty in Bar to the said Action and did humbly claim the benefit thereof and pray the Judgement of the said Mayors Court thereon whether he should be Compelled to make any further or other answer to so much and such part of the said Bill as he had pleaded unto as Aforesaid and your Petitioner not waiving his said Plea but wholly rely and insisting thereon for answer to the residue of the Complainants said Bill not before pleaded unto or unto so much thereof as he your Petitioner was advised was material or necessary for him to make answer unto did

answer

Answer and say that altho he might have Executed the Bond in question yet he could not admit the Rewas thereby indebted unto the Complainant in the Sum of Twenty Eight thousand One hundred and Ninety Pagodas Sixteen fanams and Sixty four Cash or in any part thereof the same your Petitioner never did borrow or received the said Sum or any part thereof either from the Complainant or from any one for him but that your Petitioner did receive or reasignment of two Bonds executed by Condraigula Vencatayaralo to John Sulivan Esquire bearing Date the first day of January One thousand Seven hundred and Seventy Eight Conditioned for the Payment of the Sum of Eighteen thousand Eight hundred and Sixteen Pagodas and the Sum of One thousand three hundred and forty four Pagodas and which Bonds had been asigned over to the Complainant by Benjamin Sulivan Esquire as Attorney to the said John Sulivan but which had arisen and Grown out of injustice which your Petitioner did say he would if Obliged thereto in due time fully proved to the Satisfaction of the said Mayors Court and for as much as that an asignee Must take Bond Subject to the same equity that it was Subject to in the hands of the Obligar and that as the Obligee the said John Sulivan had no equity in the said two Several Bonds asigned over by the said Benjamin Sulivan to the Complainant the Complainant had no right to call your Petitioner in question before the said Mayors Court

Court for the amount thereof or any part thereof but that the said Bond were at the Discretion of the said Mayors Court and therefore ready to be Delivered by your Petitioner when required to be Cancelled or otherwise Disposed of as in their Wisdom might seem meet

And your Petitioner Sheweth unto your Most excellent Majesty in Council that such the Plea and Answer of your Petitioner the Complainant did Exhibit and file his Replication and therein say that notwithstanding the said Plea of your Petitioner to the Complainants said Bill the Several Matters and things pleaded by your Petitioner in Bar to the Complainants Right to the said Sum of Twenty Eight thousand One hundred and Ninety Pagodas Sixteen fanams and Seventy four Cash the Complainant did say that he ought not to be Baird on Account thereof from recovering the said Sum of Twenty Eight thousand One hundred and ninety Pagodas Sixteen fanams and Seventy four Cash of your Petitioner because that the Bond which duly executed and given by your Petitioner to the Complainant was a good and Sufficient Bond vaild in the Law for Securing unto him the Principal and Interest therein Specified that he was entirely uninformed as to the Several Engagements Mentioned in your Petitioners said answer and that all which pretences the said William Sydenham knew not nor was he any ways informed of the same save and Except by your Petitioners said

said Plea and Answer and did humbly submit that the said Bond seemed to be a Clear and fair bond and that no other Conditions were therein Expressed than such as are usual where Bonds are executed for payments of Sums of Money Borrowed or the Balances Appearing due on Accounts Current and that if your Petitioner had been conscious that he did not owe the Money he should not have Executed the Bond and that his having executed it was upon the face of the Transaction a Presumption that the debt was due especially as he presumed not to say he was Surprised into the Signing thereof or forced thereto or any unfair Advantage taken of him or was under age or Insane or in Confinement and the Complainants said Attorney did say that having been authorised by his Constituent to Demand the payment of the said Bond as well as of other Claims due to the Complainant he the said William Sydenham in discharge of his duty as attorney as aforesaid had Accordingly done so and that from the year One thousand Seven hundred and Eighty Six to the Date of filing the said Bill of Complaint he did often demand payment of the said Bond from your Petitioner who promised from time to time discharge the same as soon as his Circumstances would admit but that he never to the knowledge of the said William Sydenham did pretend those matters and things which he had stated in

in his Plea and answer and the Complainant in and by his said Replication did say that it would be dangerous prejudice to the Mutual dealings of Men among each other if the Testimony of written documents was to be invalidated by such false and groundless Assertions as your Petitioner had stated in his said Plea and Answer —

And your Petitioner Sheweth unto your most Excellent Majesty in Council that to the said Replication of the Respondent he did file his Rejoinder and did therein humbly insist that the act of Parliament of the Thirteenth year of the Reign of your most Excellent Majesty and Set forth & and refered to and pleaded in your Petitioners said Plea and answer was a full and Sufficient Answer to the Respondent said Actions and your Petitioner did say that although the Bond in question Might have been executed According to Common form he did not by any Means Admit a legal execution for independent of the usurious contract particularly stated in his said Several Plea and answer no Consideration whatever had been granted to him for or on Account of the said Bond nor did your Petitioner ever benefit thereby either directly or indirectly that the pretended ignorance of the Respondent said Attorney of the Several ingagements Mentioned in your Petitioner said Several Plea and Answer could not avail him in a Court of Justice that it was an evasion where

positive

positive Affirmative or Negative was required and that he ought to have Shewn if it lay in his power so to do that such engagements did not exist that the Respondent instead of Submitting to the Court that the said Bond seemed to be a fair and Clear Bond should have shewn that it positively was a Clear and fair Bond because that it was to be presumed that the said Mayors Court could not as certain that which the Respondent himself was not Certain of that it was not Sufficient barely to Say the Conditions of the said Bond were no other than such as were usual where Bonds were Executed for payment of Sum of Money borrowed or the Ballances appearing due on Account Current but that he should have shewn in a fair clear and distinct Manner of he had the power so to do that the Conditions were Legal and bonafide to wit that the sum of Money conditioned to be paid had absolutely been borrowed and received by your Petitioner or that the pretended Account Current upon which the same was said to have arisen and become due was a Just and true Accounts Current growing out of a fair and Legal transactions and your Petitioner in and by his said Rejoinder did further say that having never received a Pagoda directly or indirectly of the pretended Consideration Money setforth in the said Bond he could not have been conscious that he was indebted to the Complainant

Complainant in the account thereof and did positively declare that the Complainants Attornies took an unfair advantage when they persuaded him to execute the said Bond and therefore the presumption drawn from the premises by the Respondent that the debt was due was without any Just foundation that the Respondents said Attorney William Sydenham might recollect when he threatened a prosecution on the said Bond that your Petitioner Assured him that were he to pursue Coerceive Measures your Petitioner would be under the Necessity of submitting to the said Mayors Court every particular of the foundation on which the pretended debt arose and which particulars your Petitioner did them fully explain to the said William Sydenham

And your Petitioner humbly Sheweth unto your Most Excellent Majesty in Council that upon such proceedings issue did Join and rules did pass for the Examination of Witnesses and that publication having passed thereon the said Cause came on to be heard before the said Mayors Court on the Thirteenth Day of the ++ Month of November and year of Christ one thousand Seven hundred and Ninety when the said Mayors Court was pleased to Order and Decree and did Accordingly order and Decree that your Petitioner should pay unto the Complainant the Sum of Twenty Eight Thousand One hundred

and

and Ninety Pagodas Sixteen fanams and Sixty Cash
together with all such Interest as there was or Should
thereafter become due thereon with Costs of Suit —

And your Petitioner humbly Sheweth to your
Most Excellent Majesty in Council that by the said
Decree of the said Mayors Court your Petitioner did
Conceive himself much aggrieved and did therefore —
Appeal therefrom to the Court of Appeals at Madras-
patnam and did as Reasons for his said Appeal First
say that the Complainant not having produced any
Witness in Support of his said Bill and your Petitioners
said Plea and answer being upon Oath the same was
the only Evidence before the said Mayors Court and that
the Law did direct that Judgement should be given according
to the Evidence produced by the parties Complainant
and Defendant in support of their respective prayers
and as your Petitioner in and by his said Plea and answer
did plead in Bar to the Complainants right of action and
specially deny being indebted unto the Complainant in
the sum sued for or in any other Sum or Sums of Money
whatever the said Mayors Court ought not to have decreed
in favor of the Complainant — Secondly Because where
there was only one Evidence against a Defendants answer
a Decree could not be given on the Complainants Bill

and

and therefore as the Complainant did not Examine Even
one Witness against the Plea and answer of your Petitioner the
said Mayors Court had no foundation whatever whereon to
ground the said Decree Thirdly Because your Petitioner in
and by his said Plea did shew the usurious Contract &c
specially out of which the Bond put in Suit by the Complainant
had arisen and how Much more then the legal Interest
had been given and which was all the Law Required
and did thereon plead the said act of Parliament in due form
and as the several Matters so pleaded by your Petitioner
were not denied by the Respondent Even by a bare Assertion
and as any thing shewn in pleading and afterwards not
traversed or averred specially to the Contrary would be taken
to be Confessed and for as much as that if the Original agree-
ment was Corrupt the subsequent Agreement would be Corrupt
also and no Color would take it out of the Statute of usury and
for as much as the Assignee of a Bond must take it subject
to the same Equity as it was in the hands of the Obligee and
as the said Bond Assigned to the Complainant by the said
Benjamin Sulivan as Attorney of the said John Sulivan and
by him Reassigned to your Petitioner was founded in a Corrupt
and usurious Contract contrary to the said Statute by your &c
Petitioner pleaded as aforesaid the said Bond upon which the
Complainant grounded his action against your Petitioner

being

being granted upon such Reasignment and growing out of such usurious Contract as Setforth in your Petitioners said Plea and answer and admitted because not denied by the Complainant in and by his said Replication becomes null and Void the said Decree of the said Mayors Court was Contrary to Law Fourthly Because your Petitioner in and by his said Answer did deny to stand indebted unto the Complainant in the Sum sued for or any Consideration on Account of the Obligation on which the Complainant had grounded his action against your Petitioner and therefore the onus probandie Resting with the Complainant he should have shewn that your Petitioner actually was and how and in what manner bonafide indebted to him in the sum sued for and should have setforth the Consideration upon which the said Obligation was given by your Petitioner and have Established the several facts by Legal and sufficient Evidence and thereupon your Petitioner did pray that the said Court of Appeals would Reverse the said Decree of the said Mayors Court

And your Petitioner humbly sheweth unto your Most Excellent Majesty in Council that to your Petitioners said Petition of Appeal the Complainant did file his Answer and did thereon and thereby say he did admit he did file his said Bill of Complaint in the Mayors Court at Madraspatnam for

for the recovery of the Sum of Twenty Eight thousand One hundred and Ninety Star Pagodas Sixteen fanams and Sixty four Cash the amount Principal and Interest of a certain Bond Executed by your Petitioner into the Complainant as stated in the said Petition and Appeal that your Petitr did on or about the time Mentioned in his said Petition and Appeal file a Plea and Answer thereto and that as a Plea to his said Bill your Petitioner did plead an act of Parliament and such others Matters as in his said Petition and Appeal were mentioned that your Petitioner as and for answer to the Complainants said Bill of Complaint did say that although he might have Executed the Bond in question yet he could not admit that he was thereby indebted unto the Complainant in the sum of Twenty Eight thousand one hundred and Ninety Pagodas Sixteen fanams and Sixty four Cash or any part thereof for that he never did Borrow or receive the said Sum or any part thereof either from the Complainant or any one for him but that your Petitioner did receive a Reasignment of two Bonds Executed by Condraigula Vencatarayalos in favor of John Sulivan Esquire bearing date the first day of January One thousand Seven hundred and Eighty Six Conditioned for the payment of the Sum of Eighteen thousand Eight hundred and Sixteen Pagodas and the Sum of One thousand three hundred and forty four Pagodas and which Bond had been

been Assigned over to the Complainant by Benjamin Sulivan
Esquire as Attorney to the said John Sulivan but which
your Petitioner did say had arisen and grown out of
Extortion iniquity and injustice and which your Petitioner
would if obliged thereto in due time fully prove to the
Satisfaction of the said Mayors Court that your Petitioner
did further state that for as much as an Assignee must
take a Bond Subject to the same Equity that it was
subject to in the hands of the Obligee and as the Obligee
the said John Sulivan had no Equity in the said two
several Bonds of Assigned over by the said Benjamin Sulivan
to the Complainant he the Complainant had no right
to call your Petitioner in question before the said Mayors
Court for the amount thereof or any part thereof but that
the said Bonds were at the Discretion of the Court and
therefore ready to be Delivered by your Petitioner when
Required to be Cancelled or Otherwise disposed of as in
their Wisdom might seem Meet That to such Plea and
answer the Complainant did file a Replication and did
therein say that Notwithstanding the said Plea of your
Petitioner and the Several Matters and things by your
Petitioner pleaded in Bar to the Complainants Right to
the said Sum of Twenty Eight thousand One hundred
and Ninety Pagodas Sixteen fanams and Sixty four Cash

That

That the Complainant ought not to be barred on Account
thereof from Recovering the said Sum of Twenty Eight thousand
One hundred and Ninety Pagodas Sixteen fanams and Sixty
four Cash of your Petitioner because the said Bond which
was duly Executed by your Petitioner to the Complainant
was a good and Sufficient Bond Valid in Law for securing
unto him the Principal and Interest therein Specified that
he was Entirely uninformed as to the several Engagements
Mentioned in your Petitioners said Answer and that all
such pretences that the Complainants Attorney the said
William Sydenham knew not nor was he any ways informed
of the same save and Except by the Appellant Plea
and Answer and did humbly submit that the said Bond
seemed to be a Clear and fair Bond and that no other
conditions were therein Expressed than such as were usual
where Bonds were Executed for payment of Sums of Money
borrowed or for securing the payment of the Balances
Appearing due on Accounts Current and that of your
Petitioner had been Conscious that he did not owe the Money
he should not have Executed the Bond and that his
having Executed it it was upon the face of the Transaction
a presumption that the Debt was due Especially as he presumed
not to say he was surprized into the signing thereof or
forced thereto or any unfair advantage taken of him or was

under

under age or Insane or in Confinement and that the
Complainants said Attorney did say that having been
authorized by his Constituent to Demand payment
of the said Bond as well as of other Claims due to the
Complainant the Complainants said Attorney in
discharge of his Duty as Attorney as aforesaid had
accordingly done so and that from the year one thousand
Seven hundred and Eighty Six to the day of filing the said
Bill of Complaint the Complainants said Attorney
had often Demanded payment of the said Bond from
your Petitioner who promised from time to time to
Discharge the same as soon as his circumstances would
admit but that he never to the Knowledge of the Complai=
=nants said Attorney William Sydenham did presume
to urge those Matters and things which he had stated
in his Plea and Answer and the Complainant in and
by his said Replication did say that it would be of
Dangerous Prejudice to the Mutual dealings of Men
among each other if the Testimoney of written Documents
was to be invalidated by false and groundless Asertions
and the Complainant did Admit that your Petitioner
did on or about the time Mentioned in the said Petition
and Appeal file his Rejoinder wherein he did humbly
insist that the said act of Parliament referred to and
pleaded

pleaded in his said Plea and Answer was a full and
Sufficient Bar to the Complainants action and he was not
indebted unto the Complainant in the Sum sued for or
any part thereof and the Complainant did also admit
that your Petitioner in and by his said Rejoinder did
setforth such other Matters and things as in and by his
said Petition of Appeal were stated and the Complai=
=nant did also admit that upon the aforesaid proceedings
Issue was Joined and Rules passed for the Examination
of Witnesses and your Petitioner did Examine two
Witness in his behalf and that publication having passed
the Cause came on to be heard before the said Mayors
Court on the thirteenth day of November last when the
said Mayors Court were pleased to order and Decree
and did Accordingly order and Decree that your Petitioner
should pay unto the Complainant the said Sum of Twenty
Eight thousand one hundred and Ninety Pagodas Sixteen
fanams and Sixty four Cash with all such Interest as
there was or should thereafter become due thereon with Costs
of Suit That from the said Decree of the said Mayors
Court your Petitioner had Appealed to the said Court of
Appeals but the Complainant did say your Petitioner could
have no Cause to think himself aggrieved by reason
of the several Matters before stated in the pleadings used

by

by the Complainant in his said Replication and because your Petitioner had not adduced any adequate Testimony to support the pretences urged by him in his said Plea and answer and Rejoinder respectively - wherefore the Complainant did humbly pray that the said Court of Appeals would be pleased to Affirm the said Decree of the said Mayors Court and dismiss your Petitioners said Petition and Appeal with Costs to be paid by your Petitioner and further that your Petitioner might be taxed with Exemplary Costs for having attempted as the Complainant did pretend to support a Litigious Evasion of a Just debt by charging persons in no wise parties to the Suit or appeared on the face of your Petitioners said Bond which was the Cause of action with Extortion iniquity and injustice and Afterwards failing to support Even the said Evasion by any Testimony whatever And your Petitioner humbly Sheweth unto your Most Excellent Majesty in Council that your Petitioners said Petition of Appeal and the Complainants Answer did come on to be heard before the said Court of Appeals on the Twenty Second day of March in the present year of Our Lord one thousand Seven hundred and Ninety four when the said Court of Appeals was pleased to Order and Decree and did Accordingly Order and Decree that the Decree of the said Mayors Court should

should stand affirmed and that your Petitioners Petition be Dismissed with double costs — as by the said Decree of the said Court of Appeals hereunto annexed for the inspection of your Most Excellent Majesty in Council may Appear

By which said Decree of the said Mayors Court and Court of Appeals your Petitioner doth Conceive himself Much aggrieved and doth therefore Appeal therefrom to your Most Excellent Majesty in Council for the following amongst other Reasons

First Because your Petitioner in and by his said Plea and Answer upon Oath did shew that the Transaction out of which the Bond in question arose was usurious and that your Petitioner did not receive any Manner of Consideration on Account of the said Bond either from the Complainant or from any other person whatever and your Petitioner humbly submits that his plea upon the Statute as by your Petitioner pleaded operates as a full bar to the Complainants said action — and that the same is aided by the further Plea by your Petitioner pleaded to wit a want of Consideration for your Petitioner in and by his said Plea did shew that he never did receive any Consideration whatever for the said Bond by him Executed to the Complainant and upon which he has brought his present action other

than

than an Assignment of the said two Bonds which had grown out of the usurious transaction in your Petitioners said Plea is particularly setforth and which your Petitioner was and always is ready to deliver up to the Complainant and did after the same to the said Mayors Court and Court of Appeals and now submits the same to your Most Excellent Majesty in Council to be disposed of as may seem Most to the Wisdom and Justice of your Most Excellent Majesty in Council

Secondly Because your Petitioner did in and by his said Plea and Answer specially deny to be indebted unto the Complainant in the sum sued for or in any other Sum or Sums of Money which said Plea and answer being upon oath was the only Evidence before the said Mayors Court and Court of Appeals and the Complainant in and by his Replication did not deny the several matters and things by your Petitioner setforth in his said Plea and answer relative to the said usurious transaction nor bring any Witness to prove that any Consideration had been given by the Complainant to your Petitioner on account of the said Bond Executed to him by your Petitioner and which your Petitioner did in and by his said answer shew he was prevailed upon by the Complainant to Execute on account of the said Bonds by your Petitioners Uncle Executed to the said John Sulivan and by the said Benjamin Sulivan as his Attorney Assigned over to the Complainant and which had arisen out of the usurious transaction in your Petitioners said Plea setforth the Complainant at the time Knowing that your Petitioners said Uncle had departed this life insolvent

Thirdly Because where a Defendant by his answer upon Oath Denies the Charges in a Complainants Bill of Complaint and the Sum of Money meant thereby to be obtained a Complainant cannot have a Decree unless he produces two Witnesses to substantiate the same and as in the present instance the Complainant did not Even produce one Witness Humbly your Petitioner humbly submitted to your Most Excellent Majesty in Council that the said Mayors Court ought not to have Decreed as hereinabar setforth and that the said Court of Appeals ought not to have affirmed the same

Lastly Because although the Bond in question was Executed by your Petitioner who had no Acquaintance with the said John Sulivan or any dealings with the Complainant yet the same arose out of an usurious transaction as in your Petitioners said Plea is particularly setforth insamuch as it was Executed on Account of the said two Bonds by your Petitioners said uncle Executed to the said John Sulivan and by his attorney the said Benjamin Sulivan Assigned to the Complainant who in Consequence and by reason of the Bond

Bond in question did reassign the same to your Petitioner and although the Complainant in and by his said answer in the said Court of Appeals did say that your Petitioner had no right to call in question parties not before the Court yet your Petitioner humbly submits to your most Excellent Majesty in Council that he had aught to trace the said usury to its source and that where an Original transaction is Corrupt the Alteration of names and parties by Assignment or otherwise will not render it Legal and Valed and that it is in Conformity to that Doctrine that the Assignee of a Bond must take it Subject to the same Equity that it was in the hands of the Assignor

For all which Reasons and such others as may be offered at the hearing your Petitioner humbly prays that your Most Excellent Majesty in Council will be pleased to Reverse the said Decree of the said Mayors Court and Court of Appeals and grant unto your Petitioner such further and other Relief in the Premises as to this Honble Court shall seem Meet—

(Signed) J Stuart Hall.
Solicitor for Appellant

Court

Court of Appeals at Madraspatnam &c

Saturday the 22d day of March Anno Domini 1794

Between Juggapah Puntalu alias Condraigulu Juggapah at Present of Madras Inhabitant Appellant and John Whitehill by his Acting Attorney William Sydenham 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 Honourable the Mayors Court together with the Decree of the said Court given in this Cause on Saturday the 13th day of November 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 Double Costs in this Court

(Seal) (Signed) Chas N. White Clk

A true Copy
(Signed) James Stuart Hall
Solr for Appt

Jo

To the Kings Most Excellent Majesty in Council

Between John Whitehill by his Attorney William Sydenham Complainant and Juggapah Puntaloo alias Condraigula Juggapah of Madras Inhabitant Defendant

The Answer

of the said Complainant John Whitehill by his said Attorney William Sydenham to the Petition and Appeal of the above named Defendant Juggapah Puntaloo alias Condraigula Juggapah

This Respondent for answer to the said Petition and Appeal or unto so much thereof as concerns this Respondent to make answer unto Saith he Admits to be true that this Respondent by his said Attorney did on or about the time mentioned in the Appellants Petition and Appeal file a Bill of Complaint in the Mayors Court at Madraspatnam against the Appellant for the Recovery of the sum of Twenty Eight Thousand One Hundred and Ninety Star Pagodas Sixteen fanams and Sixty four Cash the amount Principal and Interest of a Certain Bond executed by the said Appellant unto this Respondent a Copy whereof with an Account Current founded thereon was annexed to the said Bill of Complaint of this Respondent as is stated in the

Filed in my Office the 9th May 1794
Chas N. White Clk

the said Petition and Appeal To which said Bill of Complaint this Respondent admits that the said Appellant did on or about the time mentioned in his said Petition and Appeal file a Plea and Answer thereto and that as a Plea to this Respondents said Bill this Respondent Admits that the said Appellant did plead an act of parliament made in the thirteenth year of the Reign of your most Excellent Majesty entitled an act for establishing Certain Regulations for the better Managements of the Affairs of the East India Company as well in India as in Europe and this Respondent doth also admit that the Appellant did in and by his said plea setforth such other Matters as in his said Petition and Appeal are mentioned and this Respondent also admits that the said Appellant did as and for an answer to this Respondents said Bill of Complaint say that although he might have executed the Bond in Question yet he could not admit that he was thereby indebted unto the Complainant in the Sum of Twenty Eight Thousand one hundred and Ninety Pagodas Sixteen fanams and Sixty four Cash or in any part thereof pretending that he never did borrow nor receive the said Sum nor any part thereof either from this Respondent or from any one for him pretending to have Received only a Reassignment of Two Bonds executed by Condraigula Vencatarayalo

Vencatarayalee in favor of John Sulivan Esquire bearing
date the first day of January One Thousand Seven hundred
and Eighty Six Conditioned respectively for the payment
of the respective sums of Eighteen Thousand Eight hundred
and Sixteen Pagodas and of One Thousand Three hundred
and forty four Pagodas and which Bonds had been assigned
over to this Respondent by Benjamin Sulivan Esquire as
Attorney to the said John Sulivan but which the Appellant
pretends to say had arisen and grown out of the Extortion
iniquity and Injustice and which the Appellant would if
obliged thereto in due time fully prove to the satisfaction
of the said Mayors Court and this Respondent admits that
the Appellant did further state in his said answer that
for as much as an Assignee must take a Bond Subject
to the same equity that it was subject to in the hands of
the Obligee and as the Obligee the said John Sulivan had
no equity in the said two several Bonds assigned over by
the said Benjamin Sulivan to this Respondent therefore
as he pretended this Respondent had no right to call the
Appellant in Question before the said Mayors Court for
the amount thereof or any part thereof but that the said
Bonds were at the Discretion of the Court and therefore
Ready to be Delivered by the Appellant when Required
to be Cancelled or otherwise disposed of as to the said Mayors
Court

Court might seem meet To which said Plea and Answer
this Respondent admits that he did on or about the time
in the said Petition and Appeal mentioned file by his said
Attorney a Replication and did therein say that notwith-
standing the said Plea of the Appellant to this Respondents
said Bill and the several Matters and things pleaded
by the said Appellant in Bar to this Respondents Right
to the said Sum of Twenty Eight thousand One hundred and
Ninety Pagodas Sixteen fanams and Sixty four Cash Res-
pondent ought not to be barred on account thereof from
Recovering the said Sum of Twenty Eight Thousand One
hundred and Ninety Pagodas Sixteen fanams and Sixty
four Cash of the Appellant because the Bond which was
Duly executed and given by the Appellant to this
Respondent was a good and sufficient Bond valed in the
Law for securing unto him the Principal and Interest
therein specified that this Respondent was entirely uninformed
as to the Several Engagements mentioned in the Appellants
said answer and that as such Pretences this Respondents
Attorney the said William Sydenham knew not nor was
he any ways informed of the same save and except by the
Appellants said Plea and answer and did humbly Submit
that the said Bond seemed to be a Clear and fair Bond and
that no other Conditions are therein expressed than such as are
usual

usual where Bonds are executed for payment of Sums of Money borrowed or for securing the payment of the Balances appearing due on Accounts Current and that if the Appellant had been conscious that he did not owe the Money he should not have executed the Bond and that he having executed it was upon the face of the Transaction a Presumption that the Debt was due especially as he presumed not to say he was surprised into the signing thereof or forced thereto or any unfair advantage taken of him or was under age or Insane or in Confinement and this Respondents said attorney did say that having been authorized by his Constituent to demand the payment of the said Bond as well as of other Claims due to this Respondent this Respondents said Attorney in discharge of his Duty as Attorney as aforesaid had accordingly done so and that from the year One Thousand Seven hundred and Eighty Six to the day of filing the said Bill of Complaint this Respondents said Attorney had often demanded payment of the said Bond from the Appellant who promised from time to time to discharge the same as soon as his circumstances would admit but that he never to the Knowledge of this Respondents said Attorney William Sydenham did presume to urge those Matters and things which he had stated in his Plea and Answer and this Respondent in and by his said

Replication

Replication did say that it would be of dangerous prejudice to the mutual Dealings of Men among each other if the Testimony of written Documents was to be invalidated by such false and groundless Assertions as the Appellant had stated in his said Plea and answer To which said Replication this Respondent admits that the Appellant did on or about the time mentioned in the said Petition and Appeal file his Rejoinder wherein he did humbly insist that the act of Parliament of the thirteenth year of the Reign of his present Majesty and set forth and Referred to and pleaded in the Appellants said Plea and Answer was a full and sufficient Bar to this Respondents action and therefore and thereupon the Appellant did say he was not indebted unto the Complainant in the Sum of Twenty Eight Thousand One hundred and Ninety Pagodas Sixteen fanams and Sixty four Cash or in any other Sum or Sums of Money whatever and this Respondent also admits that the said Appellant did in and by his said Rejoinder set forth such other Matters and things as in and by his said Petition and Appeal are stated and this Respondent also admits that upon the aforesaid proceedings Issue was Joined and Rules passed for the Examination of Witnesses and the Appellant did examine two Witnesses on his behalf and that Publication having passed thereon the Cause came on to be heard before the said Mayors Court on the thirteenth day of

November

November which was in the year of our Lord One
Thousand Seven hundred and Ninety when the said
Mayors Court were pleased to Order and Decree and did
accordingly order and Decree that the Appellant should
pay unto this Respondent the said Sum of Twenty Eight
Thousand One Hundred and Ninety Pagodas Sixteen fanams
and Sixty four Cash with all such Interest as there was or
should thereafter become due thereon with Costs of Suit

From which said Decree of the said Mayors
Court this Respondent admits that the appellant did
Appeal to the Court of Appeals at Madraspatnam under
pretence that he conceived himself aggrieved by the said
Decree and this Respondent also admits that he did
put in his answer thereto and therein among other things
state that the said Appellant could have no Cause to
think himself aggrieved by the Decree of the said Mayors
Court by reason of the several Matters above set forth as
the pleadings used by this Respondent in his Replication
and Because the Appellant hath not Adduced any adequate
Testimony to support the pretences urged by him in his
said Plea answer and Rejoinder respectively

Wherefore this Respondent humbly prayed
that the said Court of Appeals at Madraspatnam would
be pleased to Confirm the said Decree of the said Mayors Court
of the said thirteenth day of November One Thousand Seven
hundred

hundred and Ninety and dismiss the Appellants said Petition
and Appeal with Costs to be paid by the Appellant and this
Respondent by his said attorney further prayed that the
Appellant might be taxed with exemplary Costs for having
attempted to support a Litigious Evasion of a just Debt
by charging Persons in no wise Parties to the Suit or Appearing
on the face of the Appellants Bond (which was the Cause of
action) with Extortion inequity and injustice and Afterwards
failing to support even the said Evasion by any Testimoney
whatever This Respondent admits that the said Petition and
Answer came on to be heard and Determined on the Twenty
Second day of March last before the said Court of Appeals
at Madraspatnam who were pleased to confirm the Decree
of the said Mayors Court of the Thirteenth day of November
One Thousand Seven hundred and Ninety and that the
Appellants Petition be thence Dismissed with double Costs
in the said Court of Appeals

From which said Order and
Decree of the said Mayors Court and Court of Appeals the
said Juggapah Puntalu alias Condragula Jaggapah hath
appealed to your Most Excellent Majesty in Council pretending
that the said Orders and Decrees of the Mayors Court and
Court of Appeals are erroneous and that the Appellant was
much aggrieved thereby for certain Reasons set forth by the
Appellant

Appellant in his said Petition and Appeal to your Most Excellent Majesty in Council to which Reasons this Respondent answereth as follows —

To the first Reason this Respondent in Answer saith that the Appellant having failed in his proof of any one usurious Transaction by this Respondent the Act of Parliament pleaded by the Appellant could not operate in Bar to this Respondents Claim —

To the Second Reason this Respondent in answer saith that the Appellant having admitted the Execution of the Bond the Consideration must of Course be inferred especially as the Appellant did not attempt to set up any proof of surprise against him when he signed the Bond nor that he was forced thereto nor that any unfair advantage had been taken of him nor that he was under age nor insane nor in confinement nor has he even proved that the Bond in question was a Commutation for the Bonds of the Appellants uncle to the said John Sulivan and pretended by the Appellant to have been assigned by Benjamin Sulivan as the Attorney of John Sulivan to this Respondent —

To the third Reason this Respondent in answer saith that where the execution of the Bond is admitted the Omnes Probandi against the effect in Law of the said

Bond

Bond rests with the Obligor against whom Judgement must follow the admission of the execution of the Bond unless he can prove to the satisfaction of the Court that he has discharged the Bond or that he was surprised into the execution thereof under certain unfair pretences or that he was under age insane or under duress at the time of executing the Bond —

To the Last Reason this Respondent in answer saith that he admits that the Assignee of a Bond must take it subject to the same Equity that it was in the hands of the Assignor but the Appellant hath — proved any connection whatever between the Two Transactions on the founds his pretended commu-tation and this Respondent saith that so far from proving any connection between the said John Sulivan and this Respondent the name of this Respondent is not mentioned in any one of the Interrogatories preferred by the said Appellant in the Cause nor is any mention made of the Bond which is the present Cause of action so that if the appellant had fully substantiated all that he looked to by his said Interrogatories he could not have proved one point to the prejudice of this Respondents Claim the whole Tenor of his Interrogatories tendering only to prove Certain Transactions between Opparow Zemindar of Nozeed and John Sulivan heretofore Secretary to the Chief and Council at Masulipatam and also between the said John Sulivan and Condrigula Vencatareyaloo Uncle to the Appellant —

Wherefore

Wherefore and for such other reasons as may be offered at the Hearing of this Cause your Petitioner most Humbly prays that your Most Excellent Majesty in Council may be pleased to confirm the said Decrees of the Mayors Court and Court of Appeals at Madraspatnam in this Cause and as the Appellant has so wantonly introduced the names of Persons in nowise parties to the Cause and has presumed to Charge one of the said Parties to wit the said John Sulivan with Extortion iniquity and injustice when the said John Sulivan could have no opportunity of Repelling such Charges that the Appellants Petition be Dismissed with exemplary Costs to be paid by the Appellant

[Signed] J. Popham

Solicitor for Respondent

To

89

To the Honble Major General William Medows

President and Governor &c. in Council

Fort St George

In the Honble Court of Appeals

Between George Moubray Accountant General and Member of the Board of Revenue in the Service of the united Company of Merchants of England trading to the East Indies at their Presidency of Fort St George Complainant and Nagapah Chetty of Madras Merchant Defendant

The Petition and Appeal of the above named Defendant

Sheweth

That George Moubray the above named Complainant did on the Twentieth day of may last past exhibit and file his Bill of Complaint in the Mayors Court against your Petitioner for the recovery of the sum of one thousand Nine hundred and fifty five Pagodas ten fanams and Sixty Cash pretended to be due and owing from your Petitioner to the Complainant which the Complainant did say would morefully and at large Appear by the Copies of an account Current and the Extract from the Minutes of Consultation of the Government of Madras annexed to his said Bill and thereon and thereby prayed to be taken as

Filed in my Office the 27th December 1790
Chas. N. White Clk

part

part thereof and the Complainants in and by his said Bill
did state that Covoor Vydenadah late deceased and your
Petitioner had caused a Bill of Complaint to be filed in the
high Court of Chancery in England against the united
Company of Merchants of England trading to the East Indies
and that thereupon a Commission issued directed to Archibald
Montgomery Campbell Benjamin Sullivan James Henry
Casamayor the Complainant Charles Bromley and Edward
Ellias or any three of them and therefore the Complainant in
and by his said Bill did further state that as it was not
necessary for him to attend to the Execution of the said
Commission [illegible] Commissioners did attend and
as he was much Engaged in his other occupations he did
not Enter on his Duty as Commissioner until the ninth day
of June which was in the year of Christ one thousand Seven
hundred and Eighty Seven and that such his attendance was
at the special Instance and request of your Petitioner conveyed
to the Complainant on the Eighth day of the said Month of
June as the Complainant did say he would in due time prove
to the satisfaction of the said Mayors Court and the Complainant
in and by his said Bill did state that he attended to the
Execution of the said Commission from the said Ninth day
of June until the Commissions was closed which was on
the Twentieth day of February and in the year of Christ one
thousand

thousand Seven hundred and Eighty Eight being Two hundred
and fifty seven days and for which the Complainant did say
he had Charged at the rate of Six Pagodas each day According
to the Resolution of the Government of Fort Saint George stated
in the Extract aforesaid and the Complainant did further state
that the said Government of Fort Saint George as the Representa-
tives of the said united Company Deliberated as to what allowance
should be given to their Commissioners and after due Consideration
thereof did resolve that the allowance should be six Pagodas
a day as before stated and that he Charged the Like rate or
Sum of six Pagodas a day which for the said period of Two
hundred and fifty Seven days made the Sum of one thousand
five hundred and forty two Star Pagodas which with Interest
thereon from the said Twentieth Day of February being the
day on which the said Commission was closed unto the thirteenth
day of May amounted to the said Sum of one thousand Nine
hundred and fifty five Star Pagodas ten fanams and Sixty Cash
of which sum the Complainant did state he had frequently and
in an amicable manner demanded the payment and that your
Petitioner having refused to Comply therewith and as the Complainant
in and by his said Bill did Erroneously pretend or to give him
any manner of satisfaction touching the premises did pray a
general Relief such as to the said Mayors Court should appear

agreeable

agreeable to Equity and good Conscience and that your Petitioner might be Decreed to pay unto the Complainant the Afresaid Sum of one thousand Nine hundred and fifty five Star Pagodas ten fanams and Sixty Cash with all such Interest as there was or should thereafter become due thereon also Costs of the Suit

And your Petitioner sheweth that to the Complainants said Bill he did on the Twenty Ninth day of June Exhibit and file his answer and did therein and thereby deny being indebted to the Complainant in the said Sum of one thousand Nine hundred and fifty five Pagodas ten fanams and Sixty Cash as was erroneously charged in his said Bill and in and by the Account Current thereunto annexed but did admit that he might stand indebted unto the Complainant in the Sum of Two hundred and thirty five Pagodas which he had tendered and then was and at all times ready to pay the same to the Complainant and your Petitioner did also admit that in a certain cause instituted by Coovoor Vydenadah Moodelly late Deceased and your Petitioner against the united Company of Merchants of England trading to the East Indies a Commission did issue from the high Court of Chancery in England directed to Archibald [illegible] Montgomery Campbell Benjamin Sulivan James Henry Casamajor the Complainant Charles Bramley and Edward Ellis or any three of them and that the Complainant did not enter on his Duty as a Commissioner under the said Commission at the opening thereof and your Petitioner in and by his said answer did say it might thereafter fully appear to the said Mayors Court that the Complainant did not take the Oath of a Commissioner nor sit as such until the fourth day of July which was in the year of Christ one thousand Seven hundred and Eighty seven although he had in his said Bill fixed the period as if he had really taken the oath and sat as a Commissioner on the Eighth day of the Month of June preceding which your Petitioner did say was Erroneous and your Petitioner did admit that he did on the said Eighth Day of June address a Letter to the Complainant on the Subject and to the intent and purpose setforth in the Complainants said Bill but your Petitioner did say that the Complainant took no notice thereof for a very Considerable time and therefore your Petitioner could not admit that the Complainant did as charged in his said Bill attend to the Execution of the said Commission from the Day of the date of the said Letter until the said Commission was closed which was on the Twentieth Day of February in the year of Christ one thousand seven hundred and Eighty Eight and in Course your Petitioner could not admit the number of Two hundred and fifty seven Days and

your

your Petitioner did in and by his said answer further say that the whole of the Number of Days on which the Complainant sat as a Commissioner under the said Commission amounted as your Petitioner made no doubt of proving to the satisfaction of the said Mayors Court to forty seven Days and no more that had the Complainant attended regularly to the due Execution of the said Commission your Petitioner would have been greatly benefited in his affairs but as that was not the Case a Considerable Length of time had unnecessarily elapsed and as the Execution of the said Commission was thereby delayed your Petitioner must of Course have been a Sufferer for your Petitioner did say he doubted not of proving to the satisfaction of the said Mayors Court that adjournments had frequently taken place for want of the Complainants attendance and that the Complainant did not act as a Commissioner until the fourth day of July in the year of Christ one thousand Seven hundred and Eighty seven and your Petitioner in and by his said answer did say he could not admit the said Extract from the Minutes of Consultation of the Governor and Council to be in any wise pertinent to the matter in question for that whatever might have been the pleasure of Government in the Disposal of the property of their Constituents your Petitioner was not to be governed thereby and therefore your Petitioner did not admit that the Complainant had any ground of right to Demand from him the Sum of Six Pagodas a day for the days of his attendance as Commissioner as aforesaid for your Petitioners did say that his Solicitors in England had informed him that the allowance of a Commissioner there was one Guinea day but that an allowance in Course was to be made in India in proportion to the encreased charges of Professional Labour as your Petitioner did say would morefully appear by the Copy of an Extract from the said Letter to his said answer annexed for the inspection of the said Mayors Court and to which Extract your Petitioner did beg leave to refer and pray the same might be taken as part of his said answer and your Petitioner did say that under such Consideration and willing and Desirous of doing that which was Equitable and Just he was satisfied to allow to the Complainant the Sum of Forty Shillings or five Pagodas a day which for forty seven days Amounts to the said Sum of Two hundred and thirty five Pagodas and your Petitioner did say that he had not allowed Interest thereon because that he was advised an allowance of Interest was not made in matters of a Similar nature.

And your Petitioner Sheweth that to his said answer the Complainant did reply and in his Replication did

did say that your Petitioner having Acknowledged his applica-
tion to the Complainant as charged in his Bill to attend
the Duties of the Commission from the Court of Chancery
in England on the Eighth day of June in the said year of
Christ one thousand Seven hundred and Eighty seven
and the Complainant having Commenced his attendance
on the then next day being the ninth day of the said Month
of June the Complainant had a right to his Charges from
that Day and that it did not avail in the Like cases
whether the Business went on without Interruption or
Interval of time Between the Different days of Sitting
Because as the Commissioners and all others employed to
Execute the Duties incedent to a Commission for Examining
Witnesses issuing under the Seal of the Court of Chancery in
England were supposed to sit and were always ready to attend
to the Duties of their Appointment from the day they received
the Order to Attend to the day of closing the Commission the
Occasional Interruptions of such a duty were never noticed
in the Charges given in by those employed to Execute the
same that the Resolution of the Government of Fort Saint George
as Representatives of the united Company who were Defendants
in the said Suit was a fair and just rate whereby to estimate
the Allowances to be made to the Commissioners and others Employed
on

on behalf of your Petitioner as one of the Complainants in the
said Suit not only because it was to be presumed such allowances
were Considered as moderate but because they were made
after due Consideration of the Subject as the Complainant
could prove if necessary to the satisfaction of the said Mayors
Court and the Complainant did in and by his said Replication
further say that he had been informed and believed that
your Petitioner had Expressly promised to pay his Commissioners
the same Fees which the said united Company were to
pay to their Commissioners and the Complainant did also
say that your Petitioner had endeavoured to surprise the
Justice of the said Mayors Court by an Partial Extract from
a Letter of his Solicitors in England carrying with it an imputa-
tion against the Charges made in this Country under the
said Commission whereas if your Petitioner had proceeded
to state the subsequent parts of the said Letter it would have
appeared Evident that these same Solicitors who had
presumed to throw a Slur upon the Charges made in
this Country were requiring from your Petitioner by way of
further Remittance a Sum more than double what was
Equal to the entire Charges of a Suit of the first Consequence
in this Country as by the further Extract of the said Letter to the
Complainants said Replication annexed and prayed to be

taken

taken as part thereof the Complainant did say might appear and that from the Extract of the said Letter as quoted by your Petitr the Complainant did say his charge was moderate for that the said Extract stated that a Guinea or Two Pagodas and five Eighths per day was the allowance made in England but that an allowance was of Course to be made in India in proportion to the Encreased Charges of Professional Labor in that Country beyond the Charges allowed in England and the Complainant did say that the Difference between the two Pagodas and five Eighths and Six Pagodas was Less than the general Difference of Charges in this Country to that in England for that in England the Charge for Drawing any Paper did not in any Case Except in Proceedings before Parliament Exceed one Shilling per Sheet whereas in this Country it was four Shillings or half a Pagoda p Sheet so that the relative Arguments of your Petitioner operated to his Prejudice in a Proportion of near two to one and as to the Interest charged by the Complainant he humbly submitted that on the Close of the Commission he was Entitled to his Costs or Charges and therefore as they were not then paid that he was Entitled to Interest thereon from that day

And your Petitioner Sheweth that to the said Replication your Petitioner did file a rejoinder and did therein shew

shew that the allusion made by the Complainant to and the Conclusion drawn from the Letter setforth in his Bill and by your Petitioner acknowledged in his said answer to have been addressed to the Complainant did not Establish or tend to establish the Charges or any of them as in the Complainants said Bill setforth but on the Contrary and for the reason in your Petitioners said answer given the same operated in favor of your Petitioner that even had the Complainant attended the Commission from the Court of Chancery in England on the Eighth day of June as in his said Replication was setforth but which your Petitioner did not admit to have been the matter of Fact yet your Petitioner humbly insisted that such attendance could not give him the Complainant a right to make a Charge from that period to the fourth day of July following as if he had really and bonafide attended the said Commission and Discharged the duties thereby imposed on him whereas upon his own shewing and as the fact really was he had during the intermediate space to wit from the said Eighth day of June until the said fourth day of July totally neglected so to do by which means the Interest of your Petitioner had suffered considerably owing to the frequent adjournments that had taken place in consequence and which frequent adjournments would not have taken place had the attendance of the Complainant been regularly given

given and your Petitioner in and by his said Rejoinder did say that if the Law would not suffer a Man to take advantage of his own wrongs much Less would it allow such advantage to be taken when by reason of such Wrongs the Party against whom the advantage was Applied had sustained real and Considerable injury that the argument in the Complainants said Replication contained as to the Justness of the Charges he had made did upon the very face of it militate against the principle it was meant to support for that when Commissioners were always ready to attend the Duties of their Appointment as the said Replication suggested from the Day they received orders to attend until the Day of Closing the Commission the occasional interruption of such Duty would in course be attributed to as occasioned by a Party in the Cause because applying the argument to the matter in question when one person was always ready and nothing was done the natural Conclusion was that the other person was not ready and in that case the Person who held himself in readiness ought not to suffer for the failure of him who was deficient — whereupon your Petitioner did say that the Complainant having in his said Bill shewn that "being Engaged in other avocations he had not Entered on his Duty as Commissioner at the Time when the Commission was open" and having also

shewn

shewn in his allusion to your Petitioners said Letter that he was not Always ready or such Letter would have been unnecessary as fully appeared by the purport thereof and your Petitioner in his said Rejoinder and in his said answer having shewn that the Complainant so far from being always ready would not attend the said Commission although importuned thereto by your Petitioner it was strongly evident that the occasional Interruption" which the Complainant had spoken of as not to be noticed by your Petitioner had not arisen out of the common Courses of things but from the neglect of the Complainant to attend to the Duties of his Appointment and therefore in Justice and in Equity such neglect on the part of the Complainant barred his right to his Claim on your Petitioner who did insist that the argument of the Complainant was further confuted by reason and the nature of the thing for that were it Left to Commissioners to Charge for non Attendance in the same manner as if they had absolutely attended a Suitor might be ruined merely by the Expenses incident to the Examination of his Witnesses and your Petitioner did further say as in and by his said answer he had Already shewn that the Resolution of the Government of Fort St George as Representatives of the united Company could not be binding on him nor Could it be held in Law or in reason as a

fair

fair and Just rule whereby to estimate the Allowance to be made by your Petitioner to the Commissioners Appointed on his behalf for were the act of one party in a Cause to be binding on another there would be an end to Justice the indigent Suitor would inevitably sink under the oppression of the man of Power and however Equitable his Claims might be he would be obliged to submit to injury without daring to complain lest the Effect should in such case prove still more injurious than the Cause and your Petitioner did say that he never did promise to pay to his Commissioners the same fees which the united Company were to pay to their Commissioners and therefore your Petitr did say as in and by his said answer he had Already said that the Complainant had no right to Demand from him the Sum of Six Pagodas a day for the Days of his attendance as Commissioner as aforesaid but that in regard to the Justice due to his Commissioners and Securing that Justice which was due to himself he was willing to give double the Sum usually given to Commissioners in England to wit the Sum of Forty Shillings or Five Pagodas a day and which for forty Seven days the number of days the Complainant actually sat as a Commissioner under the said Commission Amounted to the Sum of Two hundred and

Thirty

Thirty five Pagodas and your Petitioner in and by his said Rejoinder did deny the Charge brought forward by the Complainant of an Endeavour to surprise the Justice of the said Mayors Court by a Partial Extract of a Letter by your Petitioner received from his Solicitors in England carrying with it an imputation against the Charges made in this Country under the said Commission and concealing the subsequent part of it "that such Charge would appear groundless when it was known that your Petitioners attorney in Court did furnish the Attorney of the Complainant with the Subsequent part alluded to and of which a Copy was annexed to the Complainants said Replication and that the Reasoning used by the Complainant in support of his said Charge was as absurd as the Charge in itself was unjust for that in the first place your Petitioner did say that the remittance required from him by his said Solicitors had nothing to do with the matter in question and if it had that it could not be held in objection to the Propriety of their opinion on a Matter of fact or more properly speaking of the statement of the fact itself and Secondly notwithstanding the assertion of the Complainant to the contrary that there are many suits in the said Mayors Court and not of the first Consequence the Expences of which instead of half would be the full amount of the said required remittance that the Extract annexed

to

to the Complainants said Replication and in which the mention of the said Remittance appeared contained the strongest reasonings that could possibly be adduced to invalidate the assertion of the Complainant that the allowance made by the Government of Fort Saint George on the part of the Company to their Commissioners ought to be a rule for your Petitioners Conduct with regard to his Commissioners for amongst other things the said Extract Expressed and your Petitioner had painfully Experienced the truth thereof that the proceedings already taken had been attended with a considerable Expense and with respect to the future proceedings the Expences would be truly great Encountering as your Petitioner was not only the most Considerable Company of Persons in the Kingdom but the most Considerable body in the whole World and further that the said Extract gave a full Explanation of the purposes for which the said Remittance and on which the Complainant had Laid so much stress was required as Appeared by the following Words" "The Fees of office in this Kingdom particularly in the Court of "Chancery are Extremely high as are the fees of Council the "principal Council are retained for you against the Company" and that taking the said Extract together it would appear a neglect on the part of your Petitioner to his own Interest in not having brought it forward instead of an intentional suppression thereof

for

for the sinister purpose of surprising the Justice of the said Mayors Court and thereby injuring the interest of the Complainant for that the said Extract shewed and absolutely shewed nothing more the Distress and Difficulty with which your Petitioner as an Individual had to struggle in Contending for his right against the united powers of the most Considerable Body of persons not only in Great Britain but in the whole World at the same time that it Demonstrated to your Petitioner the absolute necessity of guarding against Exorbitant Charges by pointing out to him the painfull truth that his fortunes might not be able to support those that were regular and which would unavoidably occur in the Common course of the proceedings of the said Suit and your Petitioner in and by his said Rejoinder did Demonstrate that the Confusion of the Complainant Drawn from the Words by him quoted from the Extract to your Petitioners said answer amounted as a proof of the moderation of the Complainants said Charges was no wise aided by reason or the nature of the thing for that the said Extract in fact went to the Allowance made to Clerks to Commissioners and not to allowances granted to Commissioners themselves for that although it mentioned one Guinea a day as the allowance made to a Commissioner in England yet such mention was made merely to introduce the allowance which was given to the Clerks and upon the following Ground the Clerks under the said Commission in

question

question had made such Extravagant Charges as your Petitioner could not accede to and he therefore referred them to his Solicitors in England who in answer did state as by the said Extract may appear that the Charges made by the Clerks under the said Commission were undoubtedly Exorbitant and such as ought not to be submitted" and then to give the comparative rule by which to Direct your Petitioners Conduct it further stated that Commissioners were allowed one Guinea only and their Clerks no more than half that Sum but again and for the purpose of shewing a reason why the Clerks in this part of the World should not be confin'd to the Allowance given them in England it stated "an allowance is of Course to be made in India in Proportion to the Encreased Charges for professional Labour" and your Petitioner did state that Clerks under a Commission issuing out of one of His Majestys Court might be supposed to be professional men and therefore in this Country their fees ought to be regulated by the proportion that the Charges for professional labour in India might bear to the Charges for professional labour in England Whereas Commissioners were not nor Could they be conceived to be professional Men and therefore the Word an allowance is in course to be made in India in Proportion to the encreased Charges of professional Labour" did not

Exactly

Exactly apply to Commissioners and if they did your Petitioner hoped it would appear to the said Mayors Court that he had amply provided therefor by the Encreased allowance of Forty Shillings instead of Twenty one Shillings and which he had tendered to the Complainant which he then tendered and which he was at all times ready to pay him and your Petitioner in and by his said Rejoinder did say he was advised that although only one Shilling was allowed for Drawing papers in a Cause in England as the Complainant had insisted on in his said Replication and thereupon endeavoured to draw a conclusion favorable to his said Charges of six Pagodas a day yet that there was an Allowance also for engrossing the same and which was not the Case in India and that point being considered the proportion would then be nearly as two was to four the proportion by which your Petitr had been governed in the Allowance he had made to the Complainant and that such proportion was fair and Just or rather that your Petitioner had allowed more than the proportion would bear arose partly from the Complainants own shewing for in one part of his said Replication and when alluding to the said required remittance he Demonstrated that professional labour in England was much more Exorbitant than in India he observed that the said required remittance was a Sum more than double what is Equal to the Entire

Charges

Charges of a Suit of the first Consequence in this Country and with respect to the Charge of Interest as made by the Complainant your Petitioner humbly suggested as in and by his said answer he had already suggested

And your Petitioner Sheweth that upon the above Proceedings issue did Join and rules did pass for the Examination of Witnesses and that Witnesses were Examined accordingly and your Petitioner Sheweth that previous thereto he did Deposit in the said Mayors Court the sum of Two hundred and thirty five Pagodas the Balance by him acknowledged in and by his said answer to be due and owing to the Complainant and which he had tendered in payment as aforesaid as by the Extract of the Minutes of the said Mayors Court whereof a Copy is hereunto annexed and by your Petitioner prayed to be taken as part of this his Petition of Appeal reference being thereunto had may appear the original whereof being ready to be produced at the hearing

And your Petitioner sheweth that the Complainant in support of the several matters and things in and by his said Bill and Replication alledged and set forth did Examine one Witness and no more to wit Peter Walther one of the attornies of the said Mayors Court and whose Deposition is so irrelevant and negatory that instead of assisting it actually militates against the Cause of the Complainant and so in proportion favors that of your Petitioner for the said Peter Walther to the second interrogatory exhibited on the part of the Complainant takes upon himself to say that he knew from the Copy of a Letter he had Seen that your Petitioners Application to the Complainant to set as a Commissioner was on or about the Eighth day of June one thousand Seven hundred and Eighty seven without shewing and which was Absolutely necessary to have been shewn that he had Ever seen the original of such Letter or by whom and to whom such Letter was written and proceeding in his Deposition he says he believes without assigning a single reason as a foundation for such belief that the Complainant sat very shortly afterwards but does not say how long afterwards or in what Capacity he sat he further says that the Complainant certainly did Continue to set until the Close of the Commission but does not say that he so continued to set regularly and which he ought to have done he further says that he certainly Understood that the Commissioners on the part of your Petitioner were to receive the same fees as those on the part of the honourable Company without stating and which he ought to have done the grounds upon which he formed his Comprehension and your Petitioner sheweth that upon such

Vague

vague and indefinite Testimony the Complainant rested the merits of his Cause and thereby abandoning the several allegations in his said Bill contained he has not attempted to prove that he sat the number of Days as in his said Bill is alledged and in the account Current thereunto annexed is set forth nor in fact any particular number of Days nor that your Petitioner did ever promise that he would make to his Commissioners the same allowance that Government was pleased to grant to the Commissioners on the part of the Honourable Company nor does the Allowance so said to have been granted by Government appear any where in Evidence and your Petitr Sheweth that he did examine one Witness also to wit Venkata= =narrodjo who in the clearest most distinct and most positive Manner supports the several Facts in and by your Petitioners said answer to the Complainants Bill insisted on he shews that he attended the Commissioners in the Capacity of an interpreter about a month subsequent to the opening of the said Commission and until all the Witnesses in the Cause had been Examined and signed their Depositions that the Complainant first gave his attendance to the said Commission in the Month of July one thousand seven hundred and Eighty Seven that he the Complainant did not give regular and punctual attendance on the various days the Commissioners sat

sat and that the number of Days the Complainant attended the Commission could not have Exceeded forty seven Days and your Petitioner Sheweth that the said Cause coming on to be heard on the Fourteenth Day of the present Month of December the said Mayors Court was pleased to order and Decree and did Accordingly order and Decree that your Petitioner should pay unto the Complainant after the rate of Six Pagodas per day from the fourth Day of July one thousand Seven hundred and Eighty Seven to the Twentieth day of February one thousand Seven hundred and Eighty Eight without Interest and further that your Petitioner should pay all Costs of Suit as by the said Decree Copy whereof is hereunto annexed the original being ready to be produced at the hearing may appear from which Decree Mr Alderman Ross and Mr Alderman Amos did dissent for that they were of opinion that the Money paid into Court as aforesaid by your Petitioner to wit the said Sum of Two hundred and thirty five Pagodas was a sufficient compensation for the Services of the Complainants and your Petitioner Sheweth that by such the Decree of the said Mayors Court your Petitioner does conceive himself Much aggrieved for the following amongst other Reasons

First Because the said Decree of the said Mayors Court is not warranted by the proceedings before it but is Altogether a

Departure

Departure from the rules of Equity contrary to the Law of Evidence and Erroneous in its principle

Secondly Because your Petitioner in and by his answer to the Complainants said Bill did deny the several Matters and things in and by the Complainants said Bill charged and setforth to wit your Petitioner did deny to stand indebted unto the Complainant in the sum of one thousand Nine hundred and fifty five Pagodas ten fanams and Sixty Cash as by the Complainant in his said Bill is Charged and did shew that he stood indebted unto the Complainant in the Sum of Two hundred and thirty five Pagodas and no more and further your Petitioner did in and by his said Answer deny that the Complainant did attend to the Execution of the Commission from the Ninth of June until the Twentieth Day of February one thousand Seven hundred and Eighty Eight as is charged in the Complainants said Bill and did say that the Complainant did not set as a Commissioner until the fourth Day of July which was in the year of Christ one thousand Seven hundred and Eighty Seven and your Petitioner in and by his said answer did deny that the Complainant did set as a Commissioner two hundred and fifty Seven Days and did say that the Complainant did set as a Commissioner for the space of forty seven days and

nomore

nomore and your Petitioner in and by his said answer did deny that the resolution of Government respecting the Allowance of Six Pagodas per day to the Commissioners on the part of the Honble Company was to govern your Petitioner in regard to the Allowance to be made to the Commissioners on his part and your Petitioner says that in consequence of such the denial by your Petitioner of the Charges and Assertions of the Complainant the onus Probandi did rest with the Complainant who should thereupon have Examined Witnesses in support of his said Bill and in Confutation of such the Denial of your Petitioner but that the Complainant having neglected so to do the said Decree of the said Mayors Court is contrary to the established practice of Court of Equity and to the Law of Evidence

Thirdly Because your Petitioner says that the Allegations of a Complainant are not Evidence that they are considered in no other manner or Light than as mere Assertions which must stand or fall according to the nature and sufficiency of the Evidence that may be produced in support thereof and that the said answer of your Petitioner being upon oath ought to have been taken and received as Evidence by the said Mayors Court in conformity to the Established practice of Courts of Equity and as the said answer of your Petitioner did deny the Charges in the Complainants said Bill contained it required two

Witnesses

Witnesses on the part of the Complainant in support thereof for it is Laid down that where there is only one Witness in opposition to the answer of a Defendant the Court cannot give a Decree and therefore the said Decree of the said Mayors Court is erroneous Contrary to the established practice of Courts of Equity and to the Law of Evidence

Fourthly Because the Complainant produced one Witness only and whose deposition is Vague and indefinite and does not in any degree support the Complainants said Bill

Lastly Because the Complainant did not only abandon his said Bill by neglecting to prove the several matters and things therein and thereby Charged and in and by your Petitioners said answer denied but your Petitioner did produce a Witness on his behalf who did support your Petitioners said answer to wit that the Complainant did not attend the said Commission for a greater number than forty seven days and further that such attendance of the Complainant was not regular and which was the principal matter upon which the question before the said Mayors Court Depended

For all which reasons and such others as may be offered at the Hearing your Petitioner prays that the said Decree of the said Mayors Court may be reversed and that this Honourable Court will be pleased to grant unto your Petitr such other and further Relief in the premises as in the Wisdom of this Honble Court shall seem Meet

(Signed) J Stuart Wall
Solicitor for the Appellant

Extract

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 14 day of September Anno Domini 1790

Present

Vincentio Corbett Esquire Mayor
James Call and Andrew Ross Aldermen

George Maubray
vers
Nagapa Chetty

The Attorney for the Defendant prays Leave to pay into Court the Sum of Two hundred and thirty five Pagodas being in full Satisfaction of the Complainants Demand as tendered by him in his answer Ordered that the same be Deposited with the with the Cash and Effects of the Company in the name of the Accomptant General The Attorney for the Defendant prays that the Complainant may deliver into Court the original Letter addressed by the Defendant to the Complainant mentioned in the Bill of Complaint for the inspection of this Court ordered accordingly The attorney for the Complainant delivers into Court the Exhibit prayed for

A true Extract
(Sigd) G Taylor Regr

a true Copy
Sig J Stuart Wall
Solicitor for the Appellant

Mayors

Mayors Court at Madraspatnam

Tuesday the 14th day of December Anno Domini 1790

Present

James Call Esquire Mayor
Andrew Ross John Mitford &
James Amos Aldermen

Between George Moubray Esqr Accountant General and a Member of the Board of Revenue in the Service of the united Company of Merchants of England trading to the East Indies at their Presidency of Fort Saint George Complainant and Nagaspah Chetty of Madras Merchant Defendant

This Cause coming on to be Heard and Debated this Day in the presence of the attornies on both sides on Reading the Complainants Bill with Copies of an Account and Extract of a Letter annexed the Defendants answer with Copy of an Extract of a Letter annexed the Replication with Extract of Letter annexed the amended Rejoinder the Interrogatories and Deposition on the part of the Complainant the Interrogatories and Deposition on the part of the Defendant one Exhibit Marked A on the part of the Complainant on Hearing the Pleadings made use of by the Attornies and on due consideration had thereon This Court doth think fit to order and Decree and doth accordingly order and Decree that the Defendant do pay unto the Complainant after the rate of Six Pagodas per day from the fourth day of July one thousand Seven hundred and Eighty Seven to the Twentyeth day of February one thousand Seven hundred and Eighty Eight without Interest and it is further ordered and Decreed that the Defendant do pay all Costs of this Suit

(Sigd) J. Taylor Regr

a true Copy

(Signed) J. Stuart Hall
Solicitor for the Appellant

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 14th day of December Anno Domini

Present

James Call Esquire Mayor
Andrew Ross John Mitford &
James Amos Aldermen

George Moubray
verz
Nagaspah Chetty

Mrs Ross and Amos Dissent to the Resolution of the Court being of Opinion that the Sum of paid into Court by the Defendant is an adequate recompense for

for the Attendance of the Complainant as a Commissioner in this Business

a true Extract

(Signed) J. Taylor Regr

a true Copy

(Signed) J. Stuart Wall

Solicitor for the Appellant

To the Honoräble Major General William Medows

President in Council

Fort St George

In the Honble the Court of Appeals

Between George Moubray Accountant General and Member of the Board of Revenue in the Service of the united Company of Merchants of England trading to the East Indies at their Presidency of Fort Saint George Complainant and Nagapah Chetty of Madras Merchant Defendant

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

This Respondent for Answer to the said Petition and Appeal or unto so much thereof as concerns this Respondent to make Answer unto saith that he admits to be true that this Respondent did on or about the time mentioned in the Appellants Petition and Appeal file a Bill of Complaint in the Mayors Court at Madraspatnam against the Appellant for the Recovery of the sum of One Thousand Nine hundred and fifty five Pagodas ten Fanams and Sixty Cash due and owing to this Respondent from the Appellant as might appear by the Copies of an Account Current and the Extract from

Filed in my Office the 14th February 1791
Chas. L. White Asr

To

from the Minutes of Consultation of the Government of Fort Saint George annexed to this Respondents said Bill and this Respondent also admits that he did state in his said Bill of Complaint that Coovoor Vydenadah Late deceased and the Appellant had Caused a Bill of Complaint to be filed in the High Court of Chancery in England against the said United Company and that a Commission did also issue thereupon to the several Persons in the said Petition and Appeal named or any three of them and this Respondent did also state that as it was not necessary for him to attend the Execution of the said Commission provided three Commissioners did attend and as he was much engaged in his other Occupations he did not enter on his Duty as Commissioner until the ninth Day of June which was in the year of Christ one thousand seven hundred and eighty seven and that such his Attendance was at the special Instance and Request of the Appellant conveyed to this Respondent by the Appellants Letter under Date the eighth Day of the said Month of June And this Respondent also admits that he did in and by his said Bill state that he attended to the Execution of the said Commission from the said ninth Day of June until the Commission was Closed which was on the Twentieth Day of February and in the Year of Christ one thousand seven hundred and Eighty Eight being two hundred and fifty seven Days and for which this Respondent

Respondent did Charge at the Rate of Six Pagodas each Day according to the Resolution of the Government of Fort St George as stated in the Extract therein beforementioned And this Respondent also admits that he did further state that the said Government of Fort Saint George as the Representatives of the said united Company Deliberated as to what Allowance should be given to their Commissioners and after due Consideration thereof did resolve that the Allowance should be six Pagodas a Day as before stated and that this Respondent had Charged the Like Rate or Sum of Six Pagodas a Day which for the said Period of two hundred and fifty seven Days made the Sum of One Thousand five hundred and forty two Star Pagodas which with Interest thereon from the said Twentieth Day of February being the Day on which the said Commission was Closed until the Thirteenth Day of May which was in the year of Christ one Thousand seven hundred and Ninety amounted to the Sum of one Thousand Nine hundred and fifty five Pagodas ten Fanams and Sixty Cash for which sum this Respondent prayed Judgement and that the Appellant might pay Costs of Suit Towhich said Bill of Complaint this Respondent admits that the Appellant did on or about the time Mentioned in his said Petition and Appeal file his Answer and did thereby deny being indebted to this Respondent in the said Sum of One Thousand Nine hundred and fifty five Pagodas ten Fanams and Sixty Cash as was Charged in this Respondents said Bill and by

the

the Account Current thereunto annexed but did admit that he might stand indebted unto this Respondent in the Sum of Two hundred and thirty five Pagodas which he had tendered and was then and at all times ready to pay to this Respondent And this Respondent also admits that the Appellant did also state such other Matters and Things as in the said Petition and Appeal were set forth which this Respondent did not nor doth by any means admit To which said answer this Respondent admits that he did file his Replication and therein did say that the appellant having acknowledged his Application to this Respondent as Charged in his said Bill to attend on the Duties of the Commission from the Court of Chancery in England on the eighth Day of June in the said year of Christ one thousand seven hundred and eighty seven and this Respondent having Commenced his attendance on the then next Day being the ninth Day of the said Month of June this Respondent had a right to Charge from that Day and that it did not avail in the Like Cases whether the Business went on without Interruption or Interval of time Between the different Days of Setting because as the Commissioners and all others employd to Execute the Duties incident to a Commission for examining Witnesses issuing under the Seal of the Court were supposed to sit and always ready to attend to the Duties of their Appointment from the Day they Received the order to attend to the Day of Closing the Commission

Commission the occasional Interruptions of such as Duty were never noticed in the Charge given in by those employed to execute the Same and that the Resolution of the Government of Fort Saint George as Representatives of the united Company who were Defendants in the said suit was a fair and Just Rate whereby to estimate the Allowances to be made to the Commissioners and others employed on behalf of the Appellant as one of the Complainants in the said Suit not only because it was to be presumed such Allowances were Considered as moderate but because they were made after due Consideration of the Subject as this Respondent stated he could prove if necessary to the satisfaction of the said Mayors Court And this Respondent admits that he did in and by his said Publication further state that he had been informed and believed that the Appellant had expressly promised to pay to his Commissioners the same Fees which the said united Company were to pay to their Commissioners And this Respondent admits that he did also state that the Appellant had endeavoured to surprize the Justice of the said Mayors Court by a partial Extract from a Letter of his Solicitors in England carrying with it an Imputation against the Charges made in this Country under the said Commission whereas if the Appellant had proceeded to state the Subsequent Parts of the said Letter it would have appeared evident that the same Solicitors who had presumed to throw a Slur upon the

the

the Charges made in this Country were requiring from the Appellant by way of further Remittance a Sum more than double what was equal to the entire Charges of a Suit of the first Consequence in this Country as by the further Extract of the said Letter to this Respondents said Replication annexed would appear and that from the Extract of the said Letter as quoted by the Appellant this Respondent admits that he did say his Charge was moderate for that the said Extract stated that a Guinea or two Pagodas and five Eighths per Day was the Allowance made in England but that an Allowance was of Course to be made in India in proportion to the increased Charges of professional Labor in that Country beyond the Charges allowed in England And this Respondent also admits that he did state that the Difference between the two Pagodas and five Eighths and Six Pagodas was Less than the General Difference of Charges in this Country to that in England for that in England the Charge for Drawing any Paper did not in any case except in Proceedings before Parliament exceed one Shilling per Sheet whereas in this Country it was four Shillings or half a Pagoda per Sheet so that the relative arguments of your Petitioner operated to his Prejudice in a proportion of near two to one and as to the Interest Charged by the Complainant he humbly submitted that on the Close of the Commission he was intitled to his

Costs

Costs or Charges and therefore as they were not then paid that he was entitled to Interest thereon from that Day To which said Replication this Respondent admits that the Appellant did file a Rejoinder and did therein set forth the several frivolous and evasive Matters and Things as are in his Petition and appeal stated And this Respondent also admits that upon the above Proceedings Issue was Joined and Rules passed for the Examination of Witnesses and Witnesses were examined Accordingly and that the Appellant did previous thereto Deposit in the said Mayors Court the Sum of Two hundred and thirty five Pagodas the Balance by him Acknowledged in and by his said answer to be due and owing to the Complainant and which he had tendered in Payment as aforesaid And this Respondent also admits that he did in support of his said Bill and Replication Examine one Witness to wit Peter Walker one of the Attornies of the said Mayors Court who deposed the several Matters and Things as are stated in the said Petition and Appeal and this Respondent also admits that the Appellant examined one Witness to wit Venkatanarasagy who deposed to this Respondent having Began to attend as a Commissioner in the Month of July in the said year of Christ one Thousand seven hundred and eighty seven and that the Number of Days which this Respondent sat as a Commissioner did not exceed forty seven Days And this Respondent also admits that the said Cause come on to be

heard

heard and was heard Before the said Mayors Court on the fourteenth Day of December last when the said Mayors Court were pleased to order and Decree and did Accordingly order and Decree that the Appellant should pay unto this Respondent after the Rate of Six Pagodas per Day from the fourth Day of July one thousand seven hundred and Eighty seven to the Twentieth Day of February one thousand seven hundred and eighty eight without Interest and further that the Appellant should pay alls Costs of the Suit

From which said Decree of the Mayors Court the Appellant did Appeal to this Honourable Court of Appeals under Pretense that the said Decree is erroneous and that he is aggrieved thereby but this Respondent saith that the Appellant hath no Cause or Ground whatever to be aggrieved for the following among other Reasons

First... Because the Evidence of Peter Walker one of the Attornies for the Appellant in the said Cause against the said united Company proves that the Appellant agreed to pay the same Fees to the Commissioners which the united Company were to pay to their Commissioners

Secondly Because the Government of Fort Saint George as the agents and Representatives of the said united Company resolved to pay their Commissioners the said Allowance six Pagodas per Day in lieu of all Fees and Charges from the time of their first acting

Thirdly Because the appellant in his Answer admits that this Respondent began to sit as a Commissioner on the fourth Day of July

Fourthly Because by the Decree of the Mayors Court this Respondent is adjudged to receive the said Allowance of Six Pagodas per Day from the said fourth Day of July

Fifthly Because the said Resolution of Government hath not adverted to the actual Days of Sitting but positively establishes the Right from the time of their first acting

Sixthly Because it is admitted by the Appellant in his answer that the Commission did not close till the Twentieth Day of February which was in the year of our Lord one thousand seven hundred and Eighty eight

For all which Reasons and such Others as may be offered at the hearing of this Cause this Respondent prays that the said Decree of the Mayors Court of the said fourteenth Day of December last may be affirmed by this Honourable Court and the Appellants Petition and appeal Dismissed with Costs to be paid by the Appellant

/ Signed / S. Popham

Solicitor for Respondent

Court

Court of Appeals
at
Madraspatnam &c

Saturday the 22 day of March
Anno Domini 1794

Between Nagapah Chetty of Madras
Inhabitant Appellant and George Moubray
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 Honourable the Mayors Court together with the Decree
of the said Court given in this Cause on Tuesday the 14th day
of December 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 Honourable the Mayors Court do stand
Affirmed and that the Appellants Petition be hence Dismissed with Costs

Sir Charles Oakeley Dissents to the Resolution
of the Court being of Opinion that the Sum of 235 Pagodas paid into the
Mayors Court on the 14th Sept 1790 by the Appellants Attorney was
an adequate recompense for the Attendance of the Respondent

Pbur. /Signed/ Cha N White Clk

To

To the Kings Most Excellent Majesty in Council

Between George Moubray Esquire
Accountant General and Member of the Board
of Revenues in the Service of the united Company of
Merchants of England trading to the East Indies
under their Presidency of Fort St George Complainant
and Nagapah Chetty of Madras Merchant
Defendant

The humble Petition and appeal of the above named
Defendant

Most humbly Sheweth

That on or about the Seventeenth day of May in
the year of Christ one thousand Seven hundred and Ninety the
Complainant above named did Exhibit and file his Bill of
Complaint in the Mayors Court at Madraspatnam against
your Petitioner for the recovery of the Sum of One thousand Nine
hundred and fifty five Pagodas ten fanams and Sixty Cash
pretended to be due and owing from your Petitioner to the Complai
= nant and which the Complainant did say would more fully
and at Large appear by Copies of an account and the Extract
from the Members of Consultation of the Governor of Madras
annexed to this said Bill and by him prayed to be taken as
part

Filed in my office
the 4th April 1794
Cha N White
Clk

part thereof and your Petitioner most humbly sheweth that the Complainant did in and by his said Bill state that ~ Coovoor Vydenadah Late of Madras deceased and your Petitioner had Caused a Bill of Complaint to be filed in the High Court of Chancery against the united Company of Merchants of England trading to the East Indies and that thereupon a Commission issued Directed to Archibald ~ Montgomery Campbell Benjamin Sulivan James Henry ~ Casamayor the Complainant Charles Bromley and Edward Ellis or any three of them and therefore the Complainant in and by his said Bill did further state that as it was not ~ necessary for him to Attend to the Execution of the said ~ Commission provided three Commissioners did attend and as he was much Engaged in his other occupations he did not Enter on his Duty as Commissioner until the Ninth day of June which was in the year of Christ one thousand Seven ~ hundred and Eighty Seven and that such his attendance was at the special Instance and request of your Petitioner conveyed to the Complainant on the Eighth Day of the said Month of June as the Complainant did say he would prove to the satisfaction of the said Mayors Court and the Complai= = nant in and by his said Bill did state that he attended to the Execution of the said Commission from the said Ninth

Day

Day of June until the Commission was Closed which was on the Twen= = tieth Day of February and in the year of Christ one thousand Seven hundred and Eighty Eight being two hundred and fifty seven days and for which time the Complainant did say he had Charged at the Rate of Six Pagodas each day according to the Resolution of Government of Fort Saint George as stated in the Extract aforesaid that the said Government of Fort St George as the Representative of the said united Company Deliberated as to what allowance should be given to their Commissioners and after due Consideration thereof did ~ resolve that the allowance should be six Pagodas a day and that he had Charged the Sum or Sums of Six Pagodas a day which for the said period of Two hundred and fifty Seven Days made the sum of one thousand five hundred and forty two Star Pagodas which with Interest thereon from the said Twentieth day of February being the day on which the said Commission was Closed until the Thir= = teenth day of March Amounted to the said Sum of one thousand Nine hundred and fifty five star Pagodas ten fanams and Sixty Cash of which sum the Complainant did state he had frequently and in an amicable Manner Demanded payment but that your Petitioner having refused as the Complainant did pretend to Comply therewith did pray that your Petitioner might be Decreed to pay unto him the Complainant the said Sum of one thousand Nine hundred and fifty five Star Pagodas ten fanams and Sixty Cash with all such Interest as there was

or

or should thereafter become due thereon also all Costs of the Suit

And your Petitioner humbly Sheweth to your Most Excellent Majesty in Council that to the Complainants said Bill of Complaint he did Exhibit and file his answer and therein and thereby did deny being indebted to the Complainant in the Sum of one thousand Nine hundred and fifty five Pagodas ten fanams and Sixty Cash but did admit that he might stand indebted unto the Complainant in the sum of two hundred and thirty five Pagodas and which said Sum of two hundred and thirty five Pagodas he had tendered and then was and at all times ready to pay the same to the Complainant and your Petr did also admit that in a Certain Cause instituted by Covoor Vydenadah Moodely deceased and your Petitioner Against the united Company of Merchants of England trading to the East Indies a Commission did issue from the High Court of Chancery directed to archibald Montgomery Campbell Benjamin Sulivan James Henry Casamayor the Complainant Charles Bromley and Edward Ellis or any three of them and that the Complainant did not Enter on his Duty as a Commissioner under the said Commission at the opening thereof and your Petitr in and by his said answer did say it would thereafter fully Appear to the said Mayors Court that the Complainant did not take

take the Oath of a Commissioner nor set as such until the fourth day of July which was in the year of Christ one thousand Seven hundred and Eighty Seven although he had in his said Bill fixed the period as if he had really taken the Oath and set as a Commissioner on the Eighth day of the Month of June preceding which your Petitioner did say was Erroneous and your Petitioner did admit that he did on the said Eighth Day of June address a Letter to the Complainant on the Subject and to the intent and purport Set forth in the Complainants said Bill but your Petitioner did say that the Complainant took no Notice thereof for a very Considerable time and therefore your Petitioner could not admit that the Complainant did as charged in his said Bill attend to the Execution of the said Commission from the day of the date of the said Letter until the said Commission was Closed which was on the Seventeenth day of February in the year of Christ one thousand Seven hundred and Eighty Eight and in Course your Petitioner could not admit the Number of Two hundred and fifty Seven Days and your Petitioner did in and by his said answer say that the whole of the number of Days on which the Complainant sat as a Commissioner under the said Commission amounted as your Petitioner made no doubt of proving to the Satisfaction of the said Mayors Court

to

to forty Seven Days and no more that had the Complainant attended Regularly to the due Execution of the said Commission your Petitioner would have been greatly benefited in his Affairs but as that was not the case a Considerable length of time had unnecessarily elapsed and as the Execution of the said Commission was thereby delayed your Petitioner Must of course have been a Suffrer for your Petitioner did say he doubted not of proving to the Satisfaction of the said Mayors Court that Adjournments had frequently taken place for want of the attendance of the Complainant and that the Complainant did not act as a Commissioner until the fourth day of July in the year of Christ one thousand Seven hundred and Eighty seven and your Petitioner did say he could not admit the said Extract from the Minutes of Consultation of the Governor and Council to be in any wise pertinent to the Matter in question for that whatever might have been the pleasure of Government in the disposal of the property of their Constituents your Petitioner was not to be governed thereby and therefore your Petitioner did not admit that the Complainant had any ground of right to Demand from him the Sum of Six Pagodas a day for the days of his attendance as Commissioner as aforesaid for your Petitioner did say that his Solicitors in England had informed him

him that the allowance of a Commissioner there was one Guinea a day but that an allowance in course was to be made in India in proportion to the Encreased charges of Professional labour as your Petitioner did say would fully appear by the Copy of an Extract from the said Letter to his said answer annexed and your Petitioner did say that under such Consideration and willing and desirous of doing that which was Equitable and Just he was satisfied to allow to the Complainant the Sum of forty shillings or five Pagodas a day which for forty seven Days amounted to the said Sum of Two hundred and thirty five Pagodas and your Petitioner did say that he had not allowed Interest thereon because that he was advised an allowance of Interest was not made in matters of a similar nature

And your Petitioner humbly Sheweth to your most Excellent Majesty in Council that to your Petitioners said answer the Complainant did Reply and in his Replication did say that your Petitioner having Acknowledged his application to the Complainant as Charged in the Complainants said Bill to attend on the Duties of the Commission from the Court of Chancery on the Eighth day of June in the said year of Christ one thousand Seven hundred and Eighty seven and the Complainant having Commenced his attendance on the then next day being the ninth Day of the said Month of June the

Complainant

Complainant had a right to his Charges from that day and that it did not avail in the like Cases whether the Busines went on without interuption or Interval of time between the different days of sitting because as the Commissioners and all others Employed to Execute the Duties incedent to a Commission for Examining Witnesses issuing under the Seal of the Court of Chancery were supposed to set and were always ready to attend to the duties of their appointment from the day they received the order to attend to the day of Closing the Commission the occasional interruptions of such a duty were never noticed in the Charge given in by those Employed to Execute the same that the Resolution of the Government of Fort Saint George as Representations of the united Company were Defendants in the said suit was a fair and Just Rule whereby to Estimate the allowances to be made to the Commissioners and others Employed on behalf of your Petitioner as one of the Complai-nants in the said Suit not only because it was to be presumed such allowances were Considered as moderate but because they were made after due Consideration of the Subject as the Complainant did say he would prove if necessary to the Satisfaction of the said Mayors Court and the Complainant did in and by his said Replication further say that he had been informed and believed that your

Petitioner

Petitioner did Expressly promise to pay to his Commissioners the same fees which the said united Company were to pay to their Commissi-oners and the Complainant did also say that your Petitioner Endeavoured to surprise the Justice of the said Mayors Court by a partial Extract from a Letter of his Solicitor in England Carrying with it an imputation against the Charges made in India under the said Commission whereas if your Petitioner had proceeded to state the Subsequent parts of the said Letter it would have Appeared Evident that those same Solicitors who had presumed to throw a Slur upon the Charges made in India were requiring from your Petitioner by way of further remittance a sum more than double what was Equal to the Entire Charges of a Suit of the first Consequence in India as by the further Extract of the said Letter to the Complainants said Replication annexed and prayed to be taken as part thereof the Complainant did say would Appear and that from the very Extract of the said Letter as quoted by your Petitioner the Complainant did say his charge was moderate for that the said Extract stated that a Guinea or two Pagodas and five Eighths per day was the allowance made in England but that an allowance was of Course to be made in India in proportion to the encreased Charges for professional Labor in that Country beyond the Charges allowed in England and the Complainant did say that the difference between the two Pagodas

and

and five Eighths and Six Pagodas was less than the general Difference of Charges in that Country to that in England for in England the Charge for drawing any Paper did not in any case Except in proceedings before Parliament Exceed one Shilling per Sheet whereas in Madras it was four Shillings or half a Pagoda per sheet so that the relative arguments of your Petitioner aforesaid to his Prejudice in a proportion of near two to one and as to the Interest Charged by the Complainant he humbly submitted that on the Close of the Commission he was Entitled to his Costs or Charges and therefore as they were not then paid that he was Entitled to Interest thereon from that day.

And your Petitioner humbly sheweth to your Most Excellent Majesty in Council that to the Complainants said Replication your Petitioner did file a Rejoinder and therein did shew that the Allusion made by the Complainant to and the Conclusion drawn from the Letter setforth in his Bill and by your Petitioner Acknowledged in his said answer to have been addressed to the Complainant did not Establish or tend to establish the Charges or any of them as in the Complainants said Bill setforth but on the Contrary and for the reason in your Petitioners said answer given the same operated in favor of your Petitioner that even had the Complainant attended the Commission from the

the Court of Chancery on the Eighth day of June as in his said Replication setforth but which your Petitioner did not admit to have been the matter of fact yet your Petitioner humbly insisted that such attendance could not give him the Complainant a right to make a Charge from that period to the fourth day of July following as if he had really and bonafide attended the said Commission and discharged the Duties thereby imposed on him whereas upon his own shewing and as the fact really was he had during the intermediate space to wit from the said Eighth day of June until the said fourth day of July totally neglected so to do by which means the Interest of your Petitioner had suffered Considerable owing to the frequent Adjournments that had taken place in Consequence and which frequent adjournments would not have taken place had the attendance of the Complainant been regularly given and your Petitioner did say that if the Law would not suffer a man to take advantage of his own wrongs much Less would it allow such advantage to be taken when by reason of such wrongs the party against whom the advantage was applied had sustained real and Considerable injury that the argument in the Complainants Replication Contained as to the Justness of the Charges he had made did upon the very face of it militate against the principle it was meant to support for that when Commissioners were always ready to attend the Duties of their Appointment as the Replication suggested

suggested from the day they received orders to attend until the Day of Closing the Commission the Occasional interruption of such duty would in course be attributed to as occasioned by a party in the Cause because applying the Argument to the Matter in question when one person was always ready and nothing was done the natural conclusion was that the other person who held himself in readiness ought not to suffer for the failure of him who was Deficient whereupon your Petitioner did say that the Complainant having in his said Bill shewn that being Engaged in other avocations he had not Entered on his duty as Commissioner at the time when the Commission was Open" and having also shewn in his allusion to your Petitioners said Letter that he was not always Ready or such Letter would have been unnessary as fully appeared by the purport thereof and your Petitioner in his Rejoinder and in his said answer having shewn that the Complainant so far from being always ready would not attend the said Commission although importuned thereto by your Petitioner it was strongly Evident that the occasional interruption which the Complainant had spoken of as not to be noticed by your Petitioner had not arisen out of the common course of things but from the neglect of the Complainant to attend to the duties of his Appointment and therefore in Justice and in Equity such neglect on the part of the

Complainant

Complainant barred his right to any Claim on your Petitioner who did insist that the argument of the Complainant was further Confuted by reason and the nature of the thing for that were it left to Commissioners to Charge for non attendance in the same manner as if they had absolutely attended a Suitor might be ruined merely by the Expences incident to the Examination of his Witnesses and your Petitioner did say that the resolution of the Government of Fort Saint George as representatives of the united Company would not be binding on him nor Could it be held in Law or in reason as a fair and Just Rule whereby to estimate the Allowance to be made by your Petitioner to the Commissioners Appointed on his behalf for were the act of one party in a Cause to be binding on another there would be an end to Justice the indigent Suitor would inevitably sink under the oppression of the man of power and however Equitable his Claims might be he would be obliged to submit to injury without daring to Complain lest the Effect should in such case prove still more injurious than the Cause and your Petitioner did say that he never did premise to pay his Commissioners the same fees which the united Company were to pay to their Commissioners and therefore your Petitioner did say as in and by his answer he had already said that the Complainant had no right to Demand from him the Sum of Six Pagodas a day for the days of his attendance as Commissioner as aforesaid but that in regard to the Justice due to

his

his Commissioners and securing that Justice which was due to himself he was willing to give double the Sum usually given to Commissioners in England to wit the Sum of forty Shillings or five Pagodas a day and which for forty Seven Days the number of Days the Complainant actually sat as a Commissioner under the said Commission amounted to the Sum of two hundred and thirty five Pagodas and your Petitioner did deny the Charge brought forward by the Complainant of an Endeavour to surprise the said Mayors Court by a partial Extract of a letter by your Petitioner received from his Solicitors in England carrying with it an imputation against the Charges made in India under the said Commission and concealing the Subsequent part of it that such charge would appear groundless when it was known that your Petitioners Attorney in Court did furnish the Attorney of the Complainant with the subsequent part alluded to and of which a Copy was annexed to the Complainants said Replication that the Reasoning used by the Complainant in support of his said Charge was as absurd as the Charge itself was unjust for that in the first place your Petitioner did say that the remittance required from him by his said Solicitors had nothing to do with the matter in question and if it had that it could not be held in Objection to the propriety of their opinion on a matter of fact

or

or more properly speaking on the Statement of the fact it self and Secondly notwithstanding the assertion of the Complainant to the Contrary that there were many Suits in the said Mayors Court and not of the first Consequence the Expences of which instead of half was the full amount of the said required remittance that the Extract annexed to the Complainants Replication and in which the mention of the said remittance appeared contained the strongest Reasonings that could possibly be adduced to invalidate the assertion of the Complainant that the allowance made by the Government of Fort St George on the part of the Company to their Commissioners ought to be a Rule for your Petitioners Conduct with regard to his Commissioners for amongst others things the said Extract Expressed and your Petitr had painfully Experienced the truth thereof that "the Proceedings "already taken had been attended with a Considerable Expence "with respect to the future proceedings the Expences would be "truly great encountring as your Petitioner was not only the most Considerable Company of Persons in the Kingdom but the most Considerable body in the whole World" and further that the said Extract gave a full Explanation of the purposes for which the said remittance and on which the Complainant had lain so much stress was required as appeared by the following words "The fees of Office in this Kingdom particularly in the Court of Chancery are

Extremely

Extremely High as are the fees of Council the principal Councils are retained for you against the Company" and that taking the said Extract together it would appear a neglect on the part of your Petitioner to his own Interest in not having brought it forward instead of an intentional suppression thereof for the sinister purpose of surprising the Justice of the said Mayors Court and thereby injuring the Interest of the Complainant for that the said Extract shewed the distress and difficulty with which your Petitioner as an individual had to struggle in contending for his Right against the united Powers of the most Considerable body of Persons not only in Great Britain but in the whole World at the same time that it Demonstrated to your Petitioner the Absolute necessity of guarding against Exorbitant Charges by pointing out to him the painful truth that his fortunes might not be able to support those that were regular and which would unavoidable occur in the common course of the proceedings in the said suit and your Petitioner did Demonstrate that the conclusion of the Complainants said Charge was no wise aided by reason or the nature of the thing for that the said Extract in fact went to the Allowance made to Clerks to Commissioners and not to the Allowances granted to Commissioners for that although it mentioned one Guinea a day as the allowance made to a Commissioner in England yet such mention was made merely to introduce the allowance which was given to the Clerks and upon the following ground the Clerks under the said Commission in question had made such Extravagant Charges as your Petitioner could not accede to and he therefore referred them to his Solicitors in England who in answer did state as by the said Extract would appear that the Charges made by the Clerks under the Commission were undoubtedly Exorbitant and such as ought not to be submitted to and there to give the Comparative rule by which to direct your Petitioners conduct it further stated that Commissioners were allowed one Guinea only and their Clerks no more than half that sum but again and for the purpose of shewing a Reason why the Clerks in India should not be Confirmed to the allowance made them in England it stated an Allowance was of course to be made in India in proportion to the Encreased Charges for professional Labour and your Petitioner did state that Clerks under a Commission issuing out of his Majestys Court might be supposed to be professional men and therefore in Madras there fees ought to be regulated by the proportion that the Charges for professional Labor in India might be to the Charges for professional Labor in England whereas Commissioners were not nor could they be conceived to be professional men and therefore the words an Allowance is in course to be made in India in proportion to the Encreased Charges of professional Labor did not Exactly apply to Commissioners

and

and if they did your Petitioner hoped it would appear to the said Mayors Court that he had amply provided therefore by the Encreased allowance of forty Shillings instead of Twenty one Shillings which he had tendered to the Complainant which he then Tendered and — which he was at all times ready to pay him and your Petitioner did say he was advised that although only one shilling was allowed for Drawing papers in a Cause in England yet that there was an allowance also for Engrossing the same and which was not the case in India and that point being Considered the proportion would then be nearly as two was to four the proportion by which your Petitioner had been governed in the allowance [illegible] he had made to your Petitioner and that such proportion was fair and Just or rather that your Petitioner had allowed more than the proportion would bear were partly from the Complainants own shewing for in one part of his said Replication and when alluding to the said Required Remittance he Demonstrated that professional Labor in England was much more Exorbitant than in India he observed that the said required remittance was a sum more than double what was equal to the Entire Charges of a suit of the first Consequence in Madras and with respect to the Charge of Interest as made by the Complainant your Petitioner humbly suggested as in his said answer he had before suggested and your Petitioner humbly

Sheweth

Sheweth to your Most Excellent Majesty in Council that upon the aforesaid proceedings Issue did Join and rules did pass for the Examination of Witnesses and that Witnesses were Examined Accordingly and that previous thereto he did Deposit in the said Mayors Court the sum of Two hundred and thirty five Pagodas the balance by him acknowledged in and by his said answer to be owing to the Complainant and which he had tendered in payment as aforesaid as by the Extract of the Minutes of the said Mayors Court whereof a Copy was to your Petitioners Petition of appeal annexed — and your Petitioner humbly sheweth to your most Excellent Majesty in Council that the Complainant in support of the several Matters and things in his said Bill and Replication set forth did Examine One Witness and no more to wit Peter Walker and whose Deposition was so irrelevant and nugatory that instead of assisting it actually militated against the Cause of the Complainant and so in proportion favored that of your Petitioner for that the said Peter Walker to the second Interrogatory Exhibited on the part of the Complainant took upon himself to say that he knew from the Copy of a Letter he had seen that your Petitioners application to the Complainant to act as a Commissioner was on or about the Eighth day of June one thousand seven hundred and Eighty Seven without shewing and which was absolutely necessary to have been shewn that he had Ever seen the original of such Letter or by whom and to whom such Letter was written and proceeding in his Deposition he said he believed without

assigning

assigning a single reason or a foundation for such belief that the Complainant sat very shortly but did not say how Long Afterwards or in what Length of time he sat he further said that the Complainant Certainly did continue to sat until the Close of the Commission but did not say that he so Continued to sit Regularly and which he ought to have done he further said he Certainly understood that the Commissioners on the part of your Petitioner were to receive the same fees as those on the part of the Honble Company without stating and which he ought to have done the ground upon which he formed his Comprehension - and your Petitioner humbly sheweth to your Most Excellent Majesty in Council that upon such Vague and indefinite Testimony the Complainant rested the merits of his Cause and thereby abondaning the several allegations in his said Bill Contained had not attempted to prove that he sat the number of days as in his said Bill was Charged and in the Account Current thereunto annexed nor in fact any particular number of days nor that your Petitioner did Ever promise that he would make to his Commissioners the same allowance that Government was pleased to grant to the Commissioner on the part of the Honourable Company nor does the allowance so said to have been granted by Government appear any where in Evidence - and your Petitioner sheweth to your Most Excellent Majesty in Council that he did Examine one Witness also to wit Vencata narasayer who in the Clearest most distinct and most positive

Manner

Manner did support the several facts insisted on by your Petitr in his said answer and did depose that he attended the Commiss-sioners in the Capacity of an Interpreter about a Month subsequent to the opening of the said Commission and until all the Witnesses in the cause had been Examined and had signed their depositions that the Complainant first gave his attendance to the said Commission in the Month of July one thousand Seven hundred and Eighty seven that he the Complainant did not give regular and punctual Attendance on the various Days the Commissioner sat and that the number of Days the Complainant attended the Commission could not have Exceeded forty seven Days and your Petitioner humbly Sheweth to your most Excellent Majesty in Council that the Cause came on to be heard on the fourteenth day of December and year of Christ one thousand Seven hundred and Ninety Before the said Mayors Court at Madraspatnam when the said Mayors Court was pleased to Order and Decree and did Accordingly order and Decree that your Petitioner should pay unto the Complainant after the rate of six Pagodas per day from the fourth day of July One thousand Seven hundred and Eighty seven to the Twentieth day of February one thousand Seven hundred and Eighty Eight without Interest and further that your Petitioner should pay all Costs of Suit, from which Decree Mr Alderman Ross and Mr Aldermanx Amos did dissent for that they were of opinion that the Money paid into Court by your Petitioners be not the sum of two hundred and

thirty

Thirty four Pagodas was a sufficient Compensation for the Services of the Complainant and your Petitioner humbly Sheweth to your most Excellent Majesty in Council that by the said Decree of the said Mayors Court your Petitioner did conceive himself much aggrieved and did therefore appeal therefrom to the Court of Appeals at Madraspatnam and for Cause of appeal did shew first that the said Decree of the said Mayors Court was contrary to Evidence and therefore unjust in its principle Secondly Because your Petitioner in and by his answer to the Complainants said Bill did deny the several matters and things in and by the Complainants said Bill Charged and Setforth to wit your Petitioner did deny to stand indebted unto the Complainants in the Sum of one thousand Nine hundred and fifty five Pagodas two fanams and Sixty Cash as by the Complainant in his said Bill Charged and did shew that he stood indebted unto the Complainant in the sum of two hundred and thirty five Pagodas and no more and further your Petitioner did deny that the Complainant did attend to the Execution of the Commission from the Ninth of June until the Twentieth day of February one thousand seven hundred and Eighty Eight and did say that the Complainant did not act as a Commissioner until the fourth day of July which was in the year of Christ one thousand seven hundred and Eighty Seven and your Petitioner did deny that the Complainant did act as a Commissioner two hundred and

and fifty seven Days as Charged in his said Bill and did say that the Complainant did act as a Commissioner for the space of fifty Seven days and no more and your Petitioner did deny that Resolutions of Government respecting the Allowance of Six Pagodas per day to the Commissioner on the part of the Honourable Company was to govern your Petitioner in regard to the allowance to be made to the Commissioners on his part and your Petitioner did say that in Consequence thereof the onus Probandi did rest with the Complainant and as the Complainant did not Examine Witnesses in support of his said Bill of Complaint and to invalidate such the denials of your Petitioner in his said answer to the Complainants said Bill Contained the said Mayors Court in decreeing as aforesaid in favor of the Complainant had proceeded Contrary to Evidence Secondly Because your Petitioner did say that the answer of your Petitioner being upon Oath should be taken and received as Evidence as the said answer of your Petitioner did deny the Charges in the Complainants said Bill contained it required two Witnesses on the part of the Complainant to have supported the Charges in his said Bill contained in opposition to the Denial thereof by your Petitioner as in his said answer was setforth for it was Laid down that when there was only one Witness in Opposition to the answer of a Defendant the Court could not give a Decree and as the Complainant had produced only one Witness on his Behalf and as the Deposition of such

Witness

Witness did not in any degree support this said Bill the said Decree of the said Mayors Court was not only Contrary to Evidence but unjust in its principle and Lastly Because the Complainant did not only abandon his said Bill by neglecting to prove the Several Matters and things therein and thereby Charged and in and by your Petitioners said answer denied your Petitioner did produce a Witness on his behalf who did support your Petitioners said Answer to wit that the Complainant did not attend the said Commission for a greater number than forty Seven Days and further that such Attendance of the Complainant was not regular and as this was the principal matter upon which the question before the said Court Depended and your Petitioner did thereupon pray that the said Court of Appeals would be pleased to Reverse the Decree of the said Mayors Court and that your Petitioner might have such further and other Relief in the premises as to the said Court would seem Meet

And your Petitioner humbly sheweth unto your Most Excellent Majesty in Council that to your Petitioners said Petition of Appeal the Complainant did Exhibit and file his answer and therein and thereby did admit to have filed his Bill of Complaint in the said Mayors Court at Madraspatnam against your Petitioner for the recovery of the sum of one thousand Nine hundred and fifty five Pagodas ten Fanams and Sixty Cash and did further admit that he did in his said Bill of Complaint state that Cowoor Vydenadah Late Deceased and your Petitioner had Caused a Bill of Complaint to be filed in the High Court of Chancery in England Against the said united Company and that a Commission did also issue thereupon to the several persons in your Petitioner said Petition of Appeal set forth and the Complainant did also state that as it was not necessary for him to attend the Execution of the said Commission provided three Commissioners did attend and as he was much Engaged in other occupations he did not Enter on his duty as Commissioner until the Month of June which was in the year of Christ one thousand Seven hundred and Eighty seven and that such his attendance was at the special instance and request of the appellant Conveyed to the Complainant by your Petitioners Letter under date the Eighth day of June that he the Complainant attended to the Execution of the said Commission from the said Ninth day of June until the Commission was Closed which was on the Seventieth Day of February and in the year of Christ one thousand seven hundred and Eighty Eight being two hundred and fifty seven Days and for which the Complainant did charge at the rate of six Pagodas each day According to the Resolution of the Government of Fort St George as Stated in the Extract in his said Bill mentioned and the Complainant did admit that he did further state that the said Government of Fort St George

as

as the Representatives of the said united Company Deliberated as to what Allowance should be given to their Commissioners and after due Consideration thereof did resolve that the allowance should be six Pagodas a day and that the Complainant had Charged the Like rate or sum of six Pagodas a day which for the said period of Two hundred and fifty seven days made the sum of One thousand five hundred and forty two star Pagodas which with Interest thereon from the said Twentieth day of February being the day on which the said Commission was Closed unto the thirtieth day of May which was in the year of Christ one thousand seven hundred and Ninety amounted to the sum of one thousand Nine hundred and fifty five Pagodas ten fanams and Sixty Cash for which sum the Complainant Prayed Judgement and that your Petitioner might pay Costs of suit and the Complainant did admit that your Petitioner did to his said Bill file his answer and thereby deny being indebted to the Complainant in the said sum of one thousand Nine hundred and fifty five Pagodas ten fanams and Sixty Cash but admit that he might stand indebted unto the Complainant in the Sum of two hundred and thirty five Pagodas which your Petitioner had tendered and was then and at all times ready to pay to the Complainant and the Complainant did also admit that your Petitioner did also state such other matters and things as in your Petitioners said Petition of appeal were set forth which the

Complainant

Complainant did say he could not by any means admit and the Complainant did in and by his said answer to your Petitioners said Petition of Appeal further admit that he did file his Replication in the said Mayors Court and therein did say that your Petitioner having acknowledged his application to the Complainant as Charged in his said Bill to attend on the Duties of the Commission from the Court of Chancery on the Eighth day of June in the said year of Christ one thousand Seven hundred and Eighty Seven and the Complainant having Commenced his attendance on the then next day being the ninth day of the said Month of June the Complainant did say he had a right to Charge from that day and that it did not avail in the Like cases whether the business went on without interruption or Interval of time between the different days sitting because as the Commissioners and all others Employed to Execute the duties incident to a Commission for Examining Witnesses issuing under the seal of the Court were supposed to sit and always ready to attend to the duties of their Appointment from the day they received the order to attend to the day of Closing the Commission the occasional interruptions of such a duty were never noticed in the Charge given in by those Employed to Execute the same and that the Resolution of the Government of Fort St George as the Representatives of the united Company who were Defendants in the said Suit was a fair and Just rate whereby to estimate the Allowances to be made to the Commissioners and others Employed on behalf of your Petitioner

as

as one of the Complainants in the said Suit not only because it was to be presumed such Allowances were Considered as moderate but because they were made after due consideration of the subject as the Complainant stated he could prove if necessary to the Satisfaction of the said Mayors Court and the Complainant did admit that he did in and by his said Replication further state that he had Been informed and believed that your Petitioner had Expressly promised to pay to his Commissioners the same fees which the said united Company were to pay to their Commissioners and the Complainant did admit that he did also state that the appellant had Endeavoured to surprise the Justice of the said Mayors Court by a partial Extract from a Letter of his Solicitors in England carrying with it an imputation against the Charges made in India under the said Commission whereas if your Petitioner had produced the Subsequent parts of the said Letter it would have appeared Evident that the same Solicitors who had presumed to throw a slur upon the Charges made in India were requiring from your Petitioner by way of further Remittance a sum more than double what was Equal to the Entire Charges of a suit of the first Consequence in Madras as by the further Extract of the said Letter to the Complainants said Replication annexed would appear and that from the Extract of the said Letter as quoted by your Petitioner the Complainant did

did say his Charge was moderate for that the said Extract stated that a Guinea or two Pagodas and five Eighths per day was the Allowance made in England but that an allowance was of Course to be made in India in proportion to the Encreased Charges of professional Labor in that Country beyond the Charges allowed in England and the Complainant did also admit that he did state that the difference Between the two Pagodas five Eighths and six Pagodas was less than the general difference of Charges in Madras to that in England for that in England the charge for Drawing any paper did not in any case Except in Proceedings before Parliament Exceed one Shilling per Sheet whereas in Madras it was four shillings or half a Pagoda per Sheet so that the relative arguments of your Petitioner operated to his prejudice in a proportion of near two to one and as to the Interest Charged by the Complainant he humbly submitted that on the Close of the Commission he was Entitled to his Costs or Charges and therefore as they were not then paid that he was Entitled to Interest thereon from that day and the Complainant did in and by his said answer further admit that your Petitioner did as stated in his Petition of Appeal file a Rejoinder in the said Mayors Court and therein set forth the several Matters and things as in your Petitioners said Petition of Appeal was stated and the Complainant did also admit that upon such proceedings Issue had Joined and Rules passed for the Examination of Witness and that Witnesses were

Examined

Examined Accordingly and that your Petitioner did previous thereto Deposit in the said Mayors Court the sum of Two hundred and thirty five Pagodas the Balance by him acknowledged in and by his said answer to be due and owing to the Complainant and which he had tendered in payment as aforesaid and the Complainant did also admit that he did in support of his said Bill and Replication Examine one Witness to wit Peter Walther who Disposed the several matters and things as were stated in your Petitioners said Petition of appeal and the Complainant did also admit that your Petitioner Examined one Witness to wit Vincatanarasaya who deposed to the Complainants having began to attend as a Commissioner in the Months of July in the said year of Christ one thousand seven hundred and Eighty Seven and that the number of days which the Respondent sat as a Commissioner did not Exceed forty seven days and the Complainant did also admit that the said Cause came on to be heard and was heard before the said Mayors Court on the fourteenth Day of December one thousand Seven hundred and Ninety when the said Mayors Court was pleased to Order and Decree and did accordingly Order and Decree that your Petitioner should pay unto the Complainant after the rate of Six Pagodas per day from the fourth day of July One thousand Seven hundred

and

and Eighty Seven to the fourteenth day of February one thousand Seven hundred and Eighty Eight without Interest and further that your Petitioner should pay all Costs of the said Suit but the Respondent did deny that your Petitioner had any Cause or Ground of Appeal therefrom for the Reasons in his said answer to your Petitioners said Petition of appeal set forth and First the Complainant did say that Peter Walther one of the attornies for your Petitioner in the said Cause against the said united Company proved that your Petitioner agreed to pay the same fees to his Commissioners which the united Company were to pay to their Commissioners Secondly Because the Government of Fort St George as the agents and Representatives of the said united Company Resolved to pay their Commissioners the said allowance of six Pagodas per day in lieu of all fees and Charges from the time of their first sitting Thirdly Because your Petitioner in his answer did as the Complainant pretended admit that the Complainant began to sit as a Commissioner on the fourth day of July Fourthly Because by the Decree of the said Mayors Court the Complainant was adjudged to receive the said allowance of six Pagodas per day from the said fourth Day of July Fifthly Because the Resolution of Government had not adverted to the actual days of sitting but Established the right from the time of their first acting and Sixthly Because it was admitted by your Petitioner in his Answer that the Commission did not Close till the Twentieth day of February

which

which was in the year of our Lord one thousand Seven hundred and Eighty Eight and the Complainant did thereupon pray that the said Decree of the said Mayors Court might be affirmed by the said Court of appeals and that your Petitioners Petition and Appeal might be Dismissed with Costs

And your Petitioner humbly sheweth to your Most Excellent Majesty in Council that your Petitioners said Petition of appeal and the Complainants said answer did come on to be heard before the said Court of appeals on the twenty second day of March now last past when the said Court of Appeals were pleased to order and did Accordingly order and Decree that the President dissenting therefrom that the Decree of the said Mayors Court should stand affirmed and that your Petitioners said Petition of Appeal should be Dismissed with Costs as may more fully Appear by the said Decree of the said Court of appeals Copy whereof is hereunto annexed for the inspection of your Most Excellent Majesty in Council

By which said Decree of the said Mayors Court and Court of Appeals your Petitioner doth conceive himself much aggrieved and doth therefore appeal therefrom to your Most Excellent Majesty in Council for the following Amongst other Reasons

First..... Because the said Decrees of the said Mayors Court and Court of Appeals

Appeals are Contrary to Evidence and therefore Contrary to Law

Secondly..... Because the answer by your Petitioner filed in the said Mayors Court to the Complainants said Bill of Complaint was Delivered upon oath and therefore Evidence in the Cause and your Petitioner in and by his said answer did deny to stand indebted unto the Complainant in any other or further sum than the Sum of two hundred and thirty five Pagodas and did in and by his said answer not admit that the Complainant did attend the Execution of the said Commission as Charged in and by his said Bill of Complaint from the Ninth of June which was in the year of Christ One thousand Seven hundred and Eighty Seven until the Twentieth day of February which was in the year one thousand Seven hundred and Eighty Eight and did say that the Complainant did not sit as a Commissioner until the fourth day of July in the said year of Christ One thousand Seven hundred and Eighty seven and that he did sit as a Commissioner for the space of fifty Seven days and no more and which said several Matters and things so set forth in your Petitioners said answer were supported by the Testimony of a Witness by your Petitioner produced in the Cause and who was the interpreter Constantly attending upon the said Commissioners and which Evidence did stand and remain un refuted and unimpeached for the Testimony of Peter Walker the only Witness produced in the Cause on the part of the Complainant your Petitioner submits to your Most Excellent Majesty in Council is not Evidence insomuch as it is Vague and inconsistent

and

and more matter of Opinion

Thirdly .... Because your Petitioner did in and by his said answer deny that the Resolution of Government regarding the Allowance of Six Pagodas aday to the Commissioners on the part of the Honourable Company was to govern your Petitioner in regard to the Allowance to be made to the Commissioners on his part and that taking into Consideration the Sentiments of your Petitioners Solicitors in England upon the subject he did agree to allow forty Shillings for Every day that the Complainant had actually sat upon the said Commission and which matters and things were not Refuted by the Complainant nor did he attempt so to do Even by a single Witness

Lastly ..... Because the Complainant did in Effect abandon the Charges in his said Bill contained by neglecting to prove the same and which it was incumbent on him to have done as your Petitioner had put him to such proof by the Denial of the sufficiency or the truth of those Charges and as the Complainant did so abandon the said Charges in his said Bill Contained and as your Petitioner did Examine a Witness in support of the most material parts of his said answer and as that answer was it self Evidence being upon oath your Petitioner humbly submits to your most Excellent Majesty in Council that the said Decree of the said Mayors Court and Court of Appeals is Erroneous and Contrary to Law and that your Petitioner is greatly aggrieved thereby and your Petitioner is further

Strengthened

strengthened in the premises by the dissent of two out of four of the Members of the said Mayors Court and by the dissent of the President of the said Court of Appeals

For all which Reasons and such others as may be offered at the Hearing your Petitioner humbly prays that your most Excellent Majesty in Council will Vouchsafe to Reverse the said Decrees of the said Mayors Court and Court of Appeals and to grant unto your Petitioner such further and other Relief in the premises as to your most Excellent Majesty in Council May seem Meet

Signed J. Hall.

Solicitor for Appellant

Court

Court of Appeals
at
Madraspatnam

Saturday the 22d day of March
Anno Domini 1794

Between Nagapah Chetty of Madras
Inhabitant Appellant and George Moubray 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 together with the Decree of the said Court given in this Cause on Tuesday the 14th day of December 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 Honourable the Mayors Court do stand Affirmed and that the Appellants Petition be hence Dismissed with Costs

Sir Charles Oakeley Dissents to the Resolution of the Court being of Opinion that the sum of 235 Pagodas paid into the Mayors Court on the 14th September 1790 by the Appellants Attorney was an adequate recompense for the Attendance of the Respondent

Pbur [Signed] Chas N. White Clerk
a true Copy
[Signed] J.S. Hall.
Solicitor for Appellants

To

Filed in my Office
the 10th May 1794.
Chas N. White
Clk

To the Kings most Excellent
Majesty in Council

Between George Moubray Accountant
General and Member of the Board of
Revenues in the Service of the united Company
of Merchants of England trading to the East
Indies under their Presidency of Fort Saint George
Complainant and Nagapah Chetty of Madras
Merchant Defendant

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

This Respondent for answer to the said Petition and Appeal or unto so much thereof as concerns this Respondent to make answer unto Saith that he admits he did on or about the time mentioned in the Appellants Petition and Appeal file a Bill of Complaint in the Mayors Court at Madraspatnam against the appellant for the Recovery of the Sum of one Thousand Nine hundred fifty five Pagodas Ten fanams and Sixty Cash due and owing to this Respondent from the Appellant as might appear by the Copies of an account Current and the Extract from the Minutes of Consultation of the Government of Fort Saint George annexed to this Respondents said Bill and this Respondent also admits that he did state in his said Bill of Complaint that Cavoor Sydenadah Moodely late Deceased and the appellant had Caused a Bill

y

of Complaint to be filed in the High Court of Chancery in England against the said united Company and that a Commission did Issue thereupon to the several Persons in the said Petition and appeal named or any three of them and this Respondent admits he did also State that as it was not necessary for him to attend the Execution of the said Commission provided three Commissioners did attend and as he was much engaged in his other Occupations he did not enter on his Duty as Commissioner until the Ninth day of June which was in the year of Christ one Thousand Seven hundred Eighty seven and that such his attendance was at the special instance and request of the Appellant Conveyed to this Respondent by the appellants Letter under date the Eighth day of the said Month of June and this Respondent also admits that he did in and by his said Bill state that he attended to the Execution of the said Commission from the said Ninth day of June until the Commission was Closed which was on the Twentieth day of February and in the year of Christ one Thousand Seven Hundred Eighty and Eight being Two hundred and fifty seven Days for which this Respondent did Charge at the rate of Six Pagodas each Day according to the Resolution of the Government of Fort St George as stated in the Extract hereinbefore mentioned Copy whereof is annexed to this Respondent said Bill of Complaint and this Respondent also admits that he did further state that the said Government of Fort St George as the Representatives of the said united Company Deliberated as to the allowance which should be given to their Commissioners and after due Consideration thereof did resolve that the allowance should be Six Pagodas a day as before stated and that he this Respondent had Charged the like rate or Sum of Six Pagodas a day which for the said Period of Two hundred and fifty seven days made the Sum of one Thousand and five hundred forty two Star Pagodas which with Interest thereon from the said Twentieth day of February being the day on which the said Commission was Closed unto the thirteenth day of May which was in the year of Christ one Thousand Seven hundred and Ninety amounted to the Sum of one Thousand Nine hundred fifty five Pagodas Ten fanams and Sixty Cash for which sum this Respondent prayed Judgement and that the appellant might pay Costs of suit To which said Bill of Complaint this Respondent admits that the Appellant did on or about the time mentioned in his said Petition and Appeal file his answer and did therein deny being indebted to this Respondent in the said Sum of one Thousand Nine hundred fifty five Pagodas ten fanams and sixty Cash as was Charged in this Respondents said Bill of Complaint and by the Account Current thereunto annexed but did admit that he might stand indebted unto this Respondent in the sum of Two hundred thirty five Pagodas which he had tendered and was then and at all times ready to pay to this Respondent and this Respondent also admits that the appellant did also state such other Matters and things as in the said Petition and appeal are set forth but which this Respondent did not nor doth by any

any means admit To which said answer this Respondent admits that he filed his Replication and therein did say that the appellant having acknow = ledged his application to this Respondent as charged in his said Bill to attend on the Duties of the Commissioners from the Court of Chancery in England on the Eighth day of June in the said year of Christ one Thousand seven hundred and Eighty seven and this Respondent having Commenced his attendance on the then next day being the ninth day of the said Month of June this Respondent had a right to Charge from that day and that it did not avail in the like Cases whether the Business went on without interruption or Interval of time between the different Days of Sitting because the Commissioners and all others Employed to Execute the Duties = incident to a Commission for Examining Witnesses issuing under the seal of the Court were supposed to sit and always ready to attend to the Duties of their appointment from the Day they received the order to attend to the day of Closing the Commission and that the occasional interruptions of such a Duty were never noticed in the Charge given in by those employed to Execute the same and further that the Resolution of the Government of Fort St George as Represents = tives of the said united Company who were Defendants in the said suit was a fair and Just rate whereby to Estimate the Allowances to be made to the Commissioners and others employed on behalf of the Appellant as one of the Complainants in the said suit not only because

because it was to be presumed such Allowances were considered as moderate but because they were made after Due Consideration of the Subject as this Respondent stated he could prove if necessary to the = Satisfaction of the said Mayors Court and this Respondent admits that he did in and by his said Replication further State that he had been inform = ed and believed the Appellant had expressly promised to Pay to the Commissi = oners the same fees which the said United Company were to Pay to their = Commissioners And this Respondent admits that he did also state that the Appellant had endeavored to surprise the Justice of the said Mayors Court by a partial Extract from a Letter of his Solicitors in England carrying with it an imputation against the Charges made in this Country under the said Commission whereas if the Appellant had proceeded to state the subsequent Parts of the said Letter it would have Appeared Evident that the same Solicitors who had presumed to throw a Slur upon the Charges made in this Country were requiring from the Appellant by way of further remittance a Sum more than double what was equal to the entire Charges of a Suit of the first conse = quence in this Country as appeared by the further Extract of the said Letter as quoted by the appellants this Respondent admits that he did say his Charge was moderate for that the said Extract stated that a Guinea or two Pagodas and five Eighths per day was the Allowance made in England but that an Allowance was of Course to be made in

India

India in proportion to the encreased Charges of Professional Labor in this Country beyond the Charges Allowed in England and this Respondent also admits that he did state that the difference between the Two Pagodas and Five Eighths and Six Pagodas was Less than the general difference of Charges in this Country to that in England for that in England the Charge for drawing any Paper did not in any Case except in Proceedings before Parliament exceed One Shilling per Sheet whereas in this Country it was four Shillings or half a Pagoda per Sheet so that the relative Arguments of the Appellant operated to his prejudice in a Proportion of near two to one and as to the Interest Charged by this Respondent he humbly Submitted that having been entitled to receive his Charges on the Close of the Commission he was entitled to Interest thereon from that Day To which said Replication this Respondent admits that the appellant did file a Rejoinder and did therein set forth the several frivolous and evasive matters and things as are in his Petition and appeal stated and this Respondent also admits that upon the above proceedings Issue was Joined and Rules passed for the Examination of Witnesses and Witnesses were Examined accordingly and that the appellant did previous thereto deposit in the said Mayors Court the Sum of Two hundred and thirty five Pagodas the Balance by him Acknowledged in and by

by his said answer to be due and owing to the Complainant and which he tendered in payment as aforesaid and this Respondent also Admits that he did in support of his said Bill and Replication examine One Witness to Wit Peter Walker one of the Attornies of the said Mayors Court who deposed the several Matters and things which are stated in the said Petition and Appeal and this Respondent also admits that the appellant Examined One Witness to Wit Venkatanarasayer who deposed to this Respondents having began to attend as a Commissioner in the Month of July in the said year of Christ one Thousand seven hundred Eighty Seven and that the number of Days on which this Respondent sat as a Commissioner did not exceed Forty Seven Days and this Respondent also admits that the said Cause came on to be heard and was heard before the said Mayors Court on the Fourteenth day of December last when the said Mayors Court was pleased to Order and Decree and did accordingly order and Decree that the Appellant should pay unto this Respondent after the rate of six Pag^{s} per day from the Fourth day of July One Thousand Seven hundred and Eighty Seven to the Twentieth day of February one Thousand seven hundred and Eighty Eight with Interest and further that the appellant should pay all Costs of the Suit from which said Decree this Respondent admits that the Appellant did appeal to the Court of Mspeals at Madras and stated such Matters and things as he hath for that purpose set forth in his appeal to the Kings

Most

Most Excellent Majesty in Council and that this Respondent did Answer thereunto as in the said Appeal is setforth and this Respondent Admits that the Said Petition and appeal did come on to be heard and determined before the Court of Appeals at Madras on the 22d day of March Last when the said Court was pleased to Confirm the said Decree of the said Mayors Court and that the Appellants Petition and Appeal should be Dismissed with Costs by which Order and Decree the Appellant pretends to be aggrieved and hath stated certain Reasons against the said Decree to which Reasons this Respondent maketh answer as follows —

To the first Reason this Respondent for answer saith that the Evidence is in support of the Decree of the Mayors Court —

To the Second Reason this Respondent for Answer saith that he charged for his attendance only from the day he began to act as a Commissioner to the day the Commission was Closed to which charge he had a Legal right and the Like rate was paid by the Government of Fort Saint George to the Commissioners who acted on their behalf in the Cause in question —

To the third Reason this Respondent in answer saith that the Evidence of Peter Walker the Solicitor employed by the appellant in his Cause with the said united Company Deposes that he did always Understand that the Commissioners on the part of Nagapah Chetty meaning the appellant were to receive the same Fees as those on the part of the Honourable Company" and this Respondent saith that his Charge is regulated by the one made by the Commissioners on the part of the said United Company

To the Last Reason this Respondent saith that he denies having abandoned his Charges made in his Bill of Complaint on the Contrary he hath fully proved them first by the Exhibit being the Resolution of the Government of Fort St George for granting Six Pagodas per day to the Commissioners on behalf of the united Company Secondly by the proof of Peter Walker as aforesaid that the Appellant was to pay the same as the said Government of Fort Saint George had agreed to pay —

For all which reasons and such others as may be offered to your most Excellent Majesty in Council at the hearing of the Cause this Respondent prays that the said Decree of the Mayors Court and Court of Appeals at Madras be confirmed and that the appellants Petition and appeal be dismissed with Exemplary costs to be paid by the Appellant —

/Signed/ L. Popham

Solicitor for Respondent

To

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

In the Honorable the
Court of Appeals

Between Veerasawmy Pillay by
his Attorney Francis De Souza Complainant
.....and.....Coriatore
Vencatachelar of Madras Inhabitant Defendant

The humble Petition and Appeal of the abovenamed Defendant

Most humbly Sheweth

That the above named Complainant Veerasawmy Pillay did sometime since by his Attorney Francis De Souza file a Bill of Complaint against your Petitioner for the Sum of Two Hundred and Twenty one Pagodas thirteen fanams and ten Cash Pretended to be due to the said Veerasawmy Pillay upon the Ballance of an account Current and by the said Veerasawmy Pillay Assigned to the said Francis De Souza as by the said Bill of Complaint and Account Current thereunto annext will more at large appear

Filed in my office the 8th April 1791
Chas S. White Clk

your Petitioner sheweth that to this Bill of Complaint your Petitioner did in due time appear and put in his answer upon Oath thereby admitting that he did duly execute the Bond on which the said Ballance was supposed to arise but at the same time stating that instead of being indebted to the Complainant in the sum of Two hundred and Twenty one Pagodas thirteen fanams and ten Cash he only owed him the Sum of one hundred and forty two Pagodas forty five fanams and fifty Cash as by an Account Current annext to his said answer and which he would in due time prove might fully appear and your Petitioner did annex a Certain Account Current to his said answer by which it appeared that besides the sum Credited to him in the account annext to the Complainants Bill your Petitioner had paid thirty one Pagodas for the Expences of a Charity Water Choultry Thirty six Pagodas thirty three fanams for sundry House Expences Two Pagodas for one Thousand five Wood three Pagodas Twenty three fanams were due for Wages and fourteen Pagodas eleven fanams and forty Cash were due for One Hundred Measures of Horse Gram which several sums with the Interest thereon being Deducted from the Complainants Demand Left a Ballance due to the Complainant of the sum above stated of one hundred and forty two Pagodas forty five fanams and fifty Cash and no more which your Petitioner had tendered to the Complainant and had ever been and was always ready to pay to the Complainant the said Veerasawmy Pillay as will appear by the Copy of a Letter annext to your Petitioners answer the Original

having

having been duly delivered to them the said Veerasawmy Pillay or to his Attorney soon after the Commencement of the Suit and your Petitioner did also state in his said answer that there was thirty Pagodas Twenty one fanams and ten Cash Credited him by the Complainant that he was altogether ignorant of as by the said answer entered on the Records of the Honourable the Mayors Court may more fully and at Large appear —

Your Petitioner sheweth further that to this his answer the Complainant did by his Attorney abovenamed file his Replication and therein pretended that the several Item Charged by your Petitioner had never been received or were to be accounted for by him and thereunto annex a pretended Account of Sundry House Expences supplied him amounting to the Sum of thirty one Pagodas Twenty one fanams and ten Cash only which he pretended to say had been made out by your Petitioners Connivance whereas the fact is that your Petitioner had no Connivance being himself only a Connivance to the Complainant as is well known to him and Cannot be denied and it is equally true that the account of House Expence supplied the Complainant did really and truly amount to thirty six Pagodas thirty three fanams as your Petitioner will hereafter make appear and the Complainant did also pretend to deny the several Items charged by your Petitioner and did pretend as by his Bill of Complaint he had before Charged that the whole of the Money he had sued for was really due to him as by the said Replication remaining also of Record as aforesaid will also at large appear —

Your Petitioner sheweth further that to this Replication he did in due time put in his Rejoinder and did therein insist that no more was really due to the Complainant than the Sum of one hundred forty two Pagodas forty five fanams and fifty Cash as your Petitioner had admitted and sworn to in his answer and he did insist that he had really and truly paid and laid out for the Complainant at his particular Request the Sum of thirty one Pagodas in the Manner stated in his account and your Petitioner further insisted that at the time your Petitioner did execute the Bond to the Complainant your Petitr did inform him of the Demand that he had against him to which the Complainant replied that it was very well he would write the same off upon the Back of the Bond whenever your Petitioner would deliver him the Account and your Petitioner did further insist in his said Rejoinder that he did about a Week after being the Complainant the account which he examined and found right and faithfully promised the Defendant to write it off the said Bond and further your Petitioner did in his said Rejoinder insist that he did lay out and expend for the Complainant the Sum of thirty six Pagodas & thirty

thirty three fanams as sworn to in his said answer and he did annex the Particulars thereof to his said Rejoinder by which it appeared that the only differeance between the Two Accounts was the sum of Six Pagodas eleven fanams and Thirty Cash for Wages paid to the Servants of the Complainant on his Account and your Petitioner did insist that the same was really and truly paid by him for the Complainant and your Petitioner did further in his said Rejoinder insist that as the Complainant had not Denied the Charges of three Pagodas for fire Wood sworn to by your Petitioner in his answer he did no doubt admit the same and he did insist that the other Two Charges of three Pagodas thirty three fanams and fourteen Pagodas eleven fanams forty Cash were Justly due by the Complainant to your Petitioner and with Interest added thereon left the Ballance of one hundred and forty two Pagodas forty five fanams fifty Cash due by your Petitioner to the Complainant and no more and your Petitioner did also insist that he had not brought a single Charge against the Complainant for the sake of delaying Payment or from any other Motive but a fair and honest Desire to have Credit for such Sum as your Petitioner had really advanced the Same out of his own Pocket for the use and at the particular Request of the Complainant as by the said Rejoinder remaining also of Record may more fully and at large Appear —

And your Petitioner sheweth further that upon these Proceedings issue was Joined and Rules passed for examining Witnesses when the Complainant examined some of his Servants who said that they did not know of the several Items charged by your Petitioner but he did not produce any other Proof thereof whereas your Petitioner produced the Strongest Proofs of every Item charged in the Account annext to your Petitioners answer by the positive Oath of four Different Witnesses as by the Depositions will more fully and at large appear so that it was clearly evident that your Petitioner had advanced the same and ought in Justice and Equity to have Credit for it in his Account —

your Petitioner sheweth further that upon the Proceedings above recited this Cause came on to be heard and determined on Saturday the Twenty Sixth Day of March last when the Honourable the Mayors Court was pleased to order and Decree and did accordingly order and Decree that your Petitioner should pay the whole amount of the Sum sued for with Interest and Costs of Suit as appears by the Copy of the said Decree hereunto annexed for the Inspection of this Honorable Court the original being ready to be produced by which said Decree your Petitioner thinks himself much aggrieved and doth therefore most humbly pray Leave to appeal therefrom to this Honourable Court for the following among other Reasons —

First — Because the above several Charges having been clearly proved by the Witnesses who were examined thereto they ought to be Allowed as a Sett off against the Sum Sued for and only

the

the Difference ought to be decreed to be paid by your Petitioner —

Secondly Because having been tendered immediately after the Commencement of the Suit all subsequent Costs that were incurred Afterwards were at the peril of the Complainant and your Petitioner ought not to have been decreed to pay the same —

Thirdly ... Because of the Reasons setforth in Mr Alderman Ross's Dissent by which it appears that your Petitioner has been improperty put to a very heavy Expence which his Situation in Life under him altogether unable to discharge so that he can expect nothing less than a Jail should the Honourable Court not thinks proper to relieve him —

For which Reasons and for such others as may be adduced at the hearing of the same your Petitioner humbly prays that the said Decree may be reversed and that your Petitioner may be Decreed to pay only the Sum of one hundred and forty two Pagodas forty five fanams and fifty Cash and may be Allowed all such his Costs and Charges as he may have Sustained or have been put unto and that this Honble Court will be pleased to make such other and further orders as to this Honble Court may seem meet And your Petitioner as in duty bound Shall Ever Pray

/ Signed / P. Walker
Solicitor for Appellt

Mayors Court at Madraspatnam

Saturday the 26th day of March Anno Domini 1791

Present

Josias Dupre Porcher Esqr Mayor
James Call Andrew Ross and
John Mitford Aldermen

Between Veerasawmy Pillay by his Attorney Francis De Souza of Madras Inhabitant Complainant and Cristna Chellier of the Same place Inhabitant Defendant —

This Cause coming on to be Heard and Debated this day in the Presence of the Attornies on both Sides on Reading the Complainants Bill with Copy of an Account Current Copy of the Translation of a Bond or obligation and Copy of an Assignment annexed the Defendants Answer with Copies of an Account Current and a Letter annexed the amended Replication with Copy of the Translation of an Account annexed the amended Rejoinder with Copy of the Translation of an Account annexed the Interrogatories and Depositions on the part of the Complainant the Interrogatories and Depositions on the part

of

of the Defendant On Hearing the Pleadings made use of by the Attornies and on due consideration had thereon This Court doth think fit to order and Decree and doth Accordingly Order and Decree that the Defendant shall pray unto the Complainant the full and Just Sum of Two Hundred and Twenty one Pagodas Thirteen fanams and Ten Cash / Pags. 221. 13. 10 / together with all such Interest as now is or shall hereafter became due thereon untill full Payment is made also all Costs of this Suit

(Signed) J. Taylor Regr

A true Copy

(Signed) P. Walker

Solicitor for Appellant

Extract from the Minutes of a Court Held at the Town Hall on Saturday the 26th Day of March Anno Dominii 1796

Present

Josias Du Pre Porker Esqr Mayor
James Call Andrew Ross
John Mitford and Aldermen.

Veerasawmy Pillah by his Attorney Francis De Souza

vers

Curatoor Venecatachellier

Mr. Alderman Ross Dissents to the Resolution of the Court and will send in his Reasons at a future day

A true Copy

(Signed) P. Walker

Solicitor for Appellant

A true Extract

(Signed) J. Taylor Regr

Veera Sawmy Pillah his Attorney Francis De Souza

vers Curatoor Venecatachellier

Reasons offered by Mr Alderman Ross for his Dissent to a Decree given in this Cause on Tuesday last —

Because the Contest on the present Suit by the Tenor of the Proceedings appears to be carried on between the Assignor of the Bond sued for (who is a Native) and the Diffendant / who is also a Native / as if the

property

property still remained in the Assignor the the name of the Assignor for the sake of form is introduced into the Bill of Complaint which is not only a palpable evasion of that part of his Majesties Charter which prohibits the Natives from Suing each other in this Court but is a deviation from the Rules of Law which direct that the property of a Bond Assigned for a Valuable consideration paid shall be solely vested in the assigned whose right is so absolute in the eye of the Law that if the Obligor after notice of the Assignment pays the Money to the obligee he will be compelled to pay it over again and if the present Case there should be any presumption against the due and Valuable Consideration having been paid by the Assignee and that his name is Lent merely in Consequence of a corrupt Bargain in which a small consideration may have been given for the purpose of evading the order of the Charter (in the restraint put upon the Suits of Natives) it is still Less necessary or proper to Consider the present Suit or as entitled to the Decree which is now given in his favour whether the Transferor or the Transferee is regarded as the real Client

True Copy
(Signed) G. Taylor
Regr

(Signed) Andrew Ross
Alderman.
5th April 1791

a True Copy
(Signed) P. Walker
Solicitor for Appellt

To

To the Honble Major Genral William Meadows.

President and Governor &c Council
Fort St George.

In the Court of Appeals at Madraspatnam ... } Between Veerasawmy Pillah by his Attorney Francis DeSouza Complainant and Coatoor Vencatachellier Defendant

The Answer of the abovenamed Complainant to the Petition and Appeal of the Abovenamed Defendant

The said Respondent by his said Attorney doth admit that he did by his said Attorney file a Bill of Complaint in the Honble Mayors Court at Madraspatnam against the said appellant for the recovery of the Sum of Two Hundred and Twenty one Pagodas Thirteen fanams and Ten Cash Justly due and owing by the said Appellant for the Balance of a Bond or Obligation given and granted by the said Appellant unto this Respondent and by him Assigned over unto the said Francis DeSouza for a Valuable Consideration as in the Assignment unto the Bill of Complaint before this Honble Court annexed and this Respondents admits that the Appellant did appear unto the Summons issued upon the said Bill and did put in his answer thereto whereby the Appellant did admit that he did duly execute the Bond on which

Filed in my Office the 9th may 1791
Chas L. White Clk

which the said Balance for Two Hundred and Twenty one Pagodas Thirteen fanams and Ten Cash the said Bill was filed but did deny to be indebted in the said Sum of Two Hundred and Twenty one Pagodas Thirteen fanams and Ten Cash but insisted that he was only indebted in the Sum of one Hundred and Forty two Pagodas Forty Five fanams and Fifty Cash for proof of which the appellant annexed an Account Current unto his said Answer by which the appellant said it appeared that besides the Sum Credited to him in the Account Current annexed unto the Bill of Complaint he the appellant pretended that he had paid unto the said Veerasawmy Pillah the Sum of Thirty one Pagodas Thirty two fanams and Thirty Three Cash for Sundry Hire Expences three Pagodas for one Thousand Firewood three Pagodas and Twenty Three fanams for Wages Fourteen Pagodas Eleven fanams and Forty Cash for one Hundred Measures of Horse Gram which several Sums with Interest thereon the Appellant said Left a Balance due of the above Sum of One Hundred and Forty Two Pagodas Forty five Fanams and Fifty Cash by the appellant Acknowledged to be due instead of the Sum of Two Hundred and Twenty one Pagodas Thirteen fanams and Ten Cash really due and owing upon the said Bond which said Sum of One Hundred and Forty two Pagodas Forty five Fanams and Fifty Cash the Appellant pretended

the

he had tendered and always been ready to pay to the said Francis &c. de Souza as indeed the same appears by the Copy of the Letter annexed unto the Appellants answer which notwithstanding this Respondent saith is not a good tender because the said Money should have been paid into Court if the Appellant intended to have had any advantage therefrom and to have thereby Rendered the said Francis de souza Answerable for any Consequences for not accepting this Money and this Respondent admits that he did by his attorney file a Replication to the said answer and did deny the several Matters and things in the said answer Set forth and the appellant did file a Rejoinder thereto and that thereupon Issue did Join and Rules did pass for the Examination of Witnesses and Witnesses were examined by the appellant and also by this Respondent and Publication did pass in the said Matter but this Respondent saith that he denies that the appellant did at all prove the Several or any of the Items he would wish should be Allowed him in further sett off to those that were Allowed in the Account annexed unto this Respondents Bill on the Contrary this Respondent saith that the falacy thereof is shewn as well as the Object the appellant would wish to attain thereby from the first articles of the said account being long previous to the granting of the said Bond and this Respondent Saith that the said Cause was Sett Down for hearing and did come onto be heard on or about &c. Saturday the Twenty Sixth day of March last as said by the

Appellant

Appellant when this Respondent sheweth upon due Consi-
deration had thereon the said Mayors Court were pleased to order
and Decree and did Accordingly order and decree that the
Appellant should pay the aforesaid Sum of Two Hundred and Twenty
one Pagodas Thirteen fanams and Ten bash the full amount of the
Sum sued for with Interest and Costs as appears by the Decree
produced by the said Appellant and from which this Respondent
saith the appellant hath Causelessly appealed because the said
Decree is grounded upon the Facts stated and proved in Evidence
before them Consequently the Appellant cannot nor is he aggrieved
thereby and this Respondent in answer to the Severals objections
to the said Decree and the Cause of appeal therefrom saith

To the First.... This Respondent denies that the appellant did prove the
several Charges by Witnesses examined or otherwise and therefore the
same ought not to have been allowed to be setoff against the sum
sued for and that a Decree ought to have been given for the
difference only but this Respondent saith that the said Decree
could not have been given otherwise than the same is given for the
full Sum sued for —

To the Second This Respondent saith that the Sum which the appellant
did tender or pretends to have tendered unto this Respondent
after the Commencement of this Suit in the said Mayors Court being
Less than the Sum Sued for and really and Bonafide due he this
Respondent

Respondent was not obliged to receive the same even if the same
had been really Tendered and paid into Court which this
Respondent saith he is advised is the only Legal tender that
could have been made and this Respondent saith that he is
further advised that if the appellant had made a similar tender
by writing of the whole sum sued for the same would not have been
a good tender but that in order to save the appellant even in that
Case from Interest and subsiquent Costs that the Appellant
should have tendered the full Sum Sued for with Interest and
the Costs that had then Accrued by payment of the same in
open Court in Current Money —

To the Third This Respondent saith the dissent of a Judge from a Decree
of Court is not any part of the Decree and this Respondent saith
that the Suit is Justly brought in Matter and form and could
not have been otherwise brought than in the Name of the Assignor
who never the Less doth not appear to have any Interest thereon
as by the assignment and also by the Appellants own shewing in
his answer upon oath wherein the appellant acknowledges to
stand indebted unto the assignee and not unto the Assignor for
he therein tenders unto the said assignee Francis desouza this
Respondent the sum of one Hundred and Forty two Pagodas
Forty five Fanams and Fifty bash instead of the Sum of Two
Hundred and Twenty one Pagodas Thirteen fanams and Ten bash

whereas

whereas if the appellant had known or believed that the said Money was not owing to the afsignee but still remained due unto the Afsignor he would in that case have tendered the Money to the Afsignor But this Respondent saith that he was well aware that if he paid the said Money or any part thereof unto the Afsignor that he would in that Case have been compellable to pay it over again to the Afsignee which Sender this Respondent saith is unquestionable Evidence of the Knowledge and privity of the appellant to the said Afsignment and that the Afsignee was thereby vested with the sole right to ask demand sue for and recover the amount due on the said Bond as this Respondent could have proved by an Exhibition of the original Letter the Copy of which is annexed unto the said answer if the appellant had not rendered such proof unnecessary by admitting thereof which Letter this Respondent saith doth not only operate as Evidence of so much being due but the same is also a covenant on the part of the appellant with the Afsignee upon the grounds of the said Afsignment not only to pay him the Sum therein Sindered but also of such other further sums as he should be able to prove to the full amount of the Sum sued for thereupon

This Respondent therefore saith that the appellant hath not been improperly sued and this Respondent saith that the Pretended hardship of the appellant as being put to expense cannot be deemed so in as much as he himself was the cause of the Expense he has been decreed to pay he was willing to pay one hundred and Forty Two Pagodas Forty five fanams and fifty Cash which being Seventy Eight Pagodas less than was really due and which he really believed and now does believe the appellant able although not willing to pay and this Respondent saith that if the appellant was able to pay the Sum of One hundred and Forty two Pagodas Forty five fanams and fifty Cash he ought to have tendered and paid the same into Court whereby this Respondent would have had an opportunity of at least receiving as much of the debt of the appellant had tendered but by his not having taken that regular Mode of tender but continuing to contest the whole of the Sum Sued for upon such frivolous Grounds this Respondent saith that it is evident that the Appellant hath been influenced in defending the present suit upon Grounds both unjust and Litigious.—

This Respondent therefore prays that this Honble Court will be pleased to affirm the Decree of the Mayors Court in this Cause and to dismiss the appellants Petition and appeal with Costs.—

Signed Henry DuPuy
Attorney for the Respt

Court

whereas if the appellant had known or believed that the said Money was not owing to the Assignee but still remained due unto the Assignor he would in that case have tendered the Money to the Assignor But this Respondent saith that he was well aware that if he paid the said Money or any part thereof unto the Assignor that he would in that Case have been Compellable to pay it over again to the Assignee which Fender this Respondent saith is unquestionable Evidence of the Knowledge and privity of the appellant to the said Assignment and that the Assignee was thereby vested with the sole right to ask demand sue for and recover the amount due on the said Bond as this Respondent could have proved by an Exhibition of the original Letter the Copy of which is annexed unto the said answer if the appellant had not rendered such proof unnecessary by admitting thereof which Letter this Respondent saith doth not only operate as Evidence of so much being due but the same is also a covenant on the part of the appellant with the Assignee upon the grounds of the said Assignment not only to pay him the Sum therein Endored but also of such other further sums as he should be able to prove to the full amount of the Sum sued for thereupon

This Respondent therefore saith that the appellant hath not been improperly sued and this Respondent saith that the Pretended hardships of the appellant as being put to expense cannot be deemed so in as much as he himself was the cause of the Expense he has been decreed to pay he was willing to pay one hundred and Forty Two Pags Forty five fanams and fifty Cash which being Seventy Eight Pagodas less than was really due and which he really believed and now does believe the appellant able although not willing to pay and this Respondent saith that if the appellant was able to pay the Sum of One hundred and Forty two Pagodas Forty five fanams and fifty Cash he ought to have tendered and paid the same into Court whereby this Respondent would have had an opportunity of at least receiving as much of the debt of the Appellant had tendered but by his not having taken that regular Mode of tender but continuing to contest the whole of the Sum Sued for upon such frivolous Grounds this Respondent saith that it is evident that the Appellant hath been influenced in defending the present suit upon Grounds both unjust and Litigious.

This Respondent therefore prays that this Honble Court will be pleased to affirm the Decree of the Mayors Court in this Cause and to dismiss the Appellants Petition and Appeal with Costs.

Signed Henry DuPuy
Attorney for the Respt

Court

Court of Appeals at Madraspatnam } In Saturday the 22nd day of March Anno Domini 1794

Between Coratore Venkatachellier of Madras Inhabitant appellant and Verasawmy Pillay by his attorney Francis DeSowza of Madras Inhabitant Respondent—

This Cause coming on this day to be heard and debated befor this Court by the Attornies on both sides upon hearing the Petition of Appeal and Answer and the Material Exhibits of the Honourable the Mayors Court together with the Decree of the said Court given in this Cause on Saturday the 26th day of March 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 Honourable the Mayors Court dated

dated the 26th day of March Anno Dominii 1791 be reversed and that the Respondent Verasawmy pillay do pay all Costs in both Courts

By the Court
/Signed/ Chas N. White Clk

To

To the Honble

Major General William Medows

President in Council

Fort St. George

In the Court of Appeals
at Madraspatnam

Between Charlotte Machintosh
Widow and Administratrix of Angus
Machintosh Deceased Complainant
and Kachariah Polack of the
same place Merchants
Defendant

The Humble Petition and Appeal of the
above named Defendant

Shweth

That the said Complainant did on or about
the Tenth day of December which was in the year of our Lord
One thousand Seven hundred and Ninety file her Bill of
Complaint in the Mayors Court at Madraspatnam against
your Petitioner for the recovery of the Sum of Forty two Pagodas
Six fanams and Twenty Cash Charged by the Complainant
to be due unto her as administratrix as aforesaid by your Petitioner
for House Rent And your Petitioner further saith that the
usual Rules passed for your Petitioner to Appear to and answer
the

Filed in my office
the 14th March 1791
Thos N. White

this said Bill of Complaint and that he appeared thereto by his
Attorney at Law your Petitioner Sheweth that before the Bill was filed
your Petitioner Applied to the Complainant to allow your Petitioner a little
longer Indulgence and Offered Notes of hand to more than the
amount of the Debt and also to sell some Household furniture at
public Outcry in Order to pay off the Debt to which your Petitioner received
no answer but the Bill was filed as aforesaid your Petitioner also
Sheweth that a week before the Rules for Answering expired he
sent a Person who Offered his own note for the amount payable
in a Week in order to prevent any further Expense falling on your
Petitioner but the offer was Refused upon which your Petitioner
Applied to the Mayors Court and requested a further Indulgence
but the said Mayors Court allowed your Petitioner only one Week
to answer the said Bill when they ordered that a Decree should
pass against your Petitioner and your Petitioner was accordingly
Decreed to pay unto the Complainant her said Demand
with Interest and Costs as by a Copy of the said Decree
hereunto annexed may appear

From which said Decree of the
said Mayors Court your Petitioner Appeals to this Honourable
Court of Appeals because he conceives that under the
Circumstances before stated and because however disputed the
Justness of the Claim the said Court ought to have granted your

Petitioner

Petitioner further time —

For all which reasons and such others as your Petitioner may Offer at the Hearing of this Cause he humbly prays this Honourable Court will reverse the said Decree and give your Petitioner one Months time —

[Signed] Stephen Popham
Solicitor for appellant,

dows

rge

kintosh

ngus

inant

the

st

rd

?

ust

redas

nit

w

n

Extract

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 1st Day of March Anno Domini 1791

Present

Josias Du Pre Porcher Esqr Mayor
Andrew Rose John Mitford and
Benjamin Roebuck Aldermen

Charlotte Mackintosh Widow and Administratrix of Angus Mackintosh Deceased

vers

Zachariah Polack

The Attorney for the Complainant produces to the Court a Certificate from the Register Setting forth that the usual Rules have issued for the Defendant to answer the Complainants Bill which he has neglected doing He therefore prays that a Decree may now pass to which the opposite Attorney objects and prays that he may be allowed 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

This Court doth therefore think fit to Order and Decree and doth Accordingly Order and Decree that the Defendant shall pay unto the Complainant the full and Just sum of Forty two Star Pagodas Six Fanams and Twenty Cash Star Pagodas 42. 6. 20. together with all such Interest as now is or shall hereafter become due thereon until full payment is made also all Costs of this Suit

A true Extract

Signed J. Taylor Regr

To the Honble Major General William Medows

President in Council

Fort Saint George

In the Court of Appeals
at Madraspatnam . . .

Between Charlotte Mackintosh Widow and Administratrix of Angus Mackintosh deceased Complainant and Zachariah Polach of Madras Merchant Defendant

The Answer of Charlotte Mackintosh Complainant to the Petition of Zachariah Polach Defendant

Filed in my office the 30th March 1791
Chas. N. White Clk

This Respondent by way of answer to the said Appellants Petition of Appeal or unto so much thereof as this Respondent is advised is material or Necessary for her to make answer unto answereth and Saith that She admits to have on or about the Tenth day of December which was in the year of our Lord One Thousand Seven Hundred and Ninety filed a Bill of Complaint in the Honble the Mayors Court of Madraspatnam against the said Petitioner for the Recovery of the Sum of Forty two Pagodas Six fanams and Twenty Cash 42. 6. 20. Charged by this Respondent to be due to her as administratrix of the Estate and Effects

Effects of Angus Mackintosh deceased and this Respondent further Says that Summons did issue thereon directed to the Sheriff of Fort Saint George Town of Madraspatnam and the districts thereof Requiring and Commanding the said Petitioner to be and appear before the said Honourable Mayors Court and to answer to the said Bill of Complaint To which Summons the said Petitioner did Appear through and by the Means of his attorney at Law And this Respondent further Saith that the usual time Agreeably to the practice of the said Mayors Court having expired for the Petitioner to Answer this Respondents Bill of Complaint and having neglected so to do this Respondent did by means of her attorney at Law pray the said Honble Mayors Court to grant a Decree in her favor But the said Petitioner having Suggested that in the Space of one Week the Debt would either be Settled or an answer put in the said Honble Mayors Court were thereupon pleased to give him the time Required And this Respondent further Saith that the Second Rule having expired the said Petitioner did again through his attorney request the further Indulgence of another week But this Respondent having Suggested that the indulgence Craved for was evidently done to delay and Procrastinate the Suit for that no Copy of the Bill of Complaint had been taken or even Applied for the Honourable Mayors Court were thereupon pleased to order

and

and Decree and did accordingly order and Decree the said Petitioner to pay to this Respondent the full and Just Sum of Forty two Pagodas Six fanams and Twenty Cash / 42..6.20 with all such Interest as them was or Should thereafter become due thereon together with all Costs of Suit as by the said Decree Copy whereof Is to the Petition of Appeal annexed Relation being thereunto had doth and will More fully and at large appear. And this Respondent denies that the Petitioner Is in any wise or Measure Aggrieved by such Decree or that he has any Just or Reasonable Cause to appeal therefrom For this Respondent Says that if the Petitioner could have answered to the Bill of Complaint or if it had been his intention so to do He has more than the usual time granted him For this Respondent says that two Peremptory Rules were Served upon him under the Signature of the Register of the said Honourable Mayors Court Copies whereof this Respondent hath thereunto annexed. And this Respondent further Says that it doth evidently Appear by the Petitioners own Shewing that while he Complains of the Judgement of the said Honourable Mayors Court He in the same Moment admits the Justice of this Respondents Claim which He Says He never pretended to Dispute But that under the Circumstances Stated by him a further time Should be given him to answer and to Litigate this Just Demand a Conduct at once so very inconsistent and so Replete with injustice as

To

to Merit the Severest Reprehension of this Honourable Court And this Respondent Saith that the said Petitioner has in his Petition of Appeal introduced a great deal of Extraneous Matter Foreign to the Subject all which this Respondent does aver to be false and Groundless being Introduced by the Petitioner with a View Solely to favor his Litigious purposes and as it is a direct infrengement on and Contrary to the practice of this Honourable Court to Admit on their Records Such irregularities This Respondent prays the Same May be rasped therefrom

For all which reasons as well as those above Set forth and for Such Others as may be Offered at the hearing of the Cause This Respondent humbly prays that this Honble Court will be pleased to affirm the Order and Decree of the said Honourable Mayors Court and that the Appellants appeal be dismissed with Exemplary Costs to be paid by the said appellant for his very litigious Conduct

(Signed) J. Chalmer
Attorney for Respondent

Charlotte

Charlotte Mackintosh administratrix of Angus Mackintosh Deceased
vers
Zachariah Polack

A further Day is given the Defendant till the 22d Instant to answer the Complainants Bill indefault of which Judgement will be given for the Complainant

per Cur
(Signed) J. Taylor Regr

Town Hall
8th February 1791

true Copy
(Signed) J. Chalmer
Attorney for Respondent

Charlotte Mackintosh administratrix of Angus Mackintosh Deceased
vers
Zachariah Polack

Further Day is given the Defendant till the 1st March next to answer the Complainants Bill indefault of which Judgement will be given for the Complainant

per Cur
(Signed) J. Taylor Regr

Town Hall
22d February 1791

true Copy
Signed J. Chalmer
Attorney for Respondent

Court

Court of Appeals
at
Madraspatnam

Saturday the 22 day of
March Anno Domini
1794

Between Zacharias Polack a
Madras Merchant Appellant and
Charlotte Mackintosh Widow and
Administratrix of Angus Mackin-
tosh Deceased Respondent—

The Attorney for the Appellant
moved for Leave to withdraw his appeal to which
the Attorney for the Respondent did consent but
the Court having taken the same into Consideration
on the Motion of the Latter do think fit to order that
the Appellant do pay double Costs in this Court—

By the Court
/Signed/ Chas N. White
Clk

Saturday

Saturday the 29th day of March 1794
Present,
Sir Charles Oakeley Baronet,
Ernst William Fallofield and George West co.

To the Honorable Major General William Meadows—
President in Council
Fort Saint George—

In the Honble.
Court of appeals.

Between Gregorie Patrick of Madras
Merchant Complainant and Sasha Gopaldofsee
Vishunchundjee by his attorney Jayaram dofs
of the Same place merchant Defendant

Sheweth

The Humble Petition and appeal of the above named Defendant
That the Complainant above named did some time
on or about the seventeenth day of April and in the year of Christ
One thousand Seven hundred and Eighty Nine Exhibit and file
his Bill of Complaint in the Mayors Court at Madraspatnam
against your Petitioner for the recovery of the Sum of Five hundred
and fifty Pagodas thirty One fanams and Seventy three Cash
pretended to be due and owing by your Petitioner and which

Filed in my office
the 13th June 1791
Chas N. White
Clk

the

the Complainant did say would more fully appear by the Copy of a certain Bill of Lading and the Copy of the Translation of a Policy of Insurance and of a paragraph of a Letter from Batavia as also by the Copy of an Account to his said Bill annexed and your Petitioner Sheweth the Complainant in and by his said Bill did further state that the Snow Elizabeth sailed from Madras for Batavia on or about the ninth day of July which was in the year of our Lord One thousand Seven hundred and Eighty Six and arrived at Batavia sometime in the month of September following that the Correspondents of the Complainant at Batavia not being able to sell a certain Trunk or Chest of Varnished Wares belonging to the Complainant caused the Same to be replaced on Board the said Snow Elizabeth and that the said Snow Elizabeth Some time afterwards to wit in or about the month of February or march which was in the year of Our Lord One thousand seven hundred and Eighty Seven did sail on her return to madras and was Lost in her said Voyage that he the Complainant waited one year and One day from the sailing of the said Snow Elizabeth before he made any demand from your Petitioner of the said Sum by him insured as aforesaid which Period of one year and one day being the time according to Custom and did their apply to your Petitioner for payment of the amount thereof and that your Petitioner had refused to comply therewith and he the Complainant did thereupon wit and by his said Bill pray that your Petitioner might be decreed to pay

pay unto him the Complainant the said Sum of Five hundred and fifty Pagodas thirty One fanams and Seventy three Cash together with Interest and Costs of Suit

And your Petitioner Sheweth that to the Complainants said Bill your Petitioner did some time in or about the twenty Eighth day of July Exhibit and file his Answer and did therein and thereby state that he did not admit to be indebted to the Complainant in the Sum of Five hundred and fifty Pagodas thirty One fanams and Seventy three Cash or in any other Sum whatever and so it was Evident by the Complainants own Shewing for that he the Complainant was utterly incapable of producing those Vouchers which were Requisite to establish his pretended claims and for which he had brought his action against your Petitioner and your Petitioner did in and by his said Answer admit to have insured to the Complainant the Sum of Five hundred Pagodas upon sundry wares and Merchandize by the Complainant said to have been on Board the said Snow Elizabeth as set forth in the Complainants said Bill and your Petitioner in and by his said answer did further state that on being informed by the Complainant that the said Snow Elizabeth had been Lost and that the said Insurance had become due he your Petitioner did express a readiness to pay and satisfy the same to the Complainant immediately on his the Complainants producing the

the documents necessary to ascertain that the Goods insured by your Petitioner to the Amount of the said sum of Five hundred pagodas had absolutely been lost but that the Complainant evading such the fair and equitable Requisition of your Petitioner did produce what he called an Extract of a Letter from his Correspondent at Batavia purporting That a Trunk of Japan Varnished Wares which could not be disposed of there had been carried back again that your Petitioner deeming such information altogether Vague and insufficient did object thereto and demand something more certain and satisfactory suggesting that the Complainant should procure from his agent or any other Person residing at Batavia a Notorial or some such official and public declaration that the said Trunk mentioned in the said pretended Extract had absolutely been reshipped on the said Snow the Elizabeth and your Petitioner did in and by his said Answer shew that the Complainant did promise that he would write to his agent at Batavia and procure from him the documents required by your Petitioner but that the Complainant did some time afterwards signify to your Petitioner that the said Extract of the said Letter was the only Voucher he could produce and that your Petitioner must be satisfied therewith and your Petitioner did in and by his said Answer shew that the Complainant had, had Sufficient time to write to and Receive advice from Batavia and

and that it was to be supposed he had not been negligent or that he had not Received particular information on the matter in question because your Petitioner did state from information to be depended on that whilst the said snow was in the Streights of Malacca several Letters had been Received from the said snow the Elizabeth that in consequence thereof she had been insured by the new Insurance Company at Madras aforesaid that it was reasonable to imagine the Complainant had Received Letters from his agent who was on Board of the said snow the Elizabeth for that such was in the Common Course of Business and a thing of course and that it was equally reasonable to immagine that his said agent would in such Letters have given some account of the said Trunk And your Petitioner in and by his said Answer did say he did not know further than he had learnt by the Complainants said Bill whether the Complainant did or did not ship the said Trunk of Varnished Wares on Board the said snow the Elizabeth nor could your Petitioner possibly know whether the said Trunk was or was not on Board the said snow the Elizabeth when she sailed from Batavia but that your Petitioner verily believed it was not and your Petitioner did upon the several matters and things in his said answer contained deny that the Complainant had any right to Recover the sum set forth in the account Current to his said Bill annexed and did say that if the Complainant would procure Vouchers of proper

authenticity

authenticity, to prove that the said Trunk of China Varnished ware was on Board the said snow the Elizabeth at the time she was supposed to have been lost he your Petitioner was ready and willing to pay unto the Complainant the Amount of the Sum sued for and did thereupon tender the same to the Complainant And your Petitioner Sheweth the Complainant did on or about the twenty second day of september in the year One thousand Seven hundred and Eighty nine Exhibit and file his Repli=cation to your Petitioners said answer and therein did pretend that Some time after the Policy of Insurance had been effected on the Snow Elizabeth for and on account of the Complainant he was informed that the said Vessel had been lost on her Return from Batavia and did by the means of your Petitioners Insurance Broker acquaint your Petitioner therewith as the Answer thereof that he the Complainant did write to manook Jacob and Vartan Gaspar two armenians Resident at Batavia and who as the Complainant did pretend were persons of Credit to know what had become of the said Trunk of Japan Varnished Wares that the said manook Jacob and Vartan Gaspar did by a letter inform the Complainant that the said Trunk had been brought thither by the said Caloost Gregorio but that as it was impossible to dispose thereof the said Caloost Gregorio was Obliged to reship the same on the said snow Elizabeth and that the said snow had sailed from Batavia some time afterwards with the said Trunk on Board and the Complainant in and by his said Replication did further state that upon the Receipt of the said Letter and after he the Complainant had been informed that two armenian Merchants had been paid by the new madras Insurance Company the amount of their Insurances made by the said Company on the said Snow Elizabeth the Complainant did Acquaint your Petitioner thereof and did also shew and Explain to him the purport of the Letter so Received from the said manook Jacob and Vartan Gaspar but did pretend that he the Complainant had never promised your Petitioner that he would write to his agent at Batavia and procure from him any other Documents as stated by your Petitioner in his said answer and your Petitioner Sheweth that to the said Replication of the Complai=nant he did file a Rejoinder and did therein and thereby support and maintain the Several Facts insisted on in his Said answer and deny the matters and things setforth in the Complainants said Replication in opposition thereto and your Petitioner Sheweth that upon such proceedings had issue did join and Rules did pass for the Examination of Witnesses that Witnesses were Accordingly by examined and that publication did pass thereon and your Petitioner

Sheweth

Sheweth that after publication had passed as aforesaid the
Complainant did pray to enlarge the same and the said Mayors
Court did grant the prayer of the Complainant who did thereupon
exhibit a paper writing purporting to be a notorial declaration
taken at Batavia a Copy whereof is hereunto annexed for
the inspection of this Honble Court to which your Petitioner
craves reference - and your Petitioner Sheweth that the
Witnesses Examined on the part of the Complainant did little
more than attempt to prove the Invoice Bill of Lading
and the Letter said to have been received from Batavia from
manook Jacob and Marlan Gaspar as the same are set forth
in the pleadings and to shew that the Goods for the amount
of which the Complainant brought his actions against your
Petitioner had been reshipped at Batavia on Board the
Said Snow the Elizabeth and that the said Vessel was
afterwards lost and further to Shew that the said manook
Jacob and Marlan Gaspars were not interested in writing
the Said Letter and that a certain Person who had insured
on the said Vessel had Recovered the amount insured
and your Petitioner Sheweth that he did file Exceptions
to the Interrogatories exhibited to and depositions taken
thereon of Philipus Jacob one of the Witnesses examined on
the part of the Complainant and who was so Examined

to

to prove the said Bill of Lading that the Goods in question were
reshipped on Board the said Snow Elizabeth that the said
Vessel was afterwards lost and that sethe avait of madras
merchant who had insured a certain Sum of Money on Board
the said Vessel had recovered the amount of hereof from the
assurers and your Petitioner in his said Exceptions did state
that the said Philipus Jacob had filed a Bill in the said
Mayors Court against Gopaldass Vishnuchund for the Recovery
of a Sum of money the pretended amount of certain Goods by
him insured and pretended to have been shipped on Board
the Snow Elizabeth the Snow in question and as the Cause of
Vishnuchund was to be determined by the Evidence taken in
the Cause of your Petitioner and as the Cause of the said
Philipus Jacob would be affected by such determination the
Said Philipus Jacob was thereby a party interested in the
Event of your petitioners suit and therefore an improper
Evidence and your Petitioner Sheweth that to his said Exceptions
the Complainant did file an answer and therein did pretend
that as the said Philipus Jacob was not a party in the suit
and that the points to which he was Examined were
principally to the proof of hand writing and other matters of
fact to which the answers could not be Varied with a View
to Second any Interest which the said Philipus Jacob

might

might be supposed to have therein and your Petitioner sheweth that he did also except to the said paper Writing purporting to be a notorial declaration taken at Batavia because that the said paper Writing had not been proved by Witnesses examined thereto on Interrogatories exhibited thereon so as to have given to your Petitioner the fair advantage and to which he was Justly intitled of a cross Examination Because even if the said paper writing had been duly proved and thereby obtained every authenticity it was capable of Receiving yet that the same would be null and Void because a Notorial declaration or Instrument made in a foreign Country could not be given in Evidence in the said Mayors Court and your Petitioner Sheweth that to such the Exceptions of your Petitioner the Complainant did file an answer and therein say that an Exhibit carrying its own Evidence with it had no occation to be proved by Interrogatories and therefore could not be a matter for cross Examination that your Petitioner must have been misinformed in saying that no Deed or Instrument made in a Foreign Country could be given in Evidence in the Mayors Court because that it was laid down in Jacobs Law Dictionary under Title Evidence that things done beyond Sea might be given in Evidence to a Jury and that the Testimony of a Public notary of things done in a Foreign Country was good Evidence and your Petitioner Sheweth that the Witnesses examined on the part of your Petitioner did substantiate the Several Matters And things in your Petitioners said Answer Contained and did particularly prove the Custom of Merchants in this Country in Matters of Insurance and shew that in order to Entitle the assured to Recover from the assurer the Bill of Lading property authenticated should be produced and every attestation upon oath in the power of the assured to procure in order to prove his interest and that the property insured had actually been shipped as declared by the assured and further that the agent at a distant port should forward to his Constituent the Bills of Lading of the property shipped and without which the assured were to be the sufferers - and your Petitioner Sheweth that the said Cause did come on to be heard on the Second day of April last past when the Said Mayors Court was pleased to Over rule the Exceptions filed on the part of your Petitioner as aforesaid and did think fit to Order and Decree and did Accordingly Order and Decree that your Petitioner should pay unto the Complainant the Said Sum of Five hundred and fifty Pagodas thirty One Fanams and Seventy three Cash together with Interest and Costs as will more fully appear by a Copy of the Decree of the said Mayors Court hereunto annexed

annexed and to which your Petitioner craves reference And your Petitioner Sheweth that Conceiving himself much aggrieved thereby he did pray a rehearing thereof And that the same coming on to be reheard on the thirty first day of may last the said mayors Court was pleased to Conform the decree of the said Second day of April three of the Members thereof dissenting therefrom as will more fully and at Large appear by a Copy of the said final Decree and an Extract of the minutes of the said Mayors Court hereunto annexed and to which your Petitioner craves leave to refer and prays the Same may be taken as part of this his Petition of Appeal by which said Order and Decree of the said Mayors Court your Petitioner doth conceive himself greatly aggrieved and doth therefore appeal therefrom to this Honble Court for the following amongst other Reasons—

First ... Because the said mayors Court had no manner of foundation whereupon to ground the said Decree that in granting the Same the said mayors Court did proceed contrary to the Law of Merchants which is the Law of the land and that admitting the Said paper writing purporting to be a notorial declaration received from Batavia was contrary to the Law of Evidence and therefore your Petitioner is advised and thereupon humbly insists that the Said Decree of the said Mayors Court is erroneous and illegal—

Secondly ... Because the Complainant did not produce either the Invoice Bill of Lading or any other Authentic Document to prove that the Goods pretended to have been shipped on Board the Said Snow the Elizabeth Actually were shipped and thereby to Shew his interest therein and his Right to Recover the Amount thereof from your Petitioner for your Petitioner Sheweth that the Invoice and Bill of Lading Setforth in the Readings on the part of the Complainant were by the Complainants Own shewing an Invoice and Bill of Lading of Goods shipped from the port of Madras to Batavia whereas the Policy upon which the Complainant has declared in and by his said Bill of Complaint was effected on Goods pretended to have been Reshipped for the port of Madras from Batavia therefore the introduction thereof was altogether irrelevant and impertinent and consequently ought not to have had any the least weight with the Judgment of the Said Mayors Court—

Thirdly ..... Because the said paper writing purporting to be a Notorial declaration received from Batavia was introduced irregularly for that an Exhibit in a Cause ought to be produced so that the opposite party might have the benefit of examining or cross Examing thereto and for as much as the said paper writing giving it all the force and Virtue it is capable of is nothing more than

than the attestation of a notary public of Batavia that certain Persons therein Named appeared before him and declared the Several matters and things therein setforth Such certification although the same Should be in disputable cannot in the least affect the Declaration So certified that must stand upon its own Merits therefore if it was not in itself Evidence the notorial certification could not Render it so and your Petitioner is advised that as the Said Declaration contains nothing more than the bare assertion of certain people at Batavia which has not even the sanction of an affidavit it is altogether negatory that Such declaration would Not be received as Evidence if made at Bengal Bombay or any other British Settlement and your Petitioner humbly conceives that Coming from Batavia cannot give it greater force or Virtue And your Petitioner is further advised that if the said paper writing did really profess any force or Virtue there and in that case instead of supporting the Cause of the Complainant it would appear diametrically opposite thereto for it states that the Goods brought to Batavia on Board the Said Snow the Elizabeth belonged to Gregory Calcost and Thewn dawsur Copal Chitty a Malabar merchant at the Coast of Coromandel and shews that the Same must have consisted of Long Cloth and Jewels so that the according the Said paper writing the Complainant could not have had any Interest therein as neither himself nor his pretended

Fourthly Because the Letter pretended to have been Received from the Said Varlan Gaspar and manook Jacob was contrary to Law admitted and Read as Evidence at the hearing of the Cause and although the Complainant has endeavoured to draw from a Witness by him produced that the Said Letter was not written under the influence of interested motives to Serve the causes of the Complainants Cause at the expence of Truth yet he has failed therein for Marcath Joseph examined to the point to the fourth Interrogatory deposes as follows to wit this deponent saith he doth not know whether the Complainant was any wise interested with the Said manook Jacob and Varlan Gaspar at the time they wrote the said Letter so as to induce them to wish any thing false to answer the purpose of the Complainant although he immediately before declares that the fullest Credit could be given to their Said Letter and your Petitioner says that as well from the doctrine of the Law as from every principle of Equity the said Letter ought not to have been Received as Evidence nor Read at the hearing of this Cause—

Fifthly ... Because the Complainant has not used any endeavour by praying a Commission to Examine Witnesses at Batavia to procure the best or any Testimony that the Goods pretended to have

have been reshipped on Board the said Snow Elizabeth ever was Shipped thereon as charged in the Complainants said Bill and further setforth in and by his said Replication so that he has not Shewn any Right of Interest in and to the said property — pretended to have been on Board the Said Snow the Elizabeth as aforesaid and which he ought to have done —

Sixthly — Because the Policy effected by your Petitioner is an open Policy and as such it was incumbent on the Complainant to prove the real Value insured by a production of all the usual documents such as the Bills of Sale Bills of Parcels the Costs of the out fit the Bills of Lading signed by the master specifying the Goods Received on Board and for whom he is to carry them Custom house Clearance and every other paper which Might have been thought necessary to Substantiate his right and which the Complainant did neglect to do and therefore your Petitioner humbly insists that the said Mayors Court had No manner of foundation whereupon to ground the said Decree

Lastly — Your Petitioner says it would appear by the Complainants own Shewing that the Said Snow the Elizabeth did depart from the Said Port of Batavia and did again return thither After the said Policy had been efflicted contrary to the Condition thereof for the Complainant in and by his said Bill states that the said Snow the Elizabeth did arrive at Batavia in the month of September One thousand Seven hundred and Eighty Six which your Petitioner must regard as the first time of her arrival and the notorial Declaration declares that She arrived there in the month of March One thousand Seven hundred and Eighty Seven which your Petitioner must Regard as the second Time of her arrival and the Policy is dated in the month of February preceding —

For all which Reasons and such others as may be offered at the hearing your Petitioner humbly prays that the Honble Court will be pleased to Reverse the Decree of the said Mayors Court and that they will further be pleased to grant unto him such other and further relief in the Premises as in their Wisdom may seem meet —

[Signed] James Stuart Hall, John Hamilton, Sols for Appellant —

On

SS

N.o 3686.

On this day the thirteenth of March Anno 1790 appeared before me Johannes Nicolaas Bestbier Notary Publick admitted by the High Noble Government of Nitherland India residing within the City of Batavia in the presence of the under named Witnesses Mess.rs Johannes Marinel Sherwman Manuck Jacob and Wardan Gaspar Armenian merchants here all dwelling on the West side of the Jonkers Canal or otherwise called Rod Mallacca within this City known to me who at the Request of all and any person who it might concern out of a regard and towards the support of truth declare That in the year Seventeen hundred and Eighty Seven in the month of March Gullout Gregory Armenian Merchant and Super Cargo brought here on Commission Merchandize on Board the Vessell Elizabeth as well on his own as for the Account of Thaun Davour Copal Chitty a Malabar Merchant of the Coast of Coromandel which whether long cloth Jewells or money he did not leave behind him with them the Declar.rs to either in the whole part or Remainder and much less had he entrusted any other Inhabitant or Merchant as that he had not among persons of this discription any friend or acquaintance—

But they these Declarants well know and have heard him often declare and therefrom they further certainly know and have a perfect Knowledge of his dealings that this Merchant and Supercargo Gullout Gregory did carry back with him the produce of the Goods he brought here and sold as well as the unsold without leaving the Smallest Article behind him—

The Declarants giving the Reason of their Knowledge as in the Presents appears and more over to be ready to attest this their Deposition upon Oath on all times and Occasions they may be thereto Required Two of the same Tenor of these Presents have been Requested Thus done and executed in the presents of Moses Authongez and Johames Deverel Any Clerks as Witnesses

The minute of this is duely Signed and Sealed With a Seal of Twelve stv.rs In Testimony—

J. N. Bestbier
Notary.

Truth Translation
/Signed/ W. DuPuy
Interpreter

A true Copy
/Signed/ J. Stuart Hall
John Hamilton
Sol.rs for Appellant.

Mayors

Mayors Court at
Madraspatnam

Saturday the 2 day of April
Anno Domini 1791.

(L S)

Present

Josias Dupre Porcher Esqr. Mayor
William Webb Andrew Ross &
James Daly Aldermen.

Mayors Court

Between Gregorio Catchick of Madras
merchant Complainant and Shasha Gopal
dass pe Vashunchundjee also of the Same
place merchant Defendant.

This Cause coming on to be heard and Debated this Day
in the Presence of the attornies on both sides on Reading the Complai=
=nants Bill with Copies of a Bill of Lading Policy of Insurance
Paragraph of a Letter and an account annexed the Defendants
Answer The Replication The Rejoinder The Interrogatories and
Depositions on the part of the Complainant with three Exhibits
Marked A B & C with Translates thereof The Interrogatories and
Depositions on the part of the Defendant One Exhibit on the part
of the Complainant marked D. And 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
accordingly Order and Decree that the Defendant shall pay unto the
Complainant the full and Just Sum of Five hundred & fifty Star
Pagodas Thirty One fanams and Seventy three Cash / Star Pags.
550.31.73 / together with all Such Interest as now is or shall hereafter
become due thereon untill full Payment is made also all Costs of this
Suit.

/Signed/ George Taylor
Regr.

A true Copy

/Signed/ J. S. Hall
D. Hamilton
Solrs for Defts

Mayors

Mayors Court at
Madraspatnam

Tuesday the 31st day of May
Anno Domini 1791

L S

Present

Josias Dupre Porcher Esqr Mayor
James Ball William Webb
Andrew Ross John Mitford
Hy Chj Michell Hy Readhead
Benjn Roebuck & James Daly
Aldermen

Mayors Court

Between Gregorio Batchick of Madras
Merchant Complainant and Shaik
Gopaldoss Jee Nithunchandjee also of Madras
Merchant Defendant

This Cause coming on to be Reheard and Debated this Day
in the Presence of the Attornies on both Sides on Reading the Complai
nants Bill with Copies of Bill of Lading Policy of Insurance
Paragraph of a Letter and an account annexed The Defendants
Answer The Replication The Rejoinder The Interrogatories and
Depositions on the part of the Complainant with three Exhibits
marked A B & C with Translates thereof annexed The Interrogatories
and Depositions on the part of the Defendant One Exhibit on
the part of the Complainant marked Z on Rehearing 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 Decree of this Court of the 2d April last do stand
confirmed and that the Defendant do pay the Costs attending the
Rehearing of this Cause

Hur Degree / G. Taylor Regr

A true Copy
Signed / J. S. Hall } Solrs for
J. Hamilton } Compt.

Extract

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 31st Day of May Anno Domini 1791

Present

Josias Dupre Porcher Esqr. Mayor
James Ball William Webb
Andrew Rose John Mitford
Hy Chs Michell Henry Read Read
Benjamin Roebuck and James Daly
Aldermen

Gregorio Catchick
versus
Shasha Gopaldoss Mesurchundee

Bill with Copies of a Bill of Lading Policy of Insurance Paragraph of a Letter and an Account annexed Read

Answer Read

Replication Read

Rejoinder Read

Exceptions of the Defendant to the Interrogatories Exhibited to and the Deposition of Phillippus Jacob Read

Answer thereto Read

The Exceptions of the Defendant to the Interrogatories Exhibited to and the Deposition of Phillippus Jacob and the Answer thereto coming on to be re argued and Determined this Day in the presence of the Attornies on both Sides and on due Consideration had thereon This Court doth think fit to Order and doth Accordingly Order that the Resolution of Court of the 2nd April last whereby the Defendants Exceptions were over ruled do stand Confirmed

Interrogatories on the part of the Complainant with three Exhibits marked A B & C with Translations thereof annexed Read

Six Depositions taken thereunto four whereof were Read

The Depositions of Samier Sultan and Antoon Jacob not Read the Same not being Signed by the Witnesses Interrogatories on the part of the Defendant Read - Nine Depositions taken thereunto Read. The Witnesses N.o 1 2 3 6 7 10 11 & 12 did not appear for Examination

Additional Interrogatories on the Part of the Defendant Read

Two Depositions taken thereunto Read

Exceptions on the part of the Defendant to the Exhibit marked Z Read

Answer thereto Read

The Exceptions of the Defendant to the Exhibit marked Z and the Answer thereto coming on to be re argued and Determined this Day in the presence of the Attornies on both Sides and on due Consideration had thereon This Court doth think fit to Order and doth accordingly Order that the Resolution of Court of the 2d April last whereby the Defendants Exceptions were over Ruled do stand Confirmed

Mess.

Mess^rs. Aldermen Webb and Daly Dessent to the Resolution of the Court being of Opinion that the Exhibit ought to have been Authenticated by Oath—

Exhibit on the part of the Complainant marked 1st Read

This Cause coming on to be Reheard and Debated this Day in the presence of the Attornies on both Sides on Reading the Complainants Bill with Copies of a Bill of Lading Policy of Insurance Paragraph of a Letter and an Account annexed The Defendants Answer the Replication the Rejoinder Inter. &c Interrogatories and Depositions on the part of the Complaint with three Exhibits marked A B & C with Translates thereof annexed Interrogatories and Depositions on the part of the Defendant One Exhibit on the part of Complainant marked 1 & On Rehearing 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 Decree of this Court of the 2d april last do stand Confirmed and that the Defendant do pay the Costs &c Attending the Rehearing of this Cause—

Mess^rs. Aldermen Webb and Daly Dessent to the Resolution of the Court being of Opinion that in all Cases of Loss absolute proof of the property is indispensably necessary which has not been produced on the present Occasion—

Mr.

Mr. Alderman Mitchell Dissents to the Resolution of the Court and will Send in his Reasons at a future Day.

A True Extract
Signed J. Taylor Regt

A True Dy
Signed J. S. Hall } Solrs for
J. Hamilton } Appellant.

Fort Saint George 1st June 1795.

I dissent to the Resolution of the Court which passed yesterday for the following Reasons—

Because no proof of the Complainants interest was produced and by the Laws of Insurace the Insured cannot be entitled to Recover without first clearly establishing the existence of the Interest upon which he grounds his Right and this I am of Opinion cannot be done by a Simple declaration such as that brought before the Court which is neither Attested upon oath or sufficiently Specifick

Because Without Sufficient proof of Interest either by Bill of Lading or Competent affidavits no Insurer can deem himself Safe but is liable to payment of pretended Losses on the mere ipse dixit of others a practice which will discourage Insurances by opening a Door to wrongs highly grievous to the fair Insurer—

Because the Insurer Relying on the information given to him by the party wishing to insure is always Subjected to imposition and in case of loss is at least in Common equity entitled to the most unequivocal proofs that the Interest he insured was bonafide

on

on board The Laws of Insurance Sensible of the very different and unequal grounds upon which the Insurer and Insured Stand have wisely ordained that all Claims on Insurers for payment of Losses shall be Substantiated by the fullest and clearest Testimony and that where the Insured has been guilty however unintentionally of the Smallest error or omission which may have operated to the prejudice of the Insurance the Policy shall be void also where the party fails in proving his interest the Insurer cannot be held liable for payment of any Loss Were it Otherwise a field would be Open for abuses and the Insurance System must soon fall to the ground

Because the Armenians are Sufficiently well versed in the Customs and Laws of Commerce to know that it is expedient in all Cases to have Bills of Lading or Receipts for Goods actually shipped without adverting to any future necessity of proving the Interest on board in case of Loss the precaution of taking Receipts or Bills of Lading is absolutely Requisite for obtaining the delivery of the Goods from the Commander of the Vessel and this precaution is Seldom or ever neglected It is also the Common Practice of Merchants for every Obvious Reasons to take not one but two or three Receipts or Bills of Lading In the present instance if the Observance of this Common and necessary Rule has been wilfully omitted it must have been for some improper

purpose if Unintentionally, the Party has had the fullest advantage of his own wrong which Neither Law Reason nor precident can justify

[Signed] Henry Chichley Mitchell
Alderman

I beg leave to subscribe to the Reasons set forth in the foregoing Dissent as the grounds of the Dissent entered by me on the minutes to the Resolution of the Court on the 31st May

[Signed] Jam's Daly

A True Contract
G Taylor
Regr

Above City
[Signed] J. S. Hall
John Hamilton
} Sols for Appellt

To

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

In the Honble the
Court of Appeals-

Between Gregorio Catchick of Madras
Merchant Complainant and Shasha-
Gopauldofsjee Vishunchundjee by his
Attorney Jayaram Doss of the Same
Place Merchant Defendant.

The Answer of the above Named Gregorio Catchick to the Petition and appeal of the above Named Shasha Gopauldofsjee Vishunchundjee by his Attorney Jayaram Doss-

Filed in my Office
the 13th August 1791
Chr. N White
Clk

This Respondent for answer to the said Petition and appeal or unto so much thereof as concerns this Respondent to make answer unto Saith that he admits to be true that he did at the time mentioned in the Appellants Petition and appeal file a Bill of Complaint in the Mayors Court at Madraspatnam against the Appellant for the Recovery of the Sum of Five hundred and fifty Star Pagodas Thirty one Fanams and Seventy three Cash Current Money of Madras due and Owing by the Appellants unto this Respondent as would

Appear

appear by the Copy of a certain Bill of Lading the Copy of the Translation of a Policy of Insurance and of a Paragraph of a Letter from Batavia and also Copy of an Account annexed to this Respondents said Bill of Complaint and this Respondent further admits that he did in and by his said Bill of Complaint further state that the Snow Elizabeth sailed from Madras for Batavia on or about the Ninth day of July which was in the year of our Lord one thousand Seven hundred and Eighty Six and Arrived at Batavia some time in the Month of September then following and the Correspondents of this Respondent there at Batavia not being able to sell a certain Trunk or Chest of Vamah Wares belonging to this Respondent being the very Trunk or Chest whose Value was insured by this Respondent in and by the said Policy of Insurance as being put on Board the said Snow Elizabeth previous to her sailing from the said Roads of Madras And this Respondent also admits that he did further set forth that the said Correspondents of this Respondent at Batavia caused the Said Trunk or Chest to be Replaced on board the said Snow Elizabeth and the said Snow Elizabeth some time afterwards that is to Say in or about the Month of February or march which was in the year of Our Lord One thousand Seven hundred and Eighty Seven set Sail on her Return to Madras and was lost in her said Voyage or supposed

to

So to be as no tidings had been Received of her from that time to this Respondent admits that he did further setforth that he exercited one year and one Day from the Sailing of the said Snow Elizabeth before he Made any Demand from the said Appellant of the Said Sum so insured by him as aforesaid such Period being the time According to the Custom of Merchants at Madras in the like Cases for ascertaining the Right of the Insured against the Insurers and this Respondent did also setforth that Since his Claim had been So established as aforesaid against the said Appellant he did frequently demand from the Appellants the Payment of the Amount thereof and the Appellant having refused to comply therewith and this Respondent did thereupon in and by his said Bill pray that the Appellant might be decreed to pay unto this Respondent the Said Sum of Five hundred and fifty Pagodas Thirty One fanams and Seventy three Cash together with Interest and Costs of Suit

To which said Bill of Complaint this Respondent admits that the Appellant did in or about the Twenty Eighth Day of July in the said year of Our Lord One thousand Seven hundred and Eighty Nine file his answer and did therein deny being indebted to this Respondent in the Said Sum of Five hundred and fifty Pagodas thirty One fanams and Seventy three Cash or in any other Sum whatever and the Appellant pretended that it was evident by this Respondents own shewing that he was utterly incapable of producing those Vouchers which were Requisite to establish this Respondents Claims against the Appellant Notwithstanding the Appellant by his said Answer did admit having insured the Sum of Five hundred Pagodas upon Sundry Wares and Merchandize as having been on Board the Said Snow Elizabeth as setforth in this Respondents Said Bill and this Respondent admits that the Appellant in and by his said Answer did further state that on being informed by this Respondent that the Said Snow Elizabeth had been lost and the Said Insurance had become due that the Appellant did express a readiness to Pay and satisfy the Same to this Respondent Immediately on this Respondents producing the documents necessary to ascertain that the Goods insured by the Appellant to the Amount of the said Sum of Five hundred Pagodas had absolutely been lost but the Appellant pretended that this Respondent evaded to comply with Such the fair and equitable requisition of the Appellant otherwise than by producing an Extract of a Letter from his

Correspondent

Correspondent at Batavia purporting that a Trunk of Japan Varnished Wares which could not be disposed of there had been carried back again And this Respondent admits that the Appellant deeming such information altogether Vague and insufficient did Object thereto and demanded something more certain and Satisfactory suggesting that this Respondent should procure from his agent or any other Person residing at Batavia a notarial or some such Official and public declaration that the Said Trunk mentioned in the said Extract had absolutely been reshipped on the Said Snow Elizabeth and this Respondent admits that the Appellant did in and by his said answer setforth that this Respondent did promise that he would write to his agent at Batavia and procure from him the documents required by the Appellant but that this Respondent did some time afterwards Signify to the Appellant that the Said Extract of the said letter was the Only Voucher he could produce and that the Appellant must be satisfied therewith and this Respondent admits that the Appellant did in and by his said Answer Setforth that this Respondent had Sufficient time to write to and Receive sufficient advice from Batavia on the Matter in Question and this Respondent admits that the

Appellant

Appellant in and by his said answer doth say he did not know further than he had learnt by this Respondents said Bill whether this Respondent did or did not Ship the Said Trunk of Varnished Wares on board the said Snow Elizabeth Nor could the appellant possibly know whether the said Trunk was or was not on board the said Snow Elizabeth when she sailed from Batavia but that the Appellant verily believed it was not and this Respondent admits that the Appellant did upon the several matters and things in his said Answer Contained deny that this Respondent had any right to Recover the Sum setforth in the Account annexed to the Respondents Bill but the Appellant did say that if this Respondent would procure Vouchers of proper Authenticity to prove that the Said Trunk of China Varnished Wares was on board the said Snow the Elizabeth at the time she was supposed to have been lost the Appellant was ready and willing to pay unto this Respondent the Amount of the Sum sued for and did thereupon tender the Same to this Respondent – This Respondent admits that this Respondent did on or about the Twenty Second day of September One thousand Seven hundred and Eighty Nine file the Replication to the said Answer of the

Appellant

Appellant and therein did Setforth that Some time after the
Policy of Insurance had been effected on the Snow Elizabeth
for and on account of this Respondent he was informed that the
Said Vessell had been lost on her Return from Batavia and
did by the means of the Appellants Insurance Broker acquaint
him therewith as the Insurer thereof that this Respondent did
write to Manook Jacob and Vartan Gasper two Armenian
Merchants at Batavia and persons of Credit to know what had
become of the said Trunk of Japan Varnished Wares that the
said Manook Jacob and Vartan Gasper did by Letter inform
this Respondent that the said Trunk of Japan Varnished Wares
had been brought them by the said Galoost Gregorio but that it
was impossible to dispose thereof the said Galoost Gregorio was
Obliged to Reship the Same on the said Snow Elizabeth and
that the Said Snow had Sailed from Batavia some time
Afterwards with the Said Trunk on board and this Respondent
in and by his said Replication did further state that upon
the receipt of the said Letter and after this Respondents
had been informed that two Armenian Merchants had been
paid by the new Madras Insurance Company the Amount of
their Insurances made by the Said Company on the Said Snow
Elizabeth this Respondent did Acquaint the Appellant thereof
and did also Shew and explain to him the purport of the
Letter

Vant

Letter so Received from the said Manook Jacob and Vartan
Gasper but this Respondent did state in his said Replication
and still insists that he had never promised the Appellant
that he would write to his Agent at Batavia and procure
from him any other Documents as falsely Stated by the
appellant in his said Answer and that on the contrary and
in order to Shew that the Appellant was satisfied of this
Respondents right to Recover under the said Insurance and
the Circumstances of the Case this Respondent did setforth that
the Appellant desired this Respondent to discount Twenty
Per Cent upon the amount principal of the Said Loss and
that then he would pay this Respondent the Balance to
which this Respondent refused to accede This Respondent
did in and by his said Replication Solemnly declare
that since the departure of the said Galoost Gregorio from
Madras he had not Received any letter from him either
from Batavia Malacca or Achuen or from any other
parts but whether the said Trunk of Varnished Wares was
Sold at either of the Said Ports or not did not in any wise
Concern this Respondent for ever supposing the Said Japan
Varnished Wares were Sold by the Said Galoost Gregorio at
Malacca or Achuen then and in such case the Amount of

Such

Such sale must have been in the hands or possession of the Said
Caloost Gregorio at the time he and the said Snow Elizabeth and her
Crew and Cargo were lost for that this Respondent had given
positive Instructions to the Said Caloos Gregorio to bring the
Amount Sales of the said Japan Varnished Wares and deliver to
this Respondent or his order at Madras appeared by the Copy of
the Translation of those Instructions and of the Invoice of the
Said Japan Varnished Wares signed by the said Caloos Gregorio
annexed to this Respondents said Replication and this Respondent
did further set forth that the persons who made the Insurance on
the Said Vessell from Malacca to Madras are fully paid the
Amount of their losses by the Said Madras Insurance Company
and that this Respondent was obliged to be at the Vexation of
a Law process to enforce the payment thereof To which said
Replication this Respondent admits that the Appellant did
file a Rejoinder and did therein and thereby set forth several
irrelevant matters and things which this Respondent did not
nor doth by any means admit to be facts and this Respondent
further Admits that upon the above proceedings Issue was
Joined and Rules did pass for the Examination of Witnesses
that Witnesses were accordingly examined and that Publication
did pass thereon and this Respondent admits that after
Publication had passed as aforesaid This Respondent did

Exhibit

Exhibit a paper writing purporting to be a Notarial Declaration
taken at Batavia a Copy whereof is annexed to the Appellants
Petition and appeal and this Respondent Saith that he
examined such Witnesses and proved such points as were necessary
to Support his Claims on the Appellant and this Respondent
admits that the Appellant did file Exceptions to the Interroga
tories Exhibited to and depositions taken thereon of Philippus
Jacob one of the Witnesses Examined on the part of this Respondent
and that this Respondent further admits that the Said Philippus
Jacob was so Examined to prove the said Bill of lading and
that the Goods in Question were reshipped on board the Said
Snow Elizabeth that the said Vessell was afterwards lost and that
Sith Avict of Madras Merchant who had insured a certain
Sum of Money on board the Said Vessell had recovered the
Amount thereof from the Assurer and the Appellant in his said
Exceptions did state that the Said Philippus Jacob had filed
a Bill in the Said Mayors Court against Gopaldoss Veshnunchund
for the Recovery of a Sum of Money the Amount of certain
goods by him inmad and said to have been shipped on board
the Snow Elizabeth the Snow in question and as the Cause of
Veshanchand was to be determined by the Evidence taken in
the Cause of the Appellant and as the Cause of the Said Philippus

Jacob

Jacob would be asserted by such determination the Appellant pretended that the Said Philippus Jacob was thereby a party interested in the Event of the Appellants Suit and therefore as the Appellant pretended an Improper Evidence To which said Exception this Respondent admits that he did file an answer and did therein setforth that as the Said Philippus Jacob was not a party in the Suit he could not be said to be interested therein and that the points to which he was Examined were principally to the proof of hand writing and other matters of Fact to which the Answer could not be Varied with a view to Second any Interest which the Said Philippus Jacob might be supposed to have therein and this Respondent also admits that the Appellant did also except to the Said paper writing purporting to be a Notarial declaration taken at Batavia under pretence that the Said paper writing had not been proved by Witnesses Examined thereto on Interrogatories Exhibited thereon so as to have given to the Appellant the advantage to which he pretends he was Justly entitled of a Cross Examination and this Respondent admits that he did except thereto on the further Ground namely that if the Said paper writing had been duly proved and thereby obtained every authenticity it was capable of Receiving yet that the Same would be

be null and void because as the Appellant pretended a Notarial declaration or Instrument made in a foreign Country could not be given in Evidence in the Said Mayors Court and this Respondent Admits that to Such the Exceptions of the Appellant this Respondent did file an answer and did therein say that an Exhibit carrying Its own Evidence with it had no Occasion to be proved by Interrogatories and therefore could not be a Matter for cross Examination that the Appellant must have been Misinformed in saying that no Deed or Instrument made in a foreign Country could be given in Evidence in the Mayors Court because that it was laid down in Jacobs Law Dictionary under Title Evidence that things done beyond Sea might be given in Evidence to a Jury and that the Testimony of a Public Notary of things done in a Foreign Country was good Evidence This Respondent admits that the said Cause did come On to be heard on the Second day of April last past when the Said Mayors Court was pleased to over Rule the Exceptions filed on the part of the Appellant as aforesaid and did think fit to Order and Decree and did accordingly Order and Decree that the Appellant should pay unto this Respondent the Said sum of Five hundred and fifty Pagodas Thirty one Fanams and Seventy three Cash together with Interest and Costs of Suit a Copy of which said Decree of the

the said Mayors Court this Respondents admits to be annexed to the Petition and appeal of the Appellant and this Respondent also admits that the Appellant under pretence that he considered himself much aggrieved thereby did pray a rehearing therof and that such Rehearing being Granted the Cause came on to be Reheard on the Thirty first day of May last when the said Mayors Court was pleased to Confirm the Decree of the 3d Second day of April From which said Order and Decree of the Said Mayors Court the Appellant hath appealed to this Honble Court of appeals under pretence that he is greatly aggrieved thereby but this Respondent Saith that the Said Order and Decree of the said Mayors Court are Just and Right for the following among other Reasons

First because it is laid down in the most approved Law authors on the Doctrine of Insurances as follows Lex de qua agimus est four Equitatis whence it is to be understood that if the mind is convinced of a Banafide Insurance and a subsequent Loss the Insurer must pay Notwithstanding any Informality in the Documents produced in the Support of such Insurance and Loss so that Since the Policy of Insurance and Loss so that Since the Policy of Insurance and carrying Goods from hence is admitted and the Loss of the Ship on which the Goods went is also admitted and since it appears that this Respondents Instructions were positive as to the bringing back the Varnished wares in question or their proceeds and that the Declaration of Manock Jacob and Vartan Gasper two Merchants whose credit and character are supported in the Proceedings prove the reshipping those Goods and that Such Declaration before a Notary is proof in Law of the premises this Respondent out not to Lose the Sum Insured because his said Agent Calost Gregorio had omitted to send a Bill of Lading of such reshipping

Secondly - Because that in all Charges of Collusion or fraud and more particularly respecting Insurances the person Making such Charges is bound to prove the same by the most unequivocal Testimony and that till such positive proof is adduced the Contrary is always to be presumed on which principle the Appellants Charges in his answer and Rejoinder that this Respondents measures were not strictly Honble and that he endeavoured by such Means as were in his power to extort from the defendant as much as he possibly could and that his Conduct was unfair should fall to the Ground and the appellant be subject to Examplary Costs for such unfounded Charges against this Respondent whose Character as a Merchant and an Individual in society has hitherto been unimpeached.

Thirdly - Because the appellant in framing such Charges has

assumed

assumed certain positions the Contrary whereof hath Appeared in
Evidence in the Proceedings in the Cause for the Appellant hath
stated in his Answer on oath as well as in his Rejoinder that
this Respondent proposed to allow a Discount of Twenty per Cent
on the said sum of five hundred and Fifty Pagodas thirty one fanams
and Seventy three Cash if the Appellant would pay the Balance
when by the Evidence of Marcet Joseph Gregorio Johannes Golamonier
and Carapiet Mooratt Cawn it appears that the Appellants Attorney above
Named Syeramdoss with Mencashaw Kistnadoss and Kanidut a
Guzerat Insurance Broker came to the House of the said Marcet
Joseph and offer to pay this Respondents Demand if he would
discount twenty per Cent thereon and that Marcet Joseph
sent for this Respondent to his House to signify the proposal who
Rejected the same and insisted on his whole demand—
Fourthly Because the Appellant in his answer and Rejoinder after
expressing his dissatisfaction at this Respondents offering Extracts
of letters etcetera in support of his Claim declared his readiness
to pay the same if this Respondent would procure a Notorial or
other sufficient declaration from Batavia which Notorial declaration
hath been produced and makes part of the proceedings in the Cause—
Lastly— Because the Cause hath been reheard before the Mayors
Court at the Instance of the Appellant and after a second
Discussion of and deliberation on the merits thereof Judgment
hath

hath been confirmed in favor of this Respondent—

For all which Reasons and such others as may
be offered at the hearing of this Cause this Respondent humbly prays
this Honble Court to Confirm the said order and decree of the said
Mayors Court and the appellants petition and appeal be
dismissed with Costs to be paid by the Appellant—

/ Signed / Stephen Popham
Solicitor for Respondent

Court

Court of Appeals
at
Madraspatnam } ss

Saturday the 29th day of March
Anno Domini 1794

Between Sasha Gopall dcfs jee
Veshunchundjee by his Attorney Jayram dcfs
of Madras Merchant Appellant and Gregorio
Catchick of the same place Merchant Respon-
dent —

The Attorney for the Appellant having moved for
leave to withs draw his appeal on each party paying their own
Costs and the Attorney for the Respondent having Consented
thereto Ordered Accordingly —

By Court

/Signed/ Chas N. White
Clk

To the Honorable John Hollond Esquire
President in Council
Fort Saint George

In the Honble the Court of
Appeals at Madraspatnam }

Between Peter Perring late of Fort Saint
George but now in the City of London Esquire
by his attorney Josias Dupre Porcher of Fort
Saint George Esquire Complainant and Mordecai
Pillah of Madras Inhabitant Defendant

The Humble Petition and appeal of the above named Peter
Perring by his said attorney Josias Dupre Porcher

That your Petitioner by his said attorney Josias Dupre Porcher
did on or about the eighth Day of August in this present year of our
Lord One thousand seven hundred and eighty Nine exhibit
a Bill of Complaint in the Mayors Court against the said
Defendant for the Recovery of the Sum of Four Hundred
and eighty three Pagodas thirty One fanams and forty Cash
being the Balance of an account Current arising upon a
Mortgage Bond of the said Defendant to your Petitioner
bearing date the sixth Day of October which was in

Filed in my office
the 10th Dec. 1789
Chas N. White
Clk

the

the year of our Lord one thousand Seven hundred and eighty three Copies whereof are annexed to your Petitioners said Bill of Complaint your Petitioner further Sheweth that he appointed the said Josias Du Pre Porcher and Vencataram Pilly late of Madras Dubash your Petitioners attornies and that the said Vencataram Pillah during his life time lent to the said Moodooram Pillah on the Mortgage of his House the sum of Three hundred Star Pagodas that since that time the said Vencataram Pillah departed this Life and your Orator perceiving that the said moodooramah Pillah was his Debtor on account of the said Loan instructed the said Josias Du Pre Porcher as his attorney, to demand Payment of the Balance due thereon who hath frequently, and in an amicable manner requested the Payment of the said Balance being the said sum of Four hundred and eighty three Pagodas thirty one Fanams and forty Cash from the said Defendant who obstinately and wilfully refused to pay the same whereupon your Petitioner by his said attorney filed his Bill of Complaint in the usual Terms to which said Bill of Complaint the Defendant appeared by his attorney at Law and prayed that your Petitioner might deliver into Court the Oreginal Power of attorney from your Petitioner to his said attorney Josias Dupre Porcher for the Inspection of the Defendant and accordingly your Petitioner by his said attorney Josias Dupre Porcher did on the Sixth Day of October last file an affidavit with the Extract of a Letter From your Petitioner to his said Attorney Josias Du Pre Porcher wherein your Petitioner hath empowered his said attorney to Receive the money from the Defendant and remit to your Petitioner Copy whereof marked A is hereunto annexed for the Inspection of this Honble Court of appeals and prayed by your Petitioner to be taken as Part of this his Petition and appeal your Petitioner Sheweth that the attorney for the Defendant Objected to the said Extract and affidavit produced by your Petitioners said attorney under Pretence that he did not conceive it contained Sufficient Powers to authorize the said Josias Dupre Porcher to commence the Present Suit and therefore prayed that your Petitioners Bill might Stand dismissed with Costs whereupon your Petitioners attorney at Law prayed that the Consideration of the Matter might stand over till the then next Court Day, when he hoped to be able to produce further Powers from your Petitioner to his said attorney which Prayer of your Petitioners attorney at Law was granted by the said Mayors Court your Petitioner further Sheweth that agreable to his Prayer of the sixth of October last the said Josias Dupre Porcher did on the thirteenth Day of the said Month of October file another Affidavit with the Copy of a Letter from your Petitioner to the said Josias Du Pre Porcher and Vencataram Pillah under date the twenty Seventh day of January which was in the year of our Lord one thousand Seven hundred and eighty four the Original where of was not then to

the

be

be found Copy whereof and of the affidavit of the Said Josias Dupre Porcher Marked **B** are hereunto annexed for the Inspection of this Honorable Court and prayed by your Petitioner to be taken as Part of this his Petition and appeal your Petitioner Sheweth that the said Mayors Court having taken the said Letters and affidavit into Consideration Ordered that the Same do stands over to a full Court and the said Mayors Court did further Order that the said Bill of Complaint the affidavits of the Said Josias Dupre Porcher and the Extracts of the minutes of Court be sent round for the Perusal of the several members and your Petitioners attorney at Law prayed that he may be at liberty to deliver in the mean time the said Original Letter of the Twenty Seventh Day of January one thousand seven hundred and eighty four Copy whereof is hereunto annexed marked **B** should he find it which was ordered accordingly. your Petitioner Sheweth that in the mean time the said Josias Du Pre Porcher found the Said Original Letter which was filed in Court on the Twenty Seventh Day of November last with an affidavit of the Said Josias Dupre Porcher that the said Original Letter was of the proper Hand writing of your Petitioner

Your Petitioner Sheweth that the said Bill of Complaint of your Petitioner with the Several affidavits of the said Josias Dupre Porcher and the Letters thereunto annexed as also the Extracts of the Minutes of the Court of the sixth and thirteenth days of October last came on to be heard by and before the said mayors Court on the Said Twenty Seventh Day of November last past when the said Court were of Opinion that the Powers delivered into the said Court by the said Josias Dupre Porcher on the Part of your Petitioner did not contain sufficient authority to enable the said Josias Dupre Porcher to institute the said suit against the Defendant it was therefore Ordered that your Petitioners Bill do stand dismissed with Costs as by the said order of the Mayors Court herewith Lodged may appear. your Petitioner Sheweth that the Mayor and Messieurs aldermen Bell and Ross dissented to the Resolution of the said Court as will appear by the Extract from the minutes of the said Court respecting the said Dissent herewith also Lodged may appear.

From which said Resolution of the Mayors Court your Petitioner doth appeal to this Honble Court as he considers the same erroneous and that your Petitioner is much aggrived and injured thereby for the following Among other Reasons.

First - - - - For the Reasons stated in the said Dissent

Secondly - - Because that the Power or authority in the Request to Receive and Remit includes all the Requisites to inforce such Request namely the Power to sue on a Refusal of Payment after a Request to pay in an amicable manner

Thirdly - - Because that no Evil can arise from a liberal Interpretation of the Competency of the Authority the same being most unequivocally sufficient

sufficient to enable your Petitioners said Attorney to give the Defendant a full Discharge on Payment of the Debts—

Fourthly— Because an evident Evil may arise from the said Authority being ultimately adjudged insufficient as the Defendant May die abscond or become insolvent before a more formal authority can arrive from Europe

Fifthly— Because that it would occasion great Prejudice to commence if any accidental Informalities in the reprocal Documents between the Parent state and its distant Colonies were to be construed by the Courts of Justice as Bars to their being Received according to the plain and equitable Construction thereof

Sixthly— Because that even Statutes are allowed an equitable Construction as follows—

Bacons abridgment on the Construction of Statutes Ltr I

"An Equitable Construction is a Construction by which a case not "within the Letter of a Statute is holden to be within the meaning "thereof because its within the mischief for which a Remedy is thereby "provided The Reason for such Construction is that the Law maker could "not possibly setdown every case in express Terms—

"In order to former Right Judgment whether a case be within the "Equity of a Statute it is a good way to suppose the Law-maker "present and that you have asked him this Question did you intend "to comprehend this case Then you must give your self such an answer as "as you imagine he being an upright and reasonable Man would have given "If this be that it is within the Equity you may safely hold it to be so For while "you do no more than he would have done you do not act contrary to the "Statute but in conformity thereto

D.c. 653 "If a Statute be penned in dubious terms usage is a just rule to construe it by and this Reasoning holds more strongly in all private Concerns implicating only the Interests Individuals— And the Interpretation now asked for is in favor of the usage of Madras in like Cases—

Seventhly— Because the Legislature have lately passed an act almost shaped to the Case in Question by the Clauses therein which tend to facilitate the proving Bonds Papers and other Documents from India without those Formalities here to fore in use—

For all which Reasons and for such others as may be offered at the Hearing of this Petition and appeal your Petitioner by his said Attorney Josias DuPre Porcher prays that the said Order of the Mayors Court of the said Twenty Seventh Day of November last be Reversed with Costs to be paid by the Defendants—

/Signed/ Stephen Popham
Solr for Appellant

Filed

A

Filed 6th Octr 1789

Paragraph of a Letter from Peter Perrying to his attorney Josias DuPre Porcher -

Mombland 25th Febry 1788

Dear Porcher

When I sent yaw a few days ago duplicate of my Letter of the 8th Jany last I informed yaw that on looking over Vencatanam Pillahs account current I perceived that he had lend on my account the 21 July 1783 to Rangapillah the Sum of Five hundred Pagodas a 8 ℔ 6 ℔ ℅ the sum of Three hundred Pagodas to Mooddrom: pilla the 6th of October 1783 a 12 ℔ ℅ ℔ annum on a mortgage of a House - That Vencatanam pilla had given me credit for 8 months Interest from Mooddrompilla but had not Received any from Rungapilla these Sums I beg of yow to Receive & remit me

In the Honorable the Mayors Court at Madraspatnam.

Between Peter perring by his attorney Josias dupre Porcher - Complainant and Moodoo Rama pillah Defendant -

The above Named Josias Dupre Porcher maketh Oath and Saith that the above is a trew and Just Paragraphs of a Letter in the proper hand writing of the Said Peter perring - which this deponent Received on the Twenty ninth day of July which was in the year of Our Lord One thousand Seven hundred and Eighty Eight And that the Original Letter is in the Posession of this Deponent

Sworn to in Court
this 6th Octr 1789
James Taylor
Cl.

/Signed/ Jos: dupre Porcher

Popham
attorney for Complainant

a trew Copy
/Signed/ S. Popham

Filed 13th Octr 1789

B

In the Honorable the Mayors Court at Madraspatnam

Between Peter perring by his attorney Josias dupre Porcher Complainant and Moodooruma pilla defendant -

The Affidavit of the above Named Josias Dupre Porcher

The above Named Josias Dupre Porcher maketh Oath and saith that he Received the Annexed Paper Writing from Venkatachellum the Son of Vencatarama pillah One of the Persons named therein - that is to the best of his recollection it is a Copy of the Original Letter in the hand Writing of the Complainant Peter Perring which this deponent Swears to have read all the the Original Letter be now mislaid - That Vencatarama

Pillah

Pillah delivered over to this deponent the Sundry Papers Vouchers and Balance of Cash of the Complainants since the Receipt of the said Letter and that the Bond of the defendant to the complainants attorney now in Suit was one of the said Papers that this Deponent hath Acted in the Affairs of the Complainant uniformly since the Receipt of the said Letter and under the Authority of the Same and of Several other Letters Since received from the said Peter Perring about his affairs an Extract from one of which Letters relating to this Suit is now before this Honble Court

Jos. dupre Porcher

Sworn to in Court
this 13th Oct. 1789
G. Taylor
dpty Regr

Topham
attorney for complainant

To Mr. Josias dupre Porcher
& Vencatarampillah
at Madras

Gentlemen

Being desirous that Mr. Porcher in Conjunction with Vencaty Rampillah should have the Charge of my Papers at Madras - I hereby revoke my power of Attorney & Instructions of 1780 to Vencaty Rampillah &c & now declare them to be null & Void desiring that Mr. Porcher and Vencaty Rampillah will take

charge

charge of my Papers as undermentioned Viz.t

Bond of the Governor & Council for Pagodas 4,000 dated 17th Augt. 1780

Bond of Mr. Duff for 10,000 Rupees dated 2d Decr. 1776.

Bond of Mr. Barclay for 5000 Rs. 20th May 1778

together with what Balance of Cash Vencaty Ram may have relative to their Amount I shall hereafter write you -

In a former Letter I desired that Mr. Duff should have from me all the indulgence of time that his other Creditors are willing to allow him I now repeat that Request and have nothing further to add at present than that I shall write you again in march or perhaps sooner

I am Gentlemen

Membland 27th Janry 1784 your affectionate friend

Peter Perring

a true Copy
(Signed) Stephen Popham

Extract

Extract from the Minutes of a Court Held at the Town Hall on Friday the 27th. day of November Anno Domini 1789 —

Present

William Webb Esqure Mayor
James Hall Edward Garrow
Vincentio Corbett Andrew Ross
Robert Mitford James Landon
& Hy. Chicley Michell Aldermen

Peter Perring by his attorney Josias Dupre Porcher

Moodoorama Pillay

Bill with copies of a mortgage Bond or Obligation and an Account Current Read

Affidavit of Josias Dupre porcher Read

Affidavit of Josias Dupre Porcher with copy of a Letter annexed Read

Extract from the Minutes of Court of 6th. Octr. Read

Extract from the Minutes of Court of 13th. Octr. Read

Affidavit of Josias Dupre Porcher with an Original Letter annexed Read

The Court having taken the same into consideration are of Opinion that the Powers delivered into Court by Mr. Josias Dupre Porcher on the part of the Complainant do not contain sufficient Authority to enable the said Josias Dupre Porcher to institute the present Suit against the Defendant it is therefore Ordered that the Bill do stand dismissed with Costs—

A true Extract

/Signed/ George Taylor
Dy Regr

Extract

Extract from the Minutes of a Court Held at the Town Hall on Friday the 27th. day of November Anno Domini 1789—

Present

William Webb Esquire Mayor
James Call Edward Garrow
Vincentio Corbett Andrew Ross
Robert Mitford James Landon
Henry Chichly and Michell Aldermen

Peter Perring by his attorney Josias DuPre Porcher
Moodooramа pillah

The Mayor and Messrs. Aldermen Call and Ross dissent to the Resolution of the Court and will deliver in their Reasons next Court day—

A true Extract so far as Relates to the above Dissent—

/Signed/ G Taylor
Sy Regr.

Court of Appeals at Madraspatnam

Saturday the 29th. day of March Anno Domini 1794

Between Peter Perring late of Fort Saint George but now in the City of London Esqr. by his Attorney Josias DuPre Porcher of Fort St. George Esqr. Appellant and Moodooram Pillah of Madras Inhabitant Respondent—

The Attorney for the Appellant having moved for Leave to withdraw his Appeal on payment of all Costs— and Attorney for the Respondent having Consented thereto—

Ordered Accordingly

/Signed/ Chas. H. White
Clk.

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

In the Court of Appeals
at Madrasspatnam

Between James Kirkpatrick Late a Lieutenant Colonel in the Military Service of the Honble the East India Company under their Presidency of Fort Saint George but now of London in the Kingdom of Great Britain Esquire by his attornies Benjamin Roebuck and William Abbott of Fort Saint George aforesaid Merchant complainant and Andrew Ross also Fort Saint George Merchant Defendant

The Humble Petition and appeal of the above Named Defendant

Sheweth

That the above Named complainant by his Said attornies Benjamin Roebuck and William abbott did on the Twenty Seventh day of July which was in the year of Our Lord One thousand Seven hundred and Ninety file a Bill of complaint in the Mayors Court at Madrasspatnam wherein he did set forth and Charge that your Petitioner stood Justly and Truely Indebted unto him

Filed in my office the 1st August 1791
Chas N. White Clk

him the complainant in the full and Just sum of Twenty eight Thousand one hundred and Twenty one Pagodas Eighteen Fanams and Sixty two Cash and which the Complainant did State would More fully appear by an account Current a Copy where of he did annex to his said Bill and your Petitioner Sheweth that the Complainant in and by his said bill did State that when he was about to Return to Europe he did Constitute and appoint George Smith then also of Fort Saint George merchant his attorney for the management of his affairs During his absence and who Some time afterwards did also Return to Europe and leave your Petitioner and Alexander Cuthbert then also of Madras but Since of Great Britain merchants his attornies and together with his own Concerns did deliver over to them the Concerns of the Complainant that Some time afterwards in the year of our Lord one Thousand seven hundred and Eighty Two the complainant did Receive a Letter from the Said Alexander Cuthbert wherein and whereby he the said Alexander Cuthbert did request to be Considered as having resigned the charge of the Complainant affairs and that the Complainant Confiding in the Integrity of your Petitioner did Entrust his Concerns to your Petitioners Sole and entire management and in Consequence thereof the Complainant did State that your Petitioner became Possessed of Sundry Bonds Bills Notes Books and Papers the property of the Complainant that your Petitioner did Receive on the Complainant account from Sundry Persons Several Sums

Sums of money to a very Considerable amount and that the Particulars thereof where stated in the Account Current to his said Bill annexed and the Complainant did in and by his said Bill amongst other things further pretend that your Petitioner did neglect to remit to him the balance of Cash in your Petitioners hands and that as an Excuse for such neglect your Petitioner did assure the Complainant he had Consigned funds to his Attorney Isaac Solly of London merchand the amount whereof was by him directed to be appropriated towards the discharge of Such balance that the Complainant did Some time in the year of our Lord One thousand Seven hundred and Eighty Eight strictly enjoin your Petitioner not to make any Remittances to the Complainant through the Channel of the said Isaac Solly and did direct that all remittances to him might be made by Bills on the Honble Company and that your Petitioner not complying therewith he did revoke the Powers granted to your Petitioner and appoint the Said Benjamin Roebuck and William Abbott his Attornies that they did demand from your Petitioner all Papers belonging to the Complainant and the Account Current between your Petitioner and the Complainant and the Balance of Cash due thereon but that your Petitioner did altogether refuse and neglect So to do -

To which said Bill of Complaint your Petitioner Sheweth

he

he did on the Thirteenth day of November last past file his answer and therein Deny to be Indebted unto the Complainant in the Sum of Twenty Eight Thousand one hundred and Twenty one Pagodas Eighteen Fanams and Sixty Two Cash and amongst other things did admit that he was the attorney of the Complainant and did receive on his account Several Sums of money and in respect to the Amount and particulars thereof your Petitioner did say the Same would best appear as Stated in the Account Current thereunto annexed and your Petitioner in and by his said answer did further State that he did make remittances on account of the Complainant and in respect thereto the Same would best appear by the Said Account Current wherein the Same were Stated that your Petitioner did Consign to the Complainant that he had made Consignments to Mr Isaac Solly of London Merchant with the View of making Payments therefrom to the Complainant that the Said Isaac Solly did at Sundry Times make Payments to the Complainant on Account of your Petitioner From the Remittances made to him by your Petitioner and that the Said Isaac Solly did Continue so to do and that the Complainant did Continue to receive Such Payments a Part of which to the Amount of Two hundred Pounds sterling your Petitioner did in and by his said answer State was paid to the Complainant by the said Isaac Solly on the Thirtieth day of January then last past and which must have been Subsequent to the

Orders

Orders given by the Complainant for the Prosecution of his action against your Petitioner as the Same was not brought to your Petitioners Credit in the Account Current annexed to the Complainants said Bill And that a further Sum to the Amount of Seven hundred and Eighty Pounds Sterling your Petitioner did State the Complainant did also receive upon the Third of June then last past as your Petitioner was Informed by advices received from the said Isaac Lolly and which was Some time after the Filing of the Complainants said Bill And your Petitioner in and by his said answer did further State that the only document belonging to the Complainant and which remained in the Possession of your Petitioner was a Bond of His Highness the Nabob in the new Consolidated debt for the Principal Sum of Twenty Thousand Pagodas and which Bond he did deliver to the Complainants said Attornies the said Benjamin Roebuck and William Abbott That your Petitioner never refused to make out and deliver an account Current of the Complainants Concerns and would Soon have furnished the Same and that the Circumstances which weighed with your Petitioner in delaying the delivery of Such account Current were the Strong reasons he had for Expecting to Receive advices from his Correspondent in England by the Ships which where then Expected of further Payments having been made on your Petitioners Account to the Complainant in which Expectation he had not been altogether disappointed altho such Payments did fall Short of his Expectations from the amount of the Provisions which he had made for that Purpose but which your Petitioner did and was well authorised to assert would Soon prove a great deal more productive and greatly reduce the Sum which he stood Indebted to the Complainant

And Lastly your Petitioner Sheweth that he did in and by his said answer State that he annexed thereto an account Current of the whole Transactions which had passed thro the hands of Alexander Cuthbert and himself Jointly and under the management of himself alone the Balance whereof Amounting to Seventeen Thousand eight hundred and Fifty four Pagodas Fourteen Fanams and Seventy Cash he acknowledged to be Indebted to the Complainants Subject to any omissions or mistakes which might have escaped his notice and also Subject to the deductions of whatever payments might have already been or Should thereafter be made to the Complainant on account of your Petitioner as aforesaid

And your Petitioner Sheweth that upon the above proceedings the Complainant did pray the said Mayors Court that the said Cause might be set down to be Heard and that the Same being Set down it was accordingly heard by and before the said Mayors Court on the Nineteenth day of July in the present year of our Lord One thousand Seven hundred and Ninety

One

One when the said Mayors Court was pleased to order and Decree and did accordingly order and Decree / Mr. Alderman Webb one of the Members thereof dissenting therefrom / that your Petitioner should pay unto the Complainant the Full and Just Sum of Twenty One Thousand and Eighty Seven Pagodas and Twenty Fanams together with all such Interest as then was or should thereafter become due thereon until full Payment was made at the rate of Eight P.Cent per annum to be computed from the respective dates of the Several Items charged in the account Current annexed to the Complainants Bill of Complaint Subject to the deductions of whatever payments might have already been or might hereafter be made to the Complainant on account of your Petitioner with all Costs of the Suit as by a Copy of the said Decree and an Extract of the before mentioned Dissent hereunto annexed for the Inspection of this Honble Court prayed by your Petitioner to be taken as part of this his Petition and appeal will more fully appear

By which said Decree of the Said Mayors Court your Petitioner doth conceive himself much aggrieved and does therefore Appeal therefrom to this Honble Court for the following Amongst other Reasons

First .... Because your Petitioner is advised and thereupon humbly Insists that the Decree of the Said Mayors Court is not warranted upon the proceeding upon which the Same is grounded and therefore Contrary to Law for as much as it is laid down in the Books and are Established

Established maxim in Chancery that when a Plaintiff Finds Sufficient matter confessed in the Defendants answer whereupon to ground a Decree he may proceed to Set down the Cause for hearing upon Bill and answer but in that Case the Plaintiff must take the Defendants answer to be True in all points

Secondly Because the amount of the Debt as alledged in the Complainants Bill and Setforth in the account Current thereunto annexed is but an assertion of the Complainants unsupported by any Evidence whatever whilst it rested with the Complainant to have proved the Same if he Thought he could so have done by following up the Cause in the usual Course and thereby bringing it to hearing by Evidence

Lastly Because the Answer of your Petitioner and the account Current thereto annexed being upon Oath and Admitted to be Evidence of the Facts therein stated and the said Mayors Court ought to have been guided thereby in their Decision thereon and Should have Ordered your Petitioner to have paid So much only as he himself Confessed by his said Answer Viz.t Seventeen Thousand Eight Hundred and Fifty four Pagodas Fourteen Fanams and Seventy Cash and no more

For all which Reasons your Petitioner prays that this Honble Court will be pleased to Reverse the Decree of the Said Mayors Court and grant unto your Petitioner such Relief in the Premises as to this Honble Court Shall Seem meet

/ Signed / John Hamilton
Solr. for Appellt

Mayors

Mayors Court at
Madraspatnam

(L.S)

Mayors Court

Tuesday the 19th day of July
Anno Domini 1794

Present

Josias Dupre Porcher Esquire Mayor
James Call William Webb
John Mitford Hy. Chs. Michell
James Amos and Hy. Readhead
Aldermen

Between James Kirkpatrick late a Lieutenant Colonel in the Military Service of the Honble the East India Company under their Presidency of Fort Saint George but now of London in the Kingdom of Great Britain Esquire by his Constituted Attornies Benjamin Roebuck and William abbott of Fort St. George aforesaid Merchants Complainant and Andrew Ross of Fort Saint George Merchant Defendant

This cause coming on to be Heard and Debated this Day in the Presence of the attornies on both Sides on Reading the Complainants Bill with copies of Several Exhibits N.1. 2. 3 and 4 annexed The Defendants answer with one Exhibit annexed On Hearing the Readings made use of by the attornies and on due

Consideration

consideration had thereon This court doth think fit to order and Decree and doth Accordingly order and Decree that the Defendant Do pay unto the Complainant the Full and Just Sums of Twenty one Thousand and Eighty Seven Pagodas and Twenty Fanams / Pags. 21087.20 / together with all Such Interest as now is or Shall hereafter become due thereon untill Full Payment is made at the Rate of Eight Pr Cent Per annum to be computed from the Respective dates of the Several Items Charged in the Account Current annexed to the Complainants Bill of Complaint Subject to the deduction of whatever Payments may have already been or may hereafter be made to the Complainant on account of the Defendant and it is Further ordered and Decreed that the Defendant do pay all Costs of this Suit

A True Copy
/Signed/ George Taylor
Regr.

A true Copy
/Signed/ John Hamilton
Sol.r for appellant

Extract

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 19th Day of July Anno Domine 1791.

Present

Josias Dupre Porcher Esqr Mayor
James Ball William Webb
John Milford Fry Chp. Michell
James Amos and Fry Readhead
Aldermen

James Kirkpatrick by his attornies Benjamin Roebuck and William abbott
vers
Andrew Ross

Bill with Copies of Several Exhibits N.o 1. 2. 3 and 4 annexed Read.

Answer with one Exhibit annexed 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 Copies of Several Exhibits N.o 1. 2. 3 and 4 annexed The Defendants answer with one Exhibit annexed On Hearing the Pleadings made use of by the attornies and on due consideration had thereon This Court doth think Fit to order and Decree and doth Accordingly Order and Decree that the Defendant do pay unto the Complainant the Full and Just Sum of Twenty one thousand and Eighty Seven Pagodas and Twenty Fanams (Pag.s 21087.20) together with all such Interest as now is or shall hereafter become due thereon untill Full Payment is made at the rate of Eight Per Cent Per annum to be Computed from the respective dates of the Several Items Charged in the Account Current annexed to the Complainants Bill of Complaint Subject to the deduction of whatever payments may have already been or may hereafter be made to the Complainant on account of the Defendant and it is further ordered and Decreed that the Defendant do pay all Costs of this Suit.

N.o Alderman Webb Dissents to the Resolution of the Court the Complainant having Submitted to the Cause being Determined upon Bill and answer and is therefore of opinion that a Decree ought not to be given for more than the Sum acknowledged in the Defendants Answer.

A True Extract
/Signed/ G. Taylor Regr

A true Copy
/Signed/ John Hamilton
Sol.r for appellant

To the Honorable Major General William Medows
President in Council &c.
Fort Saint George

In the Honorable the
Court of Appeals

Between Andrew Ross of Fort Saint George
Merchant appellant and James Kirkpatrick
late a Lieutenant Colonel in the military
Service of the Honble the East India Company
under their presidency of Fort Saint George
aforesaid but now of London in the Kingdom
of Great Britain Esquire by his attornies
Benjamine Roebuck and William abbott
of Fort Saint George Merchants Respondent

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

Filed in my office
the 24th August 1791
Chas V White
Clk

This Respondent admits that he did on or about the Time in the appellants Petition of appeal for that purpose setforth exhibit and file his Bill of complaint in the Mayors Court of Madraspatnam against the appellant for the Recovery of the Sum of Twenty Eight thousand one hundred and Twenty one Pagodas Eighteen fanams and Sixty two Cash and that he did in and by his said Bill amongst others things setforth and charge as in and by his said Petition of appeal &c.

Same

same is setforth and the Respondent admits that to his this Respondents said Bill of Complaint the appellant did Exhibit and file his answer in the said mayors Court and did therein state the several matters and things as the appellant in and by his said Petition of appeal has stated the same and this Respondent admits that he did pray the said Cause might be setdown upon Bill and answer and that the same was setdown accordingly and this Respondent admits that upon such the proceedings had the said cause did come on to be heard at the time in the appellants said Petition of appeal setforth and that the said mayors Court did thereupon think fit to order and Decree and did accordingly order and Decree that the appellant should pay unto this Respondent the full and Just Sum of Twenty one thousand and Eighty Seven pagodas and Twenty fanams together with all such Interest as there was or should thereafter become due thereon until full payment should be made at the rate of Eight per Cent per annum to be computed from the Respective dates of the several Items charged in the account Current annexed to this Respondents said Bill of Complaint and further and otherwise as in and by the said Decree copy whereof is annexed to the appellants said Petition of appeal Reference being thereunto had may appear but this Respondent denies that the appellant is any wise aggrieved or injured by the Decree of the said Mayors Court or that

he

he has any legal or equitable grounds whereupon to appeal therefrom to the Wisdom and Judgment of this Honble Court on the contrary this Respondent says he is advised that the said mayors Court ought to have given a Decree against the appellant for the full Amount principal as in and by this Respondents said Bill is setforth and therein and thereby prayed to be decreed to be paid unto this Respondent to wit the Sum of Twenty one thousand and eighty Seven Pagodas and Twenty fanams together with Interest thereon at the rate of twelve per cent per annum and which this Respondent is advised he was entitled to and which was fully warranted by the proceedings upon which the said mayors Court Judged and determined as aforesaid this Respondent therefore humbly insisting thereon prays the benefit thereof in the same full and amplemanner as if he had brought his bros appeal in this Honble Court for the Same and this Respondent to the appellants First Reason for appeal says That admitting the doctrine laid down in the Books and the maxim adhered to in the Court of Chancery to be as the appellant has in and by his said first Reason stated the same yet that such the shewing of the appellant does not tend in the least to any Decree to grant out the grivance complained of nor establish the injury pretended to have been sustained thereby because the appellant has not Shewn how and in whatmanner the said doctrine laid down in the Books and the said maxim of the Court of Chancery apply to the matter in question to have done this he Should

should have shewn if it lay in his power so to do the different points in his said answer contained by him insisted on and which as positive and unequivocal ought to have been Received at the hearing of the said Cause as evidence therein but not having done so the said pretended reasn for appeal can only be considered as containing assertions from whence no inference can be drawn and consequently from whence no advantage can be derived and this Respondent says that the Appellants said answer does not contain any certain or positive assertion in contradiction to or in confutation of the Charges in this Respondent said Bill of Complaint stated and setforth material to the matter at Issue save and except that the appellant does in and by his said Answer in general terms and by a naked assertion positively deny to stand indebted unto this Respondent in the full amount of the Sum sued for to wit the said Sum of Twenty eight thousand one hundred and Twenty one Pagodas Eighteen fanams and sixty two Cash which assertion this Respondent is advised and humbly insists thereon is evasive and negatory because this Respondent says being so further advised that it is not sufficient that a Defendant do deny standing indebted to the Complainant in the Sum sued for but he should also deny being indebted in any part thereof or if indebted in part only he should shew the particular amount for this Respondent says that a suit might be commenced for the Sum of Five hundred pagodas and ten fanams and by an over charge in the fractional part of

ten

ten fanams the Defendant might solely deny being indebted in the
Amount sued for but unless he shewed the over charge of ten fanams
the Complainant would as this Respondent is advised be entitled to a
Decree for the Sum of Five hundred pagodas and which this Respondent
says is agreable to the established course of his majestys Courts and
is Consistent with Equity and Common sense and this Respon-
dent says that the Appellant in and by his said answer after
denying to stand indebted unto this Respondent in the Sum
sued for acknowledges to stand indebted unto this Respondent in
the Sum of seventeen thousand Eight hundred and fifty four
Pagodas fourteen fanams and Seventy Cash but does not add the
words "and no more" which this Respondent is advised were
absolutely essential and necessary in order to establish the said
Sum of Seventeen thousand Eight hundred and fifty four Pagodas
fourteen fanams and Seventy Cash as the only Sum due to this
Respondent and this is evident from the principle hereinbefore
Shewn and for as much as Equity instead of giving sanction to
Reliefs against evasion and as the simple denial of the full
Amount of a Sum sued for and confessing to be indebted in a
certain sum without stating that the Sum so confessed is the sum
due and no more is primafacie Evidence of an evasion and of
course contrary to Equity and good Consistence this Respondent
humbly submits to this Honble Court that the said answer

of

of the Appellant is framed upon that illegal ground and iniquitous
principle as to the Appellant seemed best calculated to answer
his purposes in depriving this Respondent of the full amount in
which he the Appellant stood Justly and truly indebted to wit
the Sum of Twenty one thousand and Eighty Seven pagodas and
twenty fanams which is the Amount principal and which
with an Interest of twelve per Cent per annum on the Items
composing it as setforth in the Account Current to this Respon-
dents said Bill annexed make together the said Sum of Twenty
Eight thousand one hundred and twenty One Pagodas Eighteen
fanams and sixty Cash the Amount prayed to be Decreed in and
by this Respondents said Bill of Complaint and that from the
premises the Appellants said first Reason for appeal is
altogether irrelevant and impertinent

To the Second Reason for appeal this Respondent says that the Bill
of Complaint of a Suitor and the Account Current or other Exhibit
that may be annexed to it can be no more than assertions in
the first instance and it will depend upon circumstances whether
it will or will not be necessary to support the Same by Evidence
for this Respondent says it after an appearance entered the
defendant does not think proper to exhibit and file his
Answer the Complainants Bill is taken pro confesso and a
Decree is granted thereon in the same manner as if every matter

and

and thing in the Bill contained had been examined into and fully proved by a due course of Evidence and nearly similar in the case where a Defendant puts in such an answer that the Plantiff finds thereon sufficient grounds for a Decree without further proof because he is then to procead to set down the same upon Bill and answer without further lengthening the cause for in the case where there are sufficient Grounds for a Decree in a Defendants answer and a Complainant being so irroneously advised instead of setting down the Same to be heard should follow up his cause in the usual Course and bring it to proof by evidence as suggested by the Appellant he would be punished for his litigious conduct by the Court with the payment of Costs and thereupon and for the several matters in this Respondents answer to the Appellants said first Reason for appeal set forth this Respondent says that the Appellants Said Second Reason for appeal does not shew how and in what manner the grievance Complained of has arisen or how and in what manner or injury has been sustained by the said Decree of the said mayors Court and therefore is impertinent and irrelevant

To the Last Reason for appeal this Respondent says that an answer of a Defendant upon Oath is evidence and must be regarded as such at the hearing of the Cause but then it can

can be taken and Received as Evidence so far as it carries the same upon the face of it agreable to the Law of Evidence and no further that is a positive and clear assertion free from quibble or evasion and thereupon this Respondent says that the only material Evidence in the Appellants said Answer contained is the denial of being indebted unto this Respondent in the full amount sued for to wit the Sum of Twenty eight thousand one hundred and Twenty one pagodas Eighteen fanams and sixty two Cash and thus far this Respondent readily admits the Same to be good Evidence but it is not to be inferred from thence and this Respondent denies the fact that such Evidence goes to prove that because the Appellant has so denied being indebted to this Respondent in the full Amount of the said sum of Twenty Eight thousand one hundred and twenty one Pagodas Eighteen fanams and sixty two Cash that he does not stand indebted unto this Respondent in the Sum of Twenty eight thousand pagodas and upwards and this Respondent says that the confession of the Defendant rests upon the same foundation and thereupon says that because the appellant has in and by his said answer confessed being indebted unto this Respondent in the Sum of Seventeen thousand Eight hundred and fifty four Pagodas fourteen fanams and Seventy Cash such confession could not have been taken as evidence that he stood indebted unto this Respondent in that Sum only for this Respondent says that to have given efficacy to such confession the Appellant should have stated that he stood

indebted

indebted unto this Respondent in the said Sum of Seventeen thousand Eight hundred and fifty four Pagodas fourteen fanams and seventy Cash and no more but not having done so the said confession of the Appellant could have given no further or other bias to the Judgement of the said mayors Court than that he the Appellant did by his own Shewing stand indebted unto this Respondent in so much and by his not denying the charge of a further sum making up the balance of Twenty Eight thousand One hundred and Twenty one Pagodas & Eighteen fanams and Sixty two Cash he has to pay

his said answer to this Respondents said Bill in referring thereto is the most Vague and ambiguous for the Appellant in and by his said Answer speaking of the Account Current to his said answer & annexed says the balance whereof being the Sum of Seventeen & thousand Eight hundred and fifty four Pagodas fourteen fanams and seventy Cash he acknowledges to stand indebted to this Complainant Subject to any Omissions or Mistakes which may have escaped his notice" So that this Respondent humbly Conceives it will fully Appear to this Honble Court from the Several matters and things

the tenor of the said Decree of the said Mayors Court and the facit confession of the Appellant of the Interest as charged in this Respondents said Bill being Just the Appellant so far from being aggrieved by the said Decree of the said Mayors Court is absolutely and materially benefitted thereby in a deduction of an Interest of four per cent for although he is decreed to pay unto this Respondent the Sum of Twenty One Thousand and Eighty Seven Pagodas and Twenty Fanams yet the same is made subject to the deduction of as whatever payments may have already been made or may hereafter be made to the Complainant which is conformable to the implied prayer of the appellant in his said answer to this Respondents said Bill of Complaint contained and if the Account Current to his said answer annexed be just and true he will have to pay no more than the Sum he has confessed to be due to wit the Sum of Seventeen Thousand Eight hundred and fifty four pagodas fourteen fanams and seventy cash therefore it is evident that the only cause for appeal of the appellant could have had any cause it have been the quantum of Interest as it is the Interest only that makes the difference and as the appellant has not taken any Notice thereof in his said answer he could not and therefore has not brought forward the same in his said petition of appeal and consequently and thereupon this Respondent humbly insists that from Equity and the Nature of the thing the appellant has no just cause of Appeal from

from the said Decree of the said Mayors Court and that in Appealing without any foundation he has been actuated by litigious and vexatious motives to injure and oppress this Respondent contrary to Equity and good Conscience—

This Respondent therefore humbly prays this Honourable Court will be pleased to Confirm the said Decree of the said Mayors Court and dismiss the appellants Petition of appeal with Costs and that this Respondent may have such other and further relief in the premisses as in the Wisdom of this Honourable Court shall seem most Meet—

/Signed/ James Stuart Hall
Solicitor for Respondent

Court

Court of Appeals
at
Madraspatnam } ss

Saturday the 29th day of March
Anno Domini 1794

Between Andrew Ross of
Fort Saint George Merchant Appellant
and James Kirkpatrick late a Lieutenant
Colonel in the military Service of the Honble the
East India Company under their Presidency of
Fort Saint George but now of London in the
Kingdom of Great Britain by his Attornies
Benjamin Roebuck and William Abbott
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 Tuesday the 19th day of July Anno Domini
1791 upon due Consideration had of the matters therein Severally con-
tained and of the Pleadings and Arguments used by the Attornies
on

on both sides This Court doth think fit to Order and Decree
and doth Accordingly Order and Decree that the said Decree
of the Honourable the Mayors Court do stand Affirmed and
that the Appellants Petition be hence Dismissed with Costs

P Curr
/Signed/ Chas H. White
Clk

To

To the Kings Most Excellent Majesty in Council

Between James Kirkpatrick late a Lieutenant Colonel in the Military Service of the Honble the East India Company under their Presidency of Fort Saint George but now of London in the Kingdom of Great Britain Esquire by his attornies Benjamin Roebuck and William Abbott of Fort Saint George aforesaid Merchants Complainant and Andrew Ross also of Fort Saint George Merchant Defendant

The Humble Petition and Appeal of the above Named Defendant

Most Humbly Sheweth

That the above Named Complainant by his said Attornies Benjamin Roebuck and William abbott did on or about the Twenty Seventh day of July which was in the year of our Lord one thousand Seven hundred and Ninety file his Bill of Complaint in the Mayors Court at Madraspatnam against your Petitioner thereon Charging that your Petitioner stood indebted unto him the Complainant in the Sum of Twenty Eight thousand one hundred and twenty one Pagodas eighteen fanams and Sixty

Filed in my office the 11th April 1794
Chas N White Clk

two

two Cash and which the Complainant did state would more fully appear by an account Current annexed to his said Bill and your Petitioner Sheweth that the Complainant in and by his said Bill did state that when he was about to Return to Europe he did Constitute and appoint George Smith then also of Fort Saint George merchant his attorney for the management of his affairs during his absence and who some time afterwards did also Return to Europe and leave your Petitioner and Alexander Cuthbert then also of Madras but since of Great Britain merchants his attornies and together with his own concerns did deliver over to them the Concerns of the Complainant that Some time afterwards in the year of our Lord One thousand Seven hundred and eighty two the Complainant did Receive a Letter from the said alexander Cuthbert wherein and whereby he the said alexander Cuthbert did request to be Considered as having resigned the Charge of the Complainants affairs and that the Complainant did entrust his concerns to your Petitioners sole and entire management and the Complainant did state that in consequence thereof your Petitioner became Possessed of Sundry Bonds Bills Notes Books and papers the Property of the Complainant that your Petitioner did Receive on the Complainants account from Sundry persons several Sums of money to a very Considerable amount and that the particulars thereof were stated in the Account Current to his said Bill annexed and the Complainant did in and by his said Bill

amongst

amongst other things further pretend that your Petitioner did neglect
to Remit to him the balance of cash in your Petitioners hands
and that as an excuse for so doing your Petitioner did assure the
Complainant he had Consigned funds to his Attorney Isaac
Solly of London Merchant the amount whereof was by your
Petitioner directed to be appropriated towards the discharge of
Such balance that the Complainant did some time in the year
of our Lord One thousand Seven hundred and eighty eight strictly
enjoin your Petitioner not to make any Remittance to the
Complainant through the channel of the said Isaac Solly and
did direct that all remittances to him might be made by Bills
on the Honble Company and that your Petitioner not complying
therewith he did Revoke the Powers granted to your Petitioner
and appoint the said Benjamin Roebuck and William
Abbott his attornies that they did demand from your Petitioner
the delivery of all papers belonging to the Complainant and the
Account Current between your Petitioner and the Complainant and
the balance of cash due thereon but that your Petitioner did
altogether refuse and neglect so to do

Your Petitioner further sheweth unto your most
Excellent Majesty That he did on the thirteenth day of November
last past file his answer to the said Bill of Complaint
and thereon denied to be indebted unto the Complainant in
the sum of twenty eight thousand One hundred and twenty one Pagodas
the
fifteen fanams and Sixty cash and amongst other things did admit that
eight
he was the attorney of the Complainant and did Receive in his account
several Sums of money and in Respect to the amount and particu-
Se
lars thereof your Petitioner did say the same would best appear as
cu
ted in the account Current thereunto annexed and your Petitioner
sh
; and by his said answer did further state that he did make remittances
in
y account of the Complainant and in Respect thereto the Same
or
uld best appear by the said account Current where in the Same
we
re stated that your Petitioner did intimate to the Complainant that
wi
had made Consignments to Mr. Isaac Solly of London Merchant
he
th the View of making Payments therefrom to the Complainant that
we
Said Isaac Solly did at Sundry times make payments to the
th
mplainant on account of your Petitioner from the Remittances made
Co
him by your Petitioner and that the said Isaac Solly did continue
o
to do and that the Complainant did continue to Receive such
o
ayments a part of which to the amount of Two hundred Pounds Sterling
p
your Petitioner did in and by his said answer state was paid to the
Complainant by the said Isaac Solly on the thirteenth day of
January then Last past and which must have been Subsequent to the
Orders given by the Complainant for the Prosecution of his action against
your Petitioner as the Same was not brought to your Petitioners credit in
the account Current annexed to the Complainants said Bill and

that

that a further Sum to the Amount of Seven hundred and eighty Pounds Sterling your Petitioner did state the Complainants did also Receive upon the third of June then Last past as your Petitioner was informed by advices Received from the said Isaac Selby which was some time after the filing of the Complainants said Bill of Complaint and your Petitioner in and by his said answer did further state that the only document belonging to the Complainant and which Remained in the possession of your Petitioner was a Bond of his Highness the Nabob in the new consolitated debt for the Principal Sum of Twenty thousand Pagodas and which Bond he did deliver to the Complainants said attornies the said Benjamin Roebuck and William abbott That your Petitioner never Refused to make out and deliver an account Current of the Complainants concerns and would soon have furnished the Same and that the circumstance which weighed with your Petitioner in delaying the delivery of such account Current were the strong Reasons he had for Expecting to receive advices from his Correspondent in England by the Ships which were then expected of further payments having been made on your Petitioners account to the Complainant in which expectation he had not been altogether disappointed all the such payments did fall short of his Expectations from the Amount of the Provisions which he had made for that purpose but which your Petitioner did and was well authorised to

to assert would soon prove a great deal more productive and greatly reduce the Sum which he stood indebted to the Complainant

And your Petitioner did in and by his said Answer further Stated that he annexed thereto an account Current of the whole transactions which had passed thro the hands of Alexander Cuthbert and himself Jointly and under the management of himself alone the balance whereof Amounting to Seventeen thousand eight hundred and fifty four Pagodas fourteen Fanams and Seventy Cash he acknowledged to be indebted to the Complainants Subject to any omissions or mistakes which might have escaped his notice and also subject to the deductions of whatever payments might have already been or should hereafter be made to the Complainant on account of your Petitioner as aforesaid

your Petitioner further Sheweth unto your most Excellent Majesty in Council that upon the above proceedings the Complainant did pray the said Mayors Court that the Said cause might be heard and that the same being set down it was accordingly heard by and before the said Mayors Court on the Nineteenth day of July which was in the year of our Lord One thousand Seven hundred and Ninety one when the said Mayors Court was pleased to Order and Decree and did accordingly order and Decree Mr Alderman Webb one of the members thereof dissenting therefrom / that your Petitioner Should pay unto the Complainant

the

the full and just sum of twenty One thausand and eighty Seven Pagodas and twenty fanams together with all such interest as then was or should hereafter become due thereon untill full payment was made at the Rate of Eight perbent per annum to be computed from the Respective dates of the Several Items charged in the Account Current annexed to the complainants Bill of complaint Subject to the deductions of whatever payments might have already been or might hereafter be made to the complainant on account of your Petitioner with all costs of the Suit as by a copy of the said Decree and an Extract of the before mentioned dissent hereunto annexed to which your Petitioner most humbly craves leave to Refer relation being thereunto had will more fully appear

From which said Decree of the said mayors court your Petitioner did appeal to the Honble the Court of Appeals at Madraspatnam aforesaid as he conceived the said Decree to be erroneous and your Petitioner much aggrieved thereby for the following Amongst other Reasons

First Because your Petitioner is advised and thereupon most humbly insists that the Decree of the said mayors court is not warranted upon the proceedings upon which the same is grounded and therefore contrary to Law for as much as it is laid down in the Books and an Established Maxim in Chancery that when a Plaintiff finds sufficient matter confessed in the Defendants Answer whereupon

whereupon to ground a decree he may proceed to set down the Cause for hearing upon Bill and answer but in that case the Plaintiff must take the Defendants answer to be true in all points

Secondly Because the amount of the debt as alledged in the Complainants Bill and setforth in the Account Current thereto annexed is but an assertion of the complainants unsupported by any evidence whatever whilst it rested with the Complainant to have proved the same if he thought he could so have done by following up the Cause in the usual course and thereby bringing it to proof by Evidence

Lastly Because the answer of your Petitioner and the account Current thereunto annexed being upon Oath and uncontroverted was Evidence of the facts therein stated and the said Mayors Court ought to have been guided thereby in their Deasion thereon and should have Ordered your Petitioner to have paid so much only as he himself confessed by his said Answer Viz^t Seventeen thousand eight hundred and fifty four Pagodas fortein fanams and Seventy Cash and no more

Your Petitioner further sheweth unto your most Excellent Majesty in Council that the said Complainant did afterwards (to wit) on the Twenty fourth day of August One thousand Seven hundred and Ninety One file his answer to your Petitioners said Petition and appeal and that the said Complainant did thereby admit that he did at the time in your Petitioners Petition and appeal mentioned exhibit such Bill of Complaint against your Pet^r

in the said Mayors Court and that your Petitioner did file such answer thereto as is herein before particularly setforth and mentioned and that the said cause afterwards was setdown to be heard upon Bill and answer and that the same came on accordingly to be heard before the said Mayors Court at the time in your Petitioners said Petition and appeal setforth and that the said Mayors Court did thereupon make their decree in the premises whereof a copy was to your Petitioners Petition and &c appeal annexed But the said Respondent did deny that your &c Petitioner was in any wise aggrieved or injuried by the said Decree of the Mayors Court and the said Respondent did by his said answer therefore pray that the said Decree of the Mayors Court might be affirmed and your Petitioners Petition and appeal dismissed with Costs and your Petitioner further humbly sheweth that the said Petition and appeals and the Answer of the said Complainant came on to be heard and determined on Saturday the twenty Ninth day of March in the present year of our Lord One thousand Seven hundred and ninety four by the said Court of appeals at Madrasspatnam aforesaid when the said Court was Pleased to Confirm the said Decree of the said Mayors Court with Costs in the said Court of appeals to be paid by your &c Petitioner

Whereas your Petitioner most humbly sheweth unto your most Excellent Majesty in Council that the said Court of appeals should have Reversed the said Decree of the said Mayors Court which is an absolute Decree in the first instance instead of being as it should have been a decree to an account for that the said Decree of the said Mayors Court doth upon the face of it presume that your Petitioner hath caused other monies to be paid to the said Complainant in the Kingdom of Great Britain but which by reason of your Petitioners being at so great a distance from thence and Sufficient time not having elapsed for him to have been advised of such payments thereof at the time when he filed his said answer and when the said Decree was pronounced your Petitioner could not therefore precisely ascertain the amount of such payments and your Petitioner most humbly sheweth that to the said Decree of the Mayors Court does presume the fact to be for although the Said Mayors Court doth in the first instance Decree the absolute payment of the said Sum of twenty one thousand and eighty Seven Pagodas and twenty fanams yet the said Mayors Court immediately afterwards Decrees that the same shall be subject to whatever payments &c might have already been or which might hereafter be made which Decree is inconsistent repugnant and incertain and thereupon your Petitioner doth most humbly submit to your most &c Excellent Majesty in Council That the said Mayors Court should have Decreed an account of such payments to have been taken by the Register of the said Court and thereby have given your Petitioner an opportunity of proving the same

Court of appeals at Madraspatnam

Saturday the 29th day of March Anno Domini 1794

Between andrew Ross of Fort St. George Merchant appellant and James Kirkpatrick late a Lieutenant Colonel in the Military Service of the Honble the East India company under their Presidency of Fort Saint George but now of London in the Kingdom of Great Britain by his attornies Benjamin Roebuck and William abbott 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 Tuesday the 19th day of July 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 Mayors court do stand affirmed and that the appellants Petition be hence dismissed with Costs

A true Copy /signed/ J. White Secrs pro tem.

/signed/ Chas N. White Clk

To

To the Kings Most Excellent Majesty in Council

Between andrew Ross of Fort Saint George Merchant appellant and James Kirkpatrick late a Lieutenant Colonel in the Military Service of the Honble East India Company under their Presidency of Fort Saint George aforesaid but now of London in the Kingdom of Great Britain Esqure by his attornies Benjamine Roebuck and William abbott of Fort Saint George Merchants Respondent

The Answer of the above Named Respondent to the Petition and appeal of the above Named Appellant

This Respondent admits that he did on or about the time in the appellants Petition of appeal for that purpose setforth Exhibit and file his Bill of Complaint in the Mayors court of Madraspatnam against the appellant for the Recovery of the Sum of Twenty eight thousand one hundred and twenty one Pagodas Eighteen fanams and Sixty two Cash and that he did in and by his said Bill amongst other things setforth and charge as in and by the said Petition of appeal the Same is setforth and this Respondent admits that to his this Respondents said Bill of complaint the

Filed in my office the 6th May 1794 Chas N. White Clk

appellant

appellant did Exhibit and file his answer in the said Mayors Court and did therein state the several matters and things as the appellant in and by his said Petition of appeal has stated the same and this Respondent admits that he did pray the said Cause might be set down upon Bill and answer and that the same was set down accordingly and this Respondent admits that upon such the proceedings had the said Cause did come on to be heard at the time in the appellants said Petition of appeal set forth and that the said mayors Court did thereupon think fit to Order and Decree and did accordingly Order and Decree that the appellant should pay unto the Respondent the full and Just sum of twenty one thousand and Eighty Seven Pagodas and twenty fanams together with all such Interest as then was or did thereafter become due thereon until full payment should be made at the Rate of Eight per Cent per annum to be computed from the Respective dates of the several Items charged in the account current annexed to this Respondents said Bill of Complaint and further and otherwise as in and by the said Decree copy whereof is annexed to the appellants said Petition of appeal reference being thereunto had may appear and this Respondent admits that the appellant did from such the Decree of the said mayors Court appeal to the Court of appeals at madraspatnam and this Respondent admits

admits that as cause of appeal the appellant did state the Several Reasons in his said Petition of appeal to your most Excellent Majesty in Council set forth and this Respondent admits that to the Said Petition of appeal in the said Court of appeals this Respondent did Exhibit and file his answer and did therein and thereby in opposition to the appellants said Reason for appeal say that he was advised that the said mayors Court ought to have given a Decree against the appellant for the full amount principal as in and by this Respondents said Bill of Complaint was set forth and therein and thereby prayed to be Decreed to be paid unto him this Respondent to wit the sum of twenty Eight thousand one hundred and twenty one Pagodas Eighteen fanams and Sixty two Cash together with Interest thereon at the rate of twelve per Cent per annum and which this Respondent did say he was advised he stood Entitled to and which was fully warranted by the Proceedings upon which the said mayors Court Judged and determined as aforesaid this Respondent therefore humbly insisting thereon did pray the benefit thereof in the same full and ample manner as if he had brought his Cross appeal in this Honble Court for the same and this Respondent to the appellants first Reason for appeal did Say That admitting the doctrine laid down in the Books and the Maxims adhered to in the Court of Chancery to be as the appellant has in his said first Reason stated the same yet that such the

shewing

shewing of the Appellant did not tend in any degree to point out the grievance complained of nor established the injury pretended to have been sustained thereby because the appellant had not shewn how and in what manner the said doctrines laid down in the Books and the said maxims of the Court of Chancery did apply to the matter in question to have done which this Respondent did say the appellant should have shewn if it lay in his power So to do the different points in his said answer contained by him insisted on and which as positive and unequivocal ought to have been received at the hearing of the said cause as Evidence therein but not having done so the said pretended Reason for Appeal could only be considered as containing assertions from whence no inference could be drawn and consequently from whence no advantage could be derived. and this Respondent did further say that the appellants said answer did not contain any certain or positive assertion in contradiction to or in confutation of the charges in this Respondents said Bill of Complaint stated and setforth material to the matter at issue save and Except that the Appellant did in and by his said answer in general terms and by a naked assertion positively deny to stand indebted unto this Respondent in the full amount of the sum sued for to wit the said Sum of twenty eight thousand one hundred and twenty one Pagodas Eighteen fanams and sixty

sixty two Cash which assertion this Respondent was advised and humbly insisted therein was Evasive and negatory because this Respondent did say being so further advised that it was not sufficient that a Defendant should deny standing indebted to the Complainant in the Sum sued for but he should also deny being indebted in any part thereof or if indebted in part only he should shew the particular amount for this Respondent did say that a Suit might be commenced for the Sum of five hundred pagodas and ten fanams and by an overcharge in the fractional part of ten fanams the Defendant might safely deny being endebted in the amount sued for but unless he shewed the over charge of ten fanams the Complainant would as this Respondent was advised be Entitled to a Decree for the Sum of five hundred pagodas and which this Respondent did say was agreable to the Established Course of Courts and was Consistent with Equity and common sense. And this Respondent did also say that the Appellant in and by his said answer after denying to stand indebted unto this Respondent in the Sum sued for did acknowledge to stand indebted unto this Respondent in the Sum of seventeen thousand Eight hundred and fifty four Pagodas fourteen fanams and Seventy Cash but did not add the words "and no more" which this Respondent was advised were absolutely essential and necessary in order to establish the said sum of seventeen thousand

Eight

Eight hundred and fifty four pagodas fourteen fanams and seventy cash as the only sum due to this Respondent and that such was Evident from the principles thereinbefore shewn and for as much as Equity instead of giveng sanction to relived against Evasion and as the a simple denial of the full amount of a sum sued for and a confession to be indebted in a certain sum without stating that the Sum so confessed was the Sum due and no more was prima facia Evidence of an Evasion and of Course contrary to Equity and good conscience and this Respondent humbly submitted to the said Court of appeals that the said Answer of the Appellant was frame upon that illegal ground and inequitious principle as to the Defendant seemed best calculated to answer his purposes in depriving this Respondent of the full Amount in which he the appellant stood Justly and truly indebted to wit the said sum of Twenty Eight thousand one hundred and twenty one Pagodas Eighteen fanams and Sixty two Cash and that from the premises the Appellants said first Reason for appeal was altogether irrelevant and impertinent

To the Second Reason for appeal this Respondent did say that the Bill of Complaint of a suitor and the Account Current or other Exhibit that might be annexed to it could be no more than a Assertion in the first instance and that it would depend upon circumstances whether it would or would not be necessary to support the same by Evidence for this Respondent did say that if after an appearance Entered the Defendant did not think proper to Exhibit and file his answer the Complainants Bill would be taken pro confesso, and a Decree would be granted thereon in the Same manner as if every matter and thing in the Bill contained had been Examined unto and fully proved by a Course of Evidence and nearly similar this Respondent did say was the case where a Defendant put in such an answer that the Plaintiff found therein sufficient grounds for a Decree without further proof because he was then to procud to set down the same upon Bill and answer without further lengthening the cause for in the case where there were sufficient grounds for a Decree in a Defendants answer and a Complainant being so Erroneously advised instead of setting down the Same to be Heard should follow up his cause in the usual course and bring it to proof by Evidence as suggested by the Appellant he would be punished for his litigious conduct by the Court with the payment of Costs and thereupon and for the Several matters in this Respondents answer to the Appellants said first Reason for appeal set forth this Respondent did say that the Appellants said Second Reason for appeal did not Shew how and in what Manner the grievance complained of had arisen or how and in what manner an injury has been sustained by the said Decree of the said Mayors Court and therefore was impertinent and irrelevant To the Last Reason for appeal this Respondent did

did admit that an answer of a Defendant upon oath was Evidence and Must be regarded as such at the hearing of the Cause but that it could be taken and Received as Evidence so far as it carried the same upon the face of it agreeable to the Laws of Evidence and no further to wit positive and clear assertion free from quibble or Evasion and thereupon this Respondent did say that the only material Evidence in the appellants said answer contained was the denial of being indebted unto this Respondent in the full amount of the Sum sued for to wit the sum of Twenty Eight thousand one hundred and twenty one Pagodas Eighteen fanams and Sixty two Cash and so far this Respondent did readily admit the same to be good Evidence but this Respondent did say he denied that such Evidence went to prove that the appellant had so denied being indebted to this Respondent in the full amount of the said sum of twenty Eight thousand one hundred and twenty one pagodas Eighteen fanams and Sixty two Cash that he did not stand indebted unto this Respondent in the sum of twenty eight thousand Pagodas and upwards and this Respondent says that the confession of the appellant rested upon the same foundation and thereupon because the appellant had in his said answer confessed being indebted unto this Respondent in the Sum of Seventeen thousand Eight hundred and fifty four Pagodas fourteen fanams and Seventy Cash

such

such confession would not have been taken as Evidence that he stood indebted unto this Respondent in that sum only but this Respondent said that to have given Efficacy to such confession the appellant should have stated that he stood indebted unto this Respondent in the sum of seventeen thousand Eight hundred and fifty four Pagodas fourteen fanams and Seventy Six Cash and no more but not having done so the said Confession of the appellant could have given no further or other bias to the Judgment of the said Mayors Court than that he the Appellant did by his own shewing stand indebted unto this Respondent in so much and by his not denying the charge of a further sum making up the balance of twenty Eight thousand one hundred and twenty one Pagodas Eighteen fanams and Sixty two Cash he had Tacitly confessed the Same and therefore the said Mayors Court ought to have been bound thereby in their decision and in consequence thereof have given a Decree in favor of this Respondent for the Full Amount in and by his said Bill prayed to be Decreed and this Respondent did in answer to the appellants said last Reason of appeal further say that the answer of a Defendant in a Court of Equity was upon oath but it should Depend upon the Internal Evidence the Answer contained how far it could be received at the hearing of the Cause as a denial of the

Charges

charges in the Plantiffs Bill setforth and if that was not full and sufficient pointed and clear the oath taken by the Defendant could not be of any avail and as to the Exhibit annexed to the Answer that could not in the nature of things be upon oath as it was a paper of reference only and in the present instance the mention made thereof by the Appellant in his said answer to this Respondents said Bill in referring thereto was the most Vague and ambiguous for the Appellant in and by his said answer speaking of the Account Current to his said answer annexed said "the balance whereof being the Sum of Seventeen thousand Eight hundred and fifty four Pagodas fourteen Fanams and Seventy Cash he acknowledged to stand indebted to the Complainant Subject to any Omissions or mistakes which may have escaped his notice" so that this Respondent humbly conceived it would fully appear to the said Court of Appeals from the Several Matters and things by this Respondent setforth in opposition to the Appellants last Reason for appeal that the said last Reason like the several others proceedings it did not shew how the Appellant had been aggrieved or in what manner he had sustained an injury by the said Decree of the Mayors Court and further this Respondent said that although the Appellant had stated that the said Mayors Court ought to have decreed unto this Respondent no more than confessed by him the

Appellant

Appellant yet he had not in his said Answer urged a single Argument to shew why he should not pay unto this Respondent an Interest of twelve per Cent as charged in his this Respondents Account Current to his said Bill annexed but had been altogether silent thereon nor had he taken any Notice thereof in stating his grievances and the injury pretended to have been sustained by the said Decree of the said Mayors Court and thereupon this Respondent did say that from the tenor of the said Decree of the Said Mayors Court and the confession of the Appellant of the Interest as charged in this Respondents said Bill being Just the Appellant so far from being aggrieved or injured by the said Decree of the said Mayors Court was absolutely and materially benifited thereby in a deduction of an Interest of four per Cent for although he was decreed to pay unto this Respondent the Sum of Twenty One thousand and Eighty Seven pagodas and twenty fanams yet the Same was made subject to the deduction of whatever payments might have theretofore been made or might thereafter be made to this Respondent which was conformable to the implied prayer of the Appellant in his said Answer to this Respondents said Bill of Complaint contained and that if the account Current to his said answer annexed be Just and true he would have to pay no more

than

than the sum he had confessed to be due to wit the sum of
Seventeen thousand Eight hundred and fifty four Pagodas
fourteen fanams and seventy Cash therefore it was Evident
that the only cause for appeal if the Appellant could have
had any cause must have been the question of Interest as it
was the Interest only that made the defference and as the
Appellant had not taken any Notice thereof in his said
Answer he could not and therefore had not brought forward
the Same in his said Petition of appeal and consequently
and thereupon this Respondent did humbly insist that from
Equity and the nature of the thing the Appellant had no
Just cause of appeal from the said Decree of the said mayors
Court and that in appealing without any foundation he
had been actuated by litigious and Vexatious motives to injure
and oppress this Respondent contrary to Equity and good
conscience and this Respondent did in and by his said answer
pray that the said Court of appeals would be pleased to affirm
the said Decree of the said Mayors Court and dismiss this
Appellants Petition of appeal with Costs

And this Respondent admits that the Appellants said
Petition of appeal and this Respondents said answer
thereto did come on to be heard and determined before
the said Court of appeals on or about the time in the
Appellants

Appellants said Petition of appeal to your most Excellent
Majesty in Council setforth and that the said Court of appeals
were pleased to affirm the said Decree of the said mayors Court
with Costs But this Respondent doth not admit as the Appellant
in and by his said Petition of appeal has suggested that the
said Court of appeals should have reversed the said Decree of the
said Mayors Court and this Respondent humbly submits to your
most Excellent Majesty in Council that the said Decree is framed
upon the Answer of the Appellant to this Respondents said
Bill of Complaint and left him the Equitable remedy of
deducting from the amount decreed any sum of money that
he might have paid over and above the sums for which this
Respondent had given him credit in the Account Current
to this Respondents said Bill of Complaint annexed and
although the Appellant might not as he pretends have been
Enabled to ascertain the amounts of such payments
immediately as he might have ascertained the amount of
remittances he had made for that purpose if he had Ever made
any and have tendered payment of the Remainder and
therefore this Respondent submits to your Majt Excellent
Majesty in Council that the said Decree of said mayors
Court is neither inconsistent repugnant nor uncertain and
this Respondent says that since the Decree of the said mayors
Court

" " " " " Court to the decision thereon by the said Court of Appeals that is to Say from the nineteenth day of July which was in the year of our Lord one thousand seven hundred and Ninety one to the twenty ninth day of march in the present year there as been a lapse of two years and Eight months during which period this Respondent Submits to your most Excellent Majesty in Council the Appellant might have ascertained the Amount of the Sums by the Appellant remitted and paid to this Respondent over and above the sums for which the Appellant has received credit in the Accaunt Current to this Respondents said Bill of Complaint annexed and as the Appellant has not done so this Respondent submits to your most Excellent Majesty in Council that it is Evident no such remittances have been made nor any such Sums paid on account thereof as suggested by the Appellant in and by his said Answer to this Respondents said Bill of Complaint and insisted on by the Appellant in and by his said Petition of Appeal

And this Respondent further Submits to your most Excellent Majesty in Council that although the Appellant would suggest the contrary it is not the course of the said Mayors Court to Decree an accaunt of payments to be taken by the Rejester thereof and so the Appellant doth well know the fact to be and this Respondent further Submits to your most Excellent Majesty in Council that the said Decree of the said mayors Court is Evidently framed to favor the Appellant and therefore this Respondent has the greatest right to complain of grievance thereby and to appeal therefrom insomuch as that the said Mayors Court in and by their said Decree have not Decreed the full Amount in and by this Respondents said Bill of Complaint charged to be due and Owing from the appellant to wit the Sum of Twenty one thousand and Eighty Seven Pagodas and Twenty fanams — together with Interest thereon at the rate of Twelve per Cent per annum and which this Respondent is advised the said Mayors Court ought to have done the same having been fully Warranted by the proceedings upon which the said Mayors Court Judged and determined as aforesaid because this Respondent further Submits to your Most Excellent Majesty in Council that there is not any thing in the Appellants said answer to this Respondents said Bill of Complaint positively affirmed to the contrary but that the said Answer is made up of conjectures surmises and references and this Respondent therefore humbly prays he may have the same benefit in the premises in the same manner as if he had brought his Said Appeal on account thereof. — And this Respondent Submits to your Most Excellent Majesty in Council notwithstanding the Suggestion of the appellant to the Contrary that it is not to be presumed that the said Mayors Court when they granted their said Decree had it in contemplation and were Satisfied that considerably less Monies were Owing to this Respondent than those so decreed as aforesaid but that the said Mayors Court in granting their said Decree did frame it most favorably for the appellant for as this Respondent has already Submitted to your Most Excellent Majesty in Council there is not any thing certain in the appellants said answer upon which the said Mayors Court were Justified in withholding from this Respondent the full

amount.

amount by his said Bill of Complaint prayed to be decreed as aforesaid and that the Chief Shewing of the appellant in and by his said answer is that notwithstanding the repeated application to him made by this Respondent as Charged in and by his said Bill of Complaint for payment of the amount due the appellant has for a Number of years with held and still continues to with hold from this Respondent a very Large Sum of Money to his Great Wrong and injury and further this Respondent Submits to your Most Excellent Majesty in Council that Since the filing of the appellants said Petition of Appeal in the said Court of appeals a period of two years and Eight Months have elapsed during which the appellant had Sufficient time to have written to his Constituents in England and have ascertained the amount of any Sum of Money that had been paid as he pretended in and by his said answer to this Respondents said Bill of Complaint over and above the Sums for which he has been credited in the account Current to this Respondents said Bill of Complaint annexed and having so ascertained the said amount upon producing the same properly authenticated it would in conformity to the said Decree have been deducted from the amount thereby decreed but as the appellant has not pretended to shew any document whatever to prove any further or other payment had been made to this Respondent than as already shewn this Respondent submits to your most Excellent Majesty in Council that it is fair to conclude that he had it not in his Power so to do — and that no such Monies ever were paid to this Respondent and this Respondent submits to your Most Excellent Majesty in Council the premises considered that the appellant in appealing to your Most Excellent Majesty in Council stands in a very different situation to what he did when appealing from the said Decree of the said Mayors Court to the said Court of appeals and that it is this Respondent and not the appellant who is aggrieved thereby. —

For 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 Vouchsafe to affirm the said Decrees of the said Mayors Court and of the said Court of appeals and dismiss the appellants said

Petn

Petition of appeal and further this Respondent humbly prays that your Most Excellent Majesty in Council will be pleased to grant unto this Respondent such further and other Relief in the premises as to your Most Excellent Majesty in Council shall Seem Meet. ——

/Signed/ James Stuart Hall
Solr for Respondt

To

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

In the Court of Appeals
at
Madraspatnam

Between George Moubray Complainant
and John Balfour Nathaniel Edward
= Kindersley and Sir John Menzies Baronet
Executors of James Wooley deceased Defendants.

The humble Petition and appeal of the above named Complainant. —

Sheweth,

That your Petitioner did on the Twenty fourth day of April which was in the year of Our Lord one thousand seven hundred and Ninety file a Bill of Complaint in the Mayors Court at Madraspatnam against the above named Defendants as Executors of James Wooley, and did therein set forth that the said James Wooley did previous to his deceased duly make and publish his last Will and Testament in writing bearing date the Twenty seventh day of February, which was in the year of Our Lord one thousand seven hundred and eighty nine and among other Legacies therein mentioned the said James Wooley did give and bequeath unto your Petitioner one Annuity or clear yearly Sum of for his Life in

Filed in my office
the 20th June 1791
Thos N. White
Clk

in the Words and Figures following "3000 To George Maubray "Esqr. an annuity of Three hundred Pounds for his life to be paid "him out of the fund left by me for Charitable uses at Madras"

"And your Petitioner did set forth in his said Bill of Complaint that the said "3000" Means Three thousand Pounds Sterling or lawfull Money of Great Britain as the imputed Value of the said annuity, in the Mind and Opinion of the said James Wooley at the time he made the said Will for your Petitioner said that the said James Wooley, in whose Hand Writing the said Will is made hath in the Margin thereof put the Several Specific Sums composing the said Legacies or the Value thereof if in annuities for the latter ascertaining the amount of the Whole and your Petitioner did further set forth that the said James Wooley after having specified the above mentioned Legacy in favors of your Petitioner and certain other Legacies did write as follows. —

"I desire that the Legacies to be paid
"in this Country may be at the Rate of Eight Shillings
"the Star Pagoda: that the Annuities commence from the
"day of my Death and that Interest at the Rate of eight
"per Cent may be allowed on the Legacies till discharged
by
"by my Executors." —

And your Petitioner did set forth that the said James Wooley in a further Clause in his said last Will and Testament hath stated as follows —

"Should my fortune by any unforeseen acci-
"-dent fall short of the Amount of the before Mentioned and
"hereafter mentioned Legacies tis my Desire that a proporti-
"-onal deduction may be Made from each of them and that
"in payment of said Legacies no preference shall be
"given to Executors or others but that as my Property can
"be realized by my Executors proportional Dessidents shall be
"Made." —

And your Petitioner stated that there is a Subsequent Clause in the Will of the said Testator in the Words following —

"And tis my desire that the Ballance
"of Fortune after all my Legacies are paid shall be
"Assigned to and vested by my Executors in the hands of the
"Governor and Council of Madras for the time being as a
"Charitable fund appropriated to the Education and
"Provision in such manner as they shall think
"proper of the Children of distressed Europeans male and
"Female" —

And

And your Petitioner did set forth that the said James Wooley appointed the said John Balfour and Nathaniel Edward Kindersley of Madras Esqrs and Sir John Menzies late of the same place Baronet Executors of his said Will and having duly executed the said Will the said James Wooley departed this life on or about the fifteenth day of april which was in the year of Our Lord one thousand Seven hundred and eighty nine without revoking or altering such Will and the same was duly proved in the Kings Ordinary of the said Mayors Court on the Twenty first day of april in the said year of Our Lord One thousand Seven hundred and eighty nine and the said John Balfour and Nathaniel Edward Kindersley did on the Ninth day of May then following obtain Probate of the said Will under the Seal of the said Mayors Court and did thereby take upon themselves the Burden and Execution thereof the like Right being reserved unto the said Sir John Menzies whenever he should apply for the same and your Petitioner did set forth that on the fifteenth day of April in the said year of Our Lord one thousand Seven hundred and Ninety being twelve Months after the Death of the said James Wooley your Petitioner did apply unto the said Nathaniel Edward Kindersley the only Executor at Madras the said John Balfour having previously departed for Europe for the Payment of three hundred Pounds being one years annuity due unto your Petr under and by Vertue of the said Will But that the said Nathaniel Edward Kindersley instead of paying the said Sum of three hundred Pounds as your Petitioner expected declared that the Assets of the said James Wooley which had hitherto come into his Possession or Power were not Sufficient for Payment of the specific Sums of money bequeathed by the said Will and that therefore there was no Ballance in his hands for a Charitable fund as above bequeathed and that as the Claim of your Petitioner was to arise from the Issues of the said Charitable fund your Petitioner could lay no Claim to his annuity till such fund existed.— Whereas your Petitioner Charged that notwithstanding the Clause which bequeaths unto your Petitioner the said Annuity of three hundred Pounds Sterling doth mention that the same was to be paid out of the fund left for charitable uses at Madras nevertheless your Petitioner had an equal Claim with the other Legatees to the benefit of the two Clauses above set forth by one of which the said Testator declares that the legacies to be paid in this Country are to be at the Rate of eight Shillings

Shillings for Pagoda and that the Annuities are to commence at the day of his Death and by another Clause that in case his Estate shall fall short of the Amount of the Legacies a proportional deduction is to be made from each and that no Preference was to be given to Executors and others so that your Petitioner Charged that he had a Right to receive either the said imputed Value of his said Legacy being the said Sum of three thousand Pounds or such proportional part thereof as would equalize your Petitioner with the other Legatees according to the tenor of the said Will or that such proportional Part of the said Sum of three thousand Pounds as the imputed Value of the said Annuity as fixed by the said Will should be Lodged as directed by the said Will in the Treasury of the said United Company at Fort St George that your Petitioner might Receive from the Interest thereof after the Rate of paid for Loans by the said Company such proportion as might arise therefrom in part payment of his said Legacy and that the Principal Sum after the death of your Petitioner might go proportionably among the other Legatees and Representatives of your Petitioner in discharge of the Sums respectively deficient to the said Legatees of the Sums bequeathed to them and Interest thereon from the death of the said James Wooley

and in Discharge of the Deficiency of such eventual Interest from the Treasury of the said united Company to your Petr short of the said Annuity of three hundred Pounds a year and the annual Interest on such Deficiencies from the time the same accrued respectively.——

Your Petitioner did further set forth that he hath stated his Claim in manner aforesaid and he therefore prayed in and by the said Bill of Complaint that the said John Balfour Nathaniel Edward Kindersley and Sir John Menzies as the Executors of the said James Wooley might be Decreed to pay unto your Petitioner the said Annuity or Clear yearly Sum of three hundred Pounds Sterling or lawfull money of Great Britain at the Rate of eight Shillings the Pagoda making Seven hundred and fifty Pagodas or that if the Estate of the said James Wooley be not Sufficient to pay and satisfy all the Legacies bequeathed by him in such case the said Executors might be decreed to set forth the full amount of the said Estate and to state how far the same was likely to fall short of full Payment of the said Several Legacies and that in such Proportion as the said Estate should appear to fall short the said Executors might be decreed to set apart for account of your Petitioner

the

the Proportion of the said Sum of Three thousand Pounds —
Sterling or lawfull Money of Great Britain or Seven thousand
five hundred Star Pagodas being the Value thereof at the
Rate of eight Shillings the Pagoda and that your Petitioner
might have Such further and other special Relief as to the
Said Mayors Court should appear agreeable to Equity and
good Conscience and that the Cost of this Suit might be paid
from the Estate of the said James Wooley to which Said Bill
of Complaint the said Nathaniel Edward Kinderley one of the
Executors of the said James Wooley filed his Answer and did
thereon admit that the said James Wooley did previous to his
decease make and publish his last Will and Testament
in writing in manner as is above stated and that Probate
thereof was granted as aforesaid and the said Nathaniel Edwd.
= Kinderley did admit that on or about the fifteenth day of
April in the said year of Our Lord One thousand Seven hundred
and eighty nine being twelve Month after the Death of the
said James Wooley your Petitioner applied unto the said
Nathaniel Edward Kinderley the only Executor then —
resident at Madras aforesaid the said John Balfour having
previously departed for Europe for payment of the Sum of
three hundred Pounds being One years annuity due to him
under

under and by Vertue of the said Will and the said Nathaniel
Edward Kinderley did admit that he might among other
Reasons for his not complying with the said Demand of
your Petitioner have given for one that the effects of the said
James Wooley which had at that time come to his Possession
and Power were not sufficient for the Payment of the
Specific Sums of money bequeathed by the Will of the
said James Wooley, and that therefore there was no —
Balance in his hands for that Purpose and of course
not any for a Charitable fund as above begueathed and
the said Nathaniel Edward Kinderley pretended he
was advised that as your Petitioners Claim was grounded
upon and was to be paid from the Issues of the said
Charitable fund your Petitioner could not by Vertue
of the said Will make any Claim to the Annuity bequeathed
him thereby until Such fund existed. —

And the said Nathaniel Edward Kinder-
= by did also depend he was advised that he as Executor
of the said Will was bound to follow the directions thereof
and particularly the one where by the Payment of Legacies
and Annuities is appointed to be made and that the
said James Wooley having particularly specified

and

and denoted from whence the annuity bequeathed to your Petitioner should be paid and not having in any other of the articles of the said Will been so particular as to allot a provisional fund from whence the other Legacies are to be paid the said Nathaniel Edward Kindersley was bound to govern himself by the litteral Direction and description of the said Will in Respect to your Petr.s annuity and not to take upon himself to interpret the Meaning of the Testator by Implication or by thinking the meaning of the Testator to be contrary to what he had himself expressly declared and the said Nathaniel Edward Kindersley did further set forth that the Testator must have meant and intended that the Payment of the said Annuity should depend upon the provisional fund denoted by him under the description of Charitable uses or he would not have declared that the payment thereof should be specifically made from that fund because that it appeared as he pretended by the article in the said Will immediately preceding the one whereby the annuity to your Petitioner was bequeathed that the Testator did thereby bequeath an annuity without appointing any fund from whence the same should be paid and without any

any Restriction or Contingency to Wit. "1000 To my Nephew "Whose Christian Name I do not know only Brother to the "said John Weston Wooley an annuity of One hundred "Pounds for his life to be Secured to him by my Executors "on a Landed Estate in Ireland I am informed he is an "Idiot therefore fortune above the Necessaries of life can "be of no use to him" the said Nathaniel Edward Kinderskey pretended that he was therefore advised that he would make himself liable to the other Legatees by the admission of your Petitioners Annuity into the Order of Legacies bequeathed by the said Will without restriction or Contingency in Case according to the Words of the said Testator in his said Will his the testators fortune should by any unforeseen accident fall short of the said Legacies because as the said Nathaniel Edward Kinderskey pretends that the express declaration of the testator in Respect of the payment of the said annuity to your Petitioner doth oblige him to interpret the same according to the words of the Testator rather than according to the interpretation made thereof by your Petitioner that in the Event of the Testators Estate falling short of the amount of the Legacies that

a proporte.

Proportional deduction is to be made from each including the Annuity bequeathed to your Petitioner as he would not allow himself to admit from such Words of the said Testator that the annuity bequeathed to your Petitioner doth come under the description of Such Legacies from which a proportional deduction is directed to be made in the Event of the Testators fortune falling short or that the said Annuity could be declared consistent With the expres Ward of the said Testator in bequeathing the same to be upon a footing with the other Lega= =cies in which the Testator said no preference should be given to Executors or others or that your Petitioner hath a Right to receive either the Value at which the Testator has computed the said Legacy being the Sum of Three thousand Pound or such proporti= =onal part thereof as will equalize him with such other Legatees without that the said fund from which the same is directed to be paid should be Sufficient thereto and of Course that the said Nathaniel Edward Kindersley could not as he pretended do what is required by your Petitioner by Lodging in the Treasury of the United Company at Fort St George Such proportional part

part of the said Sum of Three thousand Pounds in order that your Petitioner may receive the Interest thereon after the date paid for Loans by the said Company, in part payment of his said Annuity to the end that the principal Sum after the Death of your Petitioner may go proportionably among the other Legatees and the Representatives of your Petitioner in Discharge of the sums respectively deficient to the said Legatees of the Sums bequeathed to them and Interest thereon from the Death of the said James Wooley and in discharge of the deficiency of such Supposed eventual Interest from the Treasury of the said United Company to your Petitioner short of the said Annuity of three hundred Pounds a year and the Current Interest on Such Deficiency from the time decreed respectively because the said Nathaniel Edward Kindersley pretended that the said Requisition was not Suffici= =ently founded on any part of the Will of the Testator respecting the payment of the said Annuity which is therein as he pretend directed to be paid in no other manner and from no other fund then that under the discription of Charitable uses and the said Nathaniel Edward Kindersley did further set forth that

that untill Such fund was established and Created from the residue or overplus of the said Testators Estate after payment of the other Legacies bequeathed by the said Will he could not consistent with the tenor thereof set a part any Sum of money or provisional fund for the payment of the said annuity or any part thereof and the said — Nathaniel Edward Kindersley did annex to his said answer a Copy of an account of the Estate of the said James Wooley with him as also a Statement of the accounts thereof or Claims from and upon the Estate and the said Nathaniel Edward Kindersley said that the said Estate was indebted unto him in the Sum of Two thousand Two hundred and Twenty three Dag.s thirty two fanams and thirty Six Cash and the said Nathaniel Edward Kindersley did also annex to his said answer a Copy of the last will and Testament of the said James Wooley and the said Nathaniel Edw.d Kindersley did lastly Setforth that having by his said Answer Setforth such Matters which he had been advised Respecting the Claims of your Petitioner he humbly referred the same to the — Consideration of the said Mayors Court to which said

answer

answer your Petitioner filed his Replications and did therein admit that the said Nathaniel Edward Kindersley should govern himself by the litteral direction and description of the said Will of James Wooley respecting the Annuity bequeathed to your Petitioner and that the said Nathaniel Edward Kindersley was not to take upon himself to interpret the Meaning of the Testator by implication and contrary to what he himself hath expresly declared But your Petitioner said that where a Will or any other Deed or Instrument in the Law or even an act of Parliament contains Clauses which are in same respect Contradictory as in the Present Instance and therefore call for a Scrutinizing investigation of the Several parts the General rule is to Seek out the intention purport and Meaning of the Parties and to interpret the Deed accordingly your Petitioner therefore said that notwithstanding the Clause which bequeathed unto your Petitioner the said Annuity of three Hundred Pounds doth Mention that the same is to be paid out of the fund left for Charitable uses at Madras Nevertheless your Petitioner hath an equal Claim with the other Legatees to the Benefit of the two Clauses setforth in the Bill of Complaint by one of which the said Testator declares that the Legacies to be

paid

paid in this Country are to be at an Exchange of eight Shillings the Pagoda and that the Annuities are to commence at the day of his Death and by another Clause that in Case his Estate shall fall short of the amount of the Legacies a proportional deduction was to be made from each and that no preference was to given to Executors or others by which your Petitioner insisted that he had a right to receive either the said imputed Value of his said Legacy being the said Sum of three thousand Pounds or such proportional part thereof as will equalize your Petitioner with the other Legatees according to the Tenor of the said Will or that such proportional part of the said Sum of Three thousand Pounds as the imputed Value of the said Annuity as fixed by the said Testator be lodged as directed by the said Will in the Treasury of the said united Company of Fort St George that your Petitioner may receive from the Interest to arise thereon after the Rate paid for loans by the said Company such proportion as may arise therefrom in part payment of his said Legacy and that the principal Sum after the Death of your Petitioner may go proportionably among the other Legatees and among the Representatives of your Petitioner in part discharge of the Sums which may be respectively deficient to the said Legatees of the

the Sums bequeathed them and Interest thereon respectively from the Death of the said James Wooley according to the Tenor of the Will and also in part Discharge of the deficiency of such Eventual from the Treasury of the said United Company to your Petitioner short of the said Annuity of three thousand Pounds and the Current Interest of such deficiencies from the time the same should accrue respectively and your Petitioner did set forth that he was the more warranted in the above Construction of the said Will not only from the Clauses themselves which clearly manifest that an Interest for life was entended in favor of your Petitioner to the Value of three thousand Pounds and that therefore your Petitioner had a Claim to the said Sum of three thousand Pounds or a proportional part thereof in common with the other Legatees According to the Eventual assets of the Testator but that it was very well known and that your Petitioner said he would in due time prove to the Satisfaction of the said Mayors Court that a friendly intercourse Subsisted for many years without the least interruption between the Testator and your Petitioner and that the Testator has expressed his reason more than once since making the said will why he bequeathed to your Petitioner an annuity

annuity instead of a Sum of money and that he could in no wise intend to leave the Bequest in favor of your Petitioner to the Precarious Risk of being paid only from the said Surplus funds while the other Legatees were to receive in full of their respective Legacies to which said Replication the said Nathaniel Edward Kindersley filed his Rejoinder and therein among other things did say that he would not deny but that there had subsisted for many years a friendly intercourse between the Testator and your Petitioner without the least interruption that he knew of or did belive and the said Nathaniel Edward Kindersley said that he therefore believed that the Testator might have expressed his reasons since making the said Will why he bequeathed to your Petitioner an Annuity instead of a Sum of money and the said Nathaniel Edward Kindersley also said that he had reason to believe that the Testator did not intend to leave the bequest in favor of your Petitioner to the precarious risk of being paid only from a Surplus fund but that he actually meant your Petitioner to benefit as much as if he had left him Three thousand Pounds that upon the above Proceedings issue was joined and Witnesses examed on the part of your Petitioner after which Publication passed and the said Cause was set down for hearing and Came

Came on to be heard by and before the said Mayors Court on Tuesday the Seventh day of this Instant June when the said Court were pleased to Order and Decree and did accordingly Order and Decree that your Petitioners Bill should stand dismissed with Costs and your Petitioner sheweth that James Amos one of the Aldermen of the said Court dissented to the said Decree as by the said Decree and dissent herewith lodged for the Inspection of this Honble Court and by the other Proceedings in the said Cause reference being thereunto respectively had may more fully appear —

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

First — Because that where there are inconsistent and contradictory words in a Will some words must be rejected to make it sense as was determined in the Case of Boon vers Camforth —

Second — Because that in Deeds the Rule of Construction is that the intention must be directed by the Words in Wills the Words must follow the intent of the devisor

Third — Because such a Sense shall be made of a Devise that it may be for the Profit of the Devisee and not to his Prejudice. —

Fourth

Fourth ... Because that though a Parol averment shall not be admitted to explain a Will so as to expound it contrary to the import of the Words yet when the words will bear it a Parol Averment May be Admitted, —

Fifth ... Because that where there a doubt in the Meaning of a Will one part thereof shall be expounded by another. —

From all which Principles respecting the Construction of Wills and from the Proceedings in the Cause. your Petitioner humbly conceives that the Decree of the Mayor's Court ought to be reversed for your Petitioner Sheweth that by the Evidence of Benjamin Roebuck it is in proof that the Testator meant the said Annuity as a Certain Provision for your Petitioner and the Testators Reasons for bequeathing an Annuity instead of a Specific Sum are stated in the deposition of the said Benjamin Roebuck and it is also acknowledged by the Defendant as Executor to the said James Wooley that it was not the intention of the Testator to leave your Petitioner in a precarious state respecting his Legacy. —

Wherefore your Petitioner humbly conceives that the Bequest ought to be confirmed and the Prayer of your Petitioner as prayed for in his Bill of Complaint ought to be granted and the Costs of Suit paid from

from the Estate of the said James Wooley. —

[Signed] Stephen Popham
Sol. Appellant

Mayors

Mayors Court
at
Madraspatnam

Tuesday the 7th day of June
Anno Dominiv1791.

L S

Present,

Mr. James Call Senior Alderman
Andrew Ross — John Mitford
Henry Chicheley Michell Sa. Amos
and James Daly — Aldermen,

Between George Moubray Esqr.
Senior Merchant in the Service of the
United Company of Merchants of England
trading to the East Indies under their
Presidency of Fort St. George Complainant
and John Balfour and Nathaniel Edward
Kindersley of Madras Esqrs. and Sir John
Menzies late of the same place Baronet
Executors Named in the Last Will
and Testament of James Wooley deceased
Defendants. —

Mayors Court

This Cause Coming on to be heard and debated
this day in the Presence of the attorneys on both Sides
on Reading the Complainants Bill the Defendant
Nath.l Edward Kindersley's Answer with Copies of an
Account Current Statement and Will annexed the —
Replication the Rejoinder the Interrogatories and
Depositions on the part of the Complainant On Hearing
the Pleadings Made use of by the attorneys and on due
Consideration had thereon — This Court doth think fit to
Order and Decree and doth according Order and Decree
that the Complainants Bill do stand Dismissed with
Costs. —

Hear, /Signed/ George Taylor Regr.

Extract

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 7th day of June Anno Dominie 1791

Present

Mr. James Call Senior Alderman.
Andrew Ross — John Mitford
Henry Chichley Michell — James
Amos — and James Daly
Aldermen

George Moubray
Hers
John Balfour Nathl. Edward Kindersley and
Sir John Menzies Executors of James Wooley Deceased

Mr. Alderman Amos Dissents to the Resolution of the Court —

A True Extract
(signed) G. Taylor Regr.

To

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

In the Court of Appeals
at Madraspatnam

Between George Moubray
Complainant and John Balfour Nathaniel
Edward Kindersley and Sir John Menzies
Baronet Executors of James Wooley
Deceased Defendants —

The Answer of Nathaniel Edward Kindersley one of the above named Defendants to the Petition and appeal of the above named Complainant. —

This Respondent admits that the above Named appellant did on or about the time in his said Petition of appeal set forth exhibit and file a Bill of Complaint in the Mayors Court at Madraspatnam against this Respondent and the said John Balfour as Executor of James Wooley and did therein set forth that the said James Wooley did previous to his Decease duly make and publish his last Will and Testament in Writing bearing date the Twenty Seventh day of February which was in the year of Our Lord One thousand Seven hundred and Eighty Nine and among other Legacies therein mentioned the said James Wooley did give and bequeath unto the said appellant one annuity

Filed in my office the 23d July 1791
Chas. H. White Clk

annuity or clear yearly Sum for his Life in the Words and figures following "3000. to George Moubray Esq.r an annuity of three hundred Pounds for his life to be paid him out of the funds left by me for Charitable uses at Madras" and this Respondent admits that the appellant did further Setforth in his said Bill of Complaint that the said 3000 did mean three thousand Pounds Sterling or lawfull Money of Great Britain as the imputed Value of the said annuity in the mind and Opinion of the said James Wooley at the time he made the said Will for the Appellant said that the said James Wooley in whose hand Writing the said Will is made hath in the Margin thereof put the Several Specific Sums composing the said Legacies or the Value thereof if in annuities for the better ascertaining the amount of the whole and this Respondent also admits that the said appellant did further Setforth that the said James Wooley after having specified the above mentioned Legacy in favor of the appellant and certain other Legacies did write as follows. —

"I desire that the Legacies to be paid in this Country may be at the Rate of Eight Shillings the Star Pagodas that the Annuities commence from the Day of my death and that Interest at the Rate of Eight per Cent may be allowed on the Legacies till discharged by my Executors. —

This Respondent also admits that the appellant did further Setforth that the said James Wooley in a further Clause in his said last will and Testament hath stated as follows. —

Should my fortune by any unforeseen accident fall short of the amount of the beforementioned and hereafter mentioned Legacies 'tis my desire that a proportional deduction may be made from each of them and that in payment of the said Legacies no preference shall be given to Executors or others but that as my property can be realized by my Executors proportional Devidends shall be made. —

And this Respondent admits that the appellant did further state in his said Bill of Emplaint that there is a Subsequent Clause in the Will of the said Testator in the Words following. —

And 'tis my desire that the Ballance of my fortune after all my Legacies are paid shall be assigned to and vested by my Executors in the Hands of the Governor and Council of Madras for the time being as a Charitable fund appropriated to the Education and provision in such manner as they shall think proper of the Children

Children of distressed Europeans male and Female.—

And this Respondent admits that the appellant did further set forth that the said James Wooley appointed this Respondent and John Balfour of Madras Esqr. and Sir John Menzies late of the same place Baronet Executors of his said Will and having duly Executed the said Will the said James Wooley departed this life on or about the fifteenth day of april which was in the year of Our Lord One thousand Seven hundred and Eighty Nine without revoking or altering Such Will and the same was duly proved in the Kings Ordinary of the said Mayors Court on the Twenty first day of April in the said year of Our Lord One thousand Seven hundred and Eighty Nine that this Respondent and the said John Balfour did on the Ninth day of May then following obtain Probate of the said Will under the Seal of the said Mayors Court and did thereby take upon themselves the Burden and Execution thereof the like Right being reserved unto the said Sir John Menzies whenever he should apply for the Same and this Respondent admits that the appellant did further set forth that on the fifteenth day of April last past being Twelve Months after the death of the said James Wooley the appellant did apply unto this Respondent the only Executor at Madras the said John Balfour having previously departed for Europe for the payment of Three hundred Pounds being one years annuity due unto the appellant under and by virtue of the said Will but that this Respondent instead of paying the said Sum of Three hundred Pounds as the appellant expected declared that the effects of the said James Wooley which had hither to come into his possession or Power were not sufficient for the payment of the Specific Sums of money bequeathed by the said Will and that therefore there was no balance in his hands for a Charitable fund as above bequeathed and that as the Claim of the appellant was to arise from the profits of the said Charitable fund the appellant could lay no Claim to the annuity till such fund existed — Whereas the appellant pretended in his said Bill that notwithstanding that the Clause which bequeaths unto the appellant the said Annuity of three hundred Pounds sterling doth mention that the same is to be paid out of the fund left for Charitable uses at Madras Nevertheless the appellant also pretended he had an equal Claim with the other Legatees to the Benefit of the two Clauses above set forth by one of which the said Testator declares that the Legacies to be paid in this Country are to be at the rate of eight shillings for Pagoda and that the annuities are to commence at the day of his death

And—

and by another Clause that in Case his Estate should fall short of the amount of the Legacies a proportional deduction was to be made from each and that no preference was to be given to Executors and others so that the appellant Charged that he had a Right to receive either the said imputed Value of his said Legacy being the said Sum of Three thousand Pounds or such proportional part thereof as would equalise the appellant with the other Legatees according to Tenor of the said Will or that such proportional part of the said Sum of Three thousand Pounds as the imputed Value of the said annuity as fixed by the said Testator be lodged as directed by the said Will in the Treasury of the said United Company of Fort St George that the appellant might receive from the Interest to arise thereon after the Rate paid for loans by the said Company such proportion as might arise therefrom in part payment of his said Legacy and that the principal Sum after the death of the appellant might go proportionably among the other Legatees and the Representatives of the appellant in discharge of the Sums respectively deficient to the said Legatees of the Sums bequeathed to them and Interest thereon from the death of the said James Wooley and in discharge of the deficiency of such eventual Interest from the Treasury of the said united Company to the appellant short of the

Said

said annuity of Three hundred Pounds a year and the Current Interest on such deficiences from the time the same accrued respectively.—

This Respondent also admits that the appellant did further setforth that he had stated his Claim in manner as aforesaid and therefore he prayed in & by his said Bill that the said John Balfour for John Menzies and this Respondent as Executors of the said James Wooley might be Decreed to pay unto the said appellant the said annuity or Clear yearly Sum of Three hundred Pounds Sterling or lawfull Money of Great Britain at the Rate of Eight Shillings the Pagoda making Seven hundred and fifty Pagodas or that if the Estate of the said James Wooley be not Sufficient to pay and satisfy all the Legacies bequeathed by him that in Such Case the said Executors might be Decreed to setforth the full amount of the said Estate and to state how far the Same was likely to fall Short of full payment of the said Several Legacies and that in such proportion as the said Estate should appear to fall short the said Executors might be decreed to set apart for account of the appellant the proportion of the said Sum of three thousand Pounds Sterling or lawfull Money of Great Britain or Seven thousand five hundred Star Pags being the Value thereof at the Rate of Eight Shillings the

Pagoda

Pagoda and that the appellant might have such further and other special relief as to the said Mayors Court should appear agreeable to Equity and good Conscience and that the Costs of this Suit might be paid from the Estate of the said James Wooley — To which said Bill of Complaint this Respondent as one of the Executors of the said James Wooley did appear and filed his answer and did therein admit that the said James Wooley did previous to his Decease make and publish his last Will and Testament in Writing dated the Twenty Seventh day of February which was in the year of Our Lord One thousand seven hundred and eighty Nine and that among other Legacies therein mentioned the said James Wooley did bequeath unto the appellant an annuity of three hundred Pounds for his life to be paid him out of the fund left by him the said Deceased under the description of Charitable uses at Madras — In the following words and figures "3000 To George Moubray Esqr. an annuity of three hundred Pounds for his life to paid him out of the fund left by me for Charitable uses — and this Respondent did further set forth that he believed that the said "3000" Means — three thousand Pounds Sterling or lawfull Money of Great Britain or the imputed Value of the said — Annuity in the mind and Opinion of the said James Wooley at the time that he made the said Will because all the

the several Legacies whether of Specifick Sums or of annuities bequeathed by the said last Will and Testament were numerically specified in a margin thereto Amounting together to the Sum of 40500 Pounds forty thousand five hundred Pounds — Sterling Money of Great Britain — and this Respondent admitted that the said James Wooley hath directed in his said last Will and Testament as followeth — that is to say I desire that the Legacies to be paid in this Country may be at the rate of Eight Shillings the Star Pagoda that the Annuities commence at the day of My death and that Interest at the rate of Eight Shillings per Cent may be allowed on the Legacies till discharged by my Executors — and this Respondent did admit that the Clause referred to by the said Bill is mentioned in the said — deceaseds said last Will and Testament to wit should my fortune by any unforeseen accident fall short of the amount of the before mentioned and hereafter mentioned Legacies no preference shall be given to Executors or others but that as my property can be realized by my Executors proportional dividends shall be made and this Respondent did also admit that there was a Subsequent Clause in the said last Will and Testament as was set forth by the appellant in his said Bill — to wit And tis my desire that the Balance of my fortune after all

all my Legacies are paid shall be assigned to and vested by my Executors in the Hands of the Governor and Council of Madras for the time being as a Charitable fund appropriated to the Education and provision in such manner as they shall think proper of the Children of distressed Europeans Male and Female. —

And this Respondent did further in his said Answer admit that the said James Wooley appointed the said John Balfour and this Respondent and also Sir John Menzies late of Madras Baronet Executors of his said Last Will and Testament and this Respondent did also admit that the said James Wooley did duly execute the same — and did thereafter to wit on or about the fifteenth day of April in the said Year of Our Lord One thousand Seven hundred and Eighty Nine depart this life without revoking or altering such Will and this Respondent did admit that the same was duly proved in the Kings Ordinary of the said Mayors Court on the Twenty first day of April in the said year by the said John Balfour and this Respondent and that they did obtain Probate thereof under the Seal of the said Mayors Court on the Thirteenth day of May then following. —

and

And this Respondent did admit that he and the said John Balfour did thereupon take upon themselves the Burthen and execution of the said last Will and Testament the like Right being reserved unto the said Sir John Menzies Baronet when he should appear and apply for the same — And this Respondent did moreover admit in his said Answer that on or about the fifteenth day of April last past being Twelve Months after the death of the said James Wooley the Appellant applied unto this Respondent the only Executor then Resident at Madras aforesaid the said John Balfour having previously departed for Europe for payment of the Sum of three hundred Pounds being one years annuity pretended by the Appellant to be due to him under and by Virtue of the said Will — and this Respondent did admit that he might among other Reasons for his not complying with the said Demand of the said Appellant have given for one — that the Assets of the said James Wooley which had at that time come to his possession and power were not Sufficient for the payment of the Specifick Sums of money bequeathed by the Will of the said James Wooley and that therefore there was no Balance in his hands for that purpose and of Course not any for a Charitable

fund

fund as above bequeathed and that this Respondent was advised that as the appellants Claim was grounded upon and was to be paid from the Issues of the said Charitable fund that he the appellant could not by Vertue of the said Will make any Claim to the Annuity bequeath him thereby untill such fund existed. —

And this Respondent further saith that he was advised that he as Executor of the said Will was bound to follow the directions thereof and particularly that whereby the payment of Legacies and annuities were appointed to be made and this Respondent saith that the said James Wooley having particularly specified and denoted a fund wherefrom the Annuity bequeathed to the appellant should be paid and not having in any other of the Articles of the said Will been so particular as to allot a provisional fund from whence the other legacies are to be paid that he this Respondent was bound to govern himself by the litteral direction and description of the said Will in respect of the said appellants annuity and not to take upon himself to interpret the meaning of the Testator by Implication or by taking the meaning of the Testator to be contrary to what he had himself expressly declared — and this Respondent further said that the Testator must have meant and intended that the payment of the said Annuity should depend upon the provisional fund denoted by him under the description of Charitable uses or he would not have declared that the Payment thereof should be specifically made from that fund because it appeared by the Article in the said Will immediately written before and preceeding that whereby the Annuity to the appellant was bequeathed — that the Testator did thereby bequeath an annuity without appointing any fund from whence the same should be paid — and without any instruction or contingency to wit 1000 To my Nephew Whose Christian Name I do not know any Brother to the said John Weston Wooley an annuity of One hundred Pounds for his life to be secured to him by my Executors on a landed Estate in Ireland I am informed he is an Idiot therefore fortune above the Necessaries of life can be of no use to him" This Respondent was therefore advised that he would make himself liable to the other Legatees by the admission of the appellants Annuity into the Order of Legacies bequeathed by the said Will without restriction or Contingency In Case according to the Words of the said Testator in his said Will — his the Testators fortune should by any unforeseen accident fall short of the said Legacies because this Respondent said that the Express declaration of the Testator in

Respect

Respect of the payment of the said Annuity to the Appellant doth oblige him to interpret the same according to the Words of the Testator rather than according to the interpretation Made thereof by the said Appellant that in the Event of the Testators Estate falling short of the amount of the Legacies that a proportional deduction is to be made from each including the Annuity bequeathed to the Appellant as he could not allow himself to admit from Such Words of the said Testator that the Annuity bequeathed to the Appellant doth come under the description of Such Legacies from which a proportional deduction is directed to be made in the event of the Testators fortune falling short or that the said Annuity can be declared consistent with the express Words of the said Testator in bequeathing the same to be upon a footing with the other Legacies in which the Testator said that "no preference should be given to executors or others" — as that the Appellant hath a right to receive either the Value at which he has computed the said Legacy being the Sum of Three thousand Pounds or such proportional part thereof as will equalize with such other Legacies without that the said fund from which the same is directed to be paid should be Sufficient thereto — And of Course this Respondent could not as he is advised

advised do what is required by the Appellant by lodging in the Treasury of the united Company at Fort St George such proportional part of the said Sum of Three thousand Pounds in Order that the Appellant may receive the Interest thereon after the rate paid for Loans by the said Company in part payment of his said Annuity to the end as the Appellant points out in his said Bill that the Principal Sum after the death of the Appellant may go proportionably among the other Legatees and the Representatives of the Appellant in discharge of the Sums respectively deficient to the said Legatees of the Sums bequeathed to them and Interest thereon from the death of the said James Wooley and in discharge of the deficiency of such supposed eventual Interest from the death of the said James Wooley and in discharge of the deficiency of such supposed eventual Interest from the Treasury of the said United Company to the Appellant short of the said Annuity of three hundred Pounds a year and the Current Interest on such deficiency from the time the same accrued respectively — Because this Respondent said that the said Requisition was not founded on any part of the Will of the Testator respecting the payment of the said Annuity which is therein directed to be paid in no other Manner and from no other fund than that under the description of Charitable uses — and this Respondent further said that until such fund was established and Created from the

Residue

Residue or overplus of the said Testators Estate after payment of the other Legacies bequeathed by the said Will that he could not consistent with the Tenor thereof Sett a part any Sum of Money as a provisional fund for the payment of the said Annuity or any part thereof — and this Respondent according to the prayer of the appellant did annex to his said Answer Copy of an Account of the Estate of the said James Wooley with him this Respondent as Executor of his last Will and testament as also a statement of the accounts thereof or Claims from and upon the Estate by the former of which it would appear that the said Estate then stood indebted unto this Respondent in the Sum of Two thousand two hundred and Twenty three Pagodas thirty two fanams and thirty six Cash — And this Respondent did also annex to his said Answer a Copy of the last Will and Testament of the said James Wooley deceased all which this Respondent severally prayed might be admitted as part of his said Answer and said that the Originals there of were ready to be produced to the said Court when required, —

And this Respondent lastly said that having by his said Answer set forth such matters Wherein he had been advised respecting the Claims of the appellant he humbly referred the same to the Consideration of the said Mayors Court — to which

Said

Said Answer the appellant did file his Replication and did therein admit that this Respondent should govern himself by the literal direction and description of the said Will of James Wooley respecting the annuity bequeathed to the appellant and this Respondent was not to take upon himself to interpret the meaning of the Testator by Implication and contrary to what he himself hath expressly declared. But the appellant said that where a Will or any other Deed or Instrument in the law or even an Act Parliament contain Clauses which are in some respect contradictory as in the present Instance and therefore call for a Scrutinizing investigation of the several parts the general Rule is to seek out the Intention purport and Meaning of the Parties and to interpret the Deed accordingly the appellant therefore said that notwith-standing the Clause which bequeathed unto the appellant the said Annuity of Three hundred Pounds doth — Mention that the same is to be paid out of the fund left for Charitable uses at Madras nevertheless the appellant hath an equal Claim with the other Legatees to the benefit of the two Clauses set forth in the Bill of Complaint by one of which the said Testator declared that the Legacies to be paid in this County were to be at an Exchange of Eight Shillings the Pagoda and that the Annuities are to commence at the day of

his

his death and by another Clause that in Case his Estate shall fall short of the amount of the Legacies a proportional deduction was to be made from each, and that no preference was to be given to Executors or others by which the appellant insisted that he had a right to receive either the said imputed Value of his said Legacy being the said Sum of Three thousand Pounds or such proportional part thereof as will equalize the appellt with the other Legatees according to the Tenor of the said Will or that such proportional part of the said Sum of Three Thousand Pounds as the imputed Value of the said annuity as fixed by the said testator be lodged as directed by the said Will in the Treasy of the said united Company at Fort St George in order that the appellant might as he said receive from the Interest to arise thereon after the Rate paid for Loans by the said Company Such Proportion as may arise therefrom in part payment of his said Legacy and that the principal Sum after the death of the appellant may go proportionally among the other Legatees and among the Representatives of the appellant in part discharge of the Sums which may be respectively deficient to the said Legatees of the Sums bequeathed to them and Interest thereon respectively from the death of the said James Wooley according to the Tenor of the Will and also in part discharge of the deficiency of such eventual Interest from the Treasury of the

said

said United Company to the appellant short of the annuity of Three Hundred Pounds and the Current Interest of such deficiences from the time the same should accrue respectively and the appellant pretended that he was the more warranted in the above Construction of the said Will not only from the Clauses themselves which Clearly Manifest that an Interest for life was intended in favor of the appellant to the Value of Three Thousand Pounds or ten years purchase of three hundred Pounds per Annum and that therefore the appellant had a Claim to the said Sum of Three Thousand Pounds or a proportional part thereof in common with the other Legatees according to the eventual afsets of the Testators but that it was very well known and the appellant said he would in due time prove to the Satisfaction of the said Mayors Court that a friendly intercourse Subsisted for many years without the least Interruption between the Testator and the appellant and that the Testator has expressed his reason more than once since making the said Will why he bequeathed to the appellant an annuity instead of a Sum of Money and that he could in no Wise intend to leave the Bequest in favor of the appellant to the precarious Risk of being paid only from the said Surplus fund

while

While the other Legatees were to receive in full of their respective Legacies to which said Replication this Respondent did file his Rejoinder and therein said that he was advised that there was not any Matter Contradictory in the Clause whereby the Testator had bequeathed to the Appellant an Annuity of three hundred Pounds for his life to be paid out of the fund left by him the Testator for Charitable uses at Madras but that the said Clauses is unequivocal and could not be construed by any other intent and Meaning than the litteral and direct Signification of the Words in which it is declared — and the Respondent was further advised that the appellant hath misconceived the real Sense and Meaning of the two Clauses of the Testators Will set forth in his Bill of Complaint and again adverted to in his Replication — for the first of the said Clauses clearly shewed a Confirmation of the intention of the Testator to leave the appellant an Annuity and not the principal that it was to be produced from because the Testator hath only bequeathed two annuities one to a Brother of John Weston Wooley a legatee under the said Will and one to the appellant — and the Testator draws a distinction between Legacies and Annuities — for he declares that the Annuities shall Commence

Commence at the day of his death and that Interest at the rate of Eight per Cent may be allowed on the Legacies till discharged by his Executors — and this Respondent said that the desire of the Testator that the Legacies to be paid in this Country may be at the rate of eight Shillings the Star Pagoda could not as he was advised operate in the Manner to change the Nature of the bequest to the Repliant from an Annuity to that of a Legacy — and the only if any advantage that the Appellant could derive from a Construction of the said Words is that he May receive his said Annuity of three hundred Pounds per annum in this Country at eight Shillings the Star Pagoda — and this Respondent also said that he was advised that the Appellant could not legally or Equitably be benefited by the other Clause of the said Will wherein it is provided that in Case the Testators Estate should fall short of the Amount of the Legacies that a proportional deduction was to be made from each so as to give a right to receive either the imputed Value of the said Legacy being the Sum of Three Thousand Pounds or such proportional part thereof as would equalize him with the other Legacies nor would this Respondent he said as he was advised be justified in paying any part of the said Sum of Three thousand Pounds into the Treasury of the united

Company

Company of Fort St George or to the Governor and Council at Madras for the Purpose that the appellant might receive therefrom the Interest thereon until such time as it should be ascertained that there was a Balance of the Testators fortune after all Legacies were paid — and this Respondent therefore said that he could not admit that the appellant was warranted in the Construction he hath made of the said Will — But this Respondent notwithstanding said that he could not deny but that there had Subsisted for many years a friendly intercourse between the Testator and the appellant without the least Interruption that he knew of or believed — And this Respondent therefore believed that the Testator might have expressed his reasons since making the said Will why he bequeathed to the appellant an Annuity instead of a Sum of Money — and this Respondent also said that he had reason to believe that the Testator did not intend to leave the bequest in favor of the appellant to the precarious risk of being paid only from a Surplus fund, and that he actually meant him to benefit as much as he had left him £ 3000 But this Respondent said that notwithstanding such his Knowledge and belief he was advised that he as Executor of the Testator could only govern himself in the execution of his Trust by the Sense and Meaning that the Law would give to the said Will and not by his Judgment of what the Testator might have done in favor of the appellant under any other different Circumstances than those that existed respecting the appellant at the time of the Testator making his said Will. —

And this Respondent lastly said that he had not hitherto been able to collect in the Several debts due to the Estate of the said Testator but that the said Estate did still continue indebted unto him this Respondent — and this Respondent saith that he admits that upon the above proceedings issue was joined and two Witnesses were examined on the part of the appellant after which publication did pass and the said Cause was set down for hearing and came on to be heard by and before the said Mayors Court on Tuesday the Seventh day of June last when the said Court were pleased to Order and Decree and did accordingly Order and Decree that the appellants Bill should stand dismissed with Costs — and this Respondent saith that the dissent of one of the Members of the said Court to the said Decree doth not furnish any Matter against the said Decree — nor doth the said Dissent shew that if the rest of the Members of the Court had been of the same Opinion with

with the said James Amos that they would have upon that Ground given a Decree according to the prayer of the appellants Bill or under what qualifying or Conditional directions as the said dissent doth not give any Reasons upon which the Same may have been grounded but at any Rate as the Said dissent is not a part of the said Decree it is improperly used in the appellants Petition and appeal from the Said Decree which this Respondent is advised is consonant to the Rules of Law and Equity and that the appellant is not nor cannot be aggrieved thereby and in Answer to the several reasons given by the appellant as a Ground for his appealing from the Decree of the said Mayors Court this Respondent saith to the. —

First . . . That thereare not any inconsistent or contradictory Words in the Will of the said Testator and this Respondent saith that if any Words as part of the said Will were to be rejected that the same would make the same operate contrary to what appears the Sense Meaning and intention of the deceased — And Mistakes in Making Wills are never to be Supposed if any Construction Agreeable to Reason can be found out. —

To the Second . . . This Respondent Saith that the intention of the Testator is fully expressed. —

To the Third . . . This Respondent Saith that the appellant cannot be prejudiced by the said Decree because the Mayors Court have not determined that the Legacy shall be immediately vested. — because they could not have made a Decree in favor of the appellant without prejudice to the other Legatees therein Named, and who were not parties to the Said Bill it is therefore presumable that they were advised that the appellant was not upon an equality with them as the appellants Annuity is directed by the said Will to be paid out of a Fund to be Created from the Surplus or Residue of the Testators Estate. —

To the fourth . . . This Respondent saith that no parole averment is admissible in the construction of Wills so as to give them an Operation different from the Words of a Will — Because in the Construction of Will every Clause shall be so Regarded so as to take effect according to the Testators Intent if it is consistent with the Rules of Law

To the fifth . . . This Respondent Saith that it may be the Rule to expound one part of a Will by another where there is a doubt full Meaning but this Respondt Saith that there is not any doubt full Meaning of the Testators intention — For the Words which direct the fund from whence the Annuity is to be paid are full Clear and explanatory — the Testator bequeaths the appellant an Annuity of three hundred Pounds for his Life — If his intention had been that the three hundred Pounds was to be paid Annually from

a

a fund or Sum of Three Thousand Pounds to be sett apart for that Purpose out of his Estate in Equality with his other Legatees he would have Stopped at the Words for life and would in some part of his Will have disposed of the principal from which the said Annuity Was to be paid but this he has not done nor can it be implied contrary to the Appoments intention of the Testator that the Sum of Three thousand Pounds Should be taken from out of his Estate for the purpose of providing for the said Annuity as a proportionable part of it in Case by any accident it should fall short of the Amount of the Several Money Legacies Because in the last Case the said Legatees Would become entitled to the Reversion of the said Sum to compleat their legacies or to go towards compleating them as far the Said Sum Would go — It being Evidently the intention of the Testator that the Charitable fund from which the Said Annuity is to be raised is not to Commence — untill all his Money Legacies are paid — This Respondent therefore Saith that the Said appellant hath been premature in his said Suit as he hath not any demand upon this Respondent untill the Event of a Contingency Whereby only it can become Solvent. —

This

This Respondent therefore conceive that the Decree of the said Mayors Court is rightly and Justly founded upon the principles Respecting the Constructions of Wills and therefore prays that the Honble Court will affirm the Sum with Costs. —

/Signed/ Henry Durkey

attorney Respondt —

Court of

Court of Appeals
at
Madraspatnam

Saturday the 29th day of March
Anno Domini 1794

Between George Maubray of Fort St George Esqr Appellant and John Balfour Nathaniel Edward Kindersley and Sir John Menzies Baronet Executors Named in the last Will and Testament of James Wesley Deceased Respondent

This Cause coming on this day to be heard and debated before this Court by the attornies on both sides upon hearing the Petition of Appeal and Answer and the Several Exhibits of the Honble the Mayors Court together with the Decree of the said Court given in this Cause on Tuesday the 7th 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 Decree of the Honble the Mayors Court do stand affirmed and that the appellants Petition be hence dismissed with Costs.

By the Court /Signed/ Chas N. White Clk

To

To The Kings Most Excellent Majesty
in Council.

Between George Maubray Complainant and John Balfour Nathl. Edward Kendersley and Sir John Menzies Baronet Executors of James Wooley Deceased. Defendants

The Humble Petition and Appeal of the above named Complainant.

Most humbly Sheweth,

That your Petitioner did on the Twenty fourth day of April which was in the Year of Our Lord One thousand Seven hundred and Ninety file a Bill of Complaint in the Mayors Court at Madraspatnam against the above named Defendants as Executors of James Wooley Deceased and did therein setforth that the said James Wooley did previous to his Decease duly make and publish his last Will and Testament in Writing, bearing date the Twenty Seventh day of February, which Was in the Year of Our Lord One Thousand Seven hundred and Eighty Nine and among other Legacies therein mentioned the said James Wooley did give and bequeath unto your Petitioner one Annuity or Clear yearly Sum for his Life in the Words

Filed in my Office the 11th April 1794
Chas N. White Clk

87

and figures following — £. 3000 — "To George Moubray
"Esquire an Annuity of three hundred Pounds for his Life
"to be paid him out of the fund left by me for Charitable
"Uses at Madras" and your Petitioner did set forth in his
said Bill of Complaint that the said "3000" means
Three Thousand Pounds Sterling or lawful Money of
Great Britain as the imputed Value of the said —
Annuity in the mind and Opinion of the said James
Wooley at the time he made the said Will for your Pet.
said that the said James Wooley in whose hand writing
the said Will is made hath in the Margin thereof
put the Several specific Sums Composing the said
Legacies or the Value thereof if in Annuities for the better
ascertaining the Amount of the Whole and your Pet.
did further Set forth that the said James Wooley after
having specified the above Mentioned Legacy in favour
of your Petitioner and Certain other Legacies did write
as follows, —

"I desire that the Legacies to be paid in this
"Country May beat the rate of Eight Shillings the Star-
"Pagoda that the Annuities Commence from the day of
"my Death and that Interest at the Rate of Eight P Cent.
"May be allowed on the Legacies till discharged by my
"Executors." — And your Petitioner did Set forth that the
said James Wooley in a further Clause of his said Last

Will

Will and Testament hath Stated as follows. —

"Should my fortune by any unforeseen
"accident fall short of the Amount of the before mentioned
"and hereafter Mentioned legacies tis my desire that a
"Proportional deduction may be Made from each of them
"and that in payment of said Legacies no preference shall be
"given to Executors or others but that as my Property can be
"realized by my Executors proportional Devidents shall
"be made" — And your Petitioner Stated that there is a
Subsequent Clause in the Will of the said Testator in the
Words following — "and tis my desire that the Balance of my
"fortune after all my Legacies are paid shall be assigned
"to and Vested by my Executors in the hands of the Governor
"and Council of Madras for the time being as a Charitable
"fund appropriated to the Education and Provision in
"Such manner as they shall think proper of the Children
"of distressed Europeans Male and female" — And your Pet.
did Set forth that the said James Wooley appointed on the said
John Balfour and Nathaniel Edward Kindersley of Madras
Esquires and Sir John Menzies Baronet late of the same
place Executors of his said Will and having duly —
Executed the said Will the said James Wooley departed this
life on or about the fifteenth day of April which was
in the year of our Lord One thousand Seven hundred and

Eighty nine

Eighty Nine without Revoking or Altering such Will and the Same was duly proved in the Kings Ordinary of the said Mayors Court on the Twenty first day of April in the said Year of Our Lord One thousand Seven hundred and Eighty Nine and the said John Balfour and Nathaniel Edward Kindersley did on the Ninth day of May then following Obtain probate of the said Will under the Seal of the said Mayors Court and did thereby taken upon themselves the burden and Execution thereof the like Right being Reserved unto the said Sir John Kenzies whenever he should apply for the same and your Petitioner did further set forth that on the fifteenth day of April in the said year of Our Lord One thousand Seven hundred and Ninety being Twelve Months after the Death of the said James Wooley your Petitioner did apply unto the said Nathaniel Edward Kindersley the only Executor at Madras the said John Balfour having previously departed for Europe for the payment of Three hundred Pounds being one years Annuity due unto your Petitioner under and by Virtue of the said Will but that the said Nathaniel Edward Kindersley instead of paying the said Sum of Three hundred Pounds as your Petitioner expected declared that the Assets of the said James Wooley which had hitherto come into his possession or power were not Sufficient for payment of the Specific Sums of Money bequeathed by the said Will and that therefore there was no

balance

Balance in his hands for a Charitable fund as above bequeathed and that as the Claim of your Petitioner was to arise from the Issues of the said Charitable fund your Petitioner could lay no Claim to his Annuity till such fund existed Whereas your Petitioner charged that notwithstanding the Clause which bequeaths unto your Petitioner the said Annuity of Three hundred Pounds Sterling doth mention that the same was to be paid out of the fund left for Charitable Uses at Madras Nevertheless your Petitioner had an equal Claim with the other Legatees to the benefit of the two Clauses above set forth by one of which the said Testator declares that the Legacies to be paid in this Country are to be at the rate of Eight — Shillings for every Pagoda and that the Annuities are to commence at the day of his death and by another Clause that in Case his Estate shall fall short of the Amount of the Legacies a proportional deduction is to be made from each and that no preference was to be given to Executors and others so that your Petitioner charged that he had a right to receive either the said imputed Value of his said Legacy being the said Sum of three Thousand Pounds or such Proportional part thereof as would equalize your Petitioner with the other Legatees According to the Tenor of the said Will or that such proportional part of the said Sum of Three Thousand Pounds as the imputed Value of the said Annuity as

fixed

faced by the said Testator be lodged as directed by the said Will in the Treasury of the said United Company at Fort St George that your Petitioner might receive from the Interest thereof after the rate paid for Loans by the said Company such proportion of might arise therefrom in part payment of his said Legacy and that the Principal Sum after the Death of your Pet. might go Proportionally Among the other Legatees and the Representatives of your Petitioner in discharge of the Sums respectively deficient to the said Legatees of the Sums bequeathed to them and Interest thereon from the death of the said James Wooley and in discharge of the Deficiency of such eventual Interest from the Treasury of the said United Company to your Petitioner short of the said Annuity of Three hundred Pounds a year and the Annual Interest on such deficiences from the time the same accrued — Respectively your Petitioner did further set forth that he hath stated his Claim in manner aforesaid and he therefore prayed and by the said Bill of Complaint that the said John Balfour Nathaniel Edward Kindersley and Sir John Menzies as the Executors of the said James Wooley might be decreed to pay unto your Petitioner the said Annuity or clear Yearly Sum of Three hundred Pounds Sterling or lawfull Money of Great Britain at the rate of Eight Shillings the Pagoda making

Making Pagodas Seven hundred and fifty or that if the Estate of the said James Wooley be not Sufficient to pay and Satisfy all the Legacies bequeathed by him in such case that the said Executors might be decreed to set forth the full amount of the said Estate and to state how far the same was likely to fall short of the full payment of the said Several Legacies and that in such proportion as the said Estate should Appear to fall short the said Executors might be decreed to set apart for account of your Petitioner the proportion of the said Sum of Three Thousand Pounds Sterling or lawfull Money of Great Britain or Seven thousand five hundred Star Pags. being the Value thereof at the rate of Eight Shillings the — Pagoda and that Your Petitioner might have such further and other Special Relief as to the said Mayors Court should appear Agreeable to Equity and good Conscience and that the Costs of this Suit might be paid from the Estate of the said James Wooley — To which said Bill of Complaint the said Nathaniel Edward Kindersley one of the Executors of the said James Wooley filed his Answer and did therein admit that the said James Wooley did previous to his Death make and Publish his last Will and Testament in Writing in Manner as is above stated and that Probate thereof was granted as aforesaid and the said Nathaniel Edward Kindersley did further among other things Admit that in or about the —

Fifteenth

fifteenth day of April in the said Year of Our Lord One Thousand Seven hundred and eighty nine being twelve Months after the death of the said James Wooley your Petitioner applied unto the said Nathaniel Edward Kindersley the only Executor then Resident at Madras aforesaid the said John Balfour having previously departed for Europe for payment of the Sum of Three hundred Pounds Sterling being One years annuity due to him under and by Virtue of the said Will and the said Nath.l Edward Kindersley did admit that he might. Among other Reasons for his not complying with the said Demand of your Petitioner have given for one that the Assets of the said James Wooley which had at that time come to his Possession and power were not sufficient for the payment of the Specific Sum of Money bequeathed by the Will of the said James Wooley and that therefore there was no balance in his hands for that purpose and of Course not any for a Charitable fund as above bequeathed and the said Nathaniel Edward Kindersley pretended he was advised that as your Pet.rs Claim was grounded upon and was to be paid from the issues of the said Charitable fund your Petitioner could not by Virtue of the said Will make any Claim to the Annuity bequeathed him thereby untill such fund existed — And the said Nathaniel Edward Kindersley did also pretend that he was advised that he as Executor of the said

Will

Will was bound to follow the directions thereof and particularly the one whereby the payment of Legacies and Annuities is appointed to be made and that the said James Wooley having particularly Specified and denoted from whence the annuity bequeathed to your Petitioner should be paid and not having in any other of the articles of the said Will been so particular as to allot a Provisional fund from whence the other Legacies are to be paid the said Nathaniel Edward Kindersley was bound to Govern himself by the literal direction and description of the said Will in respect to your Petitioners Annuity and not to take upon himself to interpret the Meaning of the Testator by implication or by taking the Meaning of the Testator to be contrary to what he hath himself expressly declared — and the said Nathaniel Edward Kindersley did further set forth that the Testator must have meant and intended that the payment of the said Annuity should depend upon the Provisional fund denoted by him under the description of Charitable Uses or he would not have declared that the payment thereof should be Specifically made from that fund because that it appeared by the Article in the said Will immediately preceeding the one whereby the Annuity to your Petitioner was bequeathed that the Testator doth thereby bequeath an Annuity without Appointing any fund from whence the same should be paid and without any restriction

or

or Contingency to wit "1000 to my Nephew whose Christian Name I do not know only brother to the said John Weston Hooley an Annuity of One hundred Pounds for his life to be Secured to him by my Executors on a landed Estate in Ireland I am informed he is an Idiot therefore fortune above the Necessaries of life can be of no use to him the said Nathaniel Edward Kindersley pretended that he was therefore advised that he would make himself liable to the other Legatees by the admission of your Petitioners Annuity into the orders of Legacies bequeathed by the said Will without restriction or contingency in case / according to the Words of the said Testator in his said Will / his the Testators Fortune should by any unforeseen Accident fall short of the said Legacies because as the said Nathaniel Edward Kindersley pretends that the express Declaration of the testator in respect of the payment of the said annuity to your Petitioner doth oblige him to interpret the same According to the Words of the Testator rather than according to the Interpretation made thereof by your Petitioner that in the event of the Testators Estate falling short of the Amount of the Legacies that a Proportional deduction is to be made from each including the Annuity bequeathed to your Petitioner as he would not allow himself to admit from such words of the said Testator that the annuity —

Bequeathed

Bequeathed to your Petitioner doth come under the Description of such Legacies from which a proportional deduction is directed to be made in the event of the Testators fortune falling short or that the said Annuity could be declared consistent with the express word of the said Testator in bequeathing the same to be upon a footing with the other Legacies in which the Testator said no preference should be given to Executors or others or that your Petitioner hath a right to receive either the Value at which the Testator has Computed the said Legacy being the Sum of Three thousand Pounds or such proportional part thereof as will equalize him with such other Legatees without that the said fund from which the same is directed to be paid should be Sufficient thereto and of Course that the said Nathaniel Edward Kindersley could not as he pretended do what is required by your Pet.r by lodging in the Treasury of the united Company at Fort St George such proportional part of the said Sum of Three thousand Pounds in Order that your Petitioner may receive the Interest thereon after the Rate paid for Loans by the said Company in part payment of the said Annuity to the end that the Principal Sum after the Death of your Petitioner may go — proportionably among the other Legatees and the —

Representatives

Representatives of your Petitioner in discharge of the Sums respectively deficient to the said Legatees of the Sums bequeathed to them and Interest thereon from the Death of the said James Wooley and in discharge of the deficiency of such supposed eventual Interest from the Treasy of the said United Company to your Petitioner short of the said Annuity of Three hundred Pounds a year and the Current Interest on such deficiency from the time accrued respectively because the said Nathaniel Edward Kindersley pretended that the said Requisition was not Sufficiently founded on any part of the Will of the Testator respecting the payment of the said Annuity which is therein as he pretends directed to be paid in no other manner and from no other fund than under the description of Charitable Uses and the said Nathaniel Edward Kindersley did further set forth that untill such fund was established and Created from the Residue or overplus of the said Testators Estate after payment of the other Legacies bequeathed by the said Will he could not consistent with the tenor thereof set apart any Sum of money or a provisional fund for the payment of the said Annuity or any part thereof and the said Nathaniel Edward Kindersley did annex to his said Answer Copy of an Account of the Estate of the said James Wooley with him as also a Statement of the accounts thereof or Claims from and upon the Estate and the said Nathaniel Edward Kindersley said that the said Estate was indebted to him as Executor in the Sum of Two thousand Two hundred and Twenty three Pagodas Thirty two Fanams and Thirty Six Cash and the said Nathl Edward Kindersley did also annex to his said Answer a Copy of the last Will and Testament of the said James Wooley and the said Nathaniel Edward Kindersley did lastly set forth that having by his said Answer set forth such Matters which he had been advised respecting the Claims of your Petitioner he humbly refused the same to the Consideration of the said Mayors Court. — To which said Answer your Petitioner filed his Replication and did therein Admit that the said Nathaniel Edward Kindersley should govern himself by the literal direction and description of the said Will of James Wooley respecting the Annuity bequeathed to your Petitioner and that the said Nathaniel Edward Kindersley was not to take upon himself to interpret the meaning of the Testator by implication and contrary to what he himself hath expressly declared but your Petitioner said that where a Will or any other deed or Instrument in the Law or even an Act of Parliament contains Clauses which are in some respect contradictory as in the present instance and therefore call for a Scrutinizing investigation of the several parts the General Rule is to seek out the intention purport and meaning of

of the parties and to interpret the Deed accordingly your Pet.r therefore said that notwithstanding the Clause which bequeaths unto your Petitioner the said Annuity of Three Hundred Pounds doth mention that the same is to be paid out of the fund left for Charitable Uses at Madras Nevertheless your Petitioner hath an equal Claim with the other Legatees to the benefit of the two Clauses set forth in the Bill of Complaint by one of which the said Testator declares that the Legacies to be paid in this Country are to be at an Exchange of Eight Shillings the Pagoda and that the annuities are to commence at the day of his death and by another Clause that in Case his Estate shall fall short of the Amount of the Legacies a proportional deduction was to be made from each and that no preference was to be given to Executors or other by which your Petitioner insisted that he had a right to receive either the said imputed Value of his said Legacy being the said sum of Three Thousand Pounds or such proportional part thereof as will equalize your Petitioner with the other Legatees according to the tenor of the said Will or that such proportional part of the said Sum of Three thousand Pounds as the imputed Value of the said Annuity as fixed by the said Testator be lodged as directed by the said Will in the Treasury of the said United Company at Fort St George that your Petitioner may receive from the Interest to arise thereon after the Rate paid for Loans by the said Company such proportion as may arise therefrom on part payment of his said Legacy and that the Principal Sum after the Death of your Pet.r may go proportionably among the other Legatees and among the Representatives of your Petitioner in part discharge of the Sums which may be respectively deficient to the said Legatees of the Sums bequeathed them and Interest thereon respectively from the Death of the said James Wooley according to the tenor of the Will and also in part discharge of the deficiency of such eventual Interest from the Treasury of the said United Company to your Pet.r short of the said Annuity of Three thousand Pounds and the Arrent Interest of such deficiences from the time the same should accrue respectively and your Petitioner did set forth that he was the more warranted in the above construction of the Will not only from the Clauses themselves which clearly manifest that an Interest for life was intended in favor of your Petitioner to the Value of Three thousand Pounds or ten Years purchase of three hundred Pounds per Annum and that therefore your Petitioner had a Claim to the said Sum of Three Thousand Pounds or a proportionable part thereof in common with the other Legatees and according to the eventual Assets of the Testator but that it was very well known and that your Petitioner said he would in due time prove to the Satisfaction of the said Mayors Court that a friendly intercourse Subsisted for many years without the least interruption between the Testator and your Petitioner and that

that the Testator had expressed his reason more than once since making the said Will why he bequeathed to your Petitioner an Annuity instead of a Sum of Money and that he could in no Wise intend to leave the bequest in favor of your Petitioner to the precarious risk of being paid only from the Surplus fund while the other Legatees were to receive in full of their respective Legacies — To which said Replication the said Nathaniel Edward Kindersley filed his Rejoinder and therein among other things did say that he could not deny but that there had Subsisted for many years a friendly intercourse between the Testator and your Petitioner without the least interruption that he knew of or did likewise and the said Nathaniel Edward Kindersley said that he therefore believed that the Testator might have expressed his reason since making the said Will why he bequeathed to your Petitioner an Annuity instead of a Sum of money and the said Nathaniel Edward Kindersley also said that he had reason to believe that the Testator did not intend to leave the bequest in favor of your Petitioner to the precarious risk of being paid only from a Surplus fund but that he actually meant your Petitioner to benefit as much as if he had left him Three Thousand Pounds Your Petitioner further Sheweth that upon the above Proceedings issue was joined and — Witnesses examined on the part of your Petitioner after which Publication passed and the said Cause was set down for hearing

hearing and came on to be heard by and before the said Mayors Court on Tuesday the Seventh day of June in the said year of Our Lord One Thousand Seven hundred and Ninety one when the said Court ordered and Decreed that your Petitioners Bill should stand dismissed with Costs — And your Petitioner Sheweth that James Amos one of the Aldermen of the said Court dissented from the said Decree. —

From which said Decree of the said Mayors Court your Petitioner did appeal to the Honble Court of Appeals as he conceived the same to be highly erroneous and that your Petitioner was much aggrieved and injured thereby for the following among other Reasons. —

First — Because that where there are inconsistent and contradictory words in a Will some Words must be rejected to make it sense as was determined in the Case of Boon Vers Comfort. —

Second — Because that the in Deeds the Rule of Construction is that the intention must be directed by the Words in Wills the Words must follow the intent of the devisor —

Third — Because such a Sense shall be made of a Devise that it may be for the profit of the Devisee and not to his Prejudice —

Fourth — Because that though a Parol averment shall not be admitted to explain a Will so as to expound it contrary to the import of the Words yet when the Words well bear

Bear it a parol averement should be admitted, —

Fifth — Because that where there is a Doubt in the Meaning of a Will one part thereof shall be expounded by another. —

From all which Principles respecting the Constructions of Wills and from the Proceedings in the Cause your Petitioner said that the Decree of the Mayor's Court ought to have been Reversed Because by the Evidence of Benjamin Roebuck it is in proof that the Testator meant the said Annuity as a Certain Provision for your Petitioner and the Testator's Reasons for bequeathing an Annuity instead of a Specific Sum are stated in the Deposition of the said Benjamin Roebuck and that it was also acknowledged by the Defendant as Executor to the said James Wooley that it Was not the intention of the Testator to leave your Petitioner in a precarious state respecting his Legacy —

Wherefore your Petitioner considered that the Bequest ought to have been confirmed and the Prayer of your Petitioner as prayed for in his Bill of Complaint ought to have been granted and the Costs of Suit paid from the Estate of the said James Wooley —

To Which said Petition and appeal the said Nathaniel Edward Kindersley did put in his Answer Setting forth many evasive Matters and things which

Your

Your Petitioner did not nor doth by any Means Admit and Your Petitioner Sheweth that his Petition and Appeal and the Answer of the said Defendant thereto came on to be heard and determined on the Twenty Ninth day of March last by the said Court of Appeals at Madras Who thought proper 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 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 your Petitioners said Appeal to the Court of Appeals at Madras as above stated, as also for the following among other Reasons —

First. — Because the apparent inconsistency between the direction for the payment of the Annuity of three hundred Pounds to your Petitioner out of the Fund left by the Testator for Charitable uses at Madras and the Subsequent constitution of that

fund

fund in its restriction to the Balance of the Testators fortune after all Legacies are Paid as well as the direction for a proportional deduction of the before Mentioned Legacies in Case of the fortunes falling short of their amount seems impossible to be reconciled without either confining the Application of the Word Legacies in both the latter clauses to Legacies of Sums in Gross exclusive of Annuities or inserting an exception of your Petitioners Annuity in both those Clauses unless it should be understood that the direction for payment in the first Clause in a qualified sense not as absolutely confining the annuity in all events to the existence of the fund mentioned but only for making it payable out of such fund should it exist instead of making any other distinct Appropriation or trust for that purpose as was done in regard to the Nephews Annuity directed to be secured on Lands in Ireland and it cannot be understood that the Word Legacies in the two latter Clauses as restrained to Sums in Gross without at the same time excluding the Annuity to the Nephew for which there is not the possibility of a pretence which reduces those who would construe the Will to the Delemma of either inserting an exception of your Petitioners Annuity in both those Clauses or of your Petitioners ——— construing the direction for payment of it in the outset in the qualified way above mentioned The former of these Modifications appears to Carry too much Violence upon the Words of the Will and express tenor as well

of

of those two Clauses as of the antecedent direction for the Annuities to commence on the day of the Testators Decease whilst the latter Serves to reconcile the whole Will by a constructive restriction of the sense of the existing words in one of its Clauses only by separating the words of the Gift it self from the Subjoined words that denote the Mode of Payment and considering the one as absolute the other only as relative to the existence of the Means directed which is an easy explanation that arises Merely by reading the Words "to be paid &c." in a parentheses with the addition of the hypothetical expression "if Sufficient for it" "Viz. To George Moubray Esqr. an Annuity of £ 300 &c. to be paid him out of the fund left by me for Charitable uses if Sufficient for it"

Secondly. ——— Because the above construction of the Will appears the most eligible in regard to the Annuity in question and reconciles the several Clauses without denying operation to the words of any one of them according to those grand Rules of Testamentary construction which say that construction is to be preferred which give effect to every part of the Will ——— That Sales interpretatio fienda est ut evitetur absurdum ——— That the Testators intention is to be collected from the whole Will taken together and not from any particular part only ——— that the General extent of an expression in one part may be restrained by inconsistent expressions or dispositions in another

part

part and that it is the same thing whether such restriction be directly expressed or plainly implied Vide Mervin v. Strang 2. Bur 912 — 5 Brown Par Ca 496 Indeed much greater liberties have been taken with the Words of a particular disposition in order to reconcile it to an intention collected from implicative expressions in the sequel of that Will of which the Case of Robinson agt Robinson / 1 Bur 38. Brown Par Ca: 5, 278 is a very strong instance, —

Thirdly. — Because what is required in the present Will as to constructive distinction between the Gift itself and the mode for payment seems in effect no more than what is done in the Rule universally adopted in our laws, between a Gift of a legacy to one to be paid him at such an Age and a Gift of the same to him at such an Age where the first is held to be vested because the time of payment is considered as distinct from the Gift itself — Whilst the other is not so because the time is held to be annexed to and inseparable from the Gift so here the Gift of the annuity is substantive with a mode of payment Subjoined and not absolutely involved in it as if the Words had been "to George Mowbray Esqr an annuity of £ 300 out of the fund &c instead of" to be paid him out of the fund &c

Fourthly — Because the whole of the Will is capable of being reconciled by a very easy Modification in the Construction of the first Clause as that Clause may be construed to import two distinct things first an absolute Gift of the annuity — Secondly an hypothetical provision for its payment But suppose the Gift had been originally and Substantially connected with and made — expressly inseparable from the fund directed for payment as if it had been "to George Mowbray Esqr an annuity of £ 300 &c out of the fund instead of" to be paid to him out of the fund &c Your Petitioner Sheweth that even in that case the Subsequent dispositions which clearly and expressly contradicted Such a Restriction and Required that annuity equally with the other to the Nephew to be payable immediately and included them alike Among the Legacies directed to abate in proportion in case of a deficiency of Assets for them all and by postponing the fund for Charitable uses to them all alike and thereby — making them all equally independent of that fund in giving them all a priority to it leaving that merely the eventual residue after they were all answered your Petitioner Submits that Such Subsequent dispositions by the direct and Necessary import thereof may be considered to Operate as a Virtual — Repeal or Revocation of those Words which had before given your Petitioners annuity to be paid out of such fund — the Testator Might have Changed his Mind in the course of making his Will this the Law it seems may presume

as

Court of Appeals
at
Madraspatnam

Saturday the 29th day of March
Anno Domini 1794

Between George Moubray of Fort St George Esqr. appellant and John Balfour Nathaniel Edwd. Hinderseley and Sir John Mengies Baronet Executors Named in the last Will and Testament of James Wooley Deceased Respondents

This Cause coming on this day to be heard and debated before this Court by the Attornies on both Sides upon hearing the Petition of appeal and Answer and the Several Exhibits of the Honble the Mayors Court together with the Decree of the said Court given in this Cause on Tuesday the 7th 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 Decree of the Honble the Mayors Court do stand affirmed and that the Appellants Petition be hence dismissed with Cost. —

Thur
/ signed / Chas N. White Clk.

To

To the Kings Most Excellent Majesty
in Council

Between George Moubray Complainant and John Balfour Nathaniel Edward Hinderseley and Sir John Mengies Baronet Executors of James Wooley deceased Defendants

The Answer of Nathaniel Edward Hinderseley one of the Executors Named in the last Will and Testament of James Wooley Deceased Respondent to the Petition and appeal of the above Named Complainant Appellant. —

Filed in my office the 16th June 1794
Robert Clerk Clk

The said Respondent admits that the said appellant did on or about the time in his Petition and appeal mentioned particularly setforth and file his Bill of Complaint in the Mayors Court at Madraspatnam against the above Named Defendants as Executors of James Wooley Deceased and did therein Setforth that the said James Wooley previous to his decease duly Made and Published his last Will and Testament in Writing bearing date the Twenty Seventh day of February which Was in the year of our Lord One thousand Seven hundred and Eighty Nine and that Among other Legacies therein mentioned the said James Wooley did give and bequeath unto the said appellant one Annuity or Clear Yearly Sum for his life in the

Words

Words and figures following £ 3000 "To George Moubray Esqr an
Annuity of Three Hundred Pounds for his Life to be paid him out
of the fund Left by me for Charitable uses at Madras" and the
Said Appellant did Set forth in his said Bill of Complaint
that the said £3000 Meant Three Thousand Pounds Sterling
or lawful Money of Great Britain as the imputed Value of the
Said Annuity in the Mind and opinion of the said James Wooley
at the time he made the said will for the said Appellant said
that the said James Wooley in Whose hand writing the said
Will is made hath in the Margin thereof put the Several
Specific Sums Composing the said Legacies or the Value thereof
if in Annuities for the better ascertaining the amount of the Whole
And the said Appellant did further set forth that the said James
Wooley after having specified the above Mentioned Legacy in
favor of the said Appellant and Certain other Legacies did write
as follows — "I desire that the Legacys to be paid in this —
"Country may be at the rate of Eight Shillings the Star Pagoda
"that the Annuities Commence from the day of my death and that
"Interest at the rate of Eight per Cent May be Allowed on the
"Legacies till discharged by my Executors" — and the Said —
Appellant did Set forth that the said James Wooley in a further
Clause of his said last will and Testament hath Stated as
follows —

"Should my fortune by any unforeseen
accident fall short of the amount of the beforementioned and
hereafter

hereafter Mentioned Legacies tis my desire that a proportional deduction
may be made from each of them and that in payment of the said
Legacies no preference shall be given to Executors or others but that
as my Property can be realised by my Executors Proportional devidents
shall be made" — and the said Appellant stated that there was a
Subsequent Clause in the will of the said Testator in the words
following" — and tis my desire that the balance of my fortune after all
My Legacies are paid shall be Assigned to and vested by my Executors
in the hands of the Governor and Council of Madraspatnam for the
time being as a Charitable fund Appropriated to the Education and
Provision in such manner as they shall think proper of the
Children of distressed Europeans male and Female" — and the
Said Appellant did set forth that the said James Wooley
appointed the said John Balfour and Nathaniel Edward
Kindersley of Madras Esquires and Sir John Menzies Baronet
late of the Same place Executors of his said Will and having
duly executed the said will the said James Wooley departed this
life on or about the fifteenth day of April which was in the
Year of our Lord One thousand Seven hundred and Eighty
Nine without revoking or Altering such will and the same
Was duly proved in the King Ordinary of the said Mayors
Court on the Twenty first day of April in the said Year of
Our Lord One thousand Seven hundred and eighty Nine
and the said John Balfour and Nathaniel Edward Kindersley
did on the Ninth day of May then following obtain probate of

the

the said Will under the Seal of the said Mayors Court and did thereby take upon themselves the burden and Execution thereof the like right being reserved unto the said Sir John Mengies wherever he should apply for the same and the said Appellant did further setforth that on the Fifteenth day of April in the said Year of Our Lord One thousand Seven hundred and Ninety being twelve Months after the death of the said James Mosley the said appellant did apply unto the said Nathaniel Edward Kindersley the only Executor at Madras the said John Balfour having previously departed for Europe for the payment of Three hundred Pounds being one years annuity due unto your Petitioner under and by Virtue of the said Will but that the said Nathaniel Edward Kindersley instead of paying the said Sum of Three hundred Pounds as the said Appellant expected declared that the Assets of the said James Mosley which had hitherto come into his Possession or power were not Sufficient for payment of the Specific Sums of Money bequeathed by the said Will and that therefore there was no balance in his hands for a Charitable fund as above bequeathed and that as the Claim of the said Appellant was to arise from the Issues of the said Charitable fund the said Appellant could lay no Claim to his Annuity till Such fund existed whereas the said appellant Charged that notwithstanding the Clause which bequeaths unto the said Appellant the said Annuity of Three hundred Pounds Sterling doth mention that the same was to be paid out

of

of the fund left for Charitable uses at Madras Nevertheless the said appellant had an equal Claim with the other Legatees to the benefit of the two Clauses above setforth by one of which the said Testator declares that the Legacies to be paid in this Country are to be at the rate of Eight Shillings for every Pagoda and that said the annuities are to Commence at the day of his death and by another Clause that in Case his Estate shall fall short of the Amount of the legacies a proportional deduction is to be made from each and that no preference was to be given to Executors and others so that the said appellant charged that he had a right to receive either the said imputed value of his said legacy being the said Sum of Three thousand Pounds or such proportional part thereof as would equalise the said appellant with the other legatees according to the tenor of the said Will or that such proportional part of the said Sum of Three thousand Pounds as the imputed Value of the said Annuity as fixed by the said Testator be lodged as directed by the said Will in the Treasury of the said United Company at Fort St George that the said appellant might receive from the Interest thereof after the rate paid for loans by the said Company such proportion as might arise therefrom in part payment of his said legacy and that the Principal Sum after the death of the said appellant might go Proportionally among the other legatees and representatives of the said appellant in discharge of the Sums respectively deficient to the said legatees of the Sums bequeathed to them and Interest thereon from the death of

the

the said James Wooley and in discharge of the deficiency of such eventual Interest from the Treasury of the said United Company to the said Appellant short of the said Annuity of Three hundred Pounds a year and the annual Interest on such deficiencies from the time the same accrued Respectively the said Appellant did further set forth that he had Stated his Claim in manner aforesaid and therefore prayed in and by the said Bill of Complaint that the said John Balfour Nathaniel Edward Kendersley and Sir John Mengies as the Executors of the said James Wooley might be be Decreed to pay unto the said Appellant the said Annuity or Clear yearly Sum of Three hundred Pounds Sterling or lawfull Money of Great Britain at the rate of Eight Shillings the Pagoda making Pagodas Seven hundred and fifty or that if the Estate of the said James Wooley be not Sufficient to pay and Satisfy all the legacies bequeathed by him in such case that the said Executors might be decreed to set forth the full amount of the said Estate and to state how far the same was likely to fall Short of the full payment of the said Several legacies and that in such proportion as the said Estate should appear to fall Short the said Executors might be decreed to set apart for account of the said Appellant the Proportion of the said Sum of Three Thousand Pounds Sterling or lawfull Money of Great Britain or Seven thousand five hundred Star Pagodas being the Value thereof at the rate of Eight Shillings the Pagoda and that the said Appellant might have such further & other

other special Relief as to the said Mayors Court should Appear agreeable to Equity and good Conscience and that the Costs this Suit might be paid from the Estate of the said James Wooley — To which said Bill of Complaint this Respondent as one of the Executors of the said James Wooley filed his answer and did therein admit that the said James Wooley did previous to his decease make and Publish his last will and Testament writing in manner as is above stated and that Probate thereof was granted as aforesaid and this Respondent did further among other things admit that on or about the fifteenth day of april in the said year of Our Lord One thousand Seven hundred and Eighty nine being twelve Months after the death of the said James Wooley the said Appellant applied unto this Respondent the only Executor then resident at Madras aforesaid the said John Balfour having previously departed for Europe for payment of the Sum of Three hundred Pounds Sterling being one years Annuity due to him under and by Virtue of the said Will and this Respondent did Admit that he might among other reasons for his not Complying with the said Demand of the said Appellant have given for one that the Effects of the said James Wooley which had at that time come to his possession and power were not Sufficient for the payment of the Specifick Sums of Money bequeathed by the Will of the said James Wooley and that therefore there was no balance in his hands for that purpose and of Course not any for a Charitable fund as above bequeathed and this Respondent was advised that as the said Appellants Claim was

grounded

grounded upon and was to be paid from the issues of the said — a Charitable fund the said Appellant could not by Vertue of the said Will make any Claim to the annuity bequeathed him thereby until such fund existed — and this Respondent was advised that he as Executor of the said Will was bound to follow the directions thereof and particularly the one whereby the payment of legacies and annuities is appointed to be made and that the said James Wooley having particularly specified and devoted from whence the Annuity bequeathed to the said Appellant should be paid and not having in any other of the ~~Annuities~~ articles of the said will been so particular as to allot a Provisional fund from whence the other legacies are to be paid this Respondent Was bound to Govern himself by the literal direction and discription of the said Will in respect to the said Appellants Annuity and not to take upon himself to interpret the meaning of the Testator by implication or by taking the meaning of the Testator to be Contrary to what he hath himself expresly declared and this Respondent did further Setforth that the Testator must have meant and intended that the payment of the said Annuity should depend upon the Provisional fund devoted by him under the discription of Charitable uses or he would not have declared that the payment thereof should be specifically made from that fund because that it appeared by the article in the said will immediately preceding the one whereby the Annuity to the said Appellant was bequeathed that the Testator doth thereby bequeath an Annuity without

appointing

appointing any fund from whence the same should be paid and Without any restriction or Contingency to Wit "1000 to my Nephew Whose Christian Name I do not know only brother to the said John Weston Wooley an Annuity of one hundred Pounds for his life to be secured to him by my Executors on a landed Estate in Ireland I am informed he is an Ideot therefore fortune above the Necessaries of life can be of no use to him this — Respondent was therefore advised that he would make himself liable to the other legatees by the admission of the said appellants Annuity into the order of legacies bequeathed by the said Will Without Restriction or Contingency in case according to the Words of the said Testator in his said Will his the Testators fortune should by any unforeseen Accident fall short of the said Legacies because the expres declaration of the Testator in respect of the payment of the said Annuity to the said Appellant doth oblige him to interpret the same according to the words of the Testator rather than according to the Interpretation made thereof by the said Appellant that in the event of the Testators Estate falling short of the Amount of the legacies that a Proportional deduction is to be made from each including the Annuity bequeathed to the said appellant as he would not allow himself to admit from such words of the said Testator that the Annuity bequeathed to the said Appellant doth come ~~under~~ under the discription of such legacies from which a —

proportional

Proportional deduction is directed to be made in the event of the Testators fortune falling short or that the said Annuity could be declared consistent with the expres Word of the said Testator in bequeathing the same to be upon a footing with the other Legacies in which the Testator said no preference should be given to Executors or others or that the said Appellant hath aright to receive either the Value at which the Testator has Computed the said Legacy being the Sum of Three Thousand Pounds or Such proportional part thereof as will equalize him such other legatees without that the said fund from which the same is directed to be paid should be Sufficient thereto and of Course this Respondent could not do what was required by the said Appellant by lodging in the Treasury of the United Company at Fort St. George Such proportional part of the said Sum of Three thousand Pounds in order that the said Appellant might receive Interest thereon after the rate paid for loans by the said Company in part payment of his said Annuity to the said that the Principal Sum after the death of the said Appellant might go proportionably among the other legatees and the Representatives of the said Appellant in discharge of the Sums respectively deficient to the said legatees of the Sums bequeathed to them and Interest thereon from the death of the said James Wooley and in discharge of the deficiency of Such supposed eventual Interest from the Treasury of the said United Company

to the said Appellant short of the said Annuity of Three hundred Pounds a year and the Current Interest on Such deficiency from the time accrued respectively because the Requisition was not Sufficiently founded on any part of the Will of the Testator respecting the payment of the said Annuity which is therein directed to be paid in no other Manner and from no other fund than that under the description of Charetable uses and this Respondent did further Set forth that until Such fund was established and created from the residue or overplus of the said Testators Estate after payment of the other legacies bequeathed by the said Will he could not consistent with the tenor thereof set apart any sum of Money or a provisional fund for the payment of the said Annuity or any part thereof and this Respondent did annex to his said answer Copy of an Account of the Estate of the said James Wooley with him as also a Statement of the Accounts thereof or Claims from and upon the Estate and this Respondent said that the said Estate was indebted to him as Executor in the Sum of Two thousand Two hundred and Twenty three Pagodas thirty two fanams and Thirty Six Cash and this Respondent did also annex to his said answer a Copy of the last Will and Testament of the said James Wooley and this Respondent did lastly Set forth that having by his said Answer Set forth such matters which he had been advised respecting the Claims of the said Appellant he humbly

referred

referred the same to the Consideration of the said Mayors Court to which said Answer the said Appellant filed his Replication and did thereon desire that the Respondent should govern himself by the literal direction and description of the said Will of James Wooley respecting the Annuity bequeathed to the said Appellant and that the Respondent was not to take upon himself to interpret the meaning of the Testator by implication and contrary to what he himself hath expressly declared but the said Appellant said that were a Will or any other Deed or Instrument in the Law or even an Act of Parliament contains Clauses which are in some respect contradictory as in the present instance and thereof call for a Scrutinizing investigation of the Several parts the general rule is to seek out the intention purport and Meaning of the parties and to interpret the Deed accordingly the said Appellant therefore said that Notwithstanding the Clause which bequeaths unto the said Appellant the said Annuity of Three hundred Pounds doth mention that the same is to be paid out of the fund left for Charitable uses at Madras Nevertheless the said Appellant hath an equal Claim with the other legatees to the benefit of the two Clauses setforth in the Bill of Complaint by one of which the said Testator declares that the legacies to be paid in this Country are to be at an Exchange of Eight Shillings the Pagoda and that the annuities are to commence at the day of his death and by another Clause that in Case his

Estate

Estate shall fall short of the amount of the legacies proportional deduction was to be made from each and that no preference was to be given to Executors or others by which the said Appellant insisted that he had a right to receive either the said imputed Value of his said legacy being the said Sum of Three Thousand Pounds or such proportional part thereof as will equalize the said Appellant with the other legatees According to the tenor of the said Will or that such proportional part of the said Sum of three thousand Pounds as the imputed Value of the said annuity as fixed by the said Testator be lodged as directed by the said Will in the Treasury of the said united Company at Fort St George that the said Appellant might receive from the Interest to arise thereon after the Rate paid for loans by the said Company such Proportion as may arise therefrom in part payment of his said legacy and that the Principal Sum after the death of the said Appellant might go proportionably among the other legatees and among the Representatives of the said Appellant in part discharge for the Sums which might be respectively deficient to the said legatees of the Sums bequeathed them and Interest thereon respectively from the death of the said James Wooley according to the tenor of the Will and also in part discharge of the deficiency of such eventual Interest from the Treasury of the said United Company to the said

Appl.

appellant short of the said Annuity of three Thousand Pounds and the Current Interest of Such deficiences from the time the same should accrue respectively and the said appellant Set forth that he was the more warranted in the above construction of the said Will not only from the Clauses themselves which Clearly manifest that an Interest for life was intended in favor of the said appellt to the Value of Three Thousand Pounds or ten years purchase of Three hundred Pounds P Annum and that therefore the said appellant had a Claim to the said Sum of Three thousand Pounds or a proportionable part thereof in common with the other Legatees and according to the eventual effects of the Testators but that it was very well known and that the said appellant said he would in due time prove to the Satisfaction of the said Mayors Court that a friendly intercourse Subsisted for many years without the least interruption — between the Testator and the said appellant and that the Testator had expressed his Reason more than once — Since making the said Will why he bequeathed to the said appellant an Annuity instead of a Sum of money and that he would in no wise intend to leave the bequest in favor of the said appellant to the precarious risk of being paid only from the Surplus fund while the other legatees were to receive in full of their respective legacies to which said Replication this Respondent filed his Rejoinder and therein said he could not deny but that there

there had subsisted for many years a friendly intercourse between the Testator and the said appellant and this Respondent also said that he therefore believed that the Testator might have expressed his reasons since making the said Will why he bequeathed to the said appellant an Annuity instead of a Sum of money and this Respondent also said that he had reason to believe that the Testator did not intend to leave the bequest in favor of the said — appellant to the precarious risk of being paid only from a Surplus fund but that he actually meant the said appellant to benefit as much as if he had left him Three Thousand Pounds — And this Respondent admits that upon the above Proceedings issue was joined and Witnesses examined on the part of the said appellant after which Publication passed and the said Cause was set down for hearing and came on to be heard by and before the said Mayors Court on Tuesday the Seventh day of June in the said year of Our Lord One — thousand Seven hundred and Ninety one when the said Court was pleased to make such order and Decree therein as in the said appellants said Petition and appeal is particularly Set forth and mentioned and this Respondent also admits that the said appellant did afterwards appeal from the said Decree of the Mayors Court to the Honble Court of Appeals at Madraspatnam aforesaid and that this Respondent filed his Answer to the said Petition and appeal to which he — humbly craves leave to refer and prays that the same may

be

be taken as part hereof and this Respondent also admits that the said Court of Appeals did afterwards at the time in the said Appellants Petition and Appeal Setforth and Mentioned confirm the said Decree of the Mayors Court with Costs to be paid by the said Appellant and this Respondent in Answer to the first Second third fourth fifth and Sixth causes or Reasons by the said Appellant in and by his said Petition and Appeal setforth and assigned Saith that the said Several Causes and Reasons and all and every the Matters and things therein contained are not nor is any or either of them warranted by the Will of the said Testator which is Clear and explicit whereby it is evident that it was the intent of the Testator to post pone the Annuity bequeathed to the said Appellant to the Pecuniary legacies given to the other Legatees therein named and these Respondent most humbly Submits that the said Appellant who is merely a residuary legate hath been premature in bringing his Suit when he must have well known that there was no residuum out of which to provide or pay the Said Annuity or legacy and further more that the said Appellants Bill of Complaint is upon the face of it erroneous and defective for that one object hereof is to compel the Legatees in the said Will named to abate their Respective Legacies in such Proportion as the Estate of the said Testator should appear to fall short of the said Annuity or Sum of Three Thousand Pounds Sterling

Sterling Notwithstanding which the said Appellant hath not made the said Legatees Parties to the said Suit although by the said Bill of Complaint he seeks to effect their interest under the said Will. —

Wherefore and for such reasons as may be urged at the hearing of the said Petition and appeal this Respondent humbly prays that the said Decree of the Mayors Court and Court of appeals at Madraspatnam may be affirmed with Costs to be paid by the said appellant. —

/Signed/ Gilb.t Ricketts
for John White Esq.r
Sol.rs for Respondent.

To

To the Honble Major Genl Will.m Medows
President in Council
In the Honble the
Court of Appeals
Fort St George

Between Perandavy Ummal
the Widow of Armegam Pillah and
Trevengadah pillah alias Colunda Pillah
Petitioners and Veerasawmy Pillah
Respondent — In the Cause wherein the
said Veerasawmy Pillah is Complainant
and Vencatachella Pillay and Trevenga
Pillah alias Colundah Pillah are
Defendants —

The humble Petition and appeal of the
Above Named Petitioners —

Shew — That Some time on or about the Twenty fou
day of February in the year of Christ One thousand Seven
hundred and Ninety your Petitioners did file and
exhibit their Petition in the Mayors Court at Madras-
patnam and did therein State that the Complainant
above Named did on the fourth day of June in the year
of Christ One thousand Seven hundred and Eighty Nine
exhibit and file his Bill of Complaint in the said
Mayors

Filed in my Office
the 8th August 1791
Chas. N. White
Clk.

Mayors Court together with Copy of a Mortgage Bond thereinto
annexed against the Defendants above Named for the Sum of
Three hundred and Seven Pagodas forty fanams and forty Cash
pretending to be due and Owing thereupon unto him the said
Complainant and the Defendants above named having appeared
thereto and the usual Rules having issued for the Defendants
above named to Answer the Complainants Bill and they having
Neglected so to do the said Mayors Court was pleased on the fifteenth
day of December in the Year of Christ one thousand Seven hundred
and Eighty Nine to grant a Decree against the Defendants for
the Amount of the debt aforesaid and the term of fourteen days
allowed by his Majestys Charter having elapsed without the
Defendants above named Satisfying the said Decree or appealing
therefrom this Honble Court was pleased on the Nineteenth day of
January in the year of Christ one thousand Seven hundred and
Ninety to grant Award and Issue a Writ of Execution against the
Goods and Chattels of the said Defendants requiring the Sheriff
of the Town of Madraspatnam aforesaid to Seize the said
Mortgaged premises and by Sale thereof to levy the Amount
of the said Complainants Demand — And your Petitioners
Shew that they did in and by their said Petition state that
the said Sheriff instead of Seizing the property of the Defendants
aforenamed did at the instance of the Complainants unjustly
Seize upon a House and Ground the property of your Petrs

the

Petitioner the one the Widow and the other the son of Armogam Pillah deceased and your Petitioner Parandavy Ummal — Sheweth that she did in and by her said Petition shew that she was entitled to one third of the said House and Ground and your Petitioner Trevengadiah Pillah alias Colunda Pillah did shew that he was entitled to one equal share of the premisses with the said Defendant Vencatachella Pillah your Petitioner and the said Defendant being the Sons of the said Armogam pillah deceased and your Pet.r Trevengadiah pillah alias Colunda pillah did further Shew that the Defendant Vencatachella pillay and the Complainant above Named did enter into a Collusive — Mortgage in order to defraud your Petitioner of his right and property in the said House and Ground that the said Vencatachella pillah aided and Assisted by the Complai= =nant and at his instance and request did draw out a Mortgage Bond in the Name of the said Vencata= =chella Pillah as well as that of your Petitioner — Trevengadah Pillay alias Colunda pillah as if the — amount therein specified had been borrowed and — Received by your Petitioner and the said Vencatachella Pillay Jointly that your Petitioner was informed that the said Vencatachella pillah did sign your Pet.r Name to the Said pretended Mortgage Bond and that if he had done so it Was without the

Knowledge

Knowledge consent or approbation of your Petitioner and your Pet.r did in and by his said Petition further Shew that Neither he nor the said Parandavy Ummal Nor any other person or persons for them ever did receive the Sum Mentioned in the said Mortgage Bond or any part thereof nor was your Petitioner privy to the said Mortgage being made by the said Vencatachella pillay — as aforesaid but that after the Complainant had sued the said Vencatachella pillay and your Petitioner in the said Mayors = Court and previous to the Complainants obtaining a Decree he the said Vencatachella pillah had acquainted your Pet.r Trevengadiah pillay alias Colunda pillay that he had borrowed and Received from the Complainant a certain Sum of Money and that the Complainant had Sued him for the recovery thereof that the amount he had so borrowed had been actually paid by him to the Complainant that the Bond obtained by the — Complainant was for usurious Interest and that the Complainant had Agreed to Settle the same with him provided the — Interest then due and the Costs were paid that had been — incurred otherwise that he Said Vencatachella pillay would be thrown into prison and the said Vencatachella pillay did further pretend that as he had not then ready Cash to pay unto the Complainant the Complainant did agree to take your Petitioner and the said Vencatachella pillahs Bond or — Agreement for the same payable in forty five days and who your Petitioner did shew did in your Petitioners presence

declare

declare that he would upon the receipt of the said agreement
with draw the Cause then depending in the said Mayors Court
and your Petitioner in and by his said Petition did shew
that your Petitioner did not at all that time known nor had they
the least information that the House and Ground in question had been
Mortgaged to the Complainant that in order to save the said
Vencatachella pillay being thrown in to Goal your Petitioner had
Signed the said Agreement the purport of which your Petitioner
did not recollect but that your Petitioner had reason to believe
that the said agreement was obtained from your Petitioner
by the said Vencatachellapilla and the said Complainant by art
and Covin to serve the purpose and end of their evil design and to
make it appear that your Petitioner was privy to the said
Pillah alias Colunda pillah did Solemnly declare that he
was not any way privy to the said pretended Mortgage
and that the said Vencatachella pillah had no manner
of right of himself to Mortgage the said House and
Ground nor had the Complainant any right to take a
Mortgage thereof without the said Vencatachella pillah's
having first obtained Letters of administration to the
estate and effects of his father the said Arimogam pillah
deceased consequently the Mortgage made by him
could not be looked upon as Valid and your Petitioners

did

did therefore in and by their said Petition pray that the said Mayors Court
would Order the Sheriffs seals to be taken off the premisses and that
your Petitioners be put in the quiet possession and Enjoyment thereof.

And your Petitioners shew that to your
Petitioners said Petition the Complainant above named did on or
about the Twenty Ninth day of June and year of Christ One thousand
Seven hundred and Ninety Exhibit and file his answer and did
therein amongst other things deny that there was any Collusion
in the execution of the said Bond and did say that it was
duly and legally executed by the Defendant Vancatachella pillay
for and on account of himself and his Brother / your Petitioner /
the said Trevengadiah Pillah alias Colunda pillah and pretend
that if your Petitioner Parandavy ummal was entitled to a
third Share of the said House and Ground that she totally
alienated the right she had therein by having given her Consent
and approbation to the same being Mortgaged to him and the said
Respondent did further state that the said Vancatachella pillay
did in the presence of your Petitioner parandavy ummal cause
the said Mortgage Bond to be drawn and did execute the
same and that your Petitioner Trevengadiah pillah alias Colunda
pillah being then absent the said Defendant Vancatachellapillay
had Executed the said Bond for him Solemnly Assuring the
Respondent as the Respondent did pretend that he was
authorized to do so and that your Petitioner would ratify and
Confirm the same and in order to shew that your Petitioner did

acknowledge

acknowledge the Justness of the said Respondents demand as in his said Bill Set forth he did exhibit and file his said answer a Copy of the agreement in your Petitioners said Petition — Mentioned to have been obtained by collusion and Covin —

And your Petitioners shew that upon the above proceedings issue did join and Witnesses were Examined on the part and behalf of your Petitioners as well as on the part and behalf of the Respondent — And your Petitioners shew that the Witnesses produced on the part of the Respondent do not pretend that your Petitioner Trevengadiah pillay alias Colunda pillah did execute the said Mortgage Bond and although it is pretended that your Petitioner Parandavy Ummal was consenting thereto yet it is not even Suggested that she did ever execute the Same nor is she made a party to the said Bill but on the Contrary it is confessed by the Respondents that neither your Pet^{r}. the said Trevengadiah pillah alias Colunda pillay nor your Petitioner Parandavy Ummal did ever set and Subscribe their Names thereto nor deliver the same as their act and Deed and although your Petitioners in and by their said Petition did charge that the said Agreement the exhibit C was obtained from them under the full conviction that it was for the Interest of the Sum for which the Defendant Vencatachella pillah had been Sued by the Respondent and for the Court Charges incurred thereby and although your

Pet^{r}

your Petitioner did further Charge that the Respondent did induce them to believe such was the fact and promise to withdraw the said Suit on the said agreement being given for payment of the said Interest and Court charges yet the Witnesses examined in Support of the said exhibit C. and who pretend to have been present at the execution thereof go no further than saying that the same was granted on account of the Money they were indebted to the Respondent without saying what was the amount thereof — and your Petitioner shew that the Witnesses examined on the part of your Petitioners did prove that the premises in dispute were the property of the husband of your Petitioners Parandavy ummal and that the same on his decease — became jointly invested in your Petitioners and the said Defendant Vencatachella pillay that the one could not Mortgage or dispose thereof without the joint concurrence of the others and that if such concurrence was not obtained a Mortgage would be invalid as Appears by the depositions of Vancatachella pillah Canavady pillay Arooland and Narrain pillah and your Petitioners did further prove by the deposition of Teppermaul the nefarious conduct of the Respondent with respect to the exhibit C. and which will indirectly demonstrate the fraudulent principle upon which the Respondent has proceeded in the Whole of the matter in question for the said Tippermaul to the Seventh Interrogatory says that the Defendant did desire him about a year and an half ago

to

acknowledge the Justness of the said Respondents demand as in his
Said Bill Set forth he did exhibit and file his said answer
a Copy of the Agreement in your Petitioners said Petition
Mentioned to have been obtained by collusion and Covin —

And your Petitioners shew that upon the
Above proceedings issue did Join and Witnesses were
Examined on the part and behalf of your Petitioners as well
as on the part and behalf of the Respondent — And your
Petitioners shew that the Witnesses produced on the part of
the Respondent do not pretend that your Petitioner Trevengadum
pillay alias Calanda pillah did execute the said Mortgage
Bond and although it is pretended that your Petitioner
Parandavy Ummal was consenting thereto yet it is not
even Suggested that she did ever execute the Same nor is
she made a party to the said Bill but on the Contrary
it is confessed by the Respondents that neither your Petr.
the said Trevengadiah pillah alias Calanda pillay nor your
Petitioner Parandavy Ummal did ever set and Subscribe
their Names thereto nor deliver the same as their act and
Deed and although your Petitioners in and by their said
Petition did charge that the said Agreement the exhibit C
was obtained from them under the full conviction that it
was for the Interest of the Sum for which the Defendant
Vencatachella pillah had been Sued by the Respondent
and for the Court Charges incurred thereby and although your

Petr.

your Petitioner did further Charge that the Respondent did induce
them to believe such was the fact and promise to withdraw the
Said Suit on the said Agreement being given for payment of the
Said Interest and Court Charges yet the Witnesses examined in
Support of the said exhibit C. and who pretend to have been present
at the execution thereof go no further than saying that the same
was granted on account of the Money they were indebted
to the Respondent without saying what was the Amount
thereof — and your Petitioner shew that the Witnesses examined
on the part of your Petitioners did prove that the premises
in dispute were the property of the husband of your Petitioners
Parandavy ummal and that the same on his decease —
became jointly invested in your Petitioners and the said
Defendant Vencatachella pillay that the one could not
Mortgage or dispose thereof without the joint concurrence of the
others and that if such concurrence was not obtained a
Mortgage would be invalid as Appears by the depositions of
Vencatachella pillah Canavady pillay Aroolanda and Nawain
pillah and your Petitioners did further prove by the deposition
of Teppermaul the nefarious conduct of the Respondent
with respect to the exhibit C. and which will indirectly
demonstrate the fraudulent principle upon which the Respondent
has proceeded in the Whole of the matter in question for the
Said Teppermaul to the Seventh Interrogatory says that
the Defendant did desire him about a year and an half ago

to

to acquaint the Petitioners that the principal Sum for which the house in question was mortgaged to the Respondent was entirely paid and discharged and that there remained the Interest and Court Charges only to be paid to the Respondent and that the Respondent would with draw the Cause instituted by him if one of the Petitioners named Trevengadiah pillah alias Colunda pillah would execute an agreement jointly with him to pay the Interest and Court Charge at a certain time then mentioned that a promise was made by the Defendant and the Respondent that on payment of the said Interest and Court Charges the Petitioners Bill of Sale Should be delivered up to them that he the Deponent did at the desire of the Defendant Vencatachella pillay persuade the Petitioner Trevengadiah pillay alias Colunda pillay to execute the agreement aforesaid and that the said Agreement Was drawn in his the Deponent presence and that the contents thereof were read by him previous to the execution thereof by the Petitioner Trevengadiah pillah alias Colunda pillay together with Vencatachella pillay the Defendant that the Cadjan Writing produced and Shewn to him at the time of his examination Marked C. Was the identical Agreement so drawn in his presence and so read by him as aforesaid and further that some alteration did appear in the body thereof that such alteration consisted in inserting the Word Principal between the Words court

Charges

Charge and Interest in the body of the agreement which appeared to have been recently done that his Name is Mentioned in the Said Agreement as one of the Witnesses thereto and further that the Petitioner Trevengadiah pillah alias Colunda pillah did tender in his the deponents presence as well as in the presence of Paulwettah Shesha Pillay and Chetambala Chitty Head Shroff to the Board of Revenue unto the Respondent the Amount of the interest and Court Charges as aforesaid within the time in and by the said agreement limited that the Respondent did refuse to accept the same and that the reason for so refusing was with the hopes of obtaining the principal together with the interest and Court Charges contrary to the tenor and Spirit of the aforementioned agreement and that from the knowledge he had of the Transaction between the Respondent and the Defendant the Mortgage of the House in question did not appear to be a real and bonâ fide transaction and your Petitioners shew that to the last Interrogatory the said Teppermal Says that the Said Respondent caused one Shesha pillay his relation and this Deponent to be mentioned as Witnesses in the body of the said agreement but only desired the said Shesha pillah to Subscribe his Name as one of the Witnesses at the foot of the agreement purposely omitting as the Deponent believed to require the Signature of the Deponent with a View to Some sinister purpose which Now evidently Appeared from the insertion of the Word principal between the Words Court Charges and interests in

the

the aforementioned Agreement that at the time of executing the said agreement the Defendant Vancatachella Pillay required of the Respondents to deliver up to him Seven or eight different Bonds and Joys which had been granted to the Respondent on former occasions and which had been all duly discharged and that the Respondent thereupon faithfully promised in the presence of the Deponent and several other persons to give up the same but had put off the performance thereof from time to time under various frivolous excuses — And your Petitioners Shew that upon the above proceedings had the Matter did on the twenty Sixth day of July last past come on to be argued before the said Mayors Court when the said Mayors Court was pleased to Order and did Order accordingly that your Petitioners said Petition Should Stand dismissed with Costs as by the said Order of the said Mayors Court whereof a Copy is hereunto Annexed for the inspection of this Honble Court and prayed by your Petrs to be taken as part of this their Petition and appeal will more fully appear By which said Order of the said mayors Court your Petitioners do conceive themselves much aggrieved and do therefore appeal therefrom to this Honble Court for the following amongst other Reasons. —

First — Because the said mayors Court in and by their said Order has deviated from the principles of Equity and the Law of the Land. —

Secondly — Because it appears by the Respondents own Shewing that the pretended Mortgage Bond upon which the Respondent exhibited his said Bill of Complaint was not Signed by your Petitioners nor either of them nor by their authority and the only pretence set up is that the Defendant Vencatachella pillah did say that your Petitioner Trevengadiah pillah alias Colunda pillah had given his consent and thereupon your Petitioners say that as one Man cannot be bound by the Act of another so the decree of the Mayors Court upon the said Bill must have been erroneous and therefore upon the matter being again opened as in the matter of the Petition in question the said Mayors Court ought so far to have reversed their said Decree as to have granted the prayer of the said Petition and not having done so the said Mayors Court have acted contrary to equity in regard to your Petitioner Trevengadiah pillah alias Colunda pillah and much more so in regard to your Petitioner Parandavy ammal who so far from having been made a party to the said Bill her name is not mentioned therein and therefore the said Order of the said Mayors Court is without equity —

Lastly — Because all his Majesty Courts of Judicature are to be governed by evidence and in the present instance your Petitioners have produced evidence to prove that the Agreement in Exhibit C on the

the part of the Respondent contains a Forgery and of Course — inadmissible as evidence in Support of a Claim and as the Said Mayors Court have not been governed by such evidence so addduced on the part of your Petitioners but on the contrary have gone in Opposition thereto and have allowed the said fraud to have the same force as a bonafide and lawful act the said order of the said Mayors Court is contrary to Law. —

For all which Reasons and Such others as may be addduced at the hearing your Petitioners pray that the Honble Court will be pleased to Reverse the said Order of the said Mayors Court and grant them such Relief in the premises as in their Wisdom may seem meet. —

/Signed/ Jas Stuart Hall
John Hamilton } Sols. for Petrs.

Extract —

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 26th. day of July Anno Domini 1791

Present,
Josias DuPre Porcher Esqr. Mayor
Andrew Ross John Mitford &
James Amos, — Aldermen

Veerasawmy Pillah
Defr.

vs.

Venkatachellum Pillah and Colunda Pillah,
Petitioners Perandavy Ummal and Trevengada Pillah
alias Colund Pillah Read, —

Answer with three Exhibits marked A B and C annexed Read

Interrogatories on the part of the Petitioners Read, —

Six depositions taken thereunto Read, —

Interrogatories on the part of the Respondent with four Exhibits and Translates thereof annexed Read, —

Eight Depositions taken thereunto Read,

The Matter in Dispute between the Petitioners Pervandevy ummal and Trevengada Pillah alias Colunda Pillah and the Respondent Veerasawmy Pillah Coming on to be Argued and determined this day in the — Presence of the attornies on both sides On Hearing the Readings made use of by the attornies and on due Consideration had thereon

thereon This Court doth think fit to Order and doth accordingly Order that the Petitioners Petition do stand dismissed with Costs.

A true Extract

a true Copy

Signed George Taylor Regt

Signed J. S. Wall
Signed John Hamilton } Solrs for appellt

To

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

In the Honble the
Court of Appeals

Between Perandavy Ummal the Widow of Armogam Pilla and Trevengadah Pillah alias Colunda Pilla Petitioners and Veerasawmy Pilla Respondents

In the Cause wherein the said Veerasawmy Pilla is Complainant and Venkatachellum Pilla and Trevengadah Pillah alias Colunda Pilla are Defendants

The Answer of Veerasawmy Pilla to the Petition and Appeal of Perandavy Ummal the Widow of Armogam Pilla and Trevengadah Pilla alias Colunda Pilla

This Respondent admits that the said Appellants did some time on or about the Twenty fourth day of February in the year of Christ One thousand Seven hundred and Ninety file and Exhibit a Petition in the Mayor's Court of Madraspatnam and did therein State that this Respondent did on the fourth day of June which which was in the year of Christ One thousand Seven hundred and Eighty Nine, exhibit and file his Bill of Complaint in the said Mayor's Court together with a Copy of a Mortgage Bond

Filed in my Office
the 1st Sept. 1791.
Chas. S. White
Clk

Bond thereunto annexed against the Defendants above Named for the Sum of Three hundred and Seven Pagodas forty fanams and forty Cash Charged to be due and Owing thereupon unto this Respondent and the Defendants above named having Appeared thereto, and the usual Rule having Issued for the said Defendants above named to answer this Respondents Bill and they having Neglected so to do the said Mayors Court was pleased on the fifteenth day of December in the said Year of Christ one thousand Seven hundred and Eighty Nine, to grant a Decree against the said Defendants for the Amount of the debt aforesaid, on the Term of fourteen days allowed by his Majestys Charter having elapsed without the Defendants above Named Satisfying the said Decree or appealing therefrom, the said Honble Mayors Court were pleased on the Nineteenth day of January in the year of Christ One thousand Seven hundred and Ninety to grant award and issue a Writ of Execution against the Goods and Chattels of the said Defendants requiring the Sheriff of Fort St George Town of Madrapatnam and the Districts thereof to Seize the said Mortgaged Premises and by Sale thereof to levy the Amount of this Respondents demand, And this Respondent admits that the said Petitioners one of whom to Wit Trevengadiah pillah alias Colunda pilla is a Defendant in the Cause did further absurdly Setforth that the said Sheriff instead of Seizing the Property of the said Defendants did by the advice of this Respondent unjustly Seize a House and Ground the Property of the Petitioners as the Widow and Son of armoga

pillah

Pillah, and this Respondent further admits that the Petitioner Perendevy, ummal did on her part setforth that she was entitled to One third of the House and Ground and the Petitioner Trevengadiah Pillah also setforth that he was entitled to one equal Share of the Premisses with the Defendant Vencatachella Pillah, he the said Petitioner and the said Vencatachella Pillay being the Sons of the said Armogam Pilla deceased, And the said Petitioner Trevengadiah Pillay alias Colund Pilla did further assert in his said Petition that the Defendant Vencatachella Pillah and this Respondent did enter into a Collusive Mortgage in order to defraud him the Defendant Now became Petitioner of his right and Property in the said House and Ground, That the said Vencatachella Pillah aided and

assisted by this Respondent and at his Instance and Request did draw out a Mortgage Bond in the Name of the said Vencatachella Pilla as well as that of the said Trevengadiah pilla alias Colunda Pilla as if the amount therein Specified had been borrowed and Received by the Petitioner and the said Vencatachella Pillah jointly and the said appellant Trevengadiah Pilla alias Colunda Pilla did further Setforth that he was informed that the said Vencatachella Pilla did sign his the Petitioners Name to the said Bond and that if he had done so, he had so done Without the Knowledge Consent or Approbation of him the Petitioner and the said

Pet.r

Petitioner did further State that neither he nor the said Perrendavy
Ummal or any other Person or Persons for them did ever Receive
the Sum mentioned in the said Mortgage Bond or any part
thereof nor were they the said Petitioners privy to the said
Mortgage being made by the said Vencatachellum Pilla
so as aforesaid and this Respondent admits that the
Appellant the said Trevengadiah Pillah alias Colunda Pilla
did further set forth that after this Respondent had Sued
the said Vencatachella Pilla and him the said Colunda
Pilla in the said Honble Court and previous to this
Respondent obtaining a Decree the said Vencatachella
Pillah acquainted the said Petitioner Trevengadiah pilla
alias Colunda Pillah that he did Borrow and Receive of this
Respondent a Certain Sum of Money and that the Respondent
did sue him in the said Honble Court for the Recovery thereof
that the said Vencatachella had further informed the said
Trevengadiah Pillah alias Colunda Pilla that the amount
he had borrowed was actually paid by him to this Respondent
that the said Bond obtained by this Respondent was
for usurious Interest and that the Respondent had
agreed to Settle the same with him provided the Interest
then due and the Court Charges were paid that had been
incurred otherwise that he the said Vencatachella pilla
would be thrown in Prison, and the said Appellant
did further assert in their Petition to the said Honble

Mayors

Mayors Court that the said Vencatachella Pillay had further
informed him that as he had not then ready Cash to pay unto
this Respondent. This Respondent had agreed to take
the said Colunda Pilla and the said Vencatachella pilla
Bond or agreement for the same payable in forty five days
and the said appellants in their said Petition did further
assert that this Respondent had in the Petitioners presence
declared that he would upon the Receipt of the said agreement
withdraw the Cause then depending in this Honble Court
and the said appellants in their said Petition did further
assert that the said Trevengadiah Pillah alias Colunda
Pilla did not untill that time know or had he the least
Information that the house and Ground in Question was
Mortgaged to this Respondent that in order to Save the
said Vencatachella pilla from being put in Goal he the
said Trevengadiah Pillah alias Colunda pilla had Signed
the said agreement the Purport of which the Petitioner did not
then Recollect but the Petitioner had Reason to believe that
the said agreement was obtained from him the Petitioner
by the said Vencatachella Pilla and this Respondent
by art and Cavin, so as to Serve the purpose and end of
their evil designs and to make it appear that he the said
Trevengadiah pilla alias Colunda pillay was privy to the
aforesaid Mortgage made by the said Vencatachella

pillah

pilla and the said Petitioner did further Solemnly declare that he was not any way is privy to the said Mortgage and that the said Vencatachella pilla had no manner of right of himself to mortgage the said House nor had the Respondent any Right to take a Mortgage thereof without the said Vencatachella Pillay having first Obtained Letters of Administration to the Estate and Effects of his Father the said Armogam pilla deceased, and as the said Vencatachella Pilla had not obtained Letters of administration to the Estate of the said Armogam pilla deceased Consequently the Mortgage Made by him could not be looked upon as valid And thereon the said Petitioner did pray that the said Mayors Court would order the Sheriffs Seals to be taken off the Premisses and that the Petitioners might be put in Quet and Peaceably possess thereof, and this Respondent admits that he did on or about the Twenty Ninth day of June in the aforesaid year of Christ One thousand Seven hundred and Eighty Nine file an Answer to the said Petition therein among other things admitting that he did on the Fourth day of June which was in the year of Christ One thousand Seven hundred and Eighty Nine exhibit and file a Bill of Complaint in the said Honble Court. With Copy of a Mortgage Bond thereunto annexed against the said Defendants for the Sum of Three hundred and Seven

Seven Pagodas forty fanams and forty Cash due and Owing thereupon unto him the Respondent from the said Defendants and the said Defendants having appeared thereunto and the rule having issued for them to answer this Respondents Bill and they having Neglected so to do the said Honble Court was on the Fifteenth day of December which was in the said year of Christ One thousand Seven hundred and Eighty Nine pleased to pass a Decree against the said Defendants for the Amount of the said debt and the term of fourteen days allowed by the Charter of Justice having expired without Satisfying the said Decree or appealing therefrom the said Mayors Court was on the Nineteenth day of January in the year of Christ One thousand Seven hundred and Ninety pleased to grant an award and issue a Writ of Execution against the Goods Chattles and Effects of the said Defendants directed to the Sheriff of Fort St George Town of Madraspatnam and the districts thereof Requiring and Commanding him the said Sheriff to Seize upon the Premisses Mentioned and Set forth in the said Mortgage Bond and by Sale thereof to levey the amount of this Respondents demand by Virtue of which said Writ of Execution he the said Sheriff did Seize upon a Certain House and Ground being the Premisses in the said Mortgage Bond mentioned and which this Respondent insisted was his Property by Virtue thereof and this Respondent in his said Answer denied that there was any Collusion Shewn

or

or observed in the Execution of the said Bond on the Contrary
that it was duly and legally Executed by the Defendant Vencata=
=chella pillay for and on Account of himself and his Brother
the said Trevengadiah pillah alias Calunda Pilla, having
his express Consent and Authority so to do That if the
Petitioner Perendavy Ammal the Widow of Arnogam
Pilla was entitled to a third Share of the said House &
Ground so seized in Execution that she had totally
alienated the right she had therein by having given her
Consent and express Approbation to the Premises being Mortga=
=ged to the Respondent by Way of Securing the Repayment
of different Sums of Money lent and Advanced by the
Respondent on Account of the said family to Wit the widow
the said Perendavy Ammal and her two Sons the defend=
in the said Cause and this Respondent by way of illustra=
=ting the Case and in Order to Shew that the Monies for
which the said land had been given were bona fide lent
and Advanced by him did in his Answer to the Petition
in the said Mayors Court Set forth the following detail
of facts to Wit that on or about the Sixth day of Dect
which was in the year of Christ One thousand Seven
hundred and Eighty Six the Defendant Vencatachella
pillah having Occasion for a Sum of Money did
Request of this Respondent the loan of Thirty Pagodas
for the Security of which he agreed to Mortgage his
Jewels

Jewels that on the Twenty Seventh day of the said Month the
Defendant did entreat this Respondent to advance him a further
Sum of Seventy Pagodas for the Security of which two Respective
Sums he agreed to Mortgage to this Respondent the Bill of
Sale of his House and Ground that having Consented thereto and
having advanced the said further Sum of Seventy Pagodas a
Mortgage Bond was accordingly drawn out and Executed
by the said Vencatachella pillay to the Respondent and the
time limited therein for the payment of the Money having
expired and this Respondent at the time being in Want of
Cash demanded Payment thereof and which the said
Defendant being unable to comply with otherwise than by
raising Money upon his said Bills of Sale & Mortgages
as aforesaid he the said Defendant Accordingly Requested this
Respondent to deliver them up to permit him to Mortgage
them again to one Affice Nineapah Moodelly offering
thereupon to discharge this Respondent & demand from the Money
which he was to receive from the said Affice Nineapah
Moodelly and this Respondent Saith that he did in said
Answer admit having given up the said Bills of Sale and
Received in Satisfaction of part of his said Debt the Sum of
Sixty Pagodas and the remaining forty the said Vencatachella
pilla faithfully promised to liquidate in the Course of a Short
time and this Respondent in his said Answer further Set forth
that Soon after this transaction happened the Petitioner

Heren:

Perendavy ummal together with One Vadamala pilla the Agent or attorney of the said Office Nineapah Moodelliar called upon this Respondent and delivered a letter from the Defendant Vencatachella Pilla who was then Residing at Chengleput wherein after many professions of Gratitude for the favors which he therein acknowledged to have received from this Respondent he proceeded to entreat and Request this Respondent to pay of the Sum of one hundred and fifty Pags due to the said Office Nineapah Moodelly and to redeem the Bills of Sale which he had Mortgaged to him as aforesaid and this Respondent Says that being Moved with the entreaties of the said Defendant as also by those of the Petitioner Perendavy ummal he forthwith adjusted the accounts Subsisting between the Defendants and the said Office Nineapah Moodelly and paid the Amount of Principal and Interest thereon due being Pagodas one hundred and Sixty five and three quarter Redeemed the Bills of Sale and obtained from Vadamala Pillay the agent of the said Office Nineapah Moodelly a Receipt for the aforesaid Sum Which Matters this Respondent did in his said Answer say would more fully and at large appear by Copies of the Translation of the said Letter and Receipt thereunto annexed for the Inspection of the said Mayors Court marked A and B and to which this Respondent humbly prayed a Reference might be had and that they might be taken and admitted as part of that his answer the Originals whereof this

Respondent

this Respondent did say where in his Possession and ready to be produced When required — And this Respondent did further Set forth that the transaction took place in the presence of the Petitioner the said Perandavy Ummal who with her own hands delivered to the Bills of Sale to this Respondent upon receiving them from Vadamala Pilla the agent as aforesaid of the said Office Nineapah Moodelly by way of Security of the Certain Repayment of the Sums so advanced by the Respondent and this Respondent in his said Answer did also insist that the Petitioner the said Perendavy Ummal did further Solemnly Promise and did then undertake and Agree to procure a Regular Mortgage of the Premises from her sons the said Defendants immediately upon their Arrival in the Mean time the Bills of Sale were to remain by way of Deposite in the possession of this Respondent, and this Respondent in order to Shew that the Petitioner Colunda Pilla did actually receive part of the Money for which the Mortgage Bond annexed to his Respondents Bill of Complaint had been granted did in and by his said Answer pray leave to State that on or about the Second day of October which was in the year of Christ One thousand Seven=hundred and Eighty eight the said Petitioner Colunda Pilla Requested this Respondent to lend and advance him the Sum of fifty Pagodas that in order to Induce this Respondent to Comply therewith he the said Petitioner did propose that as Soon as his Brother the said Vencatachella Pillay should arrive from Chengleput which he expected in the Course of Two or

three

Three Weeks, that he would then jointly Execute with his said Brother or Mortgage on the Premises and would therein include all the different Sums lent and advanced by this Respondent either to himself or to his Brother the said Vencatachellum pilla and this Respondent in his Answer to the said Petition did further Setforth that in faith thereof he did Accordingly lend and advance him the Sum of fifty Pagodas and which this Respondent then Asserted he could prove by the Testimony of credible Evidences, and this Respondent did further State that after the Return of the said Vencatachella Pilla from Chengleput he Again came to this Respondent in the Most prefsing and urgent manner begged a further loan of the Sum of forty Pagodas four fanams and thirty Cash which loan this Respondent at first refused to make But the said Defendant with his Mother the Petitioner Perendavy ummal together with some of this Respondents Friends having Called the next day they Urged and entreated the Respondent to advance the said Sum offering thereupon to conclude the Mortgage which had remained so long unfinished Accordingly this Respondent was induced to advance the said Sum of Forty Pagodas four fanams and thirty Cash and which he paid in the Presence of the Petitioner the said Perendavy Ummal and others and this Respondent did further in his said Answer state, that he did thereupon Settle and Adjust the accounts Subsisting between them and having Stated the Sums respectively advanced to the Defendant Vencatachella Pilay and the

Petr.

Petitioner Trevengadia Pilla alias Colunda pilla, that a Ballance appeared thereon due to this Respondent of Pagodas Three hundred and Twenty five for which Sum the said Vencatachella pilla did in the presence of the said Perendavy ummal and theis Cause the Mortgage Bond to be drawn out Copy whereof this Respondent did State was annexed to this Respondents Bill of Complaint and did in their presence and in the Presence of the Subscribing Witnesses thereto duly Execute the same, and this Respondent did in his said Answer further Shew that the Petitioner Trevengadia Pilla being then Absent at Conjeepooram the said Vencatachella Pilla did in the presence of the said Perendavy Ummal also Execute the Bond for his said Brother Solemnly Assuring this Respondent that he was Authorized to do so and that his said Brother Colunda Pilla would ratify and Confirm the same from all which matters this Respondent did thereon insist that it would Evidently appear that there was no Allusive observed in Obtaining the said Mortgage Bond as was unjustly and falsely setforth by the said Petitioners on the Contrary that it was obtained by the means in the said Answer mentioned being on account of monies advanced at different times by this Respondent for the use of the family, and in further confirmation of these Matters this Respondent in his Answer to the said Petition prays leave to setforth that a Considerable time after the said mortgage Bond became due he demanded from the said defendants Payment thereof but being Constantly amused with artful Excuses

And

Excuses and evasive promises he this Respondent was under the
Necessity of applying to Mr. Charles Inglis late one of the attornies
of the said Mayors Court who forthwith Wrote to the Defendants
on the Subject demanding Payment of the amount Principal
and Interest thereon due Whereupon the said Defendant called
upon the Debash of the said Mr. Inglis and faithfully
promised to discharge the same in the Course of a Month and
Without the said Trevengadiah pillah Alias Colunda pillah
attempting to make any objections to the said Bond whatever
and this Respondent did further Set forth that the said
Vencatachella pilla and Colunda pilla did in the Presence
of Two or three Persons pay in discharge of the said Bond
the Sum of forty Pagodas faithfully promising to liquidate
the Remainder in the Course of a Month but having again
disappointed this Respondent he was at last Compelled to
Institute a Suit against them and on the fourth day of June
which was in the year of Christ One thousand Seven hundred and Eighty
nine he did thro his attorney at Law file a Bill of Complaint
against the said defendants But they not appearing to the Summons
of the said Honble Court a Warrant of Contempt did issue thereon by
Vertue of which the Body of the Defendant was attached by the
Sheriff of Fort St George and brought before the said Honble
Court and discharged the Nature of the action being on a mortgage
having precluded this Respondent from the Benefit of
Special Bail, and the Respondent for further Answer to

the

the said Petition did Set forth that on the day following this Transaction
four Persons friends to the Defendants came to this Respondent
and begged he would indulge them with further time for the
Payment of the Money which after much entreaty this Respondent
was induced to Comply with, Accordingly the said Defendants
did on the Eleventh day of the same Month of July in the presence
of the said four Persons cause a Certain written Agreement to be
drawn out wherein they did promise Covenant and agree to
discharge the amount due and Owing upon the said Bond by
the Twenty fifth day of August following together with all Costs
of Suit a true Copy of the Translation of which Marked C this
Respondent did annex to his said Answer and prayed it might be
taken as part and parcel thereof to which said agreement the said
Defendants did of their own free will and Consent duly Set and
Subscribe their names and this Respondent Saith that the time
limited in the said agreement for payment having expired he again
applied to the Defendants But as before he was put off with
evasive Promises Whereupon this Respondent finding that his indulgence
was abused in order to obtain that Justice which he was entitled to,
directed his attorney at Law to procure a Decree as Speedily as
possible, But owing to the Ill State of health of his said
attorney and his Subsequent death this Respondent did not
obtain that Decree until the Sixth day of December as
aforesaid which was in the year of Christ one thousand Seven
hundred and Eighty nine and this Respondent did further

Say

Say that from the Circumstances in his said Answer Set forth it would Clearly appear that the Mortgage Bond upon which this Respondent had brought his action was not obtained by Collusion on the Contrary that it was given by the said Vencatachella pillai to and with the consent of his Mother the said Perendavy Ummal and his Brother the Defendant and Petitioner the said Colenda Pillai and therefore this Respondent in his said Answer did maintain that the said Petitioners Manifested a Most unjust and litigious Spirit in the attempt which they had made to deprive the Respondent of his just right and Title to a Property Decreed to him by the said Mayor's Court, and this Respondent did further insist that the Prayer of the said Petition was totally irrelevant and therefore could not be complied with being Contrary to the Rules and Principles both of Law and of Equity and in direct opposition to the practice of that and of every other Court for this Respondent did maintain that although the said Colenda Pillai did not Subscribe his Name to the said Mortgage Bond, yet it appeared by his own act that he approved of his Brother the Co: Defendant doing so for him particularly by his paying the Sum of forty Pagodas in Conjunction with his said Brother to the dubash of Mr. Inglis as aforementioned previous to the Institution of the Suit in part discharge of the said Bond, and also by the Subsequent agreement which he Voluntarily entered into with his said Brother the Co: Defendant to discharge

discharge the said Bond by the Twenty fifth of August as aforementioned together with all Costs of Suit which two Voluntary acts this Respondent did insist Made him as much accessary to the Executing of the said Bond as if he had in fact with his own hand Subscribed his name thereto and this Respondent did further insist that as the said Colenda Pillay was a Defendant in this Cause and having appeared by his Attorney at Law that he had to have Set forth in an answer to the Bill of Complaint which had been passed against them what he had Suggested in his Petition for by adopting the latter mode he had evaded Answering upon Oath and which he could not with safety to his Conscience have done and this Respondent did further Shew that previous to the passing of the Decree the said Defendants had much Indulgence Shewn them Several Peremptory rules having issued for them to answer this Respondents Bill of Complaint and which they Neglected to do which Circumstance aggravated the irregularity of the Petitioner and Defendant the said Colund Pillai in the attempt which they had made to Innovate upon the practice of a Court of Judicature and this Respondent did lastly insist that as a decree had passed against the said Trevengadaiah Pillai alias Colund Pillai and no appeal made therefrom that the right of the matters in Question was finally and Conclusively determined upon and that the same could not be reversed or altered and this Respondent did in his said answer also insist that the Petitioner Perendavy Ummal was

equally

equally bound by such decree from the Circumstance of the said — Mortgage Bond having been executed by her Eldest Son in her presence and with her express Will desire and Consent and this Respondent Admits that upon these proceedings issue did join and that Witnesses were Examined, as well on the part of this Respondent as on that of the Petitioner and this Respondent saith that as the Petitioner Trevengadiah Pilla alias Colund pilla had Asserted in his Petition to the said Honble Mayors Court that the Mortgage Bond upon which this Respondent had obtained Judgement against him and the Co. Defendant Vencatachella pilla was a Collusive Transaction and that the same was Executed without his knowledge Consent or approbation / all of which this Respondent doth insist ought to have been set forth in answer upon Oath to the — Respondents Bill of Complaint / and as the said Trevengadiah Pillah alias Colundah pilla and the said Petitioner Perrendavy ummal did jointly Assert that they nor either of them or any other Person or Persons for them had ever received the Sum Mentioned in the said Mortgage Bond or any part thereof and this Respondent and as they did also deny being any way privy to the said Bond, This Respondent found it Necessary to give proof of those Sums which he had at different times lent the family and of those transaction which led to the final — adjustment of their accounts and to the execution of the Mortgage Bond upon which this Respondent brought his action from which this

Respondt

Respondent humbly trusts it will clearly appear to this Honble Court that the Assertions Contained in the Petitioners Petition to the said Mayors Court as well as in their appeal to this Honble Court are totally unfounded. —

This Respondent Saith that Adeapah Moodelly was Examined on the part of this Respondent and by his deposition proves that Vencatachella pilla one of the — Defendants in the said Cause applied to the Respondent in the year one thousand Seven hundred and Eighty Six for the loan of Money and this Respondent did at two different times and advance him the Sum of One hundred Pagodas to Secure the Repayment of which he did Mortgage and — deposite the Title Deeds of the House in Question that Afterwards this Respondent having pressed him for the Payment thereof he paid the Sum of Sixty Pagodas in part & Requested that the Bill of Sale might be delivered up for the Purpose of raising the Remainder and which was accordingly done, and this Respondent Saith that the said Witness in his answer to the last Interrogatory Exhibited on the part of this Respondent proves that in the absence of the Defendants Vencatachella pilla and Colunda pilla the person to whom the title deeds of the House had been Mortgaged became Clamourous and threatened to sell the Premises by Public Outcry unless the Money was Immediately paid whereupon the Appellant Perendavy ummal made

the

the matter known to her Sons who in consequence thereof urged and importuned this Respondent in the most pressing manner to discharge the demand and which this Respondent from a wish to Serve the family agreed to and accordingly paid the Sum Required which the Agent of one Office Nineapah Moodelly the person to whom they had been Mortgaged Received and thereupon returned the Title deeds to the said Perendavy — ummal who with her own hands delivered them to this Respondent as a Security for the payment of the money so advanced - and this Respondent for further Answer Says that the aforegoing Evidencies Corroborated by the Testimony of Vadamala Pilla the Agent of the said Office Nineapah Moodelly who clearly proves that one hundred and fifty Pagodas besides Interest was paid by this Respondent to the said Perendavy ummal for the purpose of redeeming the said Bills of Sale That She immediately gave the Money to the said Vadamala pilla and Received the said — Title Deeds which she delivered to this Respondent Promising to pay the Money that had been Lent in the Course of Six Months and this Respondent for further Answer Saith the evidence given by Vencatasawmy Ayer Ramaya Pilla and Kistnah Pilla. doth clearly prove that the appellant Trevengadiah pilla alias Olunda pilla did also Receive from this Respondent and that the Same was part of that for which the Mortgage Bond was

was Executed for in their answer to the fourth Interrogatory Exhibited by this Respondent they thus depose that they know that Trevengadiah pillah alias Olunda Pillay did some time in the Month of October in the year One thousand Seven hundred and Eighty Eight apply to this Respondent for the loan of fifty Pagodas that as an inducement for this Respondent to advance the same he promised that as soon as his Brother — Vencatachella pilla Should come from Chengleput that they would Execute a Joint Agreement or Bond for the Respective Sums — advanced to them and to their Mother, and this Respondent Saith that it is also proved by the evidence of Rungapilla and Sawmy pilla that the Defendant Vencatachella pilla and the Pet.r Perendavy ummal his mother made a fourth application to this Respondent for the Sum of forty Pagodas and that the same was paid to them by this Respondent in the presence of the said — Witnesses that the accounts were thereupon Settled and adjusted and a Ballance Struck Amounting to Pagodas Three hundred and twenty five which ballance included the Respective Sums that had been advanced at different times by this Respondent to the family Namely the said Vencatachella pilla the said — Trevengadiah pilla alias Olunda pilla and their mother the Petitioner Perendavy ummal, and this Respondent Saith it is further proved by the Testimony of the said Witness in their answer to the Sixth Interrogatory that a Mortgage Bond for the Amount was duely Executed in their presence by the Elder Brother Vencatachella Pilla in the presence of his

mother

Mother the said Perendavy Ummal By her desire free will and Consent that the Petitioner Trevengada Pilla alias Colundapilley being then absent, they assured this Respondent that he would ratify and Confirm the act whenever he came from the Country and this Respondent further Saith that by the Evidence of Toppa pilla It doth further appear that the said Vencata-chella pilla and Colunda pilla being Called on to discharge the amount of their said Bond by the Attorney employed by this Respondent that they went to his Durbash one Gajandriah and paid on Account the Sum of forty Pagodas promising to liquidate the Remainder in a Short time which Circumstance having happened prior the Institution of the Suit is a Strong and Convincing proof that the said Trevengadiah Pilla alias Colunda pilla did conceive himself bound by the said Bond, and this Respondent for further answer Saith that Casha Pilla Tolah pilla and Kistnah Pilla prove the Exhibit C. Copy whereof is annexed to this Respondents answer in the said Mayors Court and thereby Clearly Shew that the said agreement was given for a Different purpose than what the Appellants in their said Petition of appeal have inferred it to be for the said toppa pilla particularly deposes that it was given on account of the principal Money due by them and their Mother to the Respondent and that the time for the Repayment of the amount with Interest arising thereon together

together with the Charges that had been incurred in the said Mayors Court was limitted to forty five days And this Respondent Saith that Many of the Assertions Contained in the Appellants Petition to the said Honble Mayors Court as well as in their appeal to this Honble Court doth by their own Shewing appear Manifestly Contradictory for the said Petitioners State that they did not know nor had they the least information of the house and ground in question being Mortgaged Whereas by a Reference to the first part of their said petition the following Words at least the purport thereof is Set forth by them To Wit that the Complainant above Named did on the Fourth day of June Exhibit and file his Bill of Complaint with Copy of a Mortgage Bond Annexed against the Defendants above Named that they appeared thereto, and the usual Rules having passed without Answering the said Bill that a Decree passed against them, and this Respondent Saith it doth further appear by the said Exhibit C. and to which this Respondent humbly prays leave to refer that the Petitioner Trevengadiah Pilla alias Colunda pilla was fully Sensible of an action having been Instituted against him and that the house and Ground in question was mortgaged for in the said agreement the following words are Expressed to wit "As you Weerasawmy pilla having prosecuted us in the Court for the Money we are indebted to you" which matters this Respondent has Set forth in order to Shew to this Honble Court the means that have been taken to misinterpret a plain and Simple

Transaction

Transaction, and to place it in a point of View different from
what it bears — And this Respondent Saith that the
Evidence adduced on the part of the Petitioners is in every respect
weak and futile tending in no Manner to Support their
Assertions but on the Contrary militating highly against them
a strong instance of which this Respondent Saith is Shewn
in and by the fourth Interrogatory Exhibited to Narrain
pilla on the part of the Petitioners wherein it is asked of
them whether the Petitioner did not Complain to them that the
Defendant in combination with the Respondent did not
Mean to deprive them of the Shares of the Family Estate
by entering into a Colluaive Mortgage and whether they had
not often Consulted with them about a Complaint which
they meant to prefer against the Defendant and this
Respondent which Interrogatory instead of being answered
to in the affirmative Receives a direct and uniform
Negative, and this Respondent Saith that the Deposition
given by Teppermal Chitty on the part of the Petitioner
ought to have been Suppressed not only from the Contradictory
matter therein manifest which at once destroys its Credibility
But also from the Interrogatory being particularly leading
and therefore Contrary to that form which a Court of Equity demands.

This Respondent prays leave to observe on the first
part of the said Deposition which is Meant to prove that the
principal Sum due on the Bond in question was paid

and

and that the Interest and Court Charges only Remained due
that if such had been the Case some Voucher or Receipt
Must have been given on the occasion which the said Petr
Trevengadiah Pilla alias Colunda pilla being then a Defendt
to the Bill of Complaint Could have Shewn in an answer
thereto or otherwise the same might have been proved in Evidence
And which would not only have prevented a Decree passing
but might also have procured the dismission of the Bill of
Complaint Yet Could have been Shewn that this Respondent
insisted upon payment of a principal Sum which he had
already Received, and this Respondent further Saith that
part of the evidence of the said Teppermal Chitty which
deposes to an alteration having been made in the Exhibit
or Agreement Marked C. And that such alteration
Consisted in inserting the word principal between the Words
Court Charges and Interest is equally fallacious and
untrue appearing so upon the face of the Agreement
for this Respondent Saith that from the Context thereof
no Such insertion ever Could have been made and which
will appear to be the Case from a reference to the follow-
-ing Words which run literally as follows — "We do hereby
"engage to pay you the Principal and Interest agreeable
"to the Bond together with all the Charges attending
"the Court" — From which Circumstance this Respondent
Saith it doth Clearly appear that the Said Teppermaul

Chitty

Chitty has been detected in Swearing to a falsity by deposing that
the Word Principal was Recently inserted between the Words Co
Charges and Interest, And this Respondent further admits that
upon these proceedings the matter in dispute did on the Two
Sixth day of July last past come on to be argued before the
said Mayors Court when the said Mayors Court were pleased
to Order and did accordingly Order that the said Petition shou
Stand dismissed with Costs as by the said Order of the said ma
Court Copy whereof is to the appellants said Petition of app
annexed relation being thereunto had doth and will more
fully and at large appear and this Respondent denies
that the said Petitioner are aggrieved by the said Order
or that they have any Just Cause to appeal therefrom on the
Contrary this Respondent insist that by doing so they
have evinced a Most litigious disposition and such
as this Respondent humbly trusts will meet the
Reprehension of this Honible Court. —

To the first Reason given on the part of the appellants this
Respondent answereth and saith that he denies that the
said mayors Court in passing the Order which they did
have deviated in any Respect either from the Principles of
Equity or the law of the land. —

To the Second Reason given by the appellants this Respondent
answereth and saith that although he has admitted that
the Mortgage Bond upon which he brought his action

Was

Was not Signed by the Defendant Petitioners yet this Respondent
has Shewn that the same was Executed by the Defendant Vencata-
chella Pilla the Elder Brother for and on behalf of himself and
his Brother the Codefendant Trevengadiah Pilla alias Colanda
Pilla by their express desire free will and Consent on account of
Sums of Money respectively advanced to them, the Causes of
which and the Defendant periods when the loans were made
this Respondent has traced up and Clearly proved by the
Testimony of Many Credible Evidences all of whom were
long and well acquainted with the Appellants and knew
the whole to be a bona fide transaction, And this Respondent
Saith the said Mayors Court were perfectly Regular in the
Decree which they passed and that they could not have
Reversed it upon any Suggestion whatever Without trampling
upon the practice of their Court, and acting Contrary to every
Settled rule and principal of Law, for this Respondent Saith
that after a Decree is made and that fourteen days have
Elapsed without an appeal being made therefrom the same is
final and Conclusive, And this Respondent further Saith
that the Appellant Trevengadiah Pilla alias Colandapilla
has no right to Complain of want of equity for by his own Shewing
it doth appear that the Bill of Complaint was filed against
him, Jointly with Vencatachella pilla in the Month of June
that he entered a regular appearance thereto But that a decree
did not pass till the fifteenth of December following the

Cause

Cause of which this Respondent has already Shewn to have happened partly from the Agreement which he and the said Vencatachella Pilla Executed as aforementioned and which induced this Respondent to Stop proceedings in the Suit for forty five days That afterwards the said Trevengadah Pilla alias Colunda pilla and the said Vencatachella pilla having failed in the payment thereof and this Respondent having in Consequence revived proceedings Several Rules passed for them to answer this Respondents Bill of Complaint and which they having Neglected to do the said Mayors Court were on the said fifteenth day of December pleased to give a Decree in favor of this Respondent as by a true and faithful Copy whereof hereunto annexed for the Inspection of this Honble Court Relation being thereunto had doth and will more fully and at large appear — And this Respondent Saith if the said Colunda pilla had any thing to Suggest or Cause to Shew why he ought not to be Subject to and bound by the said Mortgage Bond that he ought to have set it forth in an Answer upon Oath and therefore having Neglected to do so the only fair Conclusion that can be drawn is that he could not do it with Safety to his Conscience and with regard to the said Perendavey Ummal — This Respondent Saith it hath been

Clearly

Clearly proved that she received part of the Money for which the said Mortgage Bond was given that she was present when her Eldest Son Executed it that he did so by her desire which Ceremony was in every Respect binding upon her even admitting that she was entitled to a Share in the premisses Because it is well known that according to the Custom of the natives of this Place the Signature of a Woman is not Requisite where she has either a Husband or Sons Alive —

To the Last reason adduced by the Appellants This Respondt Saith he admits that his Majestys Courts of Judicature are, and ought to be governed by Evidence and that the said Mayors Court in the present case did Strictly adhere to that rule, and although the said Appellants have made an attempt to prove a forgery yet upon the face of the pleadings it doth evidently appear that the Witness — adduced for that purpose has Sworn to an Untruth, —

For all which reasons and Such others as may be offered at the hearing this Respondent Prays this Honble Court will be pleased to affirm the Order of the said Mayors Court and that the appellants Petn of appeal be dismissed with Exemplary Costs to be paid by the appellant. —

/Signed/ George Chalmers
Solicitor for Respondent

Mayors

Mayors Court
at
Madraspatnam

Tuesday the 15th day of December
Anno Domini 1789 —

Present

William Webb Esqr Mayor
Edward Garrow — Andrew Ross
and John Metford — Aldermen

Between Veerasawmy Pilla of Madras Inhabitant Complainant and Vencatachella pilla and Olundapillah also of the same place Inhabitant Defendts

It Appearing by the Records of this Court that the usual Rules have issued for the Defendants to Answer the Complainants Bill which they have Neglected doing this Court doth therefore think fit to Order and Decree and doth Accordingly Order and Decree that the Defendants Shall pay unto the Complainant the full and Just Sum of three hundred and Seven Pagodas forty fanams and forty Cash Pay 307. 40. 40. / together with all such Interest as now is or Shall hereafter become due thereon untill full Payment is

Mayors Court

is made also all Costs of this Suit. —

A true Copy
/Signed/ G Taylor
Dy Regr

A true Copy
/Signed/ G Chalmer
Solr for Respt

Court of Appeals
Madraspatnam

Saturday the 29th Day of March
Anno Domini 1794

Between Irevengada Pillay alias Colunda Pillay and Perandavy Ummall Appellants and Veerasawmy Pillay 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 Honourable the Mayors Court together with the Order of the said Court given in this Cause on Tuesday the 26 day of July 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 Honourable the Mayors Court do stand Affirmed and that the Appellants Petition be hence Dismissed with Costs —

A true /Signed/ Chas A White Clk

To

Mayors Court
at
Madraspatnam

Tuesday the 15th day of December
Anno Domini 1789. —

Present

William Webb Esqr. Mayor
Edward Garrow — Andrew Ross
and John Metford — Aldermen

Between Veerasawmy Pilla of
Madras Inhabitant Complainant and
Vencatachella pilla and Olendapillah
also of the same place Inhabitants Defendts

It Appearing by the Records of this
Court that the usual Rules have issued for the Defendants
to Answer the Complainants Bill which they have Neglected
doing this Court doth therefore think fit to Order and
Decree and doth Accordingly Order and Decree that the
Defendants Shall pay unto the Complainant the full
and just Sum of three hundred and Seven Pagodas
forty fanams and forty Cash Pay. 307. 40. 40.
together with all such Interest as now is or Shall
hereafter become due thereon untill full Payment

is

is made also all Costs of this Suit. —

Vera
Signed J. Taylor
Dy Regr

A true Copy Signed G. Chalmer
Sol for Respt

Court of Appeals
Madraspatnam

Saturday the 29th Day of March
Anno Domini 1794

Between Srewengada Pillay alias Colunda
Pillay and Penandavy Ummall Appellants and
Veerasawmy Pillay Respondent —

This Cause coming on this day to be heard and debated before
this Court by the Attorneys on both sides upon hearing the Petition of Appeal
and Answer and the several Exhibits of the Honourable the Mayors Court
together with the Order of the said Court given in this Cause on Tuesday
the 26 day of July Anno Domini 1791 upon due Consideration had
of the matters therein severally Contained and of the Pleadings and
Arguments used by the Attorneys on both sides This Court doth think fit
to Order and Decree and doth Accordingly order and Decree that
the said Order of the Honourable the Mayors Court do stand Affirmed
and that the Appellants Petition be hence Dismissed with Costs —

Vera
Signed Chas A White Clk

To

To the Honble Major General William Medows,
President in Council
In the Court of Appeals } Fort St George,
at Madraspatnam —

Between, Butta Saib Bibby Petr
and Agavally Sature is Respondent,
In the Cause
Agavally Sature is Complainant and Shake Barry
Defendant. —

The humble Petition and appeal of Butta Saib
Bibby —

Humbly Sheweth

That the above Named Complainant did on the
Twenty fourth day of January which was in the year of
our Lord One thousand Seven hundred and Eighty Six
Exhibit and file a Bill of Complaint in the Honble the
Mayors Court at Madraspatnam against the above named
Defendant for the Recovery of four hundred and Seventy five
Pagodas Current Money of Madras Charged to be due and
Owing to him the said Complainant to which Bill of
Complaint the said Defendant did enter a Voluntary —
appearance and having Acknowledged the Justness of the
Complainants demand the said Mayors Court were pleased
on

Filed in my Office
the 15th August 1791
Chas N. White
Clk

the same day to pass a Decree for the Sum so Sued for that —
fourteen days having Elapsed without the said Defendant —
Satisfying the said Decree or Appealing therefrom the said Mayors
Court were on the Seventh day of February in the said year pleased
to grant and issue a Writ of Execution against the Goods Chattles
and Effects of the said Defendant directed to the Sheriff of
Fort St George Town of Madraspatnam and districts thereof
Requiring and Commanding him to levy therefrom the Amount
of the Complainants said demand by Vertue of which Writ of
Execution the said Sheriff did seize upon a Certain House and
Ground Situated lying and being in Moottal Pettah and
Modaculey Street under a Suggestion that a Moiety
thereof was the property of the Defendant by Vertue of a
Certain Agreement said to be Executed by your Petitioner
that your Petitioner finding her Property thus invaded, in
Order to Obtain that relief which she Conceived herself so justly
entitled to, and to prevent her Property being Sold in Execution
did address the said Honble Mayors Court in a Petition
therein Setting forth that in the year of Christ One thousand
Seven hundred and Seventy three she purchased the House
and Ground in Question with her own proper Monies from
one Modacally Janglaboy for the Sum of One hundred and
Eighty five Pagodas and that she had Accordingly Obtained
a Regular Choultry Bill of Sale in her Name a Copy of
which

which is annexed to her said Petition and the Original afterwards delivered into Court to which said Choultry Bill of Sale or title deeds your Petitioner humbly Craves leave to refer and prays it may be taken as part and parcel of the her Petition of appeal and your Petitioner further — Sheweth that she did in her Petition to the said Honble the Mayors Court set forth that she had remained in Quiet and Peaceable possession of the premisses without let Hindrance or Molestation from any one from that period when she made the Purchase to the time they were Seized in Execution, and your Petr. did thereupon insist that if the Defendant the said Shake Burry or any other Person was in Possession of any agreement with any Mark or Signature — purporting to be the Mark or Signature of your Petr. that the same was forged and fabricated either by the said Shake Burry or by some other person that he had procured to do so and your Petitioner by way of Collateral Testimony and in Order to Shew that the said Shake Burry did not Conceive himself entitled to Claim any part of the said House and Ground set forth in her said Petition that being desirous to dispose of the Premises She Caused an advertisement to be affixed on the Door of the said House intimating the Sale thereof which —

Advertisement

advertisement was up for the Space of Thirty days when agreeably thereto the Premises were knocked down to one Meya Cawn for the Sum of Five hundred and Twelve Pagodas But that Soon after this a Bill of Complaint was filed Against your Petitioner in her Absence by Virtue of which the Premisses in Question were Sequestered and which Occasioned the said Meya Cawn to refuse to Conclude the Bargain he had Made And your Petitioner further Sheweth that all these Matters were fully known to the said Shake Burry who is your Petitioners Brother and Altho he was present when the Premisses were Sold yet he did not attempt to Stop him and which your Petitioner concluded he would have done had he Conceived that he had the Most distant Claim thereto and your Petitioner did further in her said Petition remark that the said Defendant had in and by the Bond upon which the action was brought pretended to Mortgage the Moety of the House to the said Agavelly Sature the Complainant for the Sum of five hundred and Twelve Pagodas — Whereas the Whole Value of the Premisses by the Evidence which had been adduced did not much Exceed that Sum and thereupon your Petr. did and Now does Conclude the Whole matter to be a Nefarious and Collusive Transaction Because it cannot be Supposed with any Decree of Reason that the Complainant

Would

Would lend so much Money upon Such Insufficient Security and the more Especially as he appears by his own Shewing to have known that there was a Joint owner whose Consent he had neither applied for or Obtained and your Petitioner Sheweth that she did thereupon pray the said Honble Mayors Court that the Writ of Execution might be Superseded as far as it Related to the Seizure of the Premises in Question and that the Sheriffs Seals might be taken therefrom to which Petition your Petitioner Sheweth the Complainant the said Agavally Satur became Respondent and on the first day of March in the said year of our Lord one Thousand Seven hundred and Eighty Six filed an Answer, therein Setting forth that the Original Writing of the Twenty Seventh of February One thousand Seven hundred and Seventy Six under the Sign and Signature of your Petitioner, a true Copy of which is to the said Answer Annexed was the act and deed of your Petitioner and by her given to the Defendant Shabel Burry as an Instrument Setting forth his Pretensions to a Moiety of the House and Ground which she had purchased from the produce of the Estate and Effects of their deceased Mother, and which Estate and effects fell into her hands upon the decease of their said Mother which happened in the Absence of the Defendant who was then on a Voyage to Sea, that upon his Return he made enquiry about the property and found among other matters that your Petitioner had with part of the Effects purchased the House and Ground in Question and procured a Bill of Sale in her own Name, and the Respondent in his said Answer did further Set forth that the parties came to a proper understanding and that your Petitioner in Order to Recognize his right to a Moiety of the Premises gave him the Defendant a declaration under her Signature to the Purport and Effect of the Writing to the said Answer annexed Which Writing the said Respondent declared had been Assigned over to him by way of Mortgage for the Repayment of what he owed him; and your Petitioner Sheweth that on these proceedings Issue joined and Rules passed for the Examination of Witnesses when your Petitioner clearly proved by the Testimony of Several Witnesses that the House and Ground in Question Never was, nor Could have been purchased from or with the Estate and Effects of your Petitioner and the Defendants Mother because their said Mother never had any property of the kind, having lived as she died in poor and indigent Circumstances your Petitioner Sheweth that Mustapha Saib who knew your Petitioner from her infancy deposed that in the year One thousand Seven hundred and Sixty Six She lived at Arcot with her Mother who was in the poorest Circumstances that your Petitioner left that place and came to this Presidency where for some time She maintained herself

herself by making Matts That she afterwards lived with Colonel Call of the Engineers from whose Liberality She was enabled to Purchase the very House in question, and the Said Mustapah Saib did further prove that your Petr. Mother left arcott and went to Reside at Trichinopoly where she died in very Poor and Indigent Circumstances about Twenty years ago which evidence is Corroborated by the Testimony of Abdul Gunney and Imman Saib, who depose to the said Effects fully and Clearly establishing the Great Point in Issue Namely that the House and Ground in Question never was nor could have been purchased from the Effects of their Mother, She having possessed none but with the sole property of your Petitioner: Conceiving in a Similar Manner that the agreement annexed to the Respondents answer is a forged and fictitious paper And your Petitioner further Sheweth that it was proved by the Testimony of other Evidences in a very full and Complete Manner that she had remained in Quiet and peaceable possession of the Premises were since she had made the Purchase that further the Defendant was present when the said House and Ground was Sold to Meya Cawn, and that he made no kind of Objections thereto and your Petitioner further Sheweth that the Collusion attending this Transaction doth Strongly appear from the Exhibit or agreement to the Respondent answer annexed purporting to be a true and faithfull Copy from the Original Malabar Writing by the Sworn Interpreter which said Translation doth place your Petrs Name at full length Whereas your Petitioner doth Confess herself to be (as the fact really is) an illeterate Person, who Neither can Read or Write and therefore under the Necessity on Such Occasion of putting her mark which Circumstance Appearing to be a matter of much Import your Petitioner judged it Necessary to Examine into and prove and which she Accordingly did as by the Testimonies given by Sultan Saib, Meer Saib, and Mahaloom, Relation being thereunto had, doth and will more fully And at large appear And your Petitioner further Sheweth that the Circumstance of your Petitioner being unable to Write, Seems to have come to the Knowledge of the Respondent after his Answer to your Petitioners Petition was filed, and he plainly Saw that this very Matter, Would Ruin the whole of the Project he had formed, in Order therefore to Abviate a Matter so apparently fatal to his views it doth evidently appear that an Original different from that of the Copy which is annexed to the Respondents Answer, was Introduced to the Examiners office and to which a Witness has been Examined and who has deposed Contrary to the Agreement upon which the Respondent has built his Claim to a Moiety of the Premises, a Copy of which as aforementioned is to the Respondents answer

annexed

Annexed and your Petitioner further Sheweth that the Evidence on each side having been Concluded publication passed when the Respondent the said Agavelly Satur departed this life Whereby the said Cause became and Stood Abated that Sarguis Sature of Madras Merchant having Obtained Letters of Administration to his Estate and Effects the same was received by him in Consequence of which your Petitioner was Served with a Summon to appear and Shew Cause why the said Matter of Petition and Answer Should not Stand Revived, and be in the same Right and Condition as it was at the time of its Abatement But your Petitioner being from her Extreme Poverty unable to Employ an attorney the Person who had therefore acted for her having departed from this Country she did Petition the said mayors Court to be admitted in forma Pauperis and to have an Attorney assigned to her with the Prayer of which Petition the Said Honble Mayors Court were pleased to Comply as by the Order of the said Mayors Court passed thereon Copy whereof is hereunto Annexed Relation being thereunto had doth and will more fully and at large Appear and your Petitioner further Sheweth that her said Cause was set down for hearing and on Tuesday the Second day of August came on to be heard when the said Mayors Court were pleased to Order that your Petitioners Petition Should Stand dismissed as will more fully and at large Appear by an Extract of the said Order — a hereunto

hereunto Annexed for the Inspection of this Honble Court. to which your Petitioner humbly Craves leave to refer and prays that it may be taken and admitted as part and parcel of this your Petitioners Petition of Appeal from which said Order of the said Mayors Court your Petitioner doth appeal to this Honble Court as She Conceives the same to be Erroneous and that she is much aggrieved thereby in the following among other Reasons—

First ..... Because your Petitioner has fully and Clearly prove that the House and Ground Seized upon at the Instance of the Payment Agavelly Satur was the Sole property of your Petitioner purchased with her own Monies, and that She has further Shewn a Clear title thereto by Annexing to her Petn and afterwards delivering into Court the Choultry Bill of Sale of the Premisses, —

Secondly ..... Because the Malabar Writing purporting to be the Original of an agreement Copy of the translation of which is annexed to the Respondents Answer and upon which he builds his Claim to a Moiety of the premisses — Bears on the face of it as well as by the Respondents own Shewing the Strongest Marks of a Forgery for the agreement which is annexed to the Respondents Answer has your Petitioners Name in full, and is Attested by the Sworn Interpreter of the Mayors Court to be a true and faithfull Copy from the Original Whereas the Malabar Writing introduced by the Respondent has only the Mark of

your

your Petitioner which Circumstance doth manifestly shew the Collusion and the Means that have been made use of to Wrong your Petitioner as it cannot be Supposed that the Sworn Interpreter Could have Made so egregious a Mistake as to put your Petitioners Name in full if a Mark had only been placed thereunto.

Thirdly — Because if the transaction had been so as the Respondent has inferred it to be and that the House and Ground in Question had been actually purchased with the Effects of their deceased Mother in that Case the fact might easily have been proved by the very Witnesses whom the Respondent produced to prove the Agreement those Witnesses having deposed that they were acquainted with the Petitioner and her Brother Shake Beury and therefore as Such proof has not been adduced the natural and only Conclusion is that the Witnesses to the said Agreement were Suborned for the Occasion of proving this fabricated Agreement.

Fourthly — Because if your Petitioner had ever been led to recognize a right in the said Shake Beury to a Moiety of the Premisses founded on the Circumstance of the purchase having been made with the property of their deceased Mother that in that Case the said Shake Beury would Certainly have required a Country Bill of Sale to have been made out in both their Names or would have taken Some better Security than the

Agreement

agreement upon which he grounds his Claim to a Moiety thereof Which is written in Malabars a Language totally unknown to your Petitioner as well as to all the other parties Concerned who are of the Moorish Cast.

Lastly — All these Circumstances Operating forcibly upon the said Mayors Court it occasioned two of the Judges thereof to enter a Strong dissent to the Resolution made as by an Extract therefrom hereunto annexed for the Inspection of this Honble Court relation being thereunto had doth and will more fully and at large appear.

For all which Reasons and Such others as may adduced at the Hearing your Petitioner prays that this Honble Court will be pleased to Reverse the said Order of the said Mayors Court and grant her such Relief in the premisses as in their Wisdom may seem Meet

[Signed] George Chalmers
Solicitor for Appellant
In Forma pauperis

Extract.

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 2d. day of August Anno Domini 1791.

Present,

Josias DuPre Porcher Esqr. Mayor,
James Call, Andrew Ross and
James Daly — Aldermen,

Sarquis Sature Administrator to the Estate and Effects of Agavally Sature deceased, —

Shake Burry,

Petition of Batta Saib Beeby with Copy of one Exhibit annexed Read. —

Answer with Copy of a Declaration from the Original in the Malabar Language annexed Read. —

Interrogatories on the part of the Petitioner with one Exhibit Marked A annexed Read. —

Four Depositions taken thereunto Read the Witness No. 4. did not appear for Examination, —

Additional Interrogatories on the part of the Petitioner Read, —

Three Deposition taken thereunto Read,

Additional Interrogatories on the part of the Pet.r with two Exhibits Marked B. and C. Annexed Read. —

Five depositions taken thereunto Read,

Interrogatories on the part of the Respondent With one Exhibit Marked A Annexed Read,

Four Depositions taken thereunto three whereof were Read, the Witness No. 2. not having Signed his Deposition and the Witness No 3 did not appear for Examination, —

Additional Interrogatories on the part of the Respondent Read, —

Three Depositions taken thereunto Read, —

Additional Interrogatories on the part of the Respondent Read, —

One Deposition taken thereunto Read, —

Additional Interrogatories on the part of the Respondent Read,

One Deposition taken thereunto Read,

Bill of Revivor of Sarquis Sature Read, —

The Matter in dispute between the — Petitioner Butta Saib Beeby and the Respondent Sarquis Sature Administrator to the Estate and Effects of Agavally Sature deceased Coming on to be Argued and determined this day in the Presence of the attornies on both Sides On Hearing the Arguments Made use of by the attorney's and on due Consideration had thereon This Court doth think fit to Order and doth accordingly Order that the Petitioners Petition do stand dismissed

A True Extract

/Signed/ G. Taylor
Regr.

a true Copy

/Signed/ George Chalmer
Solicitor for Appellant —
In forma Pauperis. —

Between

Excl.

on

Sa

Between Agavelly Sature of Madras Merchant Complainant and Shake Bury of the Same place Inhabitant Defendant in the matter in dispute Wherein the said Butta Said Baby is Petitioner and the said Agavally Sature Respondent — And Where the said Butta Said Beeby is appellant and Sarguis Sature is Respondent. —

Butta Said Beeby the above Named appellant Maketh Oath and Saith that she is not Worth the Sum of Twelve Pagodas and a half in all the World the Matter in this Cause only excepted and therefore in the same Condition With regard to poverty as when she was admitted in forma Pauperis in the Honble the Mayors Court

The Mark of Butta Said Baby

Sworn to before me In Fort St George this 29th August 1790 the Contents hereof having been first explained to Shake Mahodeen by Rangenadom in the Malabar Language and by him to the Deponent in the Moorish Language —

/Signed/ Ja. Call
Senr Alderman —

Extract

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 11th day of December Anno Domini 1790 —

Present,

James Call Esqre Mayor
Andrew Ross John Mitford and
James Amos Aldermen,

Sarguis Sature admtor of Agavelly Sature Deceased,

vers,

Shake Bury,

Petition of Butta Said Bibby with an affidavit Sworn to in Court this day praying to be admitted to Sue in Forma Pauperis and that an Attorney may be Ordered to act for her Read filed this day

Ordered that Mr George Chalmer do act as attorney for the Petitioner and that the Proceedings in this matter do stand Revived. —

A true Extract

/Signed/ George Taylor Regr

True Copy
/signed/ George Chalmer
Solr for appellant. —

Extract

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 2d. day of August Anno Domini 1791.

Present,

Josias DuPre Porcher Esqr. Mayor.

James Call, Andrew Ross and Jas. Daly

Aldermen,

Sarguis Sature Admtor to the Estate and Effects of Agavelly Sature deceased,

Vers.

Shake Burry—

Messrs. Aldermen Call and Ross Dissent to the Resolution of the Court because upon the face of the Whole Business and the Most Material Circumstances which belong to it although it is not easy to discover from such Contradictory Evidence on which side the truth lies / the strong presumption is that it Could not be eligible for the Complainant Agavelly Sature to lend his Money upon such a Security without obtaining the Consent of the Joint Owners of the Premises and that his Neglecting so to do, and entering upon such a Contest in Such a Cause Shews so much of folly if not of depravity as to render his Claim abortive.—

A True Extract

/signed/ G. Taylor Regr.

a true Copy

/signed/ George Chalmer

Solr for Appellant—

To

To the Honble Major General Wm. Medows

President in Council

In the Court of Appeals

Fort St George,

Between Butta Saib Beeby Petitioner

and Agavelly Sature Respondent,

In the Cause

Aggavelly Sature vers Shake Burry

The Answer of Sarguis Sature Administrator of Agavelly Sature deceased to the Petition and appeal of Butta Saib Beeby—

Filed in my Office the 4th Octr. 1791

Chas N. White Clk

This Respondent admits that the above named Complainant did on the Twenty fourth day of January which was in the year of Our Lord one thousand Seven hundred and Eighty Six Exhibit and file a Bill of Complaint in the Mayors Court at Madraspatnam against the above named Defendant for the Recovery of Four hundred and Seventy five Pagodas Current Money of Madras Charged to be due and Owing to him the said Complainant that the said Defendant did Acknowledge the Justness of the debt and that the said Mayors Court did grant a Decree for the Amount of the Sum sued for that fourteen days having elapsed without the said Defendant satisfying the same an Execution did on the Seventh day of February in the said year issue against the Goods Chattels and Effects of the said

Defdt

Defendant directed to the Sheriff of Fort St George Town of Madrasapatnam and the districts thereof Requiring and Commanding him to levy therefrom the amount of the Complainants said demand that by Virtue thereof the said Sheriff did Seize upon a certain House and Ground as in the Petitioners said Petition of appeal the same is Set forth and described a Moiety thereof being the property of the Defendant under and by Virtue of a certain Agreement to him Executed by the Petitioner and this Respondent Admits that the Petitioner did file a Petition in the said Mayors Court and that she might have therein stated and thereupon prayed in manner and form as in her said Petition of appeal the same is Set forth and this Respondent Admits that to the Petitioners said Petition the said Agavelly Sature did on the first day of March in the said year of our Lord One thousand Seven hundred and Eighty Six exhibit and file an answer in the said Mayors Court and therein state the Several matters and things as in the Petitioners said Petition of appeal the same is set forth and this Respondent admits that thereupon Issue joined and Rules did pass for the examination of Witnesses and that Witnesses were examined Accordingly but this Respondent does not admit that the Petitioner did prove by Several Witnesses as pretended in her said Petition that the House and Ground in question was purchased with the estate

and Effects of her Mother for the Reasons in her said Petition Shewn nor is such Matter pertinent or relevant to the Matter in question and this Respondent Says that the depositions of Mustapha Saib Abdul Gunney and Iman Saib upon which the Petitioner so much relies are Vague and indefinite and Short from establishing the grand point in Issue as asserted by the Petitioner are in fact irrelevant and impertinent and this Respondent says that the Matter properly at Issue is the deed of Gift or conveyance of one Moiety or half part of certain premises in the Petitioners said Petition of Appeal is set forth and which this Respondent says is in proof was duly executed by the Petitioner and not forged as by her the same is pretended and this Respondent doth deny all and every Collusion or appearance of collusion as by the petitioner is asserted and that the Argument she makes use of to support such her Assertion as drawn from the said deed of Gift or conveyance is puerile and absurd and without any foundation in truth and this Respondent Says it does not appear in and by his said Answer to the Petitioners said petition filed in the Mayors Court as by her the same is asserted that the exhibit to this Respondents said Answer annexed is a true and faithfull Copy from the Original Malabar Language for this Respondent says that there is no Malabar Writing annexed to his said Answer

and

And further this Respondent says that the translation of the said deed of Gift or Conveyance whereof a Copy is annexed to his said answer does not very in fact but in very trifling matter of form only from the Original for this Respondent says being so advised that any mark which an illiterate person is accustomed to affix to the execution of Writings of any description must signify the name of the Subscribing party although the same is not expressed in alphabetical Characters and therefore whether the translation concluded with the Words /Signed/ the mark of the Subscribing party or /Signed/ the name of the Subscribing party is of no Consequence - This Respondent admits that the Petitioner did examine Witnesses to prove she was an illiterate person and that in executing writings She did affix a mark which mark they shew to be thus O and which corresponds exactly with the mark to the said deed affixed and therefore instead of invalidating the same as meant and intended so to do Supports and establishes it and effectually does away the insinuation in the Petitioners said Petition Set forth that to this Respondent did introduce into the Examiners office an Original different to the Copy annexed to his said answer nor is there a Copy of any Malabar Writing to this Respondents said answer annexed and this Respondent further

answering

Answering says that the depositions of the Witnesses on his part examined do clearly prove and establish the Several Matters and things pertinent or relevant to the matter in question as by reference thereunto had may appear and this Respondent further answering says he admits that the Petitioner did file a Petition in the said Mayors Court to be admitted as a Pauper and did also and at the same time file the usual affidavit and that the said Mayors Court did thereon admit her accordingly to prosecute the matter in Contents in forma Pauperies and this Respondent says that such the Conduct of the Petitioner was and is Contrary to equity and to the Law and if it should so appear to this Honble Court then this Respondent says it will further appear that the Petitioner has attempted to defraud him this Respondent in the premises and that to give a color thereto and the more effectually to support such inequitious practice the Petitioner has Sworn to that which is not the fact and thereupon this Respondent says that it appears by the pleadings on the part of the Petitioner Set forth that although she had sold the premises in Question yet that on account of the Claims of the Defendant in the Original Cause the purchaser did refuse to stand to his agreement

it

It further appears by the said Pleadings on the part of the Petitioner that the said premises were Valued at the Sum of Five hundred Pagodas and it further appears by the pleadings on both Sides that all that has ever been Claimed by this Respondent as the property of the said Defendant in the Original Cause is one half part of the Said premisses. so that it is evident the Petitioner — Possesses the other half part valued according to her own shewing at two hundred and fifty Pagodas and as the same is now in the possession of the Petitioner she has Sworn to a falshood in affirming upon Oath that she is not worth the Sum of five pounds in all the World her just debts being first paid and his wearing Apparel and the — Matters in question in the Cause only excepted for the said one half part of the said premisses in possession of the Petitioner as aforesaid is not a part of the matter in Contest but wholly distinct therefrom this Respondent for further Answer to the Petitioners said Petition says that he admits that the said Matter of Petition did come on to be heard before the said Mayors Court on Tuesday the Second day of August last past and that the Mayors Court was to Order that the Petitioners said Petition should stand dismissed and this Respondent Says that the Petitioner is in no wise aggrieved by

by the said Order of the said Mayors Court and that the Reasons which she has urged as Cause of appeal therefrom to this Honble Court are either impertinent irrelevant or absurd to the first of which this Respondent says —

That this Respondent has never disputed that the Bill of Sale of the premisses was made out in the Name of the Petitioner on the Contrary he has admitted the same and assigned his Reasons therefor by way of explaining the Cause thereof nor was it Necessary for this Respondent to take any further Notice of the said Bill of Sale than he has done as the same is in fact impertinent to the matter in issue further than Shewing that the Petr. Could legally grant the said Deed of Gift or Conveyance of one Moiety or half part of the said premisses by having the said Bill of Sale in her Name for the real matter in issue is whether the Petitioner did or did not execute a deed of Gift or Conveyance of one half part or moiety of the said — premisses to the Defendant in the Original Cause named which the Petitioner has artfully but Vainely endeavoured to do away in and by her Second Reason for appeal to which this Respondent Says in confutation thereof. —

That the Exhibit to this Respondents said Answer Annexed is a Translation from the Original Malabar

Wording

Writing and not certified to be a true Copy but a true translation as near as could be from the Original and this Respondent says it appears on the face of the said Instrument to be thus — Subscribed "the Mark O: of Feetty Beeby which is the — Petitioners name at full length so that the Translation in Certifying that it was signed Fully Beeby made an Omission only but otherwise was correct yet here the petitioner would insinuate that the Translation is right and that the Original is wrong because it is impossible the Sworn Interpreter could have made a mistake an argument which this Respondent believes has been used for the first time and says that it is a contradiction in terms and this Respondent says that the Petitioner regarding the Copy of the said Translation annexed to this Respondents said answer and not the Original thereof has examined two Witnesses to prove that she could not Write her Name but that in executing papers she made a certain mark which mark is found to correspond exactly with the Mark affixed to the said Deed of Gift or Conveyance and therefore instead of disproving absolutely establishes the same beyond a doubt and thereupon and for asmuch as this — Respondent has proved the due execution of the said deed of Gift or Conveyance this Respondent says that the calumniating Suggestion of the Petitioner that the said deed is a forgery must militate against herself so far as Such

Suggestion

Suggestion must have been meant and intended to give a color to and support her own inequitious conduct and as the said Deed of Gift or Conveyance is the principal and in fact only point in issue this Respondent does rely thereon, —

And this Respondent in answer to the Petitioners third Reason for appeal says — That the same is foreign and impertinent to the matter in question and for asmuch as it contains a Charge of a Most heinous Nature that of the subornation of perjury and as such Charge is not warranted by the proceedings before this Honble Court this Respondent humbly submits such Scandalous Matter to the serious consideration of this Honble Court. — And this Respondent in Answer to the Petitioners fourth Reason for appeal says that the Same is irrelevant and contains Nothing more than — impertinent conclusion drawn from false premises. —

And to the Petitioners last Reason for appeal this Respondent says he admits that the circumstances by her stated in her said Petition of appeal did operate forcibly upon the said Mayors Court and that under the influence thereof the said Mayors Court did think fit to dismiss the said Petition of the Petitioner therein filed as aforesaid and this Respondent says that the said Mayors Court having so determined the dissent of

two

two of the aldermen of the said Mayors Court was mere matter of
opinion and the same was entered on the Records Subsequent
to the passing of the said Order and as this Respondent is
advised that it is contrary to the practice of this Honble
Court to receive any matter that was not at issue in the
Court below and read at the hearing of the Cause this Respondent
humbly Submits that the Petitioner in exhibiting the dissent
of the two dissenting aldermen is highly irregular and this
Respondent says that were such dissent regular and that
the same was admitted by this Honble Court — yet that the
Same contains is one Reason in Opposition to the Right
of this Respondent in the premisses before the said
Mayors Court for the said dissent does not state any
Legal or equitable Objection to the said Deed of Gift or
conveyance or to any part of the Testimony brought forward
by this Respondent but shews a presumption only that
this Respondents Intestate the Complainant in the Original
Cause lent his Money upon an insufficient Security —
Which as an indication of his folly should cooperate
as to render his Claim abortive. ——

For all which Reasons and
Such others as may be offered at
the Hearing this Respondent
prays that the Order of the said
mayors

mayors Court may be affirmed and
that the Petitioners said Petitions
of appeal be dismissed. —

/Signed/ James Stuart Hall
for himself &
John Hamilton } Sol^rs for
Respond^t.

Court of

Court of Appeals
at
Madraspatnam } for Saturday the 29th day of March
Anno Domini 1794

Between Butta Saib Beeby
appellant and Sarguis Sature adminis-
-strator to the Estate and Effects of Agavelly
Sature deceased Respondent —

This Cause coming on this day to be heard and
debated before this Court by the Attorneys on both sides upon
hearing the Petition of appeal 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 2d day of
August Anno Domini 1791 Upon due consideration had of
the matters therein Severally Contained and of the Pleadings
and Arguments used by the Attorneys on both sides This Court
doth think fit to Order and Decree that the said Order of the
Honble the Mayors Court do stand affirmed and that the
appellants Petition be hence dismissed —

By the Court
/Signed/ Chas. S. White
Clk

Court of Appeals
at
Madraspatnam } for Saturday the 29th day of March
Anno Domini 1794,

Between Butta Saib Beeby
appellant and Sargeis Sature adminis-
=strator to the Estate and Effects of Agavelly
Sature deceased Respondent —

This Cause coming on this day to be heard and
debated before this Court by the Attornies on both sides upon
hearing the Petition of appeal and answer and the several
Exhibits of the Honble the Mayors Court together with the Order
of the said Court given in this Cause on Tuesday the 2d day of
August 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 that the said Order of the
Honble the Mayors Court do stand affirmed and that the
Appellants Petition be hence dismissed —

Hur

/Signed/ Chas. L. S. White
Clk