was not of an age Capable of building the House of paying for and Providing the Materials and says that the Defendant meaning Kistna Doss Verjee Doss did pay for the same Says that the Defendant did build the said House for the Expiress purpose of dwelling in and Carrying on his business and that such business as Long as it Continued was Constantly Carried on in the said House and further saith that the said Verjee Doss Gocull Doss was brought up from a Boy under the Defendant in the business and Considered for a long time therein no otherwise than one of the Servants Employed on conduc= =ting the same To the fifth Objection of the Appellant this Respondent Replies that he was well warranted in his Replication in Asserting that there was such proof Extant of the Signature of Verjee Doss Gocull Doss for Kistna Doss Verjee Doss in manner as by his said Replication is Set forth but this Respondent owing Probably to such Assertion was Deprived of the benefit of such Evidence at the Trial of this Cause by the timely Precaution of the Defendant on this information to procure the same to be kept back and this Respondent admits he did in and by his said Replication further state that after the return of the said C= Kistna Doss Verjee Doss to Madras that he the said Kistna Doss Verjee Doss did cause an Application to be made to this Respondent to Accept of Eight Thousand Pagodas of the Nabobs new Consolidated Bonds in lieu of the Debt in Question and that this was the fact is very Deducible and indeed in proof from the Deposition of the said hereon before Mentioned Witness Mr Miguel Johannes who states to the Last Interrogatory of this Respondents

That the intent and meaning of the said Kistna Doss applying to him the Witness for the Delivery of the part of the aforesaid Bond meaning as will appear on full Reference to the proceeding part of this Witnesses Deposition the New Consolidated Bond of the Nabob Mortgaged to him the Witness by Verjee Doss Gocull Doss as agent of the Defendant Kistna Doss Verjee Doss and during his absence from Madras was for the purpose of settling some accounts with the said Saula Coob Chundoo To the further charge taken in the said Appellants fifth point of objection namely that this Respondent had in his Pleadings further stated that he would in due time produce an Extract of a Letter Written by the Defendant himself in his own hand Writing and by him the Defendant Transmitted to Gopaul Doss his Gomastah at Madras about two years before and in which Extract the said Defendant Expressly speaks of the business of the Sowcars Shop as his own Concern this Respondent Replies that he has only to attribute his failure in producing such Evidence if as such it Could be received to the Artifices of the said Defendant Kistna Doss Verjee Doss To the Sixth objection of the Appellant This Respondent answering saith he does not know but that it may be true as the Appellants Witness Venkatady Davy has Deposed to wit that he the Witness was in the service of Verjee Doss in the Capacity of Collector of his outstanding Debts for a term of fifteen years and that during such Period his master might have Carried on Extensive dealings at the Durbar of his Highness the Nabob and in Different parts of India and that as

Gopaul

Gopaul Doss might by some sufficient authority of his said master during his absence from Madras have Mortgaged the Banking House to William Dewcock for the use of Verjee Doss and afterwards have redeemed such Mortgage from other Monies of his said Masters or whether the said Verjee Doss on his return to Madras Mortgaged the same House and Premises to Thinniah Cilay the same having been an Established Bank from the time of building the same But this Respondent utterly denies that the said Veneatasha Davy the Appellants Witness ever knew the Defendant in this Cause in the Service of Verjee Doss as he says he did know him and that too from his first Entering into such Service for this Respondent Saith that he is well warranted from his proofs already setforth and still more compleatly so from the proofs in reserve and hereafter fully setforth in contradicting such Assertion of the Witness of the Defendant in this Cause having Ever been in the Service of Verjee Doss But this Respondents admits that the said Defendant whom the Witness stiles Kistna Doss instead of Kistna Doss Verjee Doss did Carry on a Sole Trade in which the Verjee Doss named by the Witness had no further Concern or Interest with him the Defendant save as his Gomastah or Head Clerke and with whom he was as is fully in Proof Established / no otherwise Connected or responsible This Respondent does not therefore for the several reasons in proof believe that this Witness swears correctly when he

Deposes

Deposes that Verjee Doss never acted as Gomastah to Kistna Doss the Defendant in this Cause and that the said Verjee Doss did never shew his Books of Accounts of the Banking House or Deliver in Papers to Kistna Doss the said Defendant when he Occasionally Came to Madras nor ask his Consent on making Loans or Advances for the Contrary is in direct proof as will appear in the Deposition of Lakshmun Doss a Respectable Merchant of Madras who deposes That he knows Kistna Doss Verjee Doss the Defendant in this Cause for a space of Thirty years and that he has also known Verjee Doss Gowill Doss whom he stiles to have been the Gomastah of the said Defendant Kistna Doss Verjee Doss but late Deceased for about Twenty six years and says that such Gomastah did use to sign such Bonds Notes and other Vouchers and Securities for Money as were required in the Name and upon account of the said Defendant That such Bonds Notes and other Vouchers so made by the said Gomastah Verjee Doss Gowildoss were constantly taken up and Discharged from the funds of the Defendant and that the said Verjee Doss Gowill dass had not any interest or Property whatever therein for that the said Gomastah did act only in such Transactions as an agent for the Defendant This Witness goes on and states that the said Verjee Doss Gowill Doss did Continue to act for the Defendant in such Capacity of Gomastah for a Term of about

Twenty

Twenty years and that during all such time he the Gomastahs did Constantly pay and receive in the name of the Defendant and sign all Notes Deeds Seeps and other Securities in his Name and also did recieve all such Bonds Notes Deeds Seeps and other Securities payable in the Name of the Defendant and adds that this Manner of the Defendants Transacting his busines by the said Gomastahs was publick and Notorious and Publickly and Notoriously Considered by all having dealings with that House that the said Verjee Doss Gocull Doss had full and Sufficient authority Either Expressed or Implied and Confirmed by long practice to Sign Such Notes Bonds &c in manner as he was accustomed to sign in the Name of the Defendant and he swears that the Defendant was thereby bound as much as if he had himself signed such Papers and to the Sixth Interrogatory of this Respondent the same Witness swears that the Defendant about Nineteen or Twenty years ago Note this Deposition was taken on the Thirteenth day of August one Thousand Seven hundred and Ninety did leave Madras and previous to his departure did Entrust his Concerns to the Management of the said Verjee Doss Gocull Doss and that on this occasion he the Defendant did inform his Creditors and others with whom he had dealings of such his delegation and that his business would Continue to go on in his Name and that he would be responsible for Every thing that the said Verjee Doss Gocull Doss might thence

forward

forward in his Name do and did further Publickly declare in the presence of several others of his Creditors as well as in the Presence of the said Verjee Doss Gocull Doss that he had fully authorised and Empowered him the said Verjee Doss Gocull Doss to act for him in his name as fully as he himself Could do and that whatever he did in his Name he the Defendant would be Accountable for and the Witness then Concludes on this head by saying on his oath that after the Defendant had Expressed himself to his Creditors and others to the above Effect he left Madras And further to discredit the false Evidence of the said Appellants said Witness Vencatasha Dawy and others of a Like stamp this Respondent shews to this Honourable Court that this Respondents said Witness Dutchmen Doss goes on to depose that the Defendant after he had left Madras as aforesaid did occasionally and from time to time return again thereto and that upon such his arrivals in Madras he did always come to the said House where he had his Soucars Shop and there resided and Continued and that he the said Defendant did Constantly Examine all the accounts and inspect into every thing that had been done in his absence respecting the said Concern and this Witness goes on and says that the said Defendant did upon his return constantly give Directions respecting the said business and otherwise took upon himself the management thereof and further that the Creditors of the said House and others who had any concern

therewith

Therewith did Constantly Apply to the Defendant respecting any Business they had to do with the said House and that the Defendant did constantly talk with them Thereupon and did often declare that he was himself Accountable for Every thing that might be Transacted in his name by his Brother in Law the said Verjee Doss Gocull Doss and this Witness also says that the said Verjee Doss Gocull Doss did always Consult the Defendant when he happened to be at Madras upon Every Business of Consequence that occurred and that in the absence of the Defendant he did Constantly and Regularly Correspond with him upon Every thing that passed in the Business and then this Witness Concludes to this Interrogatory by a fresh Affirmance that this Verjee Doss Gocull Doss was only the Gomastah of the Defendant the said Kistna Doss Verjee Doss This Respondent in Reply to the further Deposition of the Appellants Witness the said Vencatasha Davy who says "he was present when Verjee Doss Executed the Bond in Question to the Complainant meaning this Respondent by means of his Gomastah Lakhmana Doss and that the Defendant Kistna Doss was then in Madras and Left it two Months afterwards from which time he never Returned to Madras till after the Death of Verjee Doss that the Complainant frequently Demanded the payment of the Bond from Verjee Doss to whom alone he looked for payment This Respondent answers that the falsity of this Deposition is manifest from the Deposition of this Respondents last aforesaid mentioned Witness Lakhmen Doss to the Seventh Interrogatory wherein he proves that Laulah Cook Chund the Complainant did actually pay and Advance to the Defendant Kistna Doss Verjee Doss on or about the Eighteenth Day of October in the year One Thousand Seven hundred and Eighty one the sum of one Thousand Madras Pagodas and also the sum of one Thousand Star Pagodas and Three Thousand Star Pagodas and that the same was Lent at the rate of Six per Cent per Annum and four and an half per Cent per annum Interest and that the Defendant Kistna Doss Verjee Doss was present when the Bond was given and that the Defendant did himself direct the said Verjee Doss Gocull Doss to give the said Bond and the Defendant did then Acknowledge that the Money had been Lent him and was then Justly and truely due from him the Defendant to the Complainant meaning this Respondent In further Refutation of the Deposition of the said Appellants Witness Vencatasha Davy and others Examined to the like points this Respondent begs in addition to the Evidence of his foregoing Witness to state to this Honourable Court That he Examined one Rungachary of Madras Vakeel who proves in Reply to this Respondents first Interrogatory that he knows the Complainant in the Cause about Twenty four or Twenty five years That he knows the Defendant

by

by Name Kistna Doss Verjee Doss in the Cause named for Twenty Seven or Twenty Eight years and that he knows the Verjee Doss Gocull Doss in the Cause named for Twenty four or Twenty five years To the Second Interrogatory this Witness Proves That the said Verjee Doss Gocull Doss was the Gomastah of the Defendant Kistna Doss verjee Doss and that the said Verjee Doss Gocull Doss did use to sign Bonds Notes and other Vouchers and Securities for Money as were required in the Name and upon account of the Defendant That such Bonds Notes and other Vouchers were Constantly taken up and Discharged from the funds of the Defendant and that the said Verjee Doss Gocull Doss had not any Interest or Property whatever therein and that he acted only as agent or Gomastah in such Transac: tions To the Third Interrogatory he Deposes That he knows that the said Verjee Doss Gocull Doss did act for many years as the Gomastah and agent for Transacting all the Concerns and business of the Defendant and so Continued to act as Gomastah for Twenty Two or Twenty Three years and that he did during such Period constantly pay and receive in the name of the Defendant and did sign all Notes Deeds Teeps and Other Securities in his Name and did also receive all such Bonds Notes Deeds Teeps and other Securities payable in the Name of the Defendant That this mode of the Defendants Transacting his business by the said Gomastah was public and Notorious and well known and Considered by all having

having dealings with the House that such Gomastah had full power and Sufficient authority Expressed or Implied and Confirmed by long practice to sign such Notes Bonds &c. in manner as he was accustomed to sign the same to wit in the Name of his Master the Defendant Kistna Doss Verjee Doss who was Considered to be thereby as much Bound as if he himself Executed the same To the 5th Interrogatory this Witness Deposes That he well knew the said Verjee Doss Gocull Doss who is since Deceased That the said Verjee Doss Gocull Doss was about the age of Eighteen years when the Defendant in this Cause Kistna Doss Verjee Doss built the House in which he Carried on his business That the said Verjee Doss Gocull Doss at the time the Defendant built such House was not of an age Capable of such an undertaking nor had funds for that purpose and says positively that the Defendant built and paid for the same for the Express purpose of dwelling therein and Carrying on his business and that such business for so long as it Continued was constantly Carried on in the said House and says That the said Verjee Doss Gocull Doss was brought up from a Boy under the Defendant in the business and Considered for a long time therein no otherwise than as one of the Servants Employed in Conducting the same To the Sixth Interrogatory this Witness Deposes that the Defendant did about Nineteen or Twenty years ago leave Madras and previous to his Departure did Entrust his Concerns to the Care and Management of the said Verjee Doss Gocull Doss and says That the Defendant did acquaint his Creditors and others with whom he had dealings that the business would be still Continued in his House and that

the

he should be Responsible for Every thing that the said Verjee Doss Gocull Doss might in his name do and that the Defendant did publickly declare in the presence of several of his Creditors as well as in the presence of the said Verjee Doss Gocull Doss that he had fully authorised and Empowered him to act for him the said Defendant in his Name and that as fully as he Could himself act in his own Concerns and that he would be answerable for all such his the said Verjee Doss's Transactions in his Name That after this Corporal's Acknowledgement of his future agent he the Defendant Left Madras but occasionally and from time to time returned there and that upon such Arrivals in Madras he did Constantly returns to his own House or Soucars Shop and did there Examine into all his Concerns and accounts administered during his absence by his said agent Verjee Doss Gocull Doss and did on such occasions Converse with the Employers and Dealers of the House as the sole Principal Thereof and did on such occasion when he again Quitted his said House renew the Confidence reliedd in his said Agent the said Verjee Doss Gocull Doss and that he was answerable for all Transactions he already had or should negotiate and Transact in his Name and this Witness Concludes his Deposition by again asserting that Verjee Doss Gocull Doss was only the Gomastah or agent of the Defendant Kistna Doss Verjee Doss To the Seventh Interrogatory of this Respondent to the same Witness regarding the Loan of Money made to the Defendant by this Respondent and the Particulars of such Transaction this Witness Deposes That the Complainants meaning this Respondent did actually pay and advance to the Defendant on or about the Eighteenth Day of October one Thousand Seven hundred and Eighty one the Sum of one Thousand Madras Pagodas also the Sum of one Thousand Star Pagodas and three Thousand Star Pagodas and that the Same was Lent at the rate of Six per Cent per Annum and four and an half per Cent per Annum Interest That the Defendant Kistna Doss Verjee Doss was present when the Bond was given and that the Defendant did himself Direct the Gomastah Verjee Doss Gocull Doss to give the Bond and that the said Defendant did then Acknowledge that the Money had been lent and was a True and just Debt against him the Defendant This Respondent for further satisfaction of this Honourable Court that the Debt Sued for against the Defendant Kistna Doss Verjee Doss is really and Justly due from him and his Estate only and not from the Estate of Verjee Doss the Gomastah as Venatachia Davy would insinuate and to Strengthen if it should be thought necessary the Testimony of the two foregoing Consistent and Respectable Witnesses Deposing to this fact and the Identity of all Parties in Contradiction to the Testimony of the Appellants said Witness Venatachia Davy and others brought to support him in that part of his Monstrous and unfounded Deposition now produces the Testimony of Gungarany Examined on behalf of this Respondent and this Witness to the first Interrogatory Confirms the former Witnesses in the Truth they have Deposed namely that they Knew the Parties Complainants Defendant and Verjee Doss Gocull Doss He this Witness Deposes that he knows them in Like manner Respectively and he swears he has known the Complainant for

for a Period of about Twenty years the Defendant by the Name of Kistna Doss Verjee Doss and the Gomastah by the name of Verjee Doss Gocull Doss for about the same length of time And this Witness to the Seventh Interrogatory of this Respondent Swears that Saulah Coob Chund the Complainant did Actually pay and advance the Defendant Kistna Doss Verjee Doss on or about the Eighteenth Day of October one Thousand Seven hundred and Eighty one the Sum of one Thousand Madras Pagodas Also the Sum of one Thousand Star Pagodas and three Thousand Star Pagodas and that the same was Lent at the rates of Six per Cent per annum and four and an half per Cent per annum Interest That the Defendant was present when the Bond was given and that the Defendant did himself direct the said Verjee Doss Gocull Doss to give the said Bond and that the Defendant did Acknowledge at the Time that the Money had been lent and was then Justly and Truly due from him That this Respondent has Exhibited to this Honourable Court three Direct Testimonies in Contradiction to the Single unsupported Evidence of the Appellants Witness Venkatasha Dass who has sworn that he was present when Verjee Doss Executed the Bond in Question to the Complainant by means of his Gomastah Lutchman Doss but that the Debt was due to the Complainant from Verjee Doss deceased only though he admits he used the name of Kistna Doss Verjee Doss and to whom alone he swears the Complainant looked for Repayment The following inference from these four Depositions this Respondent humbly submits are

paramount

Paramount and of force Demands from the Mind Absolute conviction of the fraud intended in this Defence by the Deposition of this Venkata Sha Dass the Appellants Witness He Venkatasha admits the giving of a Bond to the Complainant by Verjee Doss Deceased by the Name of Kistna Doss Verjee Doss and that the same was so given the Complainant by means of whom why Lutchmendass the first of the above named three Witnesses on the part of this Respondent here then the Actual giving of the Bond in the Name of Kistna Doss Verjee Doss by Verjee Doss is Established by the appellants Witness as well as the Complainants said Gomastah Lutchmen Doss and the two other Witnesses Rungachary and Gangaram and if these three Witnesses are credited the Evidences is already compleat that Verjee Doss Gocull Doss was the Gomastah of Kistna Doss Verjee Doss That the Loan was made to the said Kistna Doss Verjee Doss and that agreeable to these Soucars Custom in proof the Gomastah Verjee Doss Gocull Doss Executed for the same the usual Bond in the Name of his Principal This Respondent is not however pressed to rest his Evidence here strong even as it is in his behalf but further shews to this Honourable Court that the Witnesses of this Respondent herein before referred to are supported may their Testimony by Collateral referrent Circumstances so indubitably Established as not to leave a Doubt of the whole fabrick of Imposture intended by the Defence of this Cause and this Respondent Shews that Kistna forsaid a Respectable Cloth Merchant of Madras

Swears

Swears He knows the Parties in the Cause and the Defendant by the Name of Kistna Doss Verjee Doss for Sixteen years and the Verjee doss Gocull doss as his Gomastah for about as like periods To the Tenth Interrogatory He says he knows that the Defendant Contracted into Several arrangements respecting some Demands he had with several Different People upon various written Engagements given by the said Verjee Doss Gocull Doss in the Name of the Defendant Kistna doss Verjee doss and further says that in the Course of the late war with Hyder Ally He the Defendant paid one Thousand Rupees into the hands of Verjee Doss Gocull Doss at Madras and took a Bond from him for that amount in the Name of Kistna Doss Verjee doss which Bond Deponent swears he carried with him to Palnaud and that there the Contents were immediately paid by the Defendant the said Kistna Doss Verjee Doss and again Gopaul Doss another of this Respondents Witnesses Swears he knows the Parties and the Defendant by the Name of Kistna Doss Verjee Doss and the Gomastah by the Name of Verjee Doss Gocull Doss and that he has so known them for a space of about fifteen years He swears he knows of various arrangements of written Engagements given by Verjee doss Gocull Doss being paid and Settled by the Defendant and that he the Witness did Deposite in the late war with the said Verjee Doss Gocull Doss a sum of one hundred Pagodas who this Witness pointed by says did agreeable to his Custom and usage Executed a Bond to this Deponent for the said Sum of one hundred Pagodas in the Name of his Master the

the said Kistna Doss Verjee Doss the Defendant although the Defendant was not at that time in Madras And this Deponent saith that some time after he Carried in Person such Bond for one hundred Pagodas to the Defendant at Palnaud where he at that time was Renter or Havildhar and presented to him the said Bond which he the Defendant duly Discharged From the Depositions of these last two Witness the Intimitity of all the Parties and their relative situations is not only in full proof and affirmance of the former Depositions to that point but also proves the Custom of this Banking House Jus Mere in War time not Ceasing to Carry on their Spice to Palnaud where Gopaul Doss the Latter Witness swears the Defendant resided as renter or Havildar with other very marked Circumstances of perspicuity Deposite their Money in this Banks and take from the Gomastah Verjee Doss Gocull Doss the usual Bond of the House to that in the Name of the Defendant the Principal and those Bonds on presenting to the Defendant are paid Kaminamente Raumajee another of this Respondents Witnesses Deposes that he has known the Defendant Kistna Doss Verjee Doss in this Cause Thirty five years That he also knows Verjee Doss Goculk Doss in this Cause named about Ten or Twelve years and to the fifteenth Interrogatory this Witness answers That the Defendant Kistna Doss Verjee Doss is still living and that the Banking House which passes under this name does belong to him and that he is the owner and Principal of such House That the Man who is dead was called Verjee Doss Goculk Doss but he doth not know if the said Verjee Doss Goculk Doss was Gomastah or Principal agent of the Defendant but that in the absence of the

Defendant

Defendant How the said Verjee Doss Gocull Doss did manage the Business of the aforesaid Banking House again from the Evidence of Fakeer Jagunada Sadasseva another of this Respondents Witnesses it is in proof that he the Witness knew the Defendant by the Name of Kistna Doss Verjee Doss for Sixteen or Seventeen years and Verjee Doss Gocull Doss in the Cause Named for about Nineteen years and to the fifteenth Interrogatory this Witness answers That the said Kistna Doss Verjee Doss the Defendant is still living and that the Banking House that passes under his Name does belong to him and that the said Defendant is the Principal and owner of it That the Man who is dead was Called Verjee Doss Gocull Doss but this Witness says he does not know whether the said Verjee Doss Gocull Doss was only the Gumastah or Principal Agent of the said Defendant and managed the Business for him the said Defendant but that the Property of the Banking House did belong to the Defendant And Trecaungee Boolasseva another of this Respondents Witnesses a Diamond Merchant residing in Madras aged Sixty years or thereabouts Deposes that he knows the Complainant in this Cause about fifteen or Sixteen years That he also knows the Defendant therein by the Name of Kistna Doss Verjee Doss about Twenty Nine years and the Verjee Doss Goculs Doss in this Cause Named about Nineteen years To the Eighth Interrogatory this very respectable Witness Deposes That he did know Verjee Doss Gocull Doss lately deceased and that he did know him when he first Entered into the family of the Defendant and that he did so live in the Defendants family as a Relation That the the Witness had Examined the

the Exhibit B produced to him being the Bond of the Defendant and he says that he knows that the same is the Defendants Bond and that he is the Person intended and meant in such Bond and this Witness also proves the Custom amongst the Guzerats for the saw to add to his own Commonly received Name that of his fathers as Kistna Doss Verjee Doss meaning thereby Kistna Doss the son of Verjee Doss Says he is a Subscribing Witness to the truth of the Exhibit A produced him To the fifteenth Interrogatory this Witness Deposes That the Defendant in this Cause is still living and that the Banking House under his Name doth belong to him and saith that the Man who is dead was Called Verjee Doss Gocull Doss that is Verjee Doss the son of one Gocull Doss and which verjee Doss Gocull Doss was the agent or Gumastah of the said Defendant who was the Sole owner and Proprietor of such Banking House and Madavoyah Narrain Pilla of Madras Dubash aged Seventy years another of this Respondents most respectable Witnesses and whose Evidence has been already herein before in part recited as regards the Letter of Credit granted to the Defendant Deposes that he knows the Defendant in this Cause by the Name of Kistna Doss verjee Doss for Twenty years and upwards and his Gumastah Verjee Doss Gocull Doss by that Name for about the same length of time and this Witnesses Deposition is Conclusive Proof of the Custom of this Banking house that Verjee Doss the Gumastah Executed all Papers and

the

the payments were made from the funds of the Defendant in this Cause Kistna Doss Verjee Doss for this Witness Swears he Subscribed a Similar Paper Executed by the Gomastah to a Creditor of the Defendants at the Express request and Desire of the Defendant The Evidence of Jagunada Doss fully Corroborates the last Testimony as to the Individual Identity of the several parties and that the Defendant obtained from his Creditors a Letter of Cowle and that those who hold Bonds and other Vouchers under the signature of Kistna Doss Verjee Doss though Executed by Verjee Doss Gocull Doss the Gomastah were Equally Considered in such Letter of Cowle as all other Claimants by the immediate act of the Defendant himself and that such proceeding Caused no alarm the situation of the Principals of this House and his Gomastah being a Matter of Public Notoriety This Respondent having thus brought down by a regular Chain of Evidence and answered to all the facts material if credited to Establish the Justice and Title in him to maintain his Cause against the Appellant before this Honourable Court as he has already done to the Satisfaction of the said Honourable the Mayors Court and that to the Submits without any necessity for his further reference to the many impertinent and foreign objections superfluously taken by the Appellant will here bring forward a few Concluding Evidences whose Testimony alone this Respondent cannot for a Moment doubt would thought unassisted by the many material Depositions already before the Court on his behalf insure him success First Mr Antonio

De Souza

De Souza Merchant of Madras aged fifty four years or thereabouts Saith That he knows the Complainant Saulah Coob Chund in this Cause for about Sixteen years That he knows the Defendant Kistna Doss Verjee Doss in this Cause about Nineteen years and that he did also know the Verjee Doss Gocull Doss in this Cause Named and that he hath so known him about Nineteen years and to the fifteenth Interrogatory This Witness deposes that the Name which appears to be the Defendant in this Cause This Deponent knows to be the Name of the Banking House belonging to Kistna Doss who is now living and who is the Principal Proprietor of the said House of Kistna Doss Verjee Doss and further saith that the Man who is dead was called Verjee Doss Gocull Doss who this Deponent knows was only the Gomastah or agent of the said Houses of Kistna Doss Verjee Doss now living under the firm of Kistna Doss Verjee Doss and Mr J De Fries Merchant of Madras aged fifty Six years or thereabouts Deposes That he doth know the Complainant Saulah Coob Chund for about Twelve years he does not know the Defendant Kistna Doss Verjee Doss but he knows Verjee Doss Gocull Doss in this Cause and that he hath so known him for many years And to the Sixteenth Interrogatory this Witness deposes That he and his Partner Mr Thomas Pelling did make over several Bonds of the Nabobs New Consolidated Debt to Kistna Doss Verjee Doss but the Transaction was with his Agent or Gomastah Verjee Doss Gocull ds and further saith that he hath heard that the said

Kistna

Kistna Doss Verjee Doss is still living that Verjee Doss Gocull Doss who is dead was a Gomastah or Principal Agent and saith that he does not positively know whether the said Verjee Doss Gocull Doss had himself any Interest or Property in the busings but rather supposes that he had not David Halliburton Coquire of the Civil Service on the Madras Establishment a Witness Examined on the Part of the Defendant knows the Complainant in this Cause about Twelve or Thirteen years Does not know the Defendant Kistna Doss but knows the Verjee Doss in the Interrogatories Named and whom he Describes as late of Madras Soucar deceased about fourteen or fifteen years To the Thirty Seventh Interrogatory of the Appellant to this Witness he Deposes That he the Witness was a member of the Committee of Assigned Revenue in the year one Thousand Seven hundred and Eighty three and that he did order a Person who bore the Name of Kistna Doss Verjee Doss as being the Name of a Soucars House of which he was the factor to be Confined till he paid some Money on account of Massulapatty Rajanah Renter of Palnaud for whom he was security and saith that the said Verjee Doss did sign as Kistna Doss Verjee Doss being the usual Custom of Soucars so to sign the Name of their Masters That he the Witness did Consider the said Verjee Doss as answerable in his own Person for the Amount for which he became Security and further saith that nothing appears on the Proceedings of the Assigned Revenue that in any respect shews that he was a Gomastah to the said

Defendant

Defendant Kistna Doss Saith that the said Verjee Doss did sign Severah Papers and Petitions to the Committee of Assigned Revenue and that they (meaning such Papers and Petitions so Signed by the said Verjee Doss were under the Title of Kistna Doss Verjee Doss and to the Thirty Eighth Interrogatory of the Appellant to the same Witness He Deposes That he did know the Deceased Verjee Doss as a Soucar or Banker for many years at Madras and thought him a Principal untill he told this Deponent himself that he was only an Agent and the Witness here observes And it is notorious that he was only an agent "and further Saith" That untill he the said Verjee Doss told him and untill he the Deponent was better informed the Deponent Considered that Verjee Doss was Carrying the Name of Kistna Doss Verjee Doss in his own Right for this Deponent believes that his own proper Name was Verjee Doss Goulb Doss but this Deponent knows that the Name of Kistna Doss Verjee Doss which he adopted was the Name of the House for which he Verjee Doss was the Agent From these three Evidences the following Conclusions are Established First all the Preceding Depositions are verified regarding the Individual Identity of the Defendant in this Cause and his Gomastah Mr De Souza knew them both Personally and from his Local Situation as a Native of India and long residence in Madras and being for upwards of Nineteen years in the habits of Intercourse with these Men his Testimony is incontrovertible not only to this point of Individual Identity but as to their relative Situation with Each other of Principal and

Gomastah

Gomastah for he Swears "That Kistna Doss Verjee Doss who is now living is the Proprietor of the Banking House under that Name and that the Man who is dead was called Verjee Doss Gocull Doss who he the Deponent says he knows was only the Gomastah or Agent of the Houses of the Kistna Doss Verjee Doss now living Mr Du Pres Confirm this Witness in his knowledge of Verjee Doss Gocull Doss the Gomastah whom he Swears he has known for Many years and that he is now Dead That he the Witness and his Partner Mr Pelling made over some Bonds to Kistna Doss Verjee Doss but that the Transaction was with his Gomastah Verjee Doss Gocull Doss Here then this Witness Establishes in Common with others the Gomastahs Name to have been Verjee Doss Gocull Doss and by applying the Guzerat Rule in proof it is Evident that this Man was Verjee Doss the Son of Gocull Doss and the Defendant in like principle is Kistna Doss the son of Verjee Doss and it is also in proof by the Depositions of several Witnesses that the Defendant could not be the son of the Gomastah as absurdly hinted at in one of the Appellants objections the Connection between them being fully Established and that he was the Brother in Law and brought up under the Defendant in his Banking House And from the Deposition of Mr Halliburton the Defendants own Witness we have the best Testimony that can Establish any fact namely the confession of the Deceased Verjee Doss Gocull Doss to this Witness that he was merely the Gomastah of Kistna Doss Verjee Doss the Renter of Palnaud

Palnaud and his Master for whom he had been received as Security by the Committee of Assigned Revenue on the Idea of this Witness that he was himself the Principal of the Soucars House and by the Evidence of Gopaul Doss herein before stated it is in proof that Kistna Doss Verjee Doss the Principal of the Banking House in Madras Conducted by his Gomastah Verjee Doss Gocull Doss was resident at Palnaud as Company's Renter or Havildhar there and where he paid this Witness as also Kistnapersaud another of this Respondents Witnesses hereinbefore setforth the Amounts of their Respective Bonds Executed to them in his Name in Madras by this Gomastah Verjee Doss Gocull Doss from all which Connected serious of Supported Evidences and the proofs Established by Lakshmeen Doss Rungachery and Gungaram that the Defendant acknowledged to have received the amount of the Bond on which this action has been brought from the Complainant and that he was present and did in Person direct the Bonds to be Executed to the Complainant by his Gomastah Verjee Doss Gocull Doss deceased and this Testimony of these three Witnesses is actually authenticated beyond a possibility of Doubt by the Defendants own Witness Vencatasha Dass who has sworn that the Complainant by means of the first three Witnesses Lakshmeen Doss did lend to Verjee Doss the Amount of the Bond and that he the Witness was present when this Verjee Doss by the Name of Kistna Doss Verjee Doss did Execute to the Complainant such Bond for the specifics on which this action is brought it is manifest

that

that this Respondent has maintained his Suit and done away the influence if any for a Moment could be annexed to it of Mr Alderman Michell for that it did not appear to him that the Person who signed the Bond had any authority from Kistna Dass Verjee Dass to sign it or that the Money Received upon it was Applied to the use of the said Kistnadass Verjee Dass which Dissent and objection to the Decree of the Honourable the said Mayors Court this Respondent humbly submits to the Judgement of this Honourable Court is for the reasons aforesaid Compleatly removed This Respondent to the Several Objections in the Appellants Petition of Appeal stated to which this Respondent may not herein before have fully replied unto this Respondent submits to the Judgement of this Honourable Court that he is by no means bound to do so such parts of the Objections to which this Respondent has not answered being as he insists irrelevant to the Object of this suit and no way Connected with the Evidences necessary to inform the Judgement but on the Contrary to Puzzle and Bewilder it with a Perpetual quibble on Names under shelter of which this Respondent is Certified in his mind that the Appellants Witnesses have sworn secured as they were most probably taught to believe by the mental reservation of which of the two names of the Defendant Kistna Dass or Verjee Dass they meant to Disguise their Evidence for either would Apply as intended by them under such reservation to the Defendant or his Gomastah of whom they always speak singly as Kistna Dass

or

Verjee Dass an Imposition and Fraud intended to Compass the Defendants Ends of so mean detestable and base not to mention flagitious a Nature as this Respondent hopes will be marked with the Just indignation of this Honourable Court by their not only Confirming the Decree of the said Honourable the Mayors Court in favor of this Respondent Against the Appellant but further by Decreeing to be paid by him to this Respondent Exemplary Costs as the due punishment for Justice so Violated

From all which matters and Reasons and Such others as may be offered at the hearing this Respondent humbly prays the Decree of this Hoble Court in his behalf in manner and substance as he hath above setforth and that the Appellants Petition of Appeal may be dismissed with most Exemplary Costs

[Signed] Dr Walker
John Wilkinson
Solr for Respondent

Court

Court of Appeals
at
Madraspatnam

Saturday the 12th day of April
Anno Domini 1794.

Between Vencoo Laulah Nanagie Executor named the last Will and Testament of Kistnadoss Verjeedoss deceased — Appellant and Laulah Coob Chundoo by his attorney Francis DeSouza of Madras Inhabitants Respondents —

This Cause coming on this day to be heard and debated before the Court and upon due Consideration of the Petition of appeal together with the Decree of the Honble the Mayors Court given in this Cause on Tuesday the 22d day of November Anno Domini 1791 and it appearing to the Court that the Matter in dispute is between two Natives and that the Plaintiff in the said Mayors Court has made use of the Name of Francis DeSouza as his assignee merely for the purpose of evading the Charter This Court doth think fit to Order and Decree and doth accordingly Order and Decree that the said Decree of the Honble the Mayors Court dated the 22d day of November Anno Domini 1791. be reversed and that the Respondent Laulah Coob Chundo do pay all Costs in both Courts —

By Hour

(Signed) Chas N White
Clk

To

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

In the Honourable
the Court of Appeals

Between Charles Macalister
Keith Macalister and Mathew Macalister
Brothers and Administrators of all and Singular
the Goods Chattles Rights and Credits of the
Estate and Effects of John Macalister deceased
late a Captain of Cavalry in the Service of His
Highness the Nabab of arcot Complainants and
John Balfour in the Service of the united E.
Company of Merchants of England trading to the
East Indies on the Coast of Coromandel and
Henrietta Balfour his Wife Late Widow and
relict of Alexander Macallen Late a Major
in the said Service Executrix Appointed in the
last Will and Testament of her said Deceased
husband Major Alexander Macallen Deceased
Defendants

Shew

Filed in my Office
the 10th May 1792
Chas N White Clerk

The humble Petition and Appeal of the said Defendants

That the above named Complainants did some time on or about the thirty first day of October which was in the year of our Lord one thousand Seven

Seven hundred and Eighty Seven Exhibit and file a Bill of Complaint in the Honourable the Mayors Court at Madrasapatnam against your Petitioner Charging that your Petitioners the said John Balfour and Henrietta Balfour his Wife late the Widow and relict of the said Alexander Macllan late a Major in the said Service Executrix Appointed in the last Will and Testament of her said Deceased husband Major Alexander Macllellan as by the said last Will and Testament duly proved before the Kings ordinary in the said Honourable the Mayors Court on the Twenty first day of July in the year One Thousand Seven hundred and Eighty five as Reference being thereunto had the Complainants did say would morefully and at large appear stood Justly and Truly indebted unto them the Complainants in the full and Just Sum of Five thousand two hundred and twelve Pagodas Seven fanams and ten Cash making in Sterling Money of Great Britain at the rate of Eight Shillings for Every Pagodas the sum of Two thousand and Eighty four pounds Seventeen Shillings and three pence or thereabouts which the Complainants did pretend would morefully and at large appear by the Copy of an account Current and also by the Copies of two Receipts said to be given and granted by the late Major Alexander Macllellan in his life time to wit one under Date of the fifteenth of March and the other under date the Twenty fourth of March both in the year one thousand Seven hundred and Seventy nine and which said Account Current and two Receipts the Complainants did annex to their said Bill for the inspection of the said Honourable the Mayors Court praying that the same might be admitted as a part of their said Bill the Originals thereof being in their possession and ready to be produced when required And your Petitioners shew that the Complainants did in and by their said Bill further Set forth that the said Major Alexander Macllellan died possessed of very Considerable property in Money Jewells and other Valuable Effects to a large Amount all which said property in Money Jewels and Effects belonging to the said Alexander Macllellan in his Life time were as the Complainants alledged possessed by and taken into the Charge of your Petitioner the said Henrietta Balfour then the Widow of the said deceased as and under the Title of Executrix and that your Petitioner Henrietta Balfour then being the Widow of the said Alexander Macllellan did some time in or about the year one thousand Seven hundred and Eighty three intermarry with your Petitioner the said John Balfour who the Complainants alledge did thereupon take upon himself the Management and Charge of the said Estate of the said deceased Alexander Macllellan to a very Considerable amount and the Complainants did further pretend to shew that your Petitioner John Balfour had received Money and had converted Effects belonging to the Estate of the said deceased Alexander Macllellan into money and that he had also made partial and unequal payment of Debts owing by the said deceased in his life time without fully paying off and Discharging the aforesaid Demand upon the said

said Estate arising from the before mentioned Account Current and Receipts which the Complainants alledged he your Petitioner ought and that it was his Duty so to have done with Equal Justice to all the Creditors of the said deceased and your Petitioners shew that the Complainants did in and by their said Bill further state that they had frequently and in an amicable manner Demanded payment from your Petitioners of the said Sum of Five thousand two hundred and Twelve Pagodas Seven fanams and ten Cash and that your Petitioners had refused to pay the same and they therefore prayed that your Petitioners might answer and be Decreed so to do

And your Petitioners Shew that to the Complainants said Bill of Complaint your Petitioners did on or about the Eighteenth day of December which was in the said year of our Lord one thousand Seven hundred and Eighty Seven put in a Joint and Separate answer and for answer thereunto or unto so much thereof as your Petitioners were advised was any way material or Necessary for them your Petitioners to make answer unto they your Petitioners did answer and say and first your Petitioner John Balfour for himself said that it was true he did intermarry with the said Henrietta the Widow of the said alexander Macklellan and the Executrix appointed by the last Will of the said Deceased which last Will had been proved before the Kings ordinary in the said Honourable the Mayors Court and that since his your Petitioners inter marriage he your Petitioner had used his best Endeavours by giving advice and writing Letters to Collect the outstanding debts of the Estate of the said Alexander Macklellan and to arrange the affairs for the benefit of the Creditors and of the Executrix But your Petitioner John Balfour did deny that he had possessed himself of any Money Jewels or Effects belonging to the Estate of the said deceased Alexander Macklellan nor did your Petitioner admit that he was any way answerable to the Complainants for the sum setforth by them in their said Bill to be due the whole of the assets which had unto that time come to the hands of the said Executrix having been Appropriated to the Discharge of Debts due by the Estate as was setforth by the Account Current Delivered in by her the said Executrix into the said Honourable the Mayors Court and your Petitioners further shew that your Petitioner Henrietta Balfour for herself as Executrix to the last Will and Testament of the said Alexander Macklellan which said last Will and Testament had been proved before the Kings ordinary in the said Honourable the Mayors Court for herself in answer to the Complainants said Bill of Complaint did say that she your Petitioner did admit that she had possessed herself of the sundry Goods and Chattles Books papers and accounts belonging to the said deceased Alexander Macklellan but not of any Jewels of the the decease of the said Alexander Macklellan as Charged by the Complainants in their said Bill your Petitioner having only kept and retained such as she your Petitioner was possessed of in the Life time of the said Alexander Macklellan which as part of her Paraphernalia she your Petitioner did

state

state she was advised did belong to her of right particularly as the Estate of the said Alexander Maclellan was not insolvent as Appears by the account Delivered by your Petitioner Henrietta Balfour into the said Honourable the Mayors Court and your Petitioners shew that your Petitioner Henrietta Balfour further answering did state that she had Exerted herself to the utmost for the Recovery of the Monies due to the Estate but that from the nature of the principal Debts and the situation of the Country during a Considerable part of the time which had elapsed her Endeavours had not proved Effectual and that all the Money that had been Recovered together with what had arisen from the Sale of the Goods and Effects of the deceased had been applied as the Law Directed in discharge of the debts due by the Estate and your Petitioner Henrietta Balfour further answering did say that by the Account of Receipts and payments and the Inventory of the Estate and Effects of the said Alexander Maclellan Delivered in upon Oath by her to the said Honourable the Mayors Court in the Month of august which was in the year of our Lord one thousand Seven hundred and Eighty five and to which your Petitioner Henrietta Balfour did in and by her said answer pray reference there was a Balance due to your Petitioner as Executrix of the Sum of one thousand four hundred and Ninety two Pagodas Six fanams and fifty Cash and your Petitioner Henrietta Balfour did further state that since the said Account was so given in there had not been one farthing recovered

on

on Account of the said Estate but on the Contrary some additional unavoidable Expences had been incurred so far did your Petitioner the said Henrietta Balfour in her said Separate answer state what she had done as Executrix in order to Convince the said Honourable the Mayors Court that she was and ever had been anxious and desirous of Discharging every Just and legal debt due by the Estate of the said Alexander Maclellan deceased but your Petitioner Henrietta Balfour did say that she Could not admit that the Demand made upon her by the Complainants in manner and form as the same was stated and set forth in and by their said Bill of Complaint was a Just and legal one and that however willing she your Petitioner was or Might have been to pay off Every real Demand yet in Justice to herself and the bona fide Creditors of the said Estate she Could not Consent to pay off and satisfy a Demand of the nature and Complexion of the present one for your Petitioner Henrietta Balfour did say being so advised that the Documents produced by the Complainants were by no means sufficient to Establish or substantiate their Claim on the Estate of the said Alexander Maclellan such Documents being only two Receipts and appearing to have been given to Lieutenant Colonel Brown for Money lodged in the hands of the said Alexander Maclellan for and on account of Captain Macalister and your Petitioner Henrietta Balfour did in and by her said answer state that the said Receipts never were Delivered to the said Captain Macalister but had since his death been taken from among the Papers of

the

the said Lieutenant Colonel Brown where they had remained from the time they were granted and had been Considered agreable to the original intention of them merely as Vouchers to them the said Colonel Brown but that at any rate they did not go in the smallest Degree to prove the Transaction to have been in the nature of a Loan on which the said Alexander Maclellan was to have paid Interest therefore in the first place and upon the very face of them your Petitioner Henrietta Balfour did in her said answer insist they were altogether insufficient to support the Demand them made by the Complainants in their said Bill for Interest from the Date of the said Receipts at the rate of Twelve per Cent per annum and that this Extraordinary Charge must of necessity fall to the ground and your Petitioners further shew that your Petitioner Henrietta Balfour did in and by her said answer further state that in almost all Transactions when Money has been paid by another person for and on Account of another the Receipt granted for the Money so paid must be left outstanding after repayment has been made Either Directly to the Principal or where the Account has been Settled by the intervention of another person and this must of necessity be the case otherwise the party paying in the first instance would remain without a Voucher your Petitioner therefore humbly Conceived that a Receipt of the kind & nature of those annexed by the Complainants to their said Bill of Complaint could not primafacie be Esteemed a proof of Debt for such Receipts being almost always from the nature of the

Transaction left outstanding after Repayment as has been stated many unjust Claims and Vexatious Suits would arise should a Contrary Opinion be adopted the burthen of the proof of Repayment of the Sums Mentioned in the Receipts might at any Distant period be thrown upon the Heirs or Representatives of the party who granted them when from the Death of the persons Acquainted with the Transaction and from the loss of papers which will unavoidably happen in the Lapse of time the Circumstances may be so involved in obscurity as to put it out of their power to obtain or give any satisfactory information and failing in this proof as they must do under such Circumstances the Consequences following such an Opinion are that a Judgement must go against them for Sums long before made good and your Petitioner Henrietta Balfour did in and by her said Answer say that she humbly Conceived that this principle Applied generally to Claims not otherwise Supported than by Receipts such as were Exhibited by the Complainants but your Petitioner further observed that in the present case there were other Circumstances which militated against the Claim made by the Complainants and tending to Lessen even that weight which such Documents might in some Cases obtain for your Petitioner Henrietta Balfour did in and by her said answer state that there did not appear any thing in the Books or papers of the said Alexander Maclellan to Countenance the Claims made by the Complainants but on the Contrary much in support of the opinion that the Money

Deposited

Deposited by Lieutenant Colonel Brown for and on Account of the said Captain Macalister had either been Repaid or in any Some other manner Settled and accounted for for the Monies for which the Receipts Copies of which are to the Complainants said Bill annexed appear to have been granted are stated to the Credit of Lieutenant Colonel Brown who had not as your Petitioner Asserted any other Transaction with the said Alexander Macleller than that Respecting the Money of the said Captain Macalister and further your Petitioner Henrietta Balfour in her said answer Stated that the account of Lieutenant Colonel Brown in the Ledger of the said Alexander Macllellan was Closed by a Balance of Three thousand pardo novo Pagodas the Sums of the two Receipts being Transferred to the account of Mr Alexander Brodie as would appear by the Exhibit Marked A which your Petitioner annexed to her said answer for the inspection of the said Court the Mayors Court and which your Petitioner did pray might be taken as part thereof the originals being ready to be produced when Required and your Petitioner Henrietta Balfour further stated that the said Alexander Brodie was the agent and the Correspondent of all the parties that it was by his means that the Money was Originally put into the hands of the said Alexander Macllellan by the said Lieutenant Colonel Brown and that it was highly Probable that a Transfer of the Balance should have taken place as stated in the said account although it may now be Difficult to ascertain the manner in which it was settled and your Petitioner

Henrietta Balfour further Answering said that the Exhibit marked B and to her answer annexed was a Copy of an Abstract Statement of the Debts and Credits of the said Alexander Macllellan and your Petitioner prayed that the same might be taken as part of her said answer Stating at the same time that the Original with the Signature of the said Alexander Macllellan was ready to be Produced when required and your said Petitioner further stated that by the Balance inserted in that Abstract Statement and which Corresponded with the Balance of the Cash Book of the said Alexander Macllellan for the Month of November which was in the year One thousand Seven hundred and Seventy Nine it did Appear to have been formed about that time nearly About Nine Months subsequent to the Date of the Receipts produced by the Complainants it was not Likely your Petitioner observed that a recent Transaction like this also standing Entered on the Ledger of the said alexander Macllellan should escape all notice of himself and Servants had not the Debt been Considered as Extinguished and your Petitioner Henrietta Balfour did in and by her said answer further say that it could not with propriety be alledged that he the said Alexander Macllellan Could have any View in Excluding any Debt for which he imagined himself liable from a Statement of his affairs Evidently prepared for his own satisfaction and never intended to be brought forward yet in this abstract there was not any Mention of or allusion to any Debt to the said Captain Macalister

or

or Lieutenant Colonel Brown and your Petitioner Mennietta Balfour did further state that the improbability of any Money being due to the late Captain Macalister by the Estate of the said Alexander Macfellan would appear Stronger in the Cabitat C which she did annex to her said Answer and prayed the same Might be taken as a part Thereof the Original being ready to be produced which was a Copy of the Statement of the Debts and Credits of the said Alexander Macfellan made up after his Death by Major Alcock immediately from the Books and Accounts of the said Alexander Macfellan and your Petitioner did thereupon Remark that it was unreasonable to Suppose that he the said Major Alcock could have any motive for Suppressing any Debt to the said Captain Macalister yet in this Statement there was nothing Mentioned of the Debt now sued for nor do the names of the said Captain Macalister or Lieutenant Colonel Brown appear in it Wherefore your Petitioner Mennietta Balfour did Lastly in her said answer say that she was humbly of Opinion that she was warranted in Doubting the Validity of the present Claim of the Complainants on the Estate of the Late Alexander Macfellan as well from the very Doubtful nature of the Documents produced as proofs of the Debt on the part of the Complainants as from the strong Circumstantial proof Contained in the Cabitat which your Petitioner the said Mennietta Balfour did annex to her said Answer by which it almost Clearly Appeared that the debt had been Extinguished either by Transfer or adjustment previous to the death of the said Alexander Macfellan —

And your Petitioners Shew that the Complainants did upon the Twenty Ninth day of January in the Year One thousand Seven hundred and Eighty Eight file their Replication to the said Joint and Separate Answer of your Petitioner Denying the Several Matters and things Contained in their said answer and in the Complainants said Replication setting forth that they the Complainants never once imagined the said Alexander Macfellan Departed this life insolvent but on the Contrary that they the Complainants [illegible] were had been Convinced that his Estate was Considerable and very far superior to the payment of all his Debts and therefore that the Claims of the Complainants ought to have been satisfied some years ago and the Complainants did further say that they humbly Conceived the plea set up by your Petitioner Mennietta Balfour that she had not been able to recover the Monies due to the said Estate was of no force or Effect whatever as she had not Exhibited an Account Current of the Receipts and Disbursements relative to the said Estate and which the Complainants did say they were advised ought to have been done as Exactly as possible up to the then present time and not by Reference had to the account of Receipts and payments Delivered into the said Honourable the Mayors Court at so remote a period as the year one thousand seven

Seven hundred and Eighty five and the Complainants in their said Replication did further Attempt to Shew that from a through Knowledge of their Demand as Set forth in their Bill of Complaint having been as they pretended fully admitted by your Petitioners as Just and true they had Refrained from bringing forward a Multiplicity of Documents in support of it wishing as they did say to avoid giving superfluous and as they Judged an unnecessary trouble to the said Honourable the Mayors Court for the Complainants did in their said Replication state that some time in the Month of December which was in the year of our Lord one thousand Seven hundred and Eighty five the following Letter was received from John Sullock of Fort Saint George Esquire the agent of them the Complainants which they unjustly pretended proved that your Petitioner John Balfour not only fully admitted at that time the Justness of the Demand of the Complainants but was as they alledged anxious to Discharge it and actually made proposals for that purpose and which Letter your Petitioner shew the Complainants then recite in their said Replication as follows Viz.t Mr John Balfour called upon me yesterday to make a proposal to the Creditors of the late Major Maclellan which was to give them Company's Bonds as par in lieu of the amount principal and Interest of their Respective Demands on Maclellans Estate upon my telling him that I acted for the Administrators of the late Captain Macalister and would not say any thing to his proposal without their Consent he requested I would Acquaint Charles Mathew and you with his offer and wished to have your Sentiments on the matter as soon as possible I mean to write to Charles and Mathew to acquaint them with the proposal and to know whether they will accept or Declare it The amount of the Debt due to your late Brother by Major Maclellan with Interest to this time is about Five thousand four hundred portonovo Pagodas and it remains for Charles Mathew and you as administrators to Chuse taking a Company's Bond for that Sum or let the Debt remain on Account until the Rajah of Tanjore be inclined to Discharge his Debt to the Estate of Major Maclellan Let me hear from you as soon as possible I am Dear Keith yours Ever / signed / J Sullock" and your Petitioner shew that the Complainants did in their said Replication further state that your Petitioner John Balfour in a Letter addressed to one of the Complainants and bearing Date the Twenty fourth Day of July which was in the year of our Lord one thousand Seven hundred and Eighty seven being the Exhibit marked A which the Complainants annexed to their said Replication for the inspection of the

said

said Honourable the Mayors Court and which Exhibited the Complainants prayed might be taken as a part thereof the original being in their possession and ready to be produced when Enquired the Complainants did say that your Petitioners John Balfour not denying as your Petitioners then did the legality and Justness of the Complainants Demand did in and by the said Letter as the Complainants pretended to say only Express an inability to Discharge it for want of Assets and Promissing to attend to it as Money might be Recovered and therefore the Complainants did state that they thought the Receipts Exhibited with their Bill of Complaint were ample and all that was necessary and your Petitioners shew that the Complainants in and by their Replication did further state that those Receipts were given by the said Alexander Macfallan for and on account of their Deceased Brother to Lieutenant Colonel Brown his particular friend but that how long the said Colonel Brown Kept them in his possession or at what time their said Deceased Brother received them whether before or after the Death of Lieutenant Colonel Brown the Complainants did say was of no Consequence for the Complainants did in their said Replication state that the tenor of such Receipts as well as from other Vouchers and Corroborating

Circumstances which the Complainants did pretend they should Thereafter produce to the said Honourable the Mayors Court would Evidently prove the Transaction to have been a loan and that therefore the Demand of Interest from the respective Dates of the said Receipts at the rate of Twelve per Cent per annum was as the Complainants unjustly stated a legal Charge and in Equity and good Conscience Justly due and your Petitioner shew that the Complainants alledging their inability to Contend with sophistical arguments which they said Appeared to have been Calculated by your Petitioners to Confuse by intricate and Difficult propositions and from a persuasion of the impossibility to Convey by fair and ample Statement a Conviction necessary as the Complainants stated to set aside their Claims did state that they felt Themselves embarrassed with the laboured Maze of Vague reasonings as they pretended were used by your Petitioners to shew that Receipts granted to an Agent on behalf of his Constituent by a third person was of no real Value as they were almost always left outstanding after repayment being made that in order to guard the Heirs or Representatives of the party who granted them against the pernicious Labyrinth of obscurity formed by the Lapse of time although Receipts granted in the manner alluded to by your Petitioners might be allowed to

remain

Remain outstanding for a time yet that on the final Settlement of an account the Complainants did state they should Either be given up to be Destroyed or such indemnification granted as would render them of no Effect and the Complainants did say that no such indemnification had been nor could have been produced to the said Honourable the Mayors Court by your Petitioner which the Complainants pretended fully Demonstrated that no settlement of the Claims of the Complainant had Ever been made and Consequently that they were still in force and the Complainants did say that they Conceived that the Conclusions Drawn by your Petitioners from what the Complainants term the irregularity of the said Alexander Macleallans Books and papers to invalidate such the Claims of the Complainants were as they did pretend inconsistent and absured for that it was neither a fair and Just made of reasoning that because a man had neglected to make an Entry of a Debt his Creditors should be Deprived of his right and the Complainants did further say that it was Equally unjust and injurious to insinuate that the Money Deposited in the hands of the said Alexander Macleallan by Lieutenant Colonel Brown on Account of their deceased Brother Captain John Macalister must have been accounted for because on Closing the private account of the said Lieutenant Colonel Brown the

the balance in his favor happened to answer to the sums Mentioned in the two Receipts and the Complainants did say that it was Equally unjust and injurious to Conjecture that such Balance must have been transferred to Alexander Brodie because he was the freind the agent and Correspondent of all the parties acknowledging as the Complainants pretended your Petitioners did the Difficulty to ascertain the manner in which it was settled and the Complainants did thereupon unjustly say that your Petitioners being unable to establish one single point aimed only to an attempt to amuse the Judgement of the said Honourable the Mayors Court with surmises as groundless as they were improper and with Opinions as false as they were unjust and that your Petitioners to Continue the uniformity had Cabitted a paper marked **B** and annexed to their Answer which the Complainants did say your Petitioners had built their Chief hopes of Success and that the same was a Copy of an abstract Statement of the Debtor and Creditor of the said Alexander Macleallan under his own Signature and which Statement although Drawn up as appeared by the Date it bore nearly Nine Months Subsequent to the Dates of the Receipts produced by the Complainants yet that therein there was no mention made of any Debt due to their Deceased Brother Captain John macalister and therefore and after a variety of ingenious and curious

Reasoning

Reasoning as the Complainants did pretend on possibility probability and the Views of the said Alexander Macklellan your Petitioners had pronounced that such debt had not Existence but the Complainants said that it did then and still did Exist would fully Appear from the Circumstances in and by their said Replication thereafter stated and which your Petitioners shew the Complainants did state to be that on the Twenty fifth Day of May which was in the year of our Lord one thousand Seven hundred and Eighty the Complainants said Deceased Brother wrote a Letter to Lieutenant John Baillie then residing at Tonjore which the Complainants said would Appear by an Exhibit Marked **B** to their said Replication annexed and which they prayed Might be taken as a part thereof the Original being in their Possession and ready to be produced when required and which Letter they did say advised him that he had written to Colonel Macklellan on the Subject of his account Current and informed him that he had Empowered the said John Baillie in a Letter also an Exhibit marked **C** which was also annexed to their said Replication and which the Complainants prayed might also be taken as a part thereof the original being in their possession and ready to be produced when required and which was dated in the Month of June following and Addressed to the said Captain John Macalister stating that he had a Conversation with the said Alexander Macklellan on the Subject of the Account Current but that on presenting the Order written on the back of the said Account Current in the hand writing of the said John Macalister making the Exhibit marked **D** which the Complainants did annex unto their said Replication and did pray the same to be taken as apart thereof the original being ready to be produced when required had mentioned that the said Alexander Macklellan was by no means pointed or Direct but that he hoped to Draw from him by a gentle Letter something satisfactory and Accordingly shortly Afterwards forwarded to the said John Macalister a note in the hand writing of the said Alexander Macklellan which formed the Exhibit **E** which the Complainant did to their said Replication annex and which they prayed might be taken as a part thereof the original being ready to be Produced when required Declarative of his intention to Discharge the amount due to the said John Macalister by an early Opportunity observing that he had written to Mr. Brodie through whom he had borrowed the money to Direct the Receipts he had granted for it might be given

and

given up upon payment being made which Letter from the Date of Lieutenant John Baillies which the Complainants did say Enclosed it must they alledged have been written in the Month of June which was in the year of our Lord One thousand Seven hundred and Eighty Six Months Subsequent to the much boasted Statement as the Complainants insinuated which had been made by the said Alexander Macklellan Dated the first Day of December and year of our Lord one thousand Seven hundred and Seventy nine and Exactly Twelve Months Subsequent to the final Settlement of Colonel Browns Account also Exhibited by your Petitioners and which was Dated the first Day of June one thousand Seven hundred and Seventy nine and from all which Circumstances your Petitioners shew that the Complainants did in and by their said Replication state it would appear that their demand was well founded Legal and Just and that the Several pretends Evasions and Conclusions which the Complainants did unfairly insinuate to have been set up by your Petitioners were Vexatious Litigious and untrue That the Account Current drawn up by the deceased Captain John Macalister and Approved of as they pretended by the said Alexander Macklellan whilst it gave Additional strength to the Claims of the Complainant fully Established their right to Interest from the dates of the Receipts which

Receipts

Receipts as appeared from the tenor of the said Alexander Macklellans Letter never could have been Suffered to Remain Outstanding After the final Settlement of accounts had taken place and Lastly the Complainants in their said Replication did state unto the said Honourable the Mayors Court that on the Month of January which was in the year of our Lord One thousand Seven hundred and Eighty one Richard Joseph Sulivan did address a Letter to the said Captain John Macalister deceased which was the Exhibit marked F annexed by the Complainants in their said Replication and by them prayed to be taken as a part thereof the Original being ready to be produced when Enquired stating that he would speak to his Sister your Petitioner Henrietta Balfour on the Subject of her Claim which he was convinced she could have no Objection to Observing that he and Brodie Could adjust the matter and that in the Month of September following the said Richard Joseph Sulivan by Letter addressed to the said Captain John Macalister which was the Exhibit marked G annexed by the Complainants to their said Replication and prayed by them to be taken as a part thereof the Original being ready to be produced when Enquired fully admitted as the Complainants pretended the Claims of the said

Captain

Captain John Macalister on the Estate of the said Alexander Macklellan Lamenting that the Troubles to the Southward had prevented its being Discharged and Entreating a further indulgence

And your Petitioners Shews that to the Complainants said Replication your Petitioners did upon the fourth Day of March which was in the Year of our Lord one thousand Seven hundred and Eighty Eight put in a General Rejoinder and thereafter upon the Eleventh Day of the said Month of March file their amended Rejoinder by which your Petitioners did aver and maintain that all the matters and things Contained in their Joint and Separate answer were good Certain and Sufficient as the same were therein and thereby setforth and alledged but that the Replication of the Complainants was very untrue Evasive and insufficient and your Petitioners for Rejoinder did say that the Complainants had been wrong advised when they said that your Petitioner Henrietta Balfour ought to have Exhibited an Account Current of the Receipts and Disbursements relative to the Estate of Alexander Macklellan Exactly as possible up to the time when the Answer of your Petitioner the said Henrietta Balfour was filed in the said Honourable the Mayors Court because

Your

Your Petitioners did say that it appeared in and by the said answer that your petitioner Henrietta Balfour had Delivered in an Account Current of the Estate and Effects of the said Alexander Macklellan into the said Honourable the Mayors Court in the Month of august which was in the year one thousand Seven hundred and Eighty five and your Petitioner Henrietta Balfour had further stated in her said answer upon Oath that there had not been any Money Received for or on Account of the said Estate since she so Delivered in the said Account Current and therefore to what purpose or Effect your Petitioner did state should she have annexed an Account Current to her said Answer it Could not have been of the least Service to any of the parties in the Cause and would only have swelled the proceedings and papers to an Enormous Seize and a very heavy Expence and your Petitioners did in their said Rejoinder further state that it would tend much to their satisfaction if the Complainants would produce some of the Multiplicity of Documents which they stated to be possessed of to substantiate their Claim as those annexed to their Replication Certainly did not amount to any thing Like proof That the Letter written by John Fullock to Keith Macalister one of the Complainants Must have been written under a Mistake or from having forgotten the particulars

particulars of the Conversation which passed between him and your Petitioners John Balfour which particulars being fresh in the Memory and recollection of your said Petitioner your Petetioner John Balfour did in his said Replication state that discoursing with the said John Tulloch who was the Attorney to several of the Creditors of the said Alexander Macllellan as well as to the Complainants your Petitioner did Desire him to apply to all his Constituents and know how far they would consent to take Bonds of the Rajah of Tanjore for their debts adding that he your Petitioner could not give these Bonds unless all the Creditors agreed and your Petitioner did shew that he Spoke to the said John Tulloch as Attorney to several of the Creditors notwithstanding the wish of the Complainants to make it appear that the Said John Tulloch was so Spoken to as Attorney to the Complainants only and your Petitioner did further state that over and above this Declaration of the Conversation which your Petitioner in his said Rejoinder did aver to be true it must be said have Appeared obvious to every Considerate person that he your Petitioner could never have intended to make a partial payment to the Complainants in preference to the Bond Creditor a Measure highly improper and such as would materially

Affect

Affect him the Extract of the said Letter your Petitioner did therefore state could never be adduced as a proof of a promise of payment by him your Petitioner as the Conversation alluded beyond a Doubt to all the Creditors to whom the said John Tulloch was Attorney whose Sentiments your said Petitioner wished to know as he had personally Applied to others of the Creditors and thereby would learn the Sentiments and Opinion of the whole on his intended Arrangement of payment Much less did your Petitioner say Could it be Allowed as the Complainants pretended that he your said Petitioner thereby fully Admitted the Justice of the Complainants demand and that he your Petitioner Certainly did not ask for Vouchers or say any thing more on the Subject for as he knew that he could not pay the Demand it would have been Altogether useless to have gone at that time into an Investigation otherwise had your Petitioner had Assets he would then have Entered into the nature of the Demand and Certainly would then as he did at the time of filing his said Rejoinder have Declared it of such a nature as he could not pay And your Petitioner Shews that he did further state that if the Extract of the said Letter could not be admitted as proof how much less credit could be given to the Exhibit Marked A annexed to the Complainants

Replication

Repliciation which they said did not only not Deny the debt but promised to Attend to it as Money might be recovered for the words of the said Exhibit your Petitioner did State upon reference thereto did by no means go so far as the words were But you may rest Assured that as Money shall be received on Account of the Estate of Major Maclellan your Claim will be Attended to According to its Degree and Circumstances And your Petitioner did thereupon in his said Rejoinder Submit to the said Honourable the Mayors Court whether the Complainants were in any Measure shape or Degree warranted in Asserting As they did that your said Petitioner in and by such Letter promised to attend to their debt as Money might be recovered as there was not as your Petitioner humbly insisted the Smallest pretense for so Saying And your Petitioners Shew that for further Rejoinder they did say that the Complainants were much Mistaken when they stated in their Replication their Through knowledge of their Demand having been admitted by your Petitioners for your Petitioners did in and by their said Rejoinder pray leave to State that in the year One thousand Seven hundred and Eighty Six some time after the Date of the Letter from John Tulloch to Keith Macalister as above Referred to

the

the said Keith Macalister together with the said John Tulloch did apply to your Petitioner John Balfour for a Reversed Account under his Signature of what the Complainants stated to be due to them by the Estate of the said Alexander Maclellan upon which your said Petitioner requested to see the Vouchers on which the Claim of the Complainants rested and those since Exhibited in the said the Honble the Mayors Court were shewn to your said Petitioner who then told the said two persons above named that those Vouchers were not satisfactory he your Petitioner further Acquainted them that there was not any Mention made in the Accounts or papers of the said Alexander Maclellan of any Debt to John Macalister deceased and your Petitioner Shews that he then shewed them the Original Abstract Statements of the Debts and Credits of the Estate of the said Alexander Maclellan in which no such Debt Appeared and also the Original Account under the title "Colonel George Brown for Account of Alexander Maclellan" in which the Ballance being Porto Novo Pagodas three thousand / the amount of the Demand of the Complainants is stated to be paid and transferred to the credit of Alexander Brodie and your Petitioner John Balfour signified to the said two persons above named that the Sum Claimed Appearing to transferred to the credit of Alexander Brodie might therefore make a part of the

Sum

Sum for which the Latter was a Creditor of the Estate and your said Petitioner John Balfour did Therefore on these Grounds Refuse to grant the reversed account required or to do any other act which should seem to put the Claims of the Complainants on any footing other than what it stood on at the death of the said Alexander Macleller The Complainants therefore were well acquainted and perfectly knew that the validity of their Claim was not Admitted by your Petitioners And further your Petitioner John Balfour did request the said John Tullock who was Attorney to Alexander Brodie to Examine the Correspondence of his Constituent with the said Alexander Macleller in his Life time and to Endeavour to trace some thing satisfactory Respecting the matter in question but that your Petitioner never received any information from him although it was probable that such Correspondence might throw Light on the Subject because the principal Money in particular was paid by Colonel Brown for and on Account of Captain John Macalister deceased to Alexander Macleller thro the Means of the said Alexr Brodie and because the Letter marked E annexed to the Complainants Replication from the said Alexander Macleller to J. Baillie Mentioned his the said Alexander Macleller having written to the said Alexander Brodie on

on the Subject. And your Petitioner John Balfour in his said Rejoinder did say that he had Endeavoured to come at Certainly Respecting the validity of the Claim of the Complainants by such other and further means as were in his power and in such Investigation was informed by a man of the name of Puttapa the Dubash of the said Alexander Macleller that to the best of his Recollection the Money Received from the said Colonel Brown was repaid or Discharged but that he did not remember in what manner it was done. And for further Rejoinder your Petitioners did over that in their said Answer they reasoned fairly on the Vouchers adduced by the Complainants in support of their Claim and on the Account and papers of the said Alexander Macleller in their possession of which they your Petitioners produced Copies to the said the Honourable the Mayors Court who they Trusted would be satisfied that the motives which actuated your Petitioners had not been such as the Complainants were pleased to attribute to them and your Petitioners further shewed that acting for an Estate yet burthened with many heavy Debts and Accountable to the Creditors for their Managements and Conduct were not authorised

to

to admit a Claim unsubstantiated while from the accounts and papers of the said Alexander Macklellan it bore no Doubtful an respect. And your Petitioners in their said Rejoinder did still humbly assert that Receipts such as had been produced by the Complainants must have been Left outstanding and therefore that they were not Sufficient to Substantiate the Claims and your Petitioners did in and by their said Rejoinder further observe that they did not Conceive the want of Direct information on their part Sufficient to set aside the Claim of the Complainants but maintained that that together with the other Circumstances as Represented by them formed Sufficient grounds for Doubt and for going into a legal investigation by which your Petitioners might arrive at farther information and other Circumstances relative to this affair which your Petitioners might not otherwise Come at the knowledge of neither Could the delay be materially Detrimental to the Complainants admitting that their Claim proved to be Just for your Petitioners did state there were no Assets and several Debts of a preferential Degree being outstanding and unpaid and that should the present Claim be Even Allowed the Complainants could not Receive any Money for a Considerable time and your Petitioners did further

Setforth

Setforth that they never did Entertain an idea that any irregularity in the Account of a Debtor Could Deprive a Creditor of his Right nor did it Apply to the Case in question That the Complainants inferred the irregularity of the Accounts of the said Alexander Macklellan deceased because they happened not to Correspond with their Claim the matter in Dispute and yet to be substantiated and therefore begged the question but your Petitioners insisted that it had Clearly Appeared that Colonel Brown who owed Money to Captain John Macalister paid on his Account thro the before named Alexander Brodie certain Sums to the said Alexander Macklellan that those Sums were stated to the Credit of an Account under the title of "Colonel George Brown for Account of Alexander Brodie" and that there was no irregularity therein Except it should be proved that such Balance was not so paid or Transferred and your Petitioners did further state that the coincidence between that Balance which was three thousand Portonovo Pagodas and the Amount of the Two Receipts under which the Complainants them Claimed was not accidental as they did pretend that the Balance stated to be paid and transferred to the account of the said Alexander Brodie was actually made up of the two Sums for which the

Receipts

Receipts produced were granted to the said Colonel George Brown who had no account for himself with the said Alexander Maclellan nor any Transaction with him Excepting those of the Money paid by him for and on Account of the said Captain John Macalister and your Petitioners shew that for further Rejoinder they did state that with Respect to the Letters of Richard Joseph Sulivan as it did not appear he had acted for the Executrix they could not become Subjects of Enquiry or investigation and your Petitioners having as aforesaid overturned the proofs as the Complainants Called them in support of their Claim did next begleave to advert to the very unhandsome Language made use of by the Complainants in their said Replication and did state that the Complainants therein had said that your Petitioners aimed at amusing the said Honourable the Mayors Court with Opinions as false as they were unjust and your Petitioners did humbly insist that such Language called loudly for the interposition and interference of the said Honourable the Mayors Court as derrogatory to its Dignity and highly unbecomming because your Petitioners had filed their answer upon Oath the Term false ought not upon any Account to be applied to any matter Contained therein and your Petitioners shew they did

did Lastly say that they had not in any Respect made use of sophistical arguments Calculated to Confuse for their arguments they humbly insisted had been fair candid and proper and such as never could Confuse any intelligent person and certainly did not in any manner or Shape merit a Deserve a Replication Couched in such terms as the one filed by the Complainants which your Petitioners humbly Submitted to the Serious Consideration of the said Honourable the Mayors Court and prayed their Judgement thereon

And your Petitioners Shew unto this Honourable Court that upon the Above proceedings Rules passed for the Examination of Witnesses and that Witnesses at Madras and Others by Commission in England were Examined by the Complainants and your Petitioners and that publication did pass thereon And your Petitioners shew that the Witnesses so produced and Examined by and on the part of the Complainants did not in the least tend to prove nor did they by any means substantiate the Demand set up by the Complainants against your Petitioners but on the Contrary that the same were altogether irrelevant and impertinent

to

to the matter in issue and were Replete with self contradictions and your Petitioners attending to the most materiah point by the Complainants aimed to be Supported beg leave to state that although John Tulloh a Witness produced by the Complainants was interrogated to the Particulars of the Conversation said to have taken place betwixt your Petitioner John Balfour and the said John Tulloh and which Conversation the Complainants have Endeavoured to turn to their own advantage by attempting to Shew that the Same was addressed on the part of your Petitioners to the said John Tulloh as the individual agent of them the Complainants yet your Petitioners shew it will Evidently appear from the Evidence of the said John Tulloh himself that such Conversation on the part of your Petitioners was addressed to the said John Tulloh as the agents of the Creditors at large of the Estate of the said Alexander Macllellan deceased and not as the agent of the Complainants individually for the said John Tulloh to the Sixth Interrogatory on the part of the Complainants did depose that your Petitioner John Balfour did propose to give Companys Bonds in payment of Major Macllellans Debts provided the Creditors would receive them as far as he understood the Deponent was agent for most of the Creditors he the Deponent agreed to write to the Complainants in this Cause but said at the time he did not find himself at Liberty to accede to the proposal without Consent of the parties Concerned or words to that Effect and which your Petitioners shew is further Corroborated by the Evidence of the said John Tulloh when Examined on the part of your petitioners for to the Second Interrogatory he did Depose that your Petitioner John Balfour at the time he so Conversed with the Deponent did Acquaint him that his plan for Discharging the said Debts by Companys Bonds was intended to take place only upon the provision of all the Creditors of the said Alexander Macllellans agreeing to such mode of payment and therefore the Deponent imagined all the Creditors of Every Degree should be Consulted And your Petitioners beg leave to shew that so far from your petitioner John Balfour Ever Countenancing or admitting the Justness of the claim of the Complainants upon the Estate of the said Alexander Macllellan deceased that the Contrary will appear from the Evidence of the said John Tulloch who to the third Interrogatory on the part of your Petitioners Deposes that the Came to your petitioner John Balfours Rooms in the Fort Square in Company with Captain Keith Macalister One of the Complainants in this Cause and that your Petitioner said that no mention was made in the Books or Papers of the said Alexander Macllellan of any Sums

Sum or Sums of Money being Due by him to the said John Macalister Deceased hence it is Evident that your Petitioners Ever Viewed such Claim in a questionable light and was well warranted in so doing from the above Circumstances and your petitioners shew it is Equally Clear that the Complainants Themselves were Conscious of the unjustnys of their Claims as it is further in Proof by the Deposition of the said John Tulloh to the Sixth Interroga-tory on the part of your Petitioner that at the time above mentioned the said John Tulloh Accompanied by the said Keith Macalister did tender unto your Petitioner John Balfour an Account Current stating a Balance due to the Estate of the said John Macalister which Account he the said John Tulloh looks to your Petitioner for the purpose of obtaining his Signature thereto but that with which request your Petitioner did refuse to Comply Declaring at the time that he would not do any act which Could put the Claim of the Complai-nants on any other footing than it stood at the time of the Death of the said Alexander Machellan —

And your Petitioners shew that the Witnesses Examined on their part did Substantiate the Several matters and things in their said Answer and Rejoinder Contained and first your Petitioners shew that alexander Brodie a Witness produced by them on being

being Interrogated to the third Interrogatory whether he did not at the time when he acted as Agent or Attorney for the said George Brown give Orders or Directions to the Debash or Servant of the said George Brown who had the Charge of his Concerns in the Tanjore Country to pay to Major Alexander Machellan a Sum of Money which the said George Brown owed to the said Captain John Macalister and what sum was paid to the said Alexander Machellan in Consequence of such Directions your Petitioners shew that the said alexander Brodie in and by his Deposition to such Interrogatory declares that to the best of his recollection he did not at the time when he acted as agent or Attorney for the said George Brown given any orders or Directions to the Debash or Servant of the said George Brown who had the Charge of his Concerns in the Tanjore Country to pay to Major Alexander Machellan any sum of Money which the said George Brown owed to the said Captain John Macalister But said he well remem-bered that the said George Brown was in the said year one thousand Seven hundred and Seventy nine indebted to the said Captain John Macalister in the sum of Six thousand Pagodas or Thereabouts upon or by Virtue of a Bond or Obligation Theretofore Entered into by the said George Brown to the said Captain

John

Sum or Sums of Money being Due by him to the said John Macalister Deceased hence it is Evident that your Petitioners Ever Viewed such Claim in a questionable light and was well warranted in so doing from the above Circumstances and your petitioners shew it is Equally Clear that the Complainants Themselves were Conscious of the unjustness of their Claims as it is further in Proof by the Deposition of the said John Tulloh to the Sixth Interroga-tory on the part of your Petitioner that at the time above mentioned the said John Tulloh Accompanied by the said Keith Macalister did tender unto your Petitioner John Balfour an Account Current stating a Balance due to the Estate of the said John Macalister which Account he the said John Tulloh Looks to your Petitioner for the purpose of obtaining his Signature thereto but that with which request your Petitioner did refuse to Comply Declaring at the time that he would not do any act which Could put the Claim of the Complain-ants on any other footing than it stood at the time of the Death of the said Alexander Maclellan —

And your Petitioners shew that the Witnesses Examined on their part did Substantiate the Several matters and things in their said Answer and Rejoinder Contained and first your Petitioners shew that alexander Brodie a Witness produced by them on being

being Interrogatted to the third Interrogatory whether he did not at the time when he acted as Agent or Attorney for the said George Brown give Orders or Directions to the Debash or Servant of the said George Brown who had the Charge of his Concerns in the Tanjore Country to pay to Major Alexander Maclellan a Sum of Money which the said George Brown owed to the said Captain John Macalister and what sum was paid to the said Alexander Maclellan in Consequence of such Directions your Petitioners shew that the said alexander Brodie in and by his Deposition to such Interrogatory declares that to the best of his recollection he did not at the time when he acted as agent or Attorney for the said George Brown given any orders or Directions to the Debash or Servant of the said George Brown who had the Charge of his Concerns in the Tanjore Country to pay to Major Alexander Maclellan any sum of Money which the said George Brown owed to the said Captain John Macalister But said he well remem-bered that the said George Brown was in the said year one thousand Seven hundred and Seventy nine indebted to the said Captain John Macalister in the sum of Six thousand Pagodas or thereabouts upon or by Virtue of a Bond or Obligation theretofore Entered into by the said George Brown to the said Captain

John

John Macalister and that in the said year one thousand Seven hundred and Seventy nine the said George Brown at the request of the Deponent did at different times pay or Cause to be paid to the said Major Alexander Mac-Lellan for the use of the said Captain John Macalister part of the Monies then due and owing to the said Captn John Macalister upon or by Virtue of the said Bond or Obligation and that the said Major Alexander Maclellan did give to the said George Brown Receipts for monies so Received by him for the use of the said Captain John Macalister as aforesaid and that the said George Brown at the like Request of the Deponent did soon afterwards pay to or Allow in Account with the Deponent for the use of the said Captain John Macalister the remainder of the Monies then due and owing to the said John Captain John Macalister upon or by Virtue of the said Bond or Obligation whereby the said Bond or Obligation became fully Discharged But what sum of Money in particular the said George Brown did so pay to or allow in Account with the Deponent as aforesaid or what Sum of Money in particular the said George Brown did so pay to the said Major Alexander Maclellan as aforesaid he the Deponent did not then recollect and your Petitioners further shew that the said Alexander Brodie the

Witness

Witness Examined by them as aforesaid to the fourth and fifth Interrogatories on the part of your Petitioners deposeth That some short time after the said George Brown had paid or Caused to be paid to the said Alexander Maclellan for the use of the said John Macalister such Monies as aforesaid the said John Macalister finding that such Monies were to a greater amount than he had intended should have been paid to the said Alexander Maclellan on Account of the Monies so due and owing to him the said John Macalister as aforesaid he the said John Macalister did give Directions to the Deponent as his agent to Request the said Alexander Maclellan to repay to the said George Brown the Sum of one thousand Pagodas or thereabouts part of the Monies paid by the said George Brown to the said Alexander Maclellan as Aforesaid which the Deponent Accordingly did and thereupon the said Alexander did repay to or for the use of the said George Brown the said Sum of One thousand Pagodas or thereabouts Accordingly and which said Sum of One thousand Pagodas or thereabouts was part of the Monies paid to the said Alexander Maclellan on Account of the said John Macalister as Aforesaid and the said Alexander Brodie did further say

that at the time of Such Repayment he the deponent did Consider the said Alexander Macklellan to be then indebted to the said John Macalister in the Balance of the Monies so paid or Caused to be paid to the said Alexander Macklellan by the said George Brown as aforesaid and the Deponent did say that such Balance or any part thereof was never Accounted for with the Deponent by the said Alexander Macklellan nor did the said Alexander Macklellan Ever pass such Balance or any part thereof to the Deponents Credit in Account or Ever make any other Allowance in any other way whatever to the Deponent for the same or any part thereof to the best of the Deponents Recollection and Belief

And your Petitioners shew that Pathapa the Head Debash and who did manage and Conduct the Busines of the said Alexander macklellan deceased in his life time and the best Evidence that could be Required to ascertain the payment and Repayment of the monies in question or any other Money Transactions of the said Alexander Macklellan with whose Affairs the said Pathapah was perfectly well informed was Examined by your Petitioners and who your Petitioners shew to the first

first Interrogatory did Depose that he did Serve Major Alexander Macklellan deceased in the Capasity of Head Debash and that he Knew a Sum of Money was paid by Vencatachellum Debash to Colonel John Brown to the said Major Alexander Macklellan on Account of Captain John Macalister deceased and that the said Sum of Money was Repaid by Major Alexander Macklellan and your Petitioners shew that to Remove all manner of Doubt in Regard to the Repayment of the Money so received by the said Alexander Macklellan from the said George Brown on Account of the said John Macalister your Petitioners shew that the said Pathapa to the Second Interrogatory on the part of your Petitioners Positively Deposes that the said sum of Money was fully and Justly repaid to Vencatachellum Colonel George Browns Debash but that the Deponent did not know that it was Transfered or Carried to the Credit of Captain John Macalister and further the said Pathapa deposes that he did not believe that the said Major Alexander Macklellan at the time of the Death was indebted in the said Sum or any Sum of Money to the said Captain John Macalister Deceased

And your Petitioners shew that upon the aforegoing proceedings and Evidence the said Cause was set Down for Hearing and the same did Accordingly

Come

Come on to be heard by and before the said Honourable the Mayors Court on the Twenty Seventh Day of April in the present Year of Our Lord one thousand Seven hundred and Ninety two when the said Court were pleased to Order and Decree and did Accordingly Order and Decree that your Petitioners do pay unto the Complainants the full and Just Sum of Five thousand Two hundred and Twelve Pagodas Seven fanams and ten Cash together with all such Interest as then was or should thereafter become Due thereon until full payment be made also all Costs of the Suit as by a Copy of the said Decree hereunto annexed for the inspection of this Honourable Court and prayed by your Petitioners to be taken as part of this their Petition and Appeal may more fully and at large Appear —

By which said Decree your Petitioners Conceive themselves much Aggrieved and do therefore appeal therefrom to this Honourable Court for the following among other Reasons —

First..... Because your Petitioners are advised that the said Decree of the said Honourable the Mayors Court is in itself altogether illegal and unjust inas much as the sum Decreed is given against your Petrs in their private Capacities to the injury of their private fortunes as if the Sum sued for had been a Debt contracted by them Whereas your petitioners shew it Appears by the Title and Declaration of the Cause that your petitioner Henrietta Balfour was sued by the Complainants as the Executrix named in the Last Will and Testament of Alexander Macklellan Deceased and to which Suit your Petitioner John Balfour was made a party only on account of his having intermarried with your Petitioner Henrietta Balfour the Executrix aforesaid wherefore your Petitioners shew That in the Court of Judgement being given against your Petitioners the said Honourable the Mayors Court were bound and ought to have decreed the Sum so to have been paid by your Petitioners to the Complainants out of the Estate and Effects of the said Alexander Macklellan deceased as Customary in Like cases and According to the practice of the said Honourable the Mayors Court and not in the manner and form as the same has now been Decreed by them as aforesaid —

Secondly That the said Decree is Erroneous and Contrary to Law because the same is given against Evidence inasmuch as it is in proof by the positive Testimony of Alexander Brodie hereinbefore recited that One thousand Pagodas of the Original Sum for which Receipts were given by the said Alexander Macklellan to the said George Brown for and on account of the said John Macalister had been

been by him the said Alexander Macklellan Repaid which Original Sum your Petitioners shew amounted to Three thousand Portonovo Pagodas as Appears by the Receipts Themselves granted therefor by the said Alexander Macklellan to the said George Brown as aforesaid on which Receipts the present action was unjustly Brought and Copies whereof stand annexed to the Complainants Bill of Complaint and your Petitioners further shew that against the Repayment of the three Remaining Balance which of Course fell to be two thousand Pags there only stands a matter of opinion and belief on the part of the Complainants in the Deposition of the said Alexander Brodie

Thirdly ..... Because it appears by the positive Evidence of Pathehapa the Head Debash and manager of the said Alexander Macklellans Concerns that whatever Sums of Money the said Alexander Macklellan had so Received as aforesaid on Account of the said John Macalister that the same had by him the said Alexander Macklellan been repaid and further that at the time of his the said Alexander Macklellans death he was not indebted in any Sum of Money whatever to the said John Macalister

Lastly ..... Because the said Decree is Aggressive in Respect to its having adjudged an Interest of twelve

per

per Cent as Claimed by the Complainants upon a Matter where no Bond or other Instrument has been produced to shew that the principal Sum Sued for was Ever Lent upon Interest and in this last Cause of Objection your Petitioners are supported by the Opinion of the Honourable the Mayor of the said Mayors Court who did Dissent from that part of the said Decree being of Opinion that no more than Eight per Cent Interest should be Allowed and which stands Entered in the Records of the said Mayors Court

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

/ Signed / Jn° Hamilton
Solicitor for Appellant

Mayors

Mayor's Court at
Madraspatnam

Friday the 27th day of April
Anno Domini 1792

Present

Andrew Ross Esqr. Mayor
James Daly and William Abbott
Aldermen

Between Charles Macalister Keith Macalister
and Matthew Macalister Brothers and Administrators
of all and Singular the Goods Chattles Rights
and Credits of the Estate and Effects of John
Macalister Deceased late a Captain of Cavalry in the
Service of his Highness the Nabob of Arcot Complainants
and John Balfour in the Service of the united Company of
Merchants of England trading to the East Indies
on the Coast of Coromandel and Henrietta Balfour
his Wife late Widow and Relict of Alexander
Macllan late a Major in the said Service Executrix
Appointed in the Last Will and Testament of Her said
Deceased Husband Major Alexander Macllan
Deceased Defendants

This Cause coming on to be Heard and Debated this
Day in the Presence of the Attornies on both Sides on Reading
the Complainants Bill with Copies of two Notes of Hand
and an Account Current annexed the Defendants Joint

and Separate Answer with Copies of three Exhibits marked
A, B and C, annexed the Replication with Copies of Seven
Exhibits Marked A, B, C, D, E, F, and G annexed the
Amended Rejoinder the Interrogatories and Depositions on
the part of the Complainants with a Commission and Exhibits
marked N1 & N2, and Letters A & E annexed the
Interrogatories and Depositions on the part of the Defen-
dant an Inventory with Six Exhibits marked N1.2.3.4.5 & 6
on the part of the Complainants on Hearing the Pleadings made
use of by the Attornies and in 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 Complainants the full and Just Sum of Five Thousand
Two hundred and Twelve Pagodas Seven fanams and Ten
Cash Pagodas 5212..7..10. together with all such Interest as
now is or shall hereafter become due thereon untill full Payment
is made also all Costs of this Suit

Signed/ Pr Cur
George Taylor Esqr
Attorney Copy

Signed/ Jno Hamilton
Solicitor for Appellant

In the Honble the Court of Appeals

In the Matter of Petition and Appeal in the Cause wherein John Balfour in the Service of the united Company of Merchants of England trading to the East Indies on the Coast of Coromandel and Mennietta Balfour his Wife Late Widow and Relict of Alexander Macklellan late a Major in the said Service Executrix Appointed in the last Will and Testament of her said deceased Husband Major Alexander Macklellan deceas'd are Petitioner and Charles Macalister Keith Macalester and Mathew Macalister Brothers and Administrators of all and Singular the Goods Chattles Rights and Credits of the Estate and Effects of John Macalister deceased Late a Captain of Cavalry in the Service of his Highness the Nabob of Arcot are Respondent

The Answer of the above Respondents

These Respondents for Answer to the said Petition and Appeal or unto so much thereof as they are advised is material or necessary for them to make Answer unto

Filed in my Office
the 27th June 1792
Chas N White Clerk

unto Answer and admit that they did some time on or About the first Day of October which was in the year of our Lord One Thousand Seven hundred and Eighty Seven Exhibit and file a Bill of Complaint in the Honourable the Mayors Court at Madraspatnam against the Above named Petitioners Charging them the said Petitioners by the name and discription of John Balfour and Mennietta Balfour his Wife Widow and Relict also the Sole Executrix of Alexander Macklellan deceased Late a Major in the Service of the Honourable Company as being indebted to these Respondents in the full and Just Sum of Five Thousand two hundred and Twelve Star Pagodas Seven fanams and Ten Cash Current Money of Madras or in Sterling Money of Great Britain at the rate of Eight Shillings for every Pagoda the Sum of Two Thousand and Eighty four Pounds Seventeen Shillings and Three Pence or thereabouts and which these Respondents admit to have said would more fully Appear by an Account Current and two Receipts granted by the said Alexander Macklellan in his Life time Copies whereof were to the said Bill annexed and prayed by these Respondents to be Taken as part Thereof And these Respondents also admit to have set forth in and by their said Bill of Complaint that the said Alexander Macklellan having died possessed of very Considerable Property more than Sufficient to pay off the

the Claim of these Respondents as Administrator of their said Brother and as the said John Balfour had inter married with the Executrix the said Henrietta Balfour that they Lith stood Thereupon indebted to these Respondents in the said Sum of Five Thousand two hundred and Twelve Pagodas Seven fanams and ten Cash of which said Sum these Respondents praged the said Honourable Mayors Court to Decree them Payment And these Respondents admit that to such their Bill of Complaint the said Petitioners did on or about the Eighteenth Day of December which was in the year of our Lord one Thousand Seven hundred and Eighty Seven put in their Joint and Several answer wherein they did Petitioners Dispute the Validity of these Respondents Claim and insist that the same must have been extinguished by Transferor otherwise previous to the decease of the Testator which Answer being fully recited in the said Petitioners Petition of Appeal these Respondents Crave Leave to refer Thereto and pray that it may be taken as part of this their Answer to the said Petition of Appeal And these Respondents admit that on the Twenty ninth day of January which was in the year of our Lord one Thousand Seven hundred and Eighty Eight they filed a Replication to the said joint and Seperate Answer in order to support their said Bill of Complaint and to Controvert the matters in the said

Answer

Answer Set forth which Replication being also recited by the Petitioners in their said Petition and Appeal these Respondents crave leave to refer thereto and pray that it may be taken as part of this their answer to the said Petition and Appeal and that they may have the full benefit and advantage thereof And these Respondents admit that to the said Replication the said Petitioners filed a Rejoinder in manner and form as by them is recited in the said Petition and Appeal and to which these Respondents also crave leave to refer And these Respondents admit that upon these Proceedings Issue Joined and Rules praged for the Examination of Witnesses and that Witnesses were Examined both at Madras and by Commission in England These Respondents however Cannot admit or allow what has been set forth and stated by the Petitioners in their said Petition and Appeal namely that the Witnesses produced and Examined on the part of these Respondents did not in the Least Tend to prove or by any means to Substantiate the Demand set up against them but on the Contrary that the same were altogether Irrelevant and Impertinent to the matter in Issue and was Replete with self Contradictions These Respondents insist that the Evidence addduced by them in support of their Claim is in every respect pointed and uniform shewing in a Clear View the Justness

of

of these Respondents Demanded and amply Supplying that Information which the Petitioners in their Several pleadings seem to be so much in want of and which they urge as their Reason for Litigating the present Suit these Respondents Consider the mode in which they have introduced the Evidence in their Petition and Appeal as unfair by Extract from the Deposition in the Cause such parts as they Judged were favorable to Themselves and Drawing Conclusions thereon very Different from that which the Evidence itself intended to Convey and therefore these Respondents conceive it necessary in order to Illustrate the Transaction and to bring and place the merits of this Cause fairly before this Honourable Court to recite the Evidence as it really is And first these Respondents say that the Loan upon which the present action is grounded having been made to Major Alexander Maclellan Deceased the former Husband of the Petitioners Henrietta Balfour through the Medium of Alexander Brodie who in the Pleadings of this Cause is admitted to have been the Common agent of the Parties therefore the said Alexander Brodies Testimony was deemed Essential towards Clearing up the matters in Dispute but the said Alexander Brodie having Departed from this Country and being Resident in England the Evidence of John Tullock of Fort Saint George his agent and who had Long been in the Management of this Concerns was by these Respondents Considered as Sufficient to Supply the want of his Testimony and Accordingly these Respondents did Sometime in or about the Month of June which was in the year of our Lord one Thousand Seven hundred and Eighty Eight Exhibit and file Certain Interrogatories in the Cause to which the said John Tullock being Interrogated to the matters Relating to the present Suit Deposed to the Second Interrogatory as follows to wit That he was agent to Alexander Brodie Esquire but that he the Deponent was not Acquainted with his Concerns prior to and in the year one Thousand Seven hundred and Seventy nine but that from Mr Brodies Books he the Deponent had observed various Money Transactions between him and the late Major Alexander Macleallen and that since Mr Brodie Left this Country in the year One Thousand Seven hundred and Eighty three this Deponent had been acting in the Management of his affairs and to the Third Interrogatory the said Deponent Mr Tullock further said that it appeared from Mr Brodies Books that there were Money Transactions between the late Colonel George Brown the late Captain John Macalister and the said late Major Alexander Macleallen and that the Mr Brodie was agent and Friend of the Parties and to

to the fourth Interrogatory the said Deponent said it did not appear by Mr Brodies Books that there was an unsettled Ballance of any kind due by Alexander Macllellan to Colonel Brown on Account of the Deceased Captain Macalister but that it Appeared a Transfer was carried to Colonel Browns Credit in Captain Macalisters Account with him for Money advanced to Major Macllellan amounting as he the Deponent believed to about Three Thousand Porto Nova Pagodas and that the Account was finally Closed by a Transfer of the Ballance to Mr Brodies Account with Captain Macalister and the Deponent did therefore say that the said Sum was advanced by Captain Macalister to Major Macllellan through the hands of Colonel George Brown.

To the fifth Interrogatory the said Deponent John Tulloh further Deposed and said there were Letters among Mr Brodies Papers from the said Alexander Macllan to Mr Brodie dated in the years one Thousand Seven hundred and Twenty nine and one Thousand Seven hundred and Eighty relative to the Debt due by him to Captain John Macalister and the said Deponent said it Appeared to him by these Letters that the said Three Thousand Pagodas were paid by Colonel Brown to Major Macllellan on account of Captain Macalister and mention thereof was

Stated

stating in the following Words in a Letter Signed Alexander Macllellan Dated Tanjore 9th August 1780 as Captain Macalister has given John Baillie an order upon me for his Money I should be glad that my Receipt for 3000 Pagodas was put into Baillies hands as I shall very soon be able to pay it off. And the said Deponent said the said Letters came into his profession or Being agent to Mr Brodie And these Respondents further say that to the Sixth Interrogatory the said Deponent John Tulloh said the Defendant John Balfour did propose to give Companys Bonds in Payment of Major Macllellans Debt provided the Creditors would receive them at Par and as he the said John Balfour understood the said Deponent was agent for most of the Creditors he this Deponent agreed to write to the Complainants in the Cause but said at the time he did not find himself at Leberty to accede to the proposal without the Consent of the Parties Concerned or Words to that Effect

To the Seventh Interrogatory the said John Tulloh Deposed that he told the Petitioner John Balfour that he the Deponent was agent for the Administrators of Captain Macalisters Estate and would write to them on the Subject of his offer and which the said Witness Deposes he did do

To the Eighth Interrogatory the same Witness Deposes that at the time the said John Balfour made

this

this offer he the Witness Conceived it was his Intention to
Discharge the Debt due from the Estate of Major Macllellan
to the Administrator of Captain Macalister on their Acceeding
to the Proposal of taking Company Bonds at Par. And to
the Ninth Interrogatory the said John Tulloh Deposed
that at the time the said J Balfour made to him the Witness
the said Proposal He did not propose Bonds of the Rajah
of Tanjore for the Liquidation of the Debts due by the Estate of
Major Macllellan but did actually tender Compangs Bonds
without any Proviso or Condition whatever Except at par
as before mentioned. And these Respondents in order to Shew
unto this Honourable Court the very Erroneous Construction
put upon the Evidence of the said John Tulloh in the
Petitioners said Petition feel themselves obliged from the
Partial Extracts selected therefrom by the Petitioners of an
Idle Conversation between the said Tulloh and the said
John Balfour to state in addition to the par going Evidence
of the said John Tulloh the Evidence he the said Tulloh
likewise gave on the Part of the Appellants on the Eleventh
Day of august in the said year one Thousand Seven
hundred and Eighty Eight and the further Evidence he
gave on behalf of these Respondents Afterwards to wit on
the Seventh Day of December one Thousand Seven hundred
and Ninety one In his Deposition on behalf of the appellants

he

he says that he is Attorney for Alexander Brodie Esquire
late of Madras and that the Petitioner John Balfour did
Converse with him Respecting the Discharging the Debts
of the late Alexander Macllellan by Bonds of the Honourable
East India Company that the said John Balfour at the
time he so Conversed with the Deponent did Acquaint
he in that his Plain for Discharging the said Debts by
Compangs Bonds was intended to take place only on the
Proviso of all the Creditors of the said Alexander Macllellan
agreeing to such mode of Payment and therefore the Deponent
says he imagenes all the Creditors of every Degree should
be Consulted That he the Deponent has no Reason to believe
that the Money was ever Repaid to Colonel George Brown
or John Macalister on the Contrary he imagines it never was
Repaid for in a Letter from the said Alexander Macllellan
Dated Tanjore 19th August 1790 a very little time before
his Death he say as Captn McAllester has given John Baillie
an order upon me for his Money I should be glad that my
Receipts for 3000 Pagodas was put into Baillies hands as
I shall very soon be able to pay it off and the Deponent
adds that this Letter came into his possession as being agent
to Mr Brodie and that it very Clearly appear by
Mr Brodies Books that the Money in Question never
had been carried to this Brodies Credit nor does he the
Deponent believe it was ever is arranged as to Discharge

this

the Estate of Alexander Macklellan from these Respondents claiming
And these Respondents shew that the said Tulloch on his
Re-examination on behalf of these Respondents in December one
Thousand Seven hundred and Ninety one Corroborates fully his
two former Depositions but with some Additional facts no
ways however varying from or Contradictory of the Spirit and
meaning of his said former Depositions as Charged by the
Appellants said Petition for these Respondents shew that on
this Examination he Deposes consistent to his said former
Declarations taken upwards of three years before that he
is the agent and acting Attorney of Alexander Brodie Esqr.
and that he is well acquainted with the Concerns and Transactions
of the said Alexander Brodie That there did Exist some
Money transactions between the said Alexander Brodie and
Major Alexander Macklellan as by the Books of the said Brodie
Appear but that they do not appear to be in any manner
Connected with the present Cause That it also Appears by
the said Books of the said Brodie that there were transactions
between the said Alexander Brodie John Macalister Lieut
Colonel George Brown both now deceased and the said
Alexander Macklellan but that such Accounts Appear to be
Distinct and Seperate Accounts between the said Brodie
and each of the said Parties and that the Accounts of the said
Parties are not in any manner Connected together That the
said

said Alexander Brodie appears to have been the Common Agent
of the said John Macalister George Brown and Alexander
Macklellan That there does not appear in the Books of the
said Alexander Brodie any Ballance due from the said
Alexander Macklellan to the said George Brown but that there
is in the Account Current Book of the said Alexander Brodie
an Account Entitled "Dr Capt.n John Mc Alester in Account
with Lieutenant Colonel Brown Cr." wherein the said
John Macalester is Credited by the said Lieutenant Colonel
George Brown under the following Dates
1779. March 13th By Cash paid to Major Macklellan .... 2000 ..
24th By Cash Do to Do ..... 1000 ..
P N Pag.d 3000 ...
and for which two Several Sums the said George Brown
transmitted the Receipt of the said Alexander Macklellan
to the said Alexander Brodie on Account of the said John
Macalister and in the said Account Current Book of the
said Alexander Brodie underneath the before mentioned
Account there Appears another Account Entitled as
follows Dr Lt Colond Mc Lellan in Account with Captn
John Macalister Cr wherein the said Lieutenant Colonel
Macklellan is Debitted under the following Dates
1779. March 15th To Cash paid you this day P.N. Os 2000 ...
24th To Do ..... 1000 ...
and

the Estate of Alexander Macklellan from these Respondents claiming And these Respondents shew that the said Tulloch on his Re-examination on behalf of these Respondents in December one Thousand Seven hundred and Ninety one Corroborates fully his two former Depositions but with some Additional facts no ways however varying from or Contradictory of the Spirit and meaning of his said former Depositions as Charged by the Appellants said Petition for these Respondents shew that on this Examination he Deposes consistent to his said former Declarations taken upwards of three years before that he is the agent and acting Attorney of Alexander Brodie Esqr. and that he is well acquainted with the Concerns and transactions of the said Alexander Brodie That there did Exist some Money transactions between the said Alexander Brodie and Major Alexander Macklellan as by the Books of the said Brodie Appear but that they do not appear to be in any manner Connected with the present Cause That it also Appears by the said Books of the said Brodie that there were transactions between the said Alexander Brodie John Macalister Lieut Colonel George Brown both now deceased and the said Alexander Macklellan but that such Accounts Appear to be Distinct and Seperate Accounts betwixt the said Brodie and each of the said Parties and that the Accounts of the said Parties are not in any manner Connected together That the said

said Alexander Brodie appears to have been the Common Agent of the said John Macalester George Brown and Alexander Macklellan That there does not appear in the Books of the said Alexander Brodie any Ballance due from the said Alexander Macklellan to the said George Brown but that there is in the Account Current Books of the said Alexander Brodie an Account Entitled "Dr Capt.n John Mc Alester in Account with Lieutenant Colonel Brown Cr." whereon the said John Macalester is Credited by the said Lieutenant Colonel George Brown under the following Dates —

1779 March 13th By Cash paid to Major Macklellan .... 2000 .. ..
24th By Cash Do to Do ..... 1000 .. ..
P.Pay.t 3000 .. ..

and for which two Several Sums the said George Brown transmitted the Receipt of the said Alexander Macklellan to the said Alexander Brodie on Account of the said John Macalister and in the said Account Current Book of the said Alexander Brodie underneath the before mentioned Account there Appears another Account Entitled as follows Dr Lt Colonel Mc Lellan in Account with Capt.n John Macallister Cr. wherein the said Lieutenant Colonel Macklellan is Debitted under the following Dates —

1779 March 15th To Cash paid you this day P.N.Os 2000 .. ..
24th To Do ..... 1000 .. ..

and

and under date the Fifteenth May one Thousand Seven hundred and Eighty in the same Account he is Debitted Four hundred and Seventeen Porto Novo Pagodas for Interest on the above Sums making together Three Thousand four hundred and Seventeen Porto Novo Pagodas to the Debit of the said Lieutenant Colonel Maclellan and the said Deponent further says that it appears by the said Alexander Maclellans Receipts before mentioned that the said Sums were paid to him by the said George Brown in Account of the said Captain John Macalister Deponent further says that he has in his possession a Letter from the said Alexander Maclellan to the said Alexander Brodie dated 9th Augt 1780 wherein it is observed that as Captain Mc Allister had given an Order to John Bailey for his Money he the said Alexander Maclellan would be glad that his Receipts for Three Thousand Pagodas were put into Baillies Hands as he would very soon be able to pay it off" And these Respondents further shew that the same Witness in this Deposition confirms his former ones regarding the Proposal of the Petitioner Balfour to pay the Creditors of Maclellans Estate in Companys Bonds at Par for he says that John Balfour sometime about the End of the year one Thousand Seven hundred and Eighty five Applied to him the Deponent personally as the agent of the Majority of Such Creditors and did offer Companys Bonds at par for the liquidation of their Demands on the Estate of the said Major Alexander Maclellan and the Witness adds that he did inform the said John Balfour that he acted as agent for the administrators of the said John Macalister and that he could not without the Consent of the said

Administrators

Administrators say any thing to his Proposal that the said Balfour did thereupon request the Deponent would acquaint the said Administrators of his offer and that he wished to have their answer as soon as possible and Deponent says that from this Conversation he cannot but infer and does believe that the Petitioner Balfour did mean to discharge the Debt due to the Estate of the said John Macalister from the Estate of the said Alexander Maclellan provided these Respondents should accede to this proposal aforesaid But the Petitioners Charge that this Witness is Vague and Contradictory particularly as regards his several Reports of the Conversation which passed between him and the Petitioner and that he is uncertain even as to the Proposals made to him as regards the Creditors of the said Maclellans Estate the Contrary of which these Respondents humbly rely is manifest and that the Entire of the three Depositions of this Witness are consistent in all points only that in his last Deposition he has stated additional facts particularly as follows for to the fourth Interrogatory he says that the said Balfour did Several times the proposal above mentioned to wit the Proposal of paying the Creditors of Maclellans Estate by Companys Bonds at par offer Bonds of the Rajah of Tanjore in liquidation of the Debts due from the said Alexander Maclellan to his Creditors but Deponent saith that he doth not recollect that the said Balfour Expressed himself that unless all the Creditors his the Deponents Constituents would

would agree to the Proposal that he would not give such Bonds but Deponent goes on and says that the said John Balfour did absolutely offer Companys Bonds at par without any other Condition to him as the agent for the administrators of the said John Macalister and hence these Respondents say it is manifest that the Petitioner Balfour well knew the Claim of these Respondents to be founded and such for he did actually tender without any Condition to pay Mr Tulloh their Debt provided he would accept it by taking Companys Bonds at par which the said Tulloh observing he could not do with out the Consent of these Respondents first had the Petitioner Balfour then says acquaint the administrators of my offer and let me know this Resolution as Early as possible These Respondents further answering say that the Witnesses Examined on the Part of the Petitioners did not as they Charge in their said Petition Substanthiate the several matters and things in their said answer and Rejoinder Contained for on the Contrary these Respondents beg to call the attention of this Honourable Court even to their selected Parts of Alexander Brodie's Deposition on their behalf in their said Petition adverted to from whence alone were there no other Evedence in the same Deposition kept back it is Clearly Established that the Estate of Macllellan has to account to these Respondents for a Ballance tho not in this Deposition precisely stated after Deducting a Sum of about one Thousand Pagodas paid by Macllellan

to

to Brown thro the hands of the Witness on the Account of Captain Macalister and by his request but these Respondents will now shew this fact from the Interrogs in parts of the Depositions of the said Alexander Brodie taken on Behalf not only of the Petitioner but also of these Respondents and by the Deposition of this Witness taken by Commission in London on the Thirteenth Day of February one Thousand Seven hundred and Ninety on Behalf of the Petitioners after the Extract made therefrom and entered in the Petitioners Petition the said Alexander Brodie to the Petitioners Sixth Interrogatory Deposes That some short time previous to the Death of the said Alexander Macllellan the said John Macalister and also the Deponent as his Attorney urged and apply to the said Alexander Macllellan for payment of the said Ballance so due from the said Alexander Macllellan to the said John Macalister and the said Alexander Macllellan then gave the said John Macalister and the Deponent reason to believe that the said Alexander Macllellan would soon pay and Discharge such Ballance and the Deponent says he believed that the said Macllellan did then fully intend to pay and Discharge the same in a very short time but Deponent Continues the said Alexander Macllellan died very soon afterwards and after his Death the said John Macalister became very uneasy that he was not a Bond Creditor for the said Ballance and therefore

the

this Deponent says and for the Reasons aforesaid he the Deponent verily believes and is fully satisfyed in his own mind that the said Alexander Macleller in his Life time never did in any manner whatever pay or Discharge or Cause to be paid or Discharged the said Ballance so due from him to the said John Macalister as aforesaid or any part thereof but the whole of such Ballance remained due and owing from him at the time of his Death to the said John Macalister and this Witness to the last Interrogatory Exhibitted to him on the Part of the Petitioner Deposed that at the time he the Witness Left Madras which was in the beginning of the year one Thousand Seven hundred and Eighty three that he did leave all the Papers and Writings then in his Custody or Possession relating to any of the matter aforesaid in the hands or Possession of Mr John Sulloh of Madras and that by a Reference to such Papers some further Information might be obtained relating to the matters in Question beyond what he the Witness could depose for want of such Documents and these Respondents shew that the said Alexander Brodie being in like manner Examined on their behalf on the Seventeenth Day of February in the said year one Thousand Seven hundred and Ninety Deposed to the fourth Interrogatory that there were many Money Transactions between the Late Colonel George Browne the Late Captain John Macalister and

and the Late Major Alexander Macllellan and that he the Deponent was the Common agent and friend of the said Parties and to the fifth Interrogatory having had time of Four Days since his former Examination on behalf of the Petitioners to Reflect more minutely on the Subject in Dispute between these Respondents and the Petitioners he Disposes that there was an unsettled Ballance amounting to the Sum of Three Thousand Porto Nove Pagodas or thereabouts due from the said Alexander Macllellan to Captain John Macalister and which was Sent to the said Alexander Macllellan by the said Captain John Macalister thro the hands of Colonel George Browne and which the Deponent believed would appear in his the Deponents Books in the hands of Mr John Sulloh and the Deponent goes on and says that the said John Sulloh from being the active Manager of his the Deponents Books and the general agent for his Concerns in Madras he has an Equal knowledge with him the Deponent of every transaction in which he the Deponent was engaged in Madras and that he thinks the said John Sulloh fully Competent in every particular to give information relative to such Transactions as he the Deponent Could himself be and he the Witness Concludes by saying that he verily believes that the Ballance mentioned and referred to in he the Deponents answer to the fifth Interrogatory to be due from the said Major &c

Macllellan

Macklellan to the said John Macalister remained due to
the said Major Macklellan at the time of his Decease to
these these Respondents say it is in actual Proof and
that by the most Direct and positive Testimony to
Evidence of the said Alexander Brodie the Commonly
and friend of all the Parties what Ballance of Cash
Cash Remained due to these Respondents Brother
the said John Macalister at the time of the Death of the
said Alexander Macklellan and this Witness referring to the
Books and his agent John Tulloch and by them and he
so Corroborated as these Respondents have herein for
shewen there Remains not as Shadow of Doubt
Justice of their Claim as Administrators of their said Brother
on the Estate of the said Alexander Macklellan so far have
these Respondents been fairly able to substantiate their
Right over the boasted all sufficiency of the Petitioners these
Respondents admit that upon the foregoing Pleadings and
Evidence herein stated the Cause between the Petitioners
and these Respondents was set down for hearing in the
Honourable the Mayors Court and that such Cause came
on to be there argued at the time in the Petitioners said
Petition of appeal setforth when the said Court were
pleased to order and Decree as in the said Petition is
setforth and as Appears by the Copy of such Decree annexed

to

to the Petitioners said Petition to which Copy of the said
Decree these Respondents Crave leave to refer and pray
the same may be Deemed and taken as part of this their
answer to the said Petitioners Petetion of appeal to this
Honourable Court with all benefit thereof and by which
said Decree the said Petitioners say they Conceive themselves
agrieved and do therefore Appeal therefrom to this Noible
Court for the four several Reasons In their said Petetion
Setforth and first the said Petitioners object to the Said
Decree for that they are advised that the same is in itself
altogether illegal and unjust in as much as the Sum
Decreed is given against them the Petitioners in their
Private Capacities to the Injury of their private fortunes
and as if the same Sued for had been a Debt Contracted
by them Whereas they say the Mayors Court were bound
and ought to have Decreed the Sum so to have been paid
by the Petitioners to these Respondents of the Estate and
Effects of the Deceased Alexander Macklellan as being
Custommary as the Petitioners say it is on Like Occasion
and According to the Practise of the said Honourable the Mayors
Court and not as the said Petitioners Apeal in the manner
and form as the same has been now Decreed in the Case of
them the Petitioners To this objection these Respondents answer
that on Reference to the Copy of the Decree annexed to the

Petitioners

Petitioners said Petition the same. after reciting the Pleadings and Evidence had on the hearing the Decretal part will be found to run in these Words This Court doth think fit to order and Decree that the Defendants Do pay unto the Complainants the full and Just Sum of Five Thousand two hundred and Twelve Pagodas Seven fanams and ten Cash (Pag^{as} 5212 . 7 . 10) together with all such Interest as now is or shall hereafter become due thereon untill full payment is made also all Costs of this Suit These Respondents therefore say that the Inferrence Drawen by the Petitioners from such Decree is frivolous and Empty from their own shewing for if it is the Practice of the said Mayors Court on like occasions to Decree the Debt to be paid out of the Estate such General Practice must guide these Respondents in buying their Debt as it would be at their Perill should they Seize on the private Estate of the Petitioners on such a Decree from a mere want of the usual Words being inserted out of the Estate These Respondents however not relying or at all admitting but on the Contrary denying the Right of such a Construction of the Decree and taking and receiving it in the Spirit of its Language and as these Respondents are fully satisfied and do verily believe and insist the said Honourable the Mayors Court intended it should be understood do say and Claim that the said Mayors Court meant and were well

well warranted in Decreeing the Debt to be paid these Respondents by the Petitioner in Person as being possessed of the whole and very valuable Estate of the Deceased Alexander Macfellan as they themselves in their Pleadings in the Cause Confess and as in Proof by the three Severall Depositions of John Fullah Who as herein before shewn swears the Petitioner Balfour offered to pay him the Debt due to these Respondents provided he would Accept on their Behalf Companys Bonds at Par and desired the said Witness to make these Respondents such Proposal which he did and the same Witness not only Confirms the above offer of Companys Bonds but afterwards proves the Petitioner Balfour offered another kind of payment to wit the Bonds of the Rajah of Tanjore and from these facts a Belief necessarily follows and which must operate against the Petitioners as a full admission that they the Petitioners had Effects in their hands of the Estate of the Deceased Major Alexander Macfellan not only Sufficient to Discharge the Debt due therefrom to these Respondents but also to pay off all the other Creditors of the Estate at least so many of them as Employed the Witness Mr Fullah as their agent for Mr Fullah positively Deposes that the Petitioner Balfour did offer to pay all his the Deponents Constituents Demands in the Estate of Major Macfellan provided that all should agree to accept Companys Bonds at Par for their Discharge therefore these Respondents humbly

humbly Submit to this Honourable Court that the said Decree of the said Mayors Court was not illegal and unjust in Charging the Petitioners to pay these Respondents their Just and Equitable Claim on them the Petitioners as the Representatives acknowledged Possessions of the very Valuable and Solvent Estate of the Deceased Major Alexander Maclellan

To the Second objection taken by the Petitioners to the said Decree of the said Honourable the Mayors Court for that the same is Erroneous and Contrary to Law because the same is given against Evidence in as much as it is in proof by the Positive Testimony of Alexander Brodie that one Thousand Pagodas of the Original Sum for which Receipts were given by the said Alexander Maclellan to the said George Brown for and on Account of the said Captain John Macalister had been by him the said Alexander Maclellan repaid which original Sum the Petitioners say it is proved by the notes themselves amounted only to Three Thousand Porto Novo Pagodas these Respondents answering say that it is an Evidence as therein before shewn that Alexander Brodie deposed To the fifth Interrogatory Exhibitted to them on behalf of these Respondents that there was an unsettled Ballance amounting to the sum of Three Thousand Portonovo Pagodas or thereabouts due from the said Alexander Maclellan in the Interrogatory

named

named to Captain John Macalister and which was Remitted to the said Alexander Maclellan by the said Captain John Macalister thro the hands of Colonel George Brown and which the Deponent believed would appear by his the Deponents Books in the Hands of John Sulloh and to the last Interrogatory on behalf of these Respondents to the same Witness he Deposes that he verily believes that the Ballance mentioned and referred to in his the Deponents answer to the fifth Interrogatory to be due from the said Major Maclellan to the said John Macalister remained due from the said Maclellan at the time of his Decease But the Petitioners notwithstanding the foregoing Solemn Deposition taken four Days after the same Witness had Deposed on their Behalf state partially therefrom that it is to be inferred that a Ballance only of Two Thousand Pagodas remained due to these Respondents after the one Thousand mentioned to have been repaid in the said Deposition the fallacy of which inference will appear from a View of which Deposition for these Respondents shew that the Witness Mr Brodie Clears the whole Ground of this Transaction for he tells you in his answer to the Petitioners third Interrogatory that George Brown was in the year one Thousand seven hundred and Seventy nine indebted to

Captain

Captain John Macalister in the Sum of Six Thousand Pagodas or thereabouts on a Bond or obligation theretofore Entered into by the said George Brown to the said Captain Macalister and that in the said year One Thousand Seven hundred and Seventy nine the said George Brown at the request of him the Deponent did at Different times pay or Cause to be paid to the said Major Alexander Macklellan for the use of the said Captain John Macalister part of the Money then due and owing to the said Captain John Macalister by virtue of the said Bond or obligation and that the said Major Alexander Macklellan did give to the said George Brown Receipts for the Monies so received by him for the use of the said Captain John Macalister but what particular sums were so paid the Witness says he did not then Recollect Here then is the orgin of the transaction and the answer of the same Witness to the fourth and fifth following Interrogatories of the Petitioner throwes new light on the Subject for to these he Deposes that some short time after the said George Brown had paid or Caused in manner aforesaid to be paid to the said Alex[r] Macklellan for the use of the said John Macalister such Monies as aforesaid the said John macalister finding that such monies were to a greater amount than he had intended should have been paid to the said Alexander Macklellan on Account of the Monies so due and owing to him the said John Macalister as aforesaid he the said John Macalister did give Directions to him the Deponent as his agent to request the said Alexander Macklellan to repay to the said George Brown the Sum of One Thousand Pagodas or thereabouts part of the Monies so paid by the said George Brown to the said Alexander Macklellan as aforesaid which the Deponent Accordingly did and thereupon the said Alexander Macklellan did repay to and for the use of the said George Brown the said Sum of One Thousand Pagodas or thereabouts Accordingly and which said Sum of One Thousand Pagodas or thereabouts was part of the monies paid to the said Alexander Macklellan on account of the said John Macalister as aforesaid and this Witness goes on and says that at the time of such repayment he the Deponent did Consider the said Alexander Macklellan to be then indebted to the said John Macalister in the Ballance of the Monies so paid or Caused to be paid to the said Alexander macklellan to the said George Brown as aforesaid and this Witness further says that such Ballance or any part thereof was never accounted for with him the Witness by the said Alexander Macklellan nor did he the said Alexander Macklellan ever pass such Ballance or any part thereof to his the Deponent Credit or ever make any other Allowance or any other way whatsoever to the Deponent for the same or any part thereof to the best of his the Deponents recollection and behalf Hence these Respondents say it pleases that Connecting this last

Deposition

Deposition of the Witness Brodie taken on the part of the Petitioners on the Thirteenth Day of February one Thousand Seven hundred and Ninety and the Subsequent Deposition of the same Witness taken on the part of these Respondents on the Seventeenth Day of the same month of February that Three Thousand Porto Nova Pagodas was the Ballance remaining due to these Petitioners that every Shadow of Doubt and Suspicion is removed but that the Debt Claimed by these Respondents from the Petitioners is just and that the second objection taken by the Petitioners to the said Decree of the said Honourable the Mayors Court in favor of these Respondents falls to the Ground to the third objection taken by the Petitioners to the said Decree because that it appears by the positive Evidence of Patcheapah a Witness Examined on the behalf of the Petitioners in the Cause and which Patcheapah is stated to have been the Head Dubash and manager of the said Alexander Maclellans Concerns that whatever Sum of Money the said Alexander Maclellan had so received as aforesaid on Account of the said Captain John Macalister that the same had been by Him the said Alexander Maclellan repaid and for that at the time of the said Alexander Maclellan Death he the Witness Deposes that he Maclellan was not indebted in any Sum of Money whatever to the said John Macalister

These Respondents answering say that the Witness has Deposed very coldly considering the Evidence herein before given by the Witness Alexander Brodie who Swears that he was the Common agent and friend of all the Parties and kept their Several Accounts and Money dealings as is also in proof by John Sullah who deposes to such the Books of account kept by the said Brodie and in his profession as Brodies agent but these Respondents shew that from the Deposition of the said Alexander Brodie to the third Interrogatory of the Petitioners the hardiness of the said Patcheapah is most glaringly manifest and that these Money transaction were by no means managed by the Dubashes of the Parties for he Deposes to this Interrogatory whether he did or did not at the time when he acted as agent or Attorney for George Brown give orders or Directions to the Dubash or Servant of the said George Brown who had the Charge of his Concerns in the Tonjore Country to pay to Major Alexander Maclellan a Sum of Money which the said George Brown owed to the said Captain John Macalister that did not give any such orders or Directions to such Dubash or Servant but that the said George Brown did at the request of him the Witness at different times pay or Cause to be paid to the said Major Alexander Maclellan for the use of the said Captain John Macalister part of the Monies due



due and owing to the said Macalister from the said Brown on his Bond or obligation and that the said Alexander Macllellan on Receipt of such Several Sums of Money so Received from the said Brown on Account of the said Macalister did pass his Receipts for the same to the said Brown Here then it is in proof by the Petitioners own Witness that these Monies were sent at Different times from Brown to Macllellan on Account of Macallister but what says Patchiapah the Petitioners Witness why that he knows a Sum of Money was paid by Veneatachellum Dubash to Colonel George Brown to his Master the said Major Alexander Macllellan on Account of Captain John Macallister and that the same Sum of Money was repaid by Major Alexander Macllellan and that he gave this information sometime ago to the Petitioner John Balfour who it seems considers it with the addition of this Witnesses further Deposition to the Second Interrogatory that he does not believe that the said Major Alexander Macllellan at the time of his Death was indebted in the said Sum or any Sum of Money to the said Captain John Macallister deceased as proof of so high a nature and Value as at once to Extinguish as Debt impregnable to all his and the other Petitioners adduced Evidence tho on Care inspection it proves no more than a Single fragment from Brown to Macllellan on Account of Macalister no Sum specified and a returns of

the same Monies And this Evidence therefore will agrees with and gives high information to the Deposition of the Petitioners other Evidence the said Alexander Brodie who mentions the returns from Macllellan to Brown on account of Macallister of one Sum of money which he ascertains it to be one Thousand Pagodas or thereabouts With regard to the latter part of Patchiapahs Deposition that he does not believe that his Master Macllellan at the time of his Death was indebted in any Sum of Money to Macalister these Respondents say and humbly insist for the reasons aforesaid and hereinafter mentioned that the same can bear no weight whatever for this Witness does not swear that it was he who received this payment from Browns Dubash but on the Contrary that it was Directly paid to his Master by the Dubash of Brown and again that his Master did repay the said Sum to the said Dubash of Brown Here then is the Strongest ground of belief that on these occasions as indeed on all others of Money Concerns that Patchiapahs Master Major Macllellan did not keep an account of his Receipts and Payments there him the Witness tho he Swears he was his Head Dubash and therefore these Respondents say and Conclude on this head that the Circumstance of Patchiapahs knowledge in this one Occasion has been Accidental And to the last objection of the Petitioners for that the Decree is oppressive

Inrespect

Irrespect to its having adjudged an Interest of Twelve per Cent
upon a matter where no Bond or other Instrument has been
produced to shew that the Principal Sum Sued for by these
Respondents was ever Lent upon Interest and further because
the Petitioners say they are Supported in such objection by a
Dissent of a member Entered on the Records of the said Honourable
the Mayors Court against granting any further Interest beyond
Eight per Cent These Respondents answering say the
said Mayors Court were on this last head of Objection
well Warranted ingiving the Decree they did on the hearing
of the Cause in favor of these Respondents to be paid
their Debt with Interest at the rate of Twelve per Cent
and that for many reasons in proof in the Cause as well as by
written Documents as by the fair and Equitable Construction
of the Case before them for Decision And first by written
Documents for these Respondents shew unto this Honble
Court that they did annex to their Replication filed in the
Cause certain Exhibits and amongst other four marked
with the Letters **B C D** and **E** to which Exhibits these
Respondents crave to refer and pray the same may be taken as
particular part of this their answer to the Petitioners said Petition
of appeal from which Exhibits it is in proof in the Cause that
these Respondents Brother the Late Captain John Macalister
died on the Twenty fifth Day of May one Thousand Seven
hundred and Eighty, write from Madras to his friend Johon

Bailey advising him that he these Respondents said Brother
had on the same Day written to Maclellan telling him
that he had sent his Account Current with him to the
Fifteenth Instant and that he Bailey was to receive
the amount being a Ballance with Interest of Porto Novo
Pagodas Three Thousand Four hundred and Seventeen
And these Respondents shew that to such Letter so
written by these Respondents said Brother to the said
Bailey did reply sometime about the Sixth or Seventh
Day of June following Saying that he had Just Returned
from presenting his these Respondents said Brothers Order
to Maclellan whose Answer he Bailey observes was by no
means pointed or Direct but that the purport was that he
Maclellan understood from Mr Brodie when he took
the Money that he was to have two or three Months
before he should be obliged to pay it That it was now out in
the Country and that he Could not immediately Command
it and these Respondents shew that the Account Current
and order so presented by the said Bailey to the said Maclellan
did Debit him the said Maclellan with payment of a
Sum of Two Thousand Porto Novo Pagodas on the fifteenth
March one Thousand Seven hundred and Seventy nine
and with a further Sum of One Thousand like Porto Novo
Pagodas on the Twenty forth Day of the same Month of
March and with Interest on the said Several Sums of Two
Thousand.

Thousand Portuo Pagodas and one Thousand Porto Novo Pags
from the Respective times they were so lent at the rate of
Twelve per Cent per annum to the said herein before mentioned
Fifteenth Day of May one Thousand Seven hundred and Eighty
being a Sum of Porto Novo Pagodas Four hundred and Seventeen
making a total Ballance in favor of these Respondents said
Brother of Porto Novo Pagodas Three Thousand Four hundred
and Seventeen as in the Letter hereinn before referred to of these
Respondents said Brother John Macallister to his freind the
said John Bailey as mentioned and on which account so made
up the ballanced is an Endorsement from these Respondents
said Brother the said Captain John Macallister to pray the Contents
To Lieutenant John Bailey or order as an reference to the
Original Exhibits in the Cause will more fully and at large
Appear to the Satisfaction of this Honourable Court And these
Respondents further pray leave to shew to this Honourable
Court that so satisfyed was the said Alexander Maclellan
with the fairness Justness of the account so made up by these
Respondents said Brother with Interest aforesaid at the
rate of Twelve per Cent per Annum and transferred as
aforesaid by these Respondents said Brother to the Credit
of his freind the said John Bailey that he the said Mr Sellan
Resale to the said Bailey the Letter marked Exhibit E. in the
Cause observing thereon to the said Bailley that he Maclellan
had written to Mr Brodie there whom he had borrowed the
Money

Money Respecting the Contents of Baileis Letter to him
on the Subject and that he had given him Brodie directions
for his Receipts to be given up on the payment being made and
he Maclellan in his said Letter goes on to observe that so soon
as he should receive Brodies Answer he would advise him Baile
as at present he maclellan did not know in whose hands the
Receipts he had passed for the money were Maclellan then
Concluded in the following very marked Words of this however
you may rest assured that the Money shall be paid long before
any opportunity Can offer for Captain Macallister going home
and hence these Respondents say and humbly insist it is
Evident that Maclellan [illegible] he was to pay Interest
for the money he receive[illegible] Macallister and that that
Interest was fixed at Twelve per Cent for the same therefore
and for many other Good reasons offered at the hearing of the
Cause By these Respondents they obtained the said Decree of the
said Honourable the Mayors Court for it Cannot be supposed that
Money would be placed out in the Tanjore Country as it often is
for Security and Temporary safe keeping in London and other
Capital Commercial Towns in the Hands of a Banker to be called
for the instant when an Opportunity offers to turn it to advantage
for on the Contrary it is Evident from the very Spirit of maclellans
Observations to Bailey to wit that he thought he was called upon
for the money rather hastily and that he had it out in various hands
and Could not immediately Collect it That maclellan himself
Employed this Money and it must necessarily be presumed in fair

Reasoning

Reasoning to better advantage than the Turkey per Cent which he was therefore to pay for its use to Macallister for these Respondents say it is matter of fact and full notoriety that in the Tanjore and other Southern provinces of this Peninsula of India that even Interest of Money is so great as to be not only Thirty per Cent per annum but often far more and Therefore these Respondents say that the said Honourable the Mayors Court were governed in framing their Decree in this Cause not only by the written Documents herein referred to of Record in the Cause but also by their knowledge of the advantages it must be presumed Macllellan made of this Loan of him from these Respondents Deceased Brother the said John Macallister

From all which Matters and things and the further Reasons that shall be offered at the hearing these Respondents humbly Submit to this Honourable Court that they have fully Established their Title to the said Decree in their favor in the said Honourable the Mayors Court and therefore pray that the same may be Confirmed by the Decision of this Honourable Court and that the Petitioners said Petition of appeal from such Decree may be thence Dismissed with Exemplary Costs

/Signed/ J. Chalmer
John Withington
Attorneys for Respondents

Court of Appeals
at
Madraspatnam

Saturday the 12th Day of April
Anno Domini 1794

Between John Balfour in the Service of the United Company of Merchants of England trading to the East Indies on the Coast of Choromandel and Henrietta Balfour his Wife late Widow and Relict of Alexander Maclellan late a Major in the said Service Executrix appointed in the last Will and Testament of her said Deceased Husband Major Alexander Maclellan Deceased Appellants and Charles Macatester Keith Macatester and Matthew Macatester Brothers and Administrators of all and Singular the goods Chattles Rights and Credits of the Estate and Effects of John Macatester Deceased late a Captain of Cavalry in the Service of his Highness the Nabob of Arcot 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 Friday the 27th day of April Anno Domini 1792 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 that the Decree and doth Accordingly Order and Decree that the said Decree of the Honble the Mayors Court do stand affirmed except as to the charge of Interest of 12 p Cent p Annum upon the Original Sum of Civiru Pago das 29.17.01 or 3000 Port Novo Pagodas, which the Court doth think fit to order and Decree shall be at and after the rate of 8 p Cent p Annum and no more to be paid out of the assets together with all Costs in this suit of the Estate of Alexr Maclellan Deceased and that the Appellants Petition be hence dismissed

By the Court
/Signed/ Chas N. White
Cler

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

In the Honble the
Court of Appeals

Between Yamanah of Madras
Inhabitant Complainant and Ann Shaw
Executrix of the last Will and Testament
of Captain George Mackay deceased Defendant

The humble Petition and Appeal of the abovenamed
Defendant

Sheweth

That on the tenth day of November which
was in the year of our Lord one thousand seven hundred and
Ninety the abovenamed Complainant did file and Exhibit
a Bill of Complaint against your Petitioner in the Worthy
the Mayors Court of Madraspatnam and did therein and
thereby charge your Petitioner as Executrix of the last Will
and Testament of George Mackay deceased late a Captain in
the service of the Honourable United Company of Merchants
of England trading to the East Indies to be indebted to him
the said Complainant in the full and just sum of one
thousand one hundred and thirty one Pagodas and fifteen
Cash Current money of Madras or in Sterling Money of
Great Britain at the rate of Eight shillings for every Pagoda
the sum of Four hundred and fifty two Pounds and
eight shillings or thereabouts and in Favor thereof the
said

Filed in my office
the 23 April 1792
Chas H. White
Clk

said Complainant did annex to and Exhibit with his said
Bill of Complaint an Account Current Composing the
several Items on which his Claim was pretended to be
founded And your Petitioner further sheweth that a summons
did issue thereon requiring and Commanding your Petitioner
as Executrix aforesaid to be and appear before the said Honourable
Court and then and there to answer to the said Bill of Complaint
and further to stand to and abide by such order and Decree
thereon as to the said Honourable Court should seem meet
That your Petitioner being so summoned did appear through
and by the means of her Attorney at Law and on the 25th
Day of January which was in the year of our Lord one thousand
seven hundred and Ninety one filed an answer to the said
Bill of Complaint wherein your Petitioner did state and set forth
That the Account Current to the Complainants Bill of Complaint
annexed was not sufficient to support the Claim which he
had made That such Vouchers ought to have been produced
in support thereof as would have Clearly shewn that such
sums were Bonafide lent and advanced as by the said Account
Current was stated to be And your Petitioner did further in
her said answer set forth that was the Complainants Demand
so ill founded he would not even in that case be intitled
to payment of the sum for which he had sued because the
property in the possession of your Petitioner belonging to the
Estate of the said George Mackay was inadequate to the discharge

of

of the Different claims upon it And your Petitioner did further say that the Complainant instead of endeavouring to settle the matter in an amicable manner by agreeing to take his share of the property after an equal division should be made upon the Different Claims being ascertained was guided by the most unequitable views by Endeavouring to realize the whole of his pretended Claim with Interest to the utter exclusion of the other Creditors who had not been wanton Enough to sue the Estate and therefore she Conceived it to be her duty to resist such Conduct and to prevent Judgement passing to their prejudice And your Petitioner for the inspection and guidance of the said Honble Mayors Court did annex to her said answer a List of the several Claimants on the Estate of the said George Mackay with a statement of the several Principal sums Charged by them in order to shew the unreasonable conduct of the Complainant in attempting to secure the whole of his pretended Debt to the utter Exclusion of all the other Claimants when even if it had been Justly founded he would in that Case only Expect a proportionah share of the Assets with others And your Petitioner further Sheweth that to this answer in no Respect admitting the debt but on the Contrary insisting that the Account Current Annexed to the Bill of Complaint was insufficient to support the Claim a Replication was filed by the said Complainant

Complainant in words to the following purport That your Petitioner as Executrix aforesaid stood Justly and truely indebted unto him in the full and Just sum of one thousand one hundred and thirty one Star Pagodas as Charged in his the Repliants Bill of Complaint and that your Petitioner in not Denying had to all intents and purposes admitted the several matters in his said Bill Contained That the Account Current to his said Bill annexed was full and Sufficient to Establish the Justness of his said Demand and that your Petitioner in and by the statement to her said Answer annexed fully admitted the Justness of the same by setting forth the Principal amount thereon as Due to him the Repliant and as a further proof thereof the Repliant said the same appeared by your Petitioners having Confessed that if he the Repliant had agreed to take his share of the property of your Petitioners Testator with other Creditors in that Case his said Demand would not have been objected to and the said Repliant further setforth that he could not have any thing to do with the objects or intentions of other Creditors That it was his particular Duty to take such measures as were most Conducive to secure his own property and that as the Law aids and protects the vigilent Creditor the the Repliant in Commencing his suit for the recovery of the amount due to him had neither acted wantonly nor

unjustifiably

Block 7
Rack No.
Shelf No.
Serial No. 23
General No.