25,000—4-5-12.

Block 7

Rack No.

Shelf No.

Serial No. 24

General No. 1208

Appeals from Mayor's Commission

Vol. 24

126

Saturday the 19th day of April 1794

Present

Sir Charles Oakeley Baronet,
Ernst William Fallofield and George Westcott,

To the Honble Major Genl William Medows,
President en Council
Fort St George,

In the Honble the
Court of Appeals

Between William Balfour
John Spalding and Oliver Coates Complainants
and Stephen Popham Defendant —

The Humble Petition and appeal of the
above named Stephen Popham —

That on the Twenty fourth day of November
Which was in the year of Our Lord One thousand Seven hundred
and Ninety the above named Complainant feled a Bill of
Complaint in the Mayors Court at Madraspatnam & your
Petitioner for the Recovery of the Sum of One Thousand five
hundred and Twenty one Star Pagodas forty one fanams and
Eighteen Cash Charged to be due by your Petitioner upon a
Bond to which your Petitioner appeared and the Usual
Rules having passed for your Petitioner to Answer your
Petitioner Sheweth that in the Meantime the said Suit

was

Filed in my Office
the 25th February 1794
Chas S. White
Clk

was Dormant your Petitioner having proposed payment by Instalments one Instalment whereof your Petitioner paid but was prevented from contencing the Payment of the further Instalments by a continued Chain of embarrasements which your Petitioner had not any reason to foresee when he first made his intended arrangement for payment of his said Debt and your Petr. Sheweth that on the fourteenth day of this Instant February your Petitioner was absent from Court on Account of indisposition and the Mayors Court at the Instance of the Complainants Attorney thought proper to pass a Decree that your Petitioner should pay unto the Complainants the said Sum of One thousand five hundred and Twenty One Pag. forty One Jannams and Eighteen Cash together with all such Interest as then was or should thereafter become due thereon untill full Payment was made also all Cost of the Suit —

From which said Decree of the said Mayors Court your Petitioner doth appeal to this Honble Court as he conceives the said Decree to be erroneous and that your Petitioner is much aggrieved thereby —

/ Signed / Popham
Solr for Appellant

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 14th day of February Anno Domini 1792 —

Present

Andrew Ross Esqr Mayor
Josias DuPre Porcher and Jam. Daly
Aldermen,
William Balfour John Spalding and Oliver Coet

vers

Stephen Popham

The Attorney for the Complainants produces to the Court a Certificate from the Register Setting forth that the usual Rules have issued for the Defendant to Answer the Complainants Bill which he has Neglected doing he therefore prays that a Decree may now pass — to Which Mr. Peter Walker for Mr. Stephen Popham Objects and prays that he may be allowed a further time of One Week to put in the Defendants Answer The Court having taken the Same into Consideration it is Ordered that a Decree do pass Bill Read —

It appearing by the Records of this Court that the usual Rules have issued for the Defendant to Answer the Complainants Bill which he has Neglected doing This Court doth therefore think fit to Order and Decree and doth accordingly Order and Decree that the Defendant do pay unto the Complainants the full and just Sum

Sum of One thousand five hundred and Twenty one Star Pags. forty one fanams and Eighteen Cash / Star Pags. 1521. 41. 18. together with all such Interest as now is or shall hereafter become due thereon untill full Payment is made also all Costs of this Suit. —

A True Extract

/Signed/ George Taylor Regt.

To the Honble Major Genl. William Medows
President in Council
Fort St George,

In the Honble the Court
of Appeals,

Between William Balfour
John Spalding and Oliver Coll Complainants
and Stephen Popham Defendant.

The Answer of the above Named Complainants to the Petition and appeal of the abovenamed Defendant. —

These Respondents for Answer to the said Petition of appeal or unto so much thereof as is material or necessary for them to make Answer unto answer and say that they admit that they did on the Twenty fourth day of November which was in the year of Our Lord One thousand Seven hundred and ninety five and exhibit a Bill of Complaint in the Honble the Mayors Court of Madraspatnam against the said appellant for the recovery of the sum of one thousand five hundred and Twenty one Pagodas forty one fanams, and — eighteen Cash being so much Principal and Interest due to these Respondents on a certain Bond or Written obligation true Copy whereof is to the said Bill of Complaint annexed and prayed therein to be referred to and these Respondents do admit that after the usual rules had passed for the —

Defendant

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

Defendant to Answer these Respondents Bill of Complaint that they were induced from his urgent entreaties and faithfull promises of discharging his debt by certain Instalments / the periods of which were fixed by himself / to give him the time required and these Respondents did expect that in return for such forbearance on their part the appellant would have rigidly attended to what he had undertaken to perform and by paying the several Instalments when they became due — & superceded the necessity of renewing proceedings but failing to make good his promised Instalments, these Respondents were in justice to themselves forced after many and various Rules had passed by means of their Attorney at law to pray the said Honble Mayors Court that a Decree might pass against the Defendant and which was accordingly granted as by the said Decree relation being thereunto had doth and will more fully and at large appear — And these Respondents deny that the said Decree is erroneous or that the Defendant has any reason to consider himself as aggrieved thereby on the contrary these Respondents say that the Decree of the said Mayors Court is in every respect regular being consistent with the practice thereof and that the conduct of the appellant in appealing therefrom is not only an ungreatfull return for the indulgence shewn to him by these Respondents but a direct infringement on the Several Statutes which the Legislature

Legislature has made and provided to prevent unnecessary delays in Execution —

For all which Matters and such others as may be offered at the hearing these Respondents humbly pray that the Decree of the said Honble Mayors Court may stand affirmed and that the appellants Petition of appeal may be dismissed with exemplary Costs to be paid by the appellant for his very litigious conduct —

/ Signed George Chalmer
Solicitor for Respondents

Court.

Court of Appeals
at
Madraspatnam
} for Saturday the 19th day of April
Anno Domini 1794.

Between Stephen Popham of Fort St George
Esqr. one of the Attornies of this Honble Court appellant
and William Balfour, John Spalding, and Aliver
Coll of Fort St George Merchants Respondents —

This Cause coming on this day to be heard and debated
before this Court by the Attornies on both sides upon hearing the
Petition of appeal and answer and the several Pabers of the
Honble the Mayors Court together with the Decree of the said
Court given in this Cause on Tuesday the 14th day of February
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 and Decree and doth accordingly
Order and Decree that the said Decree of the Honble the
Mayors Court do stand affirmed and that the appellants
Petition be hence dismissed with double Costs in both
Courts —

Hen /Signed/ Chas N White Clk

To the Kings Most Excellent Majesty in Council —

Between William Balfour,
John Spalding, and Aliver Coll,
Complainants, and Stephen Popham
Defendant. —

The humble Petition and appeal of the above
named Stephen Popham. —

Most humbly Sheweth,

That on the Twenty fourth day of November —
which was in the year of our Lord One thousand Seven hundred
and Ninety the above Named Complainants filed a Bill of
Complaint in the Mayors Court at Madraspatnam Against your Petr.
for the Recovery of the Sum of One thousand five hundred and
Twenty one Star Pagodas forty one fanams and Eighteen Ash
Charged to be due by your Petitioner upon a Bond to which
your Petitioner appeared and the usual Rules having
passed for the your Petitioner to answer your Petitioners —
Sheweth that in the mean time the said Suit was —
Dormant your Petitioner having proposed payment by
Instalments one Instalment whereof your Petitioner paid
but was prevented from continuing the payment of the further
Instalments by a continued Chain of embarrassments which
your Petitioner had not any reason to foresee when he first

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the 2d May 1794
Chas N White
Clk

made

Made his intended arrangement for payment of his said Debt and your Petitioner Sheweth that on the fourteenth day of the said February your Petitioner was absent from Court on account of indisposition and the Mayors Court at the instance of the Complainants Attorney thought proper to pass a Decree that your Petitioner should pay unto the Complainants the said Sum of One thousand five hundred and Twenty one Pagodas forty one fan. and Eighteen Cash together with all such Interest as then was or should thereafter become due thereon untill full payment was made also all Costs of the Suit —

From which said Decree of the said Mayors Court your Petitioner did appeal to the Court of Appeals having considered the said Decree to be erroneous and that your Petitioner was much aggrieved thereby And your Petitioner Sheweth that the said Cause coming on to be heard and determined before the said Court of Appeals on the Nineteenth day of April last the said Decree of the Mayors Court was confirmed whereby your Petitioner considers himself additionally aggrieved and therefore appeals therefrom to your Most Excellent Majesty in Council in the hope of a Reversal of both Decrees. —

/Signed/ Stephen Popham
Solr. for appelt —

Court of Appeals
at
Madraspatnam

Saturday the 19th day of April
Anno Domini 1794

Between Stephen Popham of Fort St George Esqr. One of the Attornies of this Honble Court appellant — and William Balfour, John Spalding & Oliver Colt — of Fort St George Merchants Respondents —

This Cause coming on this day to be heard and debated before this Court by the Attornies on both Sides upon hearing the Petition of appeal and Answer and the several Exhibits of the Honble the Mayors Court together with the Decree of the said Court given in this Cause on Tuesday the 14th day of February 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 and Decree and doth accordingly Order and Decree that the said Decree of the Honble the Mayors Court do stand affirmed and that the Appellants Petition be hence dismissed with double Costs in both Courts. —

By Order
/Signed/ Chas. N. White
Clk.

To

To the Kings Most Excellent Majesty in Council

Between William Balfour,
John Spalding, and Oliver Coy Complainants,
and Stephen Lapham Defendant,

The Answer of the above named Complainants to the Petition of appeal of the above named Defendant —

These Respondents, for answer to the said Petition of appeal or unto so much thereof as is material for them to make answer unto answer and say that they admit that they did on the Twenty fourth day of November which was in the year of our Lord One thousand seven hundred and Ninety file and exhibit their Bill of Complaint in the Honble the Mayors Court of Madraspatnam against the above named appellant for the recovery of the Sum of One thousand five hundred and Twenty one Pagodas forty one fanams and Eighteen Cash making in Sterling money of Great Britain at the rate of Eight Shillings for every Pagoda the Sum of Six hundred and eight Pounds and fifteen Shillings

Filed in my Office
the 25th June 1795
Robert Clerk
Clk

or thereabouts being so much principal and Interest due to these Respondents on a certain Bond or written Obligation executed by the appellant true Copy whereof is to the said Bill of Complaint annexed and thereon and thereby referred to and these Respondents humbly shew unto your Most Excellent Majesty in Council that the usual Rules having expired and the said appellant having neglected to put in his Answer to the said Bill of Complaint the said Honble Mayors Court did on the fourteenth day of February which was in the year of our Lord One thousand Seven hundred and Ninety two think fit to order and Decree and did accordingly order and Decree that the said appellant should pay to these Respondents the Sum of One thousand five hundred and Twenty one Pagodas forty one fanams and Eighteen Cash together with all such interest as then was or should thereafter become due thereon untill full payment was made also all Costs of Suit As by the said Decree copy whereof is hereunto annexed relation being thereunto had doth and will more fully and at large appear from which Decree of the said Honble Mayors Court these Respondents admit the said appellant did on the Twenty Seventh day of February which was in the year of our Lord One thousand Seven hundred and

Ninety

Ninety two Lodge a Petition and appeal to the President in Council of Fort St George as forming a Court of appeals and did therein Setforth that on the Twenty fourth day of November which was in the year of our Lord one thousand Seven hundred and Ninety These Respondents filed a Bill of Complaint in the mayors Court at Madraspatnam against him the appellant for the recovery of the sum of one Thousand five hundred and twenty one Star Pagodas forty one fanams and eighteen Cash charged to be due by the appellant upon a Bond to which the appellant appeared and the usual rules having passed for him to answer he stated that in the meantime the said Suit was Dormant he the appellant having proposed — payment by Instalments one Instalment where of the appellant said he paid but was prevented from continuing the payment of the further Instalments by a continued chain of embarrasment which the — appellant had not any reason to foresee when — he first made his intended Arrangement for payment of his debt and the appellant further said that on the fourteenth day of this Instant February he the appellant being absent from Court on account of Indisposition the said Mayors Court at the Instance of these Respondents attorney thought proper

to pass a Decree that the appellant should pay unto these Respondents the Sum Sued for with Interest and Costs —

And these Respondents further shew unto your most Excellent Majesty in Council that to the said Petition and appeal they did on the day of march in the said year one Thousand Seven hundred and Ninety two put in their answer and therein did admit having brought their action in the manner and form stated by the appellant and these Respondents in their said answer did further admit that the usual rules according to the Course and practice of the said Mayors Court having expired for the appellant to answer their Bill of Complaint they were induced from the appellants urgent entreaties and faithful promises of discharging his debt by certain Instalments the periods of which were fixed by himself to give him the time required —

And these Respondents in their answer to the said Petition and appeal did further setforth that they did expect that in return for such forbearance the appellant would have regidly attended to what he had undertaken to perform and by paying the several Instalments when they became due superceded the necessity of renewing proceedings but failing to make good his promised Instalments these Respondents were in Justice to themselves forced after many and various rules had passed by means of

their

their Attorney at Law to pray the said Honble Mayors Court that a Decree might pass against the Defendant and which was accordingly granted as by the said Decree relation being thereunto had would more fully appear, And these Respondents in their said Answer denyed that the said Decree was Erroneous or that the Appellant had any Just Reason to consider himself as aggrieved thereby, on the contrary these Respondents insisted that the Decree of the Said Mayors Court was in every respect regular being consistent with the practice thereof and that the conduct of the Appellant was not only an ungreatfull return for the Indulgence shewn to them by these Respondents but a direct Inadvertent Infringement on the Several Statues which the legislature has made and provided to prevent necessary delays in Execution. —

And these Respondents further admit that the said Cause coming on to be heard by and before the said Honble Court of appeals on Saturday the nineteenth day of April in the present year of our Lord one thousand Seven hundred and Ninety four the said Court upon due consideration had of matters therein severally contained did think fit to Order and decree and did accordingly order and decree that the said Decree of the Honble Mayors Court should stand affirmed and that the Appellants Petition should be dismissed with double Costs in both Courts. —

as by the said Decree true Copy whereof is hereunto annexed relation being thereunto had will more fully Appear. —

And these Respondents deny that the Appellant is aggrieved by such Decree or that he has any just cause or reason to appeal therefrom to your Most Excellent Majesty in Council on the Contrary these Respondents insist that the appellants object is as it always has been to procrastinate and delay the payment of a just debt Inasmuch as he offers no reason whatever to induce your Most Excellent Majesty in Council to alter or reverse the Decrees of the Honble Mayors Court and Court of appeals at Madraspatnam. —

To all which matters and Such others as may be offered at the hearing these Respondents humbly pray that the Decree of the said Honble Mayors Court and Court of appeals may be affirmed by your Most Excellent Majesty in Council and that the appellants Petr. of appeal may be dismissed with exemplary Costs to be paid by the appellant for his very litigious conduct and as a compensation for the injury and unconvenience which these Respondents have suffered by the extraordinary delay. —

/Signed/ George Chalmer,
Solicitor for Respondents

Extract.

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 11th day of February Anno Domini 1793

Present,

Andrew Ross Esqr. Mayor,

Josias Du Pre Dorcher and Jas. Daly

Aldermen,

William Balfour John Spalding and Oliver Colt,

Stephen Popham,

The attorney for the Complainants Produces to the Court a Certificate from the Register Setting forth that the usual rules have issued for the Defendant to Answer the Complainants Bill which he has neglected doing he therefore prays that a decree may now pass to which Mr. Peter Walker for Mr. Stephen Popham Objects and prays that he may be allowed a further time of one Week to put in the Defendants Answer the Court having taken the same in to Consideration it is Ordered that a Decree do pass Bill read. —

It appearing by the Records of this Court that the usual Rules have issued for the Defendant to Answer the Complainants Bill which he has Neglected doing this Court doth therefore think fit to order and Decree and doth accordingly Order and Decree that the Defendant do pay unto the Complainants the full and just sum of one thousand five hundred and Twenty one Star Pags. forty one fanams and Eighteen Cash / Star Pags. 1521. 41. 18. / together with all such Interest as now is or shall hereafter become due thereon untill full payment is made also all Costs of this Suit. —

A true Extract

/ Signed / P. Taylor Regr. —

Court of Appeals
at
Madraspatnam

} for Saturday the 19th day of April
Anno Domini 1794 —

Between Stephen Popham of Fort St. George Esqr. one of the Attorneys of this Honble Court Appellant — and William Balfour John Spalding and Oliver Colt of Fort St. George Merchants Respondents. —

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

this Cause on Tuesday the 14th day of February Anno Domini 1792 upon due consideration had of the matters therein severally contained and of the Pleadings and Arguments used by the Attorneys on both sides This Court doth think fit to Order and Decree and doth accordingly Order and Decree that the said Decree of the Honble the Mayor's Court do stand affirmed and that the appellants Petition be hence dismissed with double Cost in both Courts —

/Signed/ Chas N. White
Clk

A true Copy
/Signed/ G. Chalmer
Sol. for Respts

5

To the Honble Major Genl Willm Medows
President in Council
Fort St George.

In the Honble
the Court of Appeals
at Madraspatnam,

Between Dany Chitty by his Guardian Catho Coundaramah Chitty — Administrator of Dany Chitty Vencatasha Chitty deceased and of Dany Chitty Vencatachella Chitty deceased — Petitioner and Stephen Popham Respondent. — In the Cause of Stephen Popham Complainant and Nayaroo Ball Chitty Defendt

The Humble Petition and Appeal of the abovenamed Stephen Popham. —

Sheweth

That your Petitioner did on the Fourteenth day of April which was in the year of our Lord One thousand Seven hundred and Ninety exhibit and file a Bill of Complaint in the Mayor's Court at Madraspatnam Against the above named Defendant for the recovery of the Sum of Five hundred and Twenty five Pagodas Twenty six fanams and Seventy Cash due and owing by the said Defendant unto your Petitioner & secured by the Mortgage of certain Premises your Petitioner

Filed in my Office
the 12th April 1792
Chas N. White
Clk

Sheweth

Sheweth that the Defendant on the receipt of the Summons appeared and Confessed the Debt. whereupon the said Mayors Court were pleased to Order and Decree that the Defendant should pay unto your Petr. the said Sum of Five hundred and Twenty five Pagodas Twenty Six fanams and Seventy Cash together with Interest and all Cost of Suit, that the time limitted by the Charter for an appeal having expired without the said Defendant satisfying the said Decree of the said Mayors Court or appealing therefrom the said Mayors Court were pleased to grant a Warrant of Execution against the Effects of the said Defendant directed to the Sheriff of the Town of Madraspatnam and the — districts thereof that in consequence thereof the said Sheriff did Seize and Sequester the Premises that were Mortgaged to your Petitioner to wit a certain House and Ground — Situated in Peddo Naicki Pettah in Covaur Vydenadah Moodallears Street between the Houses of Saroyagadangoo Moodaa Kistna Moodelliar and Allagumma your — Petitioner Sheweth that after the Seizure of the said — Premises was made to wit on the Fourteenth day of Septr. in the said year of our Lord one thousand Seven hundred and Ninety the said Dany Chitty by his said Guardian Cathi Coundaramah Chitty did file a Petition in the said Mayors Court therein Reciting the Cause herein before by your Petitioner already recited and pretending that the said

Said Premises so seized under the Execution aforesaid were the — Property of the said Daney Chitty and did further among other things Set forth that Daney Chitty Ragavah Chitty the Great Grand father of the said Daney Chitty had three Sons Namely Daney Chitty — Permaul Chitty Daney Chitty Paupiah and Daney Chitty Veerah Chitty that after the death of Daney Chitty Ragavah Chitty the Ground in Question was some time in the year One thousand Seven hundred and Nineteen purchased from the Honble — Company by the said Daney Chitty Permaul Chitty and that he built a House thereon that some time after the said House was built the said Daney Chitty Permaul Chitty departed this life Intestate and Daney Chitty Paupiah Chitty the Next Brother to the said Daney Chitty Permaul Chitty Succeeded him as the head of the family and in Consequence took upon him the Management of the family affairs, and that the said Daney Chitty Permaul Chitty did not at the time of the purchasing of the said Ground from the Honble Company as aforesaid procure a title Deed or Bill of Sale of the Premises because at that time such Security was not deemed Necessary but that about sixteen years Subsequent to the said purchase and after the Death of the said Dany Chitty Permaul Chitty his Brother the said Dany Chitty Paupiah Chitty did — obtain the same in his own Name whereof a Copy is annexed to the said Petition and the said Daney Chitty did further set forth

that

that the said Daney Chitty Paupiah Chitty and Daney Chitty Vencatasha Chitty and the rest of the Hendred of the said daney Chitty lived together in the said House as one and the same family without any dispute or difference that some time after the death of the said Daney Chitty Permaul Chitty Daney Chitty Veerah Chitty his Brother took his family left Madras and went to Trichinopoly and there resided that the said Veerah Chitty had three Sons named Ragavah Chitty Allagery Chitty and Codundas Ramah Chitty the Two formers of whom have since departed this life that is Ragavah Chitty without issue and Allagary Chitty had an only Son named Balla Gruah Chitty who now resides on Trichinopoly and the said Dany Chitty did further Shew that the said Dany Chitty Paupiah Chitty continued to leive in the said House for a long time together with the Grand father and the father of the said Daney Chitty as one and the same family without the least dispute or difference Whatever and that the father of the said Daney Chitty some time after also went to Trichinoply upon some Busines on the interm the said Daney Chitty Paupiah Chitty was Seized with a violent fit of Sickness and Soon after departed this life Intestate that before his death and in his late illness he did in the presence of those of his Cast as well as some other Persons of his Acquaintance

delivered

Delivered the whole of the said Joint Property of the said Daney Chetty Paupiah Chitty and Permaul Chitty together with the title Deed herein before referred to and his Son Seetaramiah Chitty unto the Care and Management of Vencatasha Chitty he being the next in Succession in the male Line, and the said Daney Chitty did further Set forth that the said Vencatash Chitty enjoyed the posession of the said House together with the property delivered to him as aforesaid and that soon after the death of Daney Chitty Paupiah Chitty his son Daney Chitty Seetaramiah also departed this life without Issue and that his funeral rites were performed by the said Daney Chitty Vencatasha Chitty that the said Daney Chitty Vencatasha Chitty urged thereto from Necessity did some time in the year one thousand Seven hundred and Sixty Sell and dispose part of the said House and Ground to one Nineapah Moodelly for the Sum of One hundred and Eighty Pagodas a Copy of the Bill of Sale thereof is annexed to the said Petition and the Said Daney Chitty did further set forth that some time after Words the Remainder of the said House and Ground being the Premisses now in question whereby the said Daney Chitty Vencatasha Chitty Mortgaged for a certain Sum of money to one Venca ta Kistnamah Chitty in whose hands the said Daney Chitty Vencatasha Chitty did deposite the Title deed

in

in question that the said Vencatasha Chitty some time after he had Mortgaged the said House and Ground became infirm and Apprehending his death Redeemed the said Mortgage and received back the said Title deeds and sending for the said Daney Chitty Ragavah Chitty one of the Sons of Daney Chitty Veerah Chitty who at that time happened to be in Madras and intrusted into his hands the said Title deed together with the whole of the Estate and Effects with instructions to deliver the same to his Son Daney Chitty Vencatachella Chitty the father of the said Daney Chitty when he should arrive from Trichinopoly and that the said Ragavah Chitty thereupon did take possession of the effects belonging to the said Daney Chitty Vencatasha Chitty & placing them in one of the Rooms of the House in question locked them up and affixed his Seal thereon and the other appartments were as usually enjoied and occupied by the aunt and other Relations and family of the said Daney Chitty and that after the Death of the said Vencatachah Chitty the grand father of the said Daney Chitty in Combination with one Ragoone Moottaloo Chitty and Pauravanthum Tomby a Moodelly taken an opportunity of the absence of the father of the said Daney Chitty who was then at Trichinopoly abused the trust reposed on him and applied to the Register of the Choultry Court for a certificate in his the said Daney Chitty

Ragavah

Ragavah Chitty's Name a Copy thereof is annexed to the said Petn. and the said Daney Chitty did assert in his said Petition that the said Ragavah Chitty had never been in possession of the said House, neither was there an Advertisement affixed at the door of the said House as stated in the said Certificate and the said Daney Chitty did further set forth that the said Ragavah Chitty after having obtained the said Certificate went to Trichinopoly keeping the same a secret from the father of the said Dany Chitty and that when the father of the said Daney Chitty demanded from the said Ragavah Chitty the Goods and other property which had been left in his Charge as aforesaid by the Grand father of the Petitioner he promised to deliver them and did under false promises and pretext put the father of the said Daney Chitty off from time to time untill his Death and that he left his only Son the said Daney Chitty then about three years old and the said Daney Chitty did further set forth that the said Ragavah Chitty maintained the said Daney Chitty for about Six years when on his arrival at Madras he entred and took uninterrupted possession of the said House as his property and that some time ago the said Daney Chitty Ragavah Chitty also arrived at Madras and upon the said Daney Chitty's demanding from him the estate of his Grand father as aforesaid that the said Ragavah Chitty said he had purchased the said house from the Grand father of the said Daney Chitty

and

and that he had a Certificate from the Choultry Court and that when the said Certificate was produced it was perceived that the Name of his Grand father affixed thereto Was a forgery and that thereupon the said Daney Chitty drew out a Petition to the Sitting — Magistrate informing him thereof and that whilst the said Daney Chitty was giving his information upon Oath said Ragavah Chitty absconded to Trechinopoly and he hath since erased the said Forgery and pasted a Piece of Paper thereon and that the said Ragavah Chitty some time after died and the said Daney Chitty Revived his Claim on Daney Chitty Coduda Ramah the Brother of the said Daney Chitty Ragavah Chitty and to that end addressed a Complaint to Mr John Holland then Second in Council a Copy of the said Petition is Annexed to the said Petition and that the said John Holland ordered a Tallier to Summon the said Coduda Ramah Chitty to appear before him but who instead of so doing fled from Madras in a Clandestine manner — and Lastly the said Daney Chitty said that he was credibly informed that the amount for which your Petitioner has sued the Defendant in the said Mayor's Court was actually paid to your Petitioner before the filing his Answer to the said Petition and prayed that the said Sheriff might be ordered to take off his Seal from the said Premises and that the said Daney Chitty might be left in quiet possession thereof. —

To

To which said Petition of the said Daney Chitty your Petitioner filed his answer therein admitting such parts of the said Petition as recited the original Cause but your Petitioner insisted that the said house and Premises are the property of Daney Chitty Ragavah Chitty and not the property of the said Daney Chitty as he hath falsely asserted in his Petition your Petitioner did further set forth that he is entirely uninformed as to the Genealogy of the family of the ~~family~~ Petitioner or of the various occurrences which were stated in the said Petition to have happened in the said Family nor have the merits of the Defendants Title to the House and premises seized under and by virtue of the execution which hath issued under the Seal of the said — Mayor's Court in the above cause any thing to do therewith for your Petitioner said that the original Grant of the Ground in question having been lost the said Daney Chitty Ragavah Chitty applied to the Choultry Court at Madras for a Certificate thereof and after the usual Advertisement was affixed in all public places according to the usual form by the said — Choultry Court Register which ought to have been well known to the Grand father and father of the said Daney Chitty for they lived in the same House with the said Daney Chitty Ragavah Chitty a Certificate was given to the said Daney Chitty Ragavah Chitty under date the thirty first day of August which was in the year of Christ One thousand Seven hundred and Sixty nine

Which

Which certificate is now of Record in the said Mayors Court in this Cause having been produced by your Petitioner at the Instance of the said Daney Chitty your Petitioner did further set forth that from the said year One thousand Seven hundred and Sixty nine to the year One thousand Seven hundred and Eighty Seven when the said Daney Chitty Ragavah Chitty died being upwards of Eighteen years he hath enjoyed the said House and premises and the Rent Issues and Profits thereof and made Several alterations and Repairs thereon without the least Interruption or hindrance whatever from any person or persons whomsoever, and in the Month of August One thousand Seven hundred and Eighty seven the said Daney Chitty Ragavah Chitty died being upwards of eighteen years he hath enjoyed the said House and premises and the Rents Issues and Profits thereof and made Several alterations and Repairs thereon without the least Interruption or hindrance whatever from any person or persons whomsoever and in the Month of August One thousand Seven hundred and Eighty seven the said Daney Chitty Ragavah Chitty departed this life whereupon Dany Chitty Cotunda Ramah Chitty at present of Trichinopoly Merchant as his Brother and Heir applied to and obtained from the said Mayors Court Letters of Administration to the Estate and Effects of the said Daney Chitty Ragavah Chitty as by the said Letters of Administration delivered into the said Mayors Court by your Petitioner at the Instance of the said Daney Chitty may appear —

Your Petitioner did further set forth that the said Daney Chitty Cotunda Ramah Chitty after he had Obtained the said Letters of Administration from the said

Mayors

Mayors Court took possession of all the Estate and property of his said Deceased Brother and paid all his lawful Debts —

And your Petitioner did also set forth that the said Daney Chitty Cotundah Ramah Chitty went soon afterwards to Trichinopoly and finding that his Business would not permit him to return as he expect appointed the Defendant Nayaroo Ball Chitty to be his Attorney to transact and manage all the Affairs of the Daney Chitty Ragavah Chitty a Copy of the said power of Attorney is now among the records of the said Mayors Court —

And your Petitioner did further set forth that he hath so far shewn to the said Mayors Court the rights of the said Daney Chitty Ragavah Chitty to the said House and premises and therefore the said Daney Chitty could not pretend to have any claim to the same for it clearly appears by the said Chouttry Certificate that the said Daney Chitty Ragavah Chitty had enjoyed the said premises for upwards of fifteen years without any dispute whatever previous to his obtaining the said Certificate and after he had obtained the same that he had the Possession thereof for Eighteen years more that is to say from the time he obtained the said Bill of Sale in the year one thousand Seven hundred and Sixty nine to the day of his Death which happened in the year One thousand Seven hundred and Eighty Seven and your Petitioner did say that it appeared very extraordinary to him that after the said Daney Chitty Ragavah Chitty had enjoyed the said —

premises

Premises for thirty three years without the least dispute or
Interruption whatever that it should now be disputed and Claimed
by the said Daney Chitty after the Death of the real Proprietor
thereof in whose name the said Certificate is made and your Pet.r
did also say that he conceived it would be of Dangerous prejudice
to the mutual Dealings of men among each other if the Testimony
of written Authenticated Documents under the Signature of the
Justices and Register of the Choultry Court and under the Seal of
the Honble Company was to be Invalidated by such Groundless
Assertions as the said Daney Chitty hath stated in his Petition
And as to that part of the Petition which states that the said
Rangavah Chitty committed a Forgery by signing the name of the
Grand father of the said Daney Chitty to the said Bill of Sale
and that the said Rangavah Chitty Absconded to Trichinoply
and hath since erased the said forgery and pasted a piece of
paper thereon your Petitioner humbly Submitted to the said
Mayor's Court to judge of the fact from a View of the said
Certificate then and now as aforesaid among the Records thereof &
humbly prayed the exemplary reprehension of the said Court against
the said Daney Chitty for asserting a matter contrary to the truth
and thereby attempting to mislead the Judgment of the said Mayor's
= Court —

Your Petitioner Absolutely denied the truth of that
part of the petition which states that the said Daney Chitty
" addressed a Complaint to Mr. John Holland then Second in Council
" against the said Daney Chitty Cotundah Ramah Chitty, and that
" the said John Holland ordered a Tahsir to Summon the said
" Daney Chitty Cotunda Ramah Chitty to appear before him
" but who instead of so doing fled from Madras in a Clandestine
" manner, leaving his Palanquin and other things behind," for your
Petitioner said that when the said Daney Chitty Cotunda Ramah
Chitty was preparing to go to Trechinoply on very important
Business the said Daney Chitty with a view to Harrass and
perplex him addressed a Petition to the said John Holland
as appears by the said Copy annexed to the said Petition and the
said Daney Chitty Cotunda Ramah Chitty was in a consequence
thereof Summoned by Mr. Thomas Chase Clerk to the Justices
and having accordingly appeared he gave his Answer thereto
And the said Thomas Chase examined into the Matter fully
and heard the Proofs on both sides and threw out the Petition
of the said Daney Chitty as being false and Groundless and
ordered the said Daney Chitty Cotunda Ramah Chitty to
proceed on his intended Journey to Trechinoply — your Pet.r
in answer to the last part of the said Petition denied having
received the Whole Money for which he hath sued the Defendant
altho he admitted having received a considerable part thereof
but he Submitted that the same had nothing to do with the
merits of the said Petition as long as your Petitioner had Still

a

a Claim under the execution issued in the above Cause. —

All which Matters and things your Petitioner humbly Submitted to the said Mayor's Court upon the Merits of his Title then and now in the Record thereof as aforesaid and upon Such further proofs as he might adduce to such other matters as are set forth in your Petitioners answer and therefore humbly prayed that the said Mayor's Court would direct the Sheriff to sell the said Premises to Satisfy the Decree of the said Mayor's Court in favour of your Petitioner and your Petitioner also prayed that the Petition of the said Daney Chitty might be dismissed with exemplary Costs to be paid by him. —

Your Petitioner sheweth that Issue was Joined and Witnesses examined on both Sides and publication passed and the same was set down for hearing and came on to be heard by and before the said Mayor's Court on Friday the thirtieth day of March last When the said Court did think proper to order, and did accordingly order that the Prayer of the Petition of the said Daney Chitty be held good and that the Sheriffs Seals be taken off the said premises in dispute and your Petitioner to pay all Costs as by the said order herewith sent for the Inspection of this Honble Court of Appeals Reference being thereunto had may more fully appear. —

From

From which said order of the said Mayor's Court your Petitioner doth appeal to this Honble Court of Appeals as he conceives the same Erroneous and that your Petr is much aggrieved and injured thereby for the following among other Reasons. —

First. ——— Because all the original Documents respecting the Title of the House and Ground in question are in the possession of your Petitioner or of those under whom he claims who have been for a series of years in the uninterrupted possession of the Premises in question. —

Secondly ——— Because the name which is pretended to have been forged is not the name of any party to the Certificate wherein the Forgery is said to have been made —

Thirdly. ——— Because the Evidence for your Petr proves positively the Points which support his Title and such evidence can not nor ought not to be impeached by any Negative proofs or proofs tending to Establish Contrary points —

Fourthly ——— Because the Evidence for your Petitioner is corroborated by written and official Documents whereas the Evidence for the Petitioner in the Mayor's Court has not one Document to lead to a Belief that it is founded, whence it is fair to Infer that such evidence is fabricated whereas Such an Inference cannot be drawn to impeach the

Evidence

Cathoo Codundarama Chitty and the Respondent Coming on to be Argued and determined this day in the presence of the Attornies on both sides on Hearing the Pleadings and Arguments made use of by the Attornies and on due Consideration had thereon This Court doth think fit to Order and doth accordingly Order that the Petitioners Petition be granted that the Sheriffs Seals be taken off the Premisses in dispute and that the Respondent do pay the Costs attending the Petition. —

A true Extract

/Signed/ George Taylor Regr.

To the Honble Mayor General W.m Medows —
President in Council

In the Honble the Court of Appeals } For St George,
at Madraspatnam — }

Between Davey Chitty Permaul Chitty by his Guardian Cathoo Coduna Rainah Chitty Administrator of Davey Chitty Vencatasha Chitty deceased and of Davey Chitty Vencatachella Chitty deceased Petitioner and Stephen Popham — Respondent — In the Cause of Stephen Popham Complainant and Nayaroo Ball Chitty Defendant.

The Answer of the above Named Petitioner

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

This Respondent admits that the Petitioner on or about the time in his Petition and appeal for that purpose set forth exhibit and file a Bill of Complaint in the Mayor's Court of Madraspatnam against the above Named Defendant for the Sum of five hundred and Twenty five Pagodas Twenty Six fanams and Seventy Cash but this Respondent does not admit that

for

for securing the payment thereof into the Petitioner the Defendant did Mortgage certain premisses for this Respondent says that the said Defendant had no right to Mortgage the Premisses alluded to either to the Petitioner or to any other Person — and this Respondent Says he admits that upon receipt of a Summons the said Defendt did appear to the said Bill so filed by the Petitioner as aforesaid and that he did thereupon confess the amount sued for by the Petitioner and that in consequence thereof the said Mayors Court did order and Decree in manner and form as in the Petitioners said Petition of Appeal the Same is Set forth and this Respondt also admits that for the reasons in the Petitioners said Petn of Appeal set forth Execution did issue in manner and form as is therein and thereby expressed and that under and by Vertue of the said execution the Sheriff of the Town of Madras-patnam did Seize and Sequester certain premisses in the said Petition of Appeal described and by the Petitioner pretended to have been mortgaged to him by the Defendant and this Respondent admits that after the Seizure aforesaid he did file his Petition in the said Mayors Court about the time and to the purport in the Petitioners said Petition of Appeal set forth and this Respondent admits that the Petitioner did to Such this Respondents Petition exhibit and file his answer in the said Mayors Court and did therein set forth the Several matters

and things in his said Petition of Appeal for that purpose recited and this Respondent admits that thereupon issue did join and rules did pass for the examination of Witnesses and that Witnesses were accordingly examined on both sides — And this Respondent begs leave to shew to this Honble Court that although the Petitioner has recited the Petitioner and answer he has totally omitted all particulars of the depositions adduced in support thereof — And this Respondent says that the Evidence brought forward by the Petitioner does not by any means establish the several matters in his the Petrs said answer contained but is altogether defective — the first Witness Mootiah Chetty to the second Interrogatory deposes that in the year of Christ One thousand Seven hundred and Sixty nine he was a Neighbour and acquaintance of Ragavah Chitty in the pleadings named and was by him called upon before the Register of the Choultry Court in order to obtain a Choultry Bill of Sale of a house and Ground situated in Pedda naicko Pettah and that Daney Chitty Laupiah was the real and lawfull proprietor of the said house and Ground before the said Ragavah Chitty became in possession of the same that the said Daney Chitty Ragavah Chitty became in possession of the said house under the right and title of being Nephew to the said

Daney

Daney Chitty Paupiah Chitty and that the said Ragavah Chitty was in peaceable possession of the said house and Ground fifteen years previous to his obtaining the said Choultry Bill of Sale: to the third Interrogatory the same Witness deposes that in the said year One thousand Seven hundred and Sixty Nine he was intimately acquainted with Venkatasha Chitty this Respondents Grand father and that he was living when the said Bill of Sale was obtained by the said Ragavah Chitty and that the said Venkatasha Chitty did live in the said house with the said Ragavah Chitty and to the best of the Witnesses knowledge knew thereof that the said Ragavah Chitty did make several Buildings and repairs in the said house and that the Public always considered it as his property and which he had enjoyed it thirty Eight years uninterrupted Venkatachella Chitty also examined to the third Interrogatory says he believes that Venkatachella Chitty was living when the said Ragava Chitty obtained the Bill of Sale and did then live in the said house and to the best of the Witnesses recollection did know thereof that the said Ragavah Chitty did make several Buildings and repairs in the said house that the Public in General always understood it to be his property and that he enjoyed the same during his life time uninterrupted Rama Chitty examined to the fifth Interrogatory deposes that he did

live

live in the house in question many years under the permission of the said Ragavah Chitty who did let the same to many other Persons and did receive the rents thereof and which is this Respondents says all the material proof attempted to be set up by the Petitioner and thereupon this Respondent prays leave to observe that in Such attempted proof there is no mention made of the Original Bill of Sale having been lost as inserted on in the Petitioners said Answer so as to Warrant the application to the said Choultry Court for the said Certificate nor is there any mention made of the Advertisements having been affixed in all public places according to the custom observed in like Cases and upon which the Choultry Court to Register grant his certificate and although the Petitioner in his said Answer states that such custom had been observed in the present Instance yet the Witnesses who ought to have deposed thereto are totally silent upon that head and although the Petitioner in his said Answer has contradicted a fact in this Respondents said Petition contained that this Respondent had addressed a Petition to John Holland Esqr. then in Council against Daney Chitty Pulunda Ramah Chitty the Administrator of the said Ragavah Chitty who in Consequence fled from Madras yet the only witness Thomas Chase produced by the Petr. in Support of Such his denial declares he has no

recollection

recollection of the matters to which he is interrogated and this Respondent says that he this Respondent did also examine Witnesses and further says that such Witness did by their testimony clearly and distinctly support the several matters and things in his this Respondents said Petition contained and fully and effectually do away the assertion by the Petr. set up in his said Answer in opposition thereto for this Respondent says that Rangapah Naick to the fifth Interrogatory deposes that the title deeds of the house of Dana Chitty Venkatacha Chitty were mortgaged by him in his life time about five or six years previous to his death to Venkata Kistnama Chitty the deponents father and that the title Deeds of the said house were in the Name of Daney Chitty Paupiah Chitty uncle to Daney Chitty Venkatacha and to the last Interrogatory the deponent says that the said Daney Chitty Venkatacha Chitty did redeem the said Title deeds which were so mortgaged as aforesaid by paying amount which he had borrowed thereon Natchapah Moodely to the third Interrogatory says that Daney Chitty Venkatacha Chitty in his life time did sell and dispose of a part of the said Premises to the deponents Brother named Mooley Nyneapah and did obtain from the said Daney Chitty Venkatacha Chitty a Bill of Sale thereof under his signature as the original proprietor thereof which Bill of Sale he the deponent says he did produce at the time of his examination and further says that the said Bill of Sale was registered in the Choultry Court and this Respondent says that the depositions of the said Rungapah Chitty and Natchyapah Moodelly establishes the fact that the premisses in question were not the property of Ragavah Chitty but of the said Daney Chitty Venkata=cha Chitty and that the title Deeds were not in his the said Ragavah Chitty's name but in the Name of the said Daney Chitty Venkatacha Chitty, and this Respondent says that the said Nachiapah Moodelly to the third Interroga=tory further says that he was neighbour to the Daney Chitty Venkatacha Chitty in his life time and that their houses did join each other that he has constantly resided in his said house for a Number of Years and that during that period no advertizement had been affixed on the door of the said house whereby any notice was declared to be given that a certificate of the said house and premisses was to be granted by the Choultry Court to Daney Chitty Ragavah Chitty and further says that if such an advertizement had been affixed he the Deponent would have known thereof and Rungapah Naick to the same Interroga=tory says that he has resided in the Neighbourhood of the Premisses in question for the Space of thirty Years during that

that period no advertizement was ever affixed on the door of the said house of the Notice above Mentioned and that if such an advertizement had been affixed he certainly would have known thereof — And this Respondent Says that the said Natcheyapah Moodelliar and Rungiapah Naick deposing to the Same Interrogatory do prove that Ragavah Chitty never was the the proprietor of the house in Question and that this Respondent has been in the possession thereof for Seven or Eight years and that he is entitled thereto as the Grand Son of the said Daney Chitty Vencatasha Chitty And this Respondent says that Gopaul Kistnamah Chitty to the Second Interrogatory says he was present a few days previous to the death of the said Daney Chitty Vencatasha Chitty when he signified his Will to Daney Chitty Ragavah Chitty as to the disposal of his property that the said Daney Chitty Vencatasha Chitty died possessed of the house in question and the Title deeds thereof together with a Small Box containing as the Deponent believes some Rubies and Diamonds — that the said Daney Chitty Vencatasha Chitty did amongst other property deposit in the hands of the said Daney Chitty Ragavah Chitty the title deeds of a house which he shews to be the house in question instructing him to deliver the same to Daney Chitty Vencatachellum Chitty his Son and Heir which testimony of the said Gopaul Kistnamiah Chitty is corroborated by the Deposition of Vencata Narrain Chitty to the same Interrogatory and this Respondent says that Ramalinga Chitty to the fourth Interrogatory says that he was present when a demand was made on the said Ragavah Chitty by the Petitioner and some of his Relations to be delivered up to him as having been given to him the said Ragavah Chitty in trust by the said Daney Chitty Vencatasha Chitty but that the said Ragavah Chitty did make objections thereto pretending that the said house had been sold to him by the Petitioners grand father producing a Paper in Support thereof pretending the same was a Bill of Sale executed by the said Daney Chitty Vencatasha Chitty that the Witness in conjunction with two others did compare the said Signature with other signatures and that thereon the Same did appear to be a forgery and said to have been affixed for the purpose of depriving the Petitioner of his Property and which testimoney of the said Rama=linga Chitty is corroborated by the depositions of Vencatachellum Chitty and Venaigoo Chetty to the same Interrogatory and the said Ramalinga Chetty to the Second Additional Interrogatory says he has looked at

at the exhibit shewn to him at the time of his examination purporting to be the certificate of a house granted in the Name of Daney Chitty Ragavah Chitty and declares it was brought to him the Deponent for the purpose of examining the Signature affixed thereto that he did examine it accordingly that it was in the gentoo Character and said to be the Signature of the said Daney Chitty Vencatasha Chitty and that it appeared to him not to be the Signature of the said Daney Chitty Vencatasha Chitty and this Respondent says that Rungapah Chitty to the third Veerah Moodely to the third Additional Interrogatories and Rungapah Chitty to the last Interrogatory further Corroborates the Testimoney of the said Ramaling Chitty which this Respondent humbly Submits to this Honble Court proves the Certificate produced by the Petitioner to be the same as was objected to when produced by the said Ragavah Chitty in opposition to the Claims of this Respondent and this Respondent says that Cavetah Peravatha to the Sixth Interrogatory depose to their knowledge of this Respondent having presented a Petition to John Holland Esqr. against Daney Chitty Coolunda Rama Chitty and that the said John Holland did in consequence thereof grant Bailars to apprehend the said Daney Chitty Coolunda Rama Chitty but that before the Bailars arrived he had absconded and that the Reason of his absconding was his apprehension of losing the Cause Subsisting between him and this Respondent — And lastly this Respondent Says that by the deposition of Rungapah Naick and Natchyapah Moodelliar to the third Interrogatory and Rungapah Chitty and Ramalinga Chitty to the last Interrogatory he has shewn that he is now in possession of the premises that he has been so in possession for a considerable Number of years and that he obtained the same peaceably and quietly and further previous to such possession of this Respondent the said Premises were possessed by some female Relations of this Respondent who had enjoyed the rents and profits arising therefrom for a considerable time and this Respondent Admits that the matter was set down for hearing and that the same came on to be heard before the said Mayors Court on the time in the Petrs Said Petition of appeal for that purpose set forth when the said Mayors Court were pleased to order and did accordingly order that the prayer of this Respondents said Petition be held good that the Sheriffs Seals should be taken off the Premises in dispute and that the Respondent Now Petitioner should pay all Costs of Suit — But this Respondent doth deny that thereby or by reason thereof —

the

the Petitioner is any wise aggreeved or injured or that he has any good Cause of appeal therefrom and this Respondent submits that the reasons upon which the Petitioner grounds his said Cause of appeal are without foundation and are fallacious and nugatory. —

To the Petitioners first reason this Respondent says he denies that the Original Documents of the house in question are in the Petitioners possession for this Respondent says that the pretended Certificate which the Petitioner alludes to as the Original Document was collusively and fraudulently obtained as this Respondent has clearly proved the fact to be and therefore null and void and further this Respondent says that he this Respondent has proved that he has been in the possession of the Premises for many years that he now is in possession thereof and that he so holds possession as the lawfull heir. —

To the Petitioners Second Reason this Respondent admits that the name forged is not the Name of any party to the certificate but this Respondent says that the Name was forged to impose upon the friends of this Respondent & did the said Daney Chitty Ragavah Chitty in his fraudulent and ineguitous purposes of depriveing this Respondent of his property the said Daney Chitty Ragavah Chitty thereby intending to inculcate a belief that Daney Chitty Vencatasha Chitty the Respondents grand father had a knowledge of and was consenting to the said Certificate and thereby establishing the Right of the said Daney Chitty Ragavah Chitty in the Premisses all which fraud ineguity and evil design of the said Daney Chitty Ragavah Chitty this Respondent humbly submits he has clearly shewn by a regular cause of Evidence. —

To the Petitioners third Reason this Respondent Says he denies that the Petitioner has proved by the Testimony of the Evidence he has adduced all or any of the points in Support of his pretended title on the contrary this Respondent Says he the Petitioner has failed therein totally and further that the proofs advanced by this Respondent do clearly and decidely shew that the conduct of the party whom he the Petitioner pretends to Claim under in the premisses was replete with breach of trust with fraud and ineguity and if such conduct was not to be impeached as the Petitioner says it ought not to be property would never be secured to the lawfull Owner. —

To the Petitioners fourth Reason this Respondent says that he denies the Petitioners Evidence is supported by written and official Documents for this Respondent Says that he denies the Petitioners evidences as duly proved that

Petitioner may have such further and other relief in the premisses as to this Honble Court may seem meet. ——

/Signed/ J. S. Hall } Sols for
Jno. Hamilton } Respt.

By written answer filed Decr 20th for the Respondent says that the only pretended document produced by the Petitioner and in any wise pertinent to the matter in question was the Certificate which this Respondent has proved to be a fraud practised by the said Daney Chitty Ragava Chitty and further this Respondent says notwithstanding the assertion of the Petitioner to the Contrary that he this Respondent did in the course of his evidence produce a Document to shew that a part of the Premisses in question had been disposed of by the said Daney Chitty Vencatasha Chitty in his life time and this Respondent denies the insinuation of the Petr that there is any foundation whereon to ground an inference that the evidence produced by this Respondent is fabricated but this Respondent says notwithstanding the assertion of the Petitioner to the Contrary that the Evidence adduced by him the Petitioner is not only impeachable but that this Respondent has actually proved it to be fraudulent Corrupt and inequitious. —

This Respondent therefore humbly prays that the order of the said Mayors Court may be affirmed that the Petitioners Petition may be dismissed with Costs and that your Petr

Court of Appeal

Court of Appeals
at
Madraspatnam } for Saturday the 19th day of April
Anno Domini 1794

Between Stephen Lushington of Fort St George
Esqr one of the attornies of this Honble Court appellt
and Daney Chitty Permaul Chitty by his Guardian
Catheo Coundaramah Chitty Administrator of
Daney Chitty Vencatasha Chitty deceased and of
Daney Chitty Vencatachella Chitty also deceased
Respondents —

This Cause coming on to be heard and debated before this Court by the attornies on both sides upon hearing the Petn of appeal and answer and the Several Exhibits of the Honble the Mayors Court together with the Order of the said Court given in this Cause on Friday the 30th day of March 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 And Decree and doth accordingly Order and Decree that the Said Order of the Honble the Mayors Court do stand affirmed and that the appellants Petition be hence dismissed with Costs —

Thur, (Signd) Chas N. White
Clk

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

In the Court of Appeals
at Madraspatnam }

Filed in my Office
the 3d May 1792
Chas N. White
Clk

Between Butchavany Sunker Waredut of Madras Soucar by his Attorney Thomas Richard Fairchild of Madras aforesaid Gentlemen of Complainant and Gungadss of Masulipatnam Inhabitant Defendant. —

The Humble Petition and appeal of the Abovenamed Defendant. —

Sheweth,

That the said Butchavany Sunker Waredut did by his Attorney the said Thomas Richard Fairchild on or about the Eleventh day of December which was in the Year of Our Lord one thousand Seven hundred and Ninety Exhibit his Bill of Complaint in the Honble the Mayors Court at Madraspatnam against your Petitioner thereby setting forth that your Petitioner as the Surviving Partner of the house of Verdadss Peetambrdss Gungadss stood justly and truly indebted unto the said Complainant in the full and just Sum of Two thousand nine hundred and Seventy two

Pagn

Pagodas three fanams and thirteen Cash Current Money of Madras or in Sterling Money of Great Britain at the Exchange of Eight Shillings for every Pagoda the Sum of One thousand one hundred and Eighty Eight Pounds Sixteen Shillings and Six Pence or thereabouts which the said Complainant alledged would more fully appear by an account Current and Assignment Copies whereof were annexed to the said Bill of Complaint to which the said Complainant referred and prayed the same might be taken as part of his said Bill of Complaint and the Said Complainant by his said Bill of Complaint did further charge that the said account Current was made up from an account Current furnished by your Petitioner and sent to the said Complainant as he pretended accompanied by a letter relative thereto a Copy of the translation of which account Current and letter the said Complainant alledged was annexed to his said Bill of Complaint the Complainant by his said Bill of Complaint therefore prayed that your Petitioner might answer the premises and be decreed by the said Mayors Court to pay unto the said Complainant the Said Sum of Two thousand Nine hundred and Seventy two Pagodas three fanams and thirteen Cash with Interest for the same and Costs of Suit your

Petr.

Petitioner further Sheweth unto this Honble Court that your Petitioner did on or about the fifth day of April in the said year one thousand Seven hundred and Ninety one file his answer to the said Complainants said Bill of Complaint and therein set forth that he was advised and believed that the Complainant in and by his said Bill of Complaint did seek to recover from your Petitioner the Sum of Two thousand Nine hundred and Seventy two Pagodas three fanams and thirteen Cash being a balance pretended by the said Complainant to be due and owing to him by your Petitioner upon the foot of the running account by him the said Complainant made up and assigned or pretended to be assigned to one Thomas Richard Fairchild in the Said Complainants said Bill of Complaint mentioned Hereby endeavouring to give the said Complainant a colourable right to Sue your Petitioner in the said Honble the Mayors Court and your Petitioner did further Set forth that he was advised and believed that the Said running account was not transferrable or Assignable so as to give the said Complainant or his Attorney the said Thomas Richard Fairchild any power or authority whatever to sue your Petitioner

in

in the said Honble the Mayors Court for the recovery of the balance thereby pretended to be due and owing in manner aforesaid and your Petitioner did further Setforth that he was not indebted either to the said Complainant or to his said attorney the said Thomas Richard Fairchild in the said pretended balance of Two thousand Nine = = hundred and Seventy two Pagodas three fanams & thirteen Cash or in any other Sum of Money whatever and that your Petitioner never had any transaction or dealings either Mercantile or otherwise with the Said Complainant or with the said Thomas Richard Fairchild notwithstanding which the said Thomas Richard Fairchild died on the Eleventh day of december in the year of our Lord One thousand Seven hundred and Ninety make an affidavit of your Petitioner being indebted to him the said Thomas Richard Fair: = child in the said Sum of Two thousand Nine hundred and Seventy two Pagodas three fanams and thirteen Cash and afterwards caused your Petitioner to be thereupon arrested and thrown into Prison and your Petitioner did by his said Answer further Setforth that he was not the Surviving partner of the House of Varjeedoss by the Bill of Complaint called Veeradadoss and Peetambra: = doss in the Complainants said Bill of Complaint mentioned and that your Petitioner never was a Partner in the said House or firm for that the Business of the Said firm was carried on as your Petitioner believed in the Name of the said Varjeedoss your Petitioners late father and of Peetambradoss who was your Petitioners Grand father both of which persons were dead, the said Peetambradoss having first departed this life, and after him the said Varjeedoss died to wit some time in or about the Month of January which was in the year of our Lord One thousand Seven hundred and Eighty Eight leaving your Petitioner then a Minor under the age of Twenty one years and totally ignorant of the dealings or concerns of the said Peetambradoss and of the Said Varjeedoss or either of them and your Petitioner did by his said answer positively allege that he never had any dealings or transactions in the way of trade or Business with them or with either of them but that shortly before the death of the said Varjeedoss he the said Varjeedoss sent for his Gomastah named Ragoo = = nadadoss who transacted and managed the business of the said Varjeedoss and that he the said Varjeedoss did thereupon as your Petitioner believed order and direct the said Gomastah to carry on the business of the

Said

Said Vazeedass after his death as he the said Gomastah had done in the life time of the said Vazeedass and your Petitioner by his said answer did further set forth that the said Account Current was not as untruely alledged in and by the Complainants said Bill of Complaint made up from an Account Current furnished by your Petitioner for that he did not make up or furnish the Complainant with any Account whatever and that your Petitioner did not Send or write nor cause to be sent or written any letter whatever to the Complainant relative to Such Account or Any Account whatever but that he believed the said Gomastah the said Rajoonadass did or might have written such letter and furnished such account but herein your Petitioner could not particularly set forth for that your Petitioner was at the time when such Account is said to have been furnished and that the said letter is said to have been written in the age of Twenty one years to wit of the age of Eighteen years and no more and that your Petitioner then was & Still is ignorant of and unacquainted with the Several transactions in the Complainants said Bill of Complaint and in the Account Current thereunto Annexed particularly mentioned and alluded to

And that the said Suit has been most unjustly instituted against your Petitioner with a View thereby to injuire and distress him which the said Complainant and his attorney the said Thomas Richard Fairchild have fully effected your Petitioner further sheweth unto this Honble Court that the said Complainant did on or about the Tenth day of May in the year one thousand Seven hundred and Ninety one by his attorney the said Thomas Richard Fairchild reply to your Petitioners said answer and thereon set forth that your Petitioner as Surviving partner as aforesaid stood justly and truly indebted unto the said Complainant in the Sum of Two thousand Nine hundred and Seventy two Pags Three fanams and thirteen Cash as charged in and by the said Complainants Bill of Complaint exhibited and filed in the Said Mayors Court against your Petitioner and as More particularly appeared as the said Complainant alledged in and by the Account Current and the other documents to the said Complainants said Bill annexed and which said Sum of Two thousand Nine hundred and Seventy two Pagodas three fanams and thirteen Cash was by the said Complainant previous to the exhibiting and filing his said Bill really and bona fide assigned to his said attorney the said Thomas Richard fairchild as by the Assignment

Whereof

Whereof a copy is to the said Complainants said Bill of Complaint annexed reference being thereunto had would morefully and at large appear and the said Complainant sayd that the Insinuations thereon and in opposition thereto by your Petr. as in and by his said answer the same appeared were frivolous and Impertinent and brought forward with the unjust and unjustious view as the said Complainant pretended of defrauding the said Complainant by his attorney as aforesaid of his just dues and that notwithstanding any thing to the Contrary in your Petitioners said Answers Contained the matters and things in the said account Current Contained were properly assignable agreeable to the practice of the said Mayors Court as by numerous Precedents upon the records thereof the said Complainant alledged would appear and agreeable to the Practice of Courts of Equity in General and thereupon the said Complainant said he had by his said Attorney full power and authority to Sue your Petitioner in the said Honble the Mayors Court for the recovery of the said Sum of Two thousand nine hundred and Seventy two Pagodas three Panams and thirteen Cash and the more particularly as the same had arisen and grown out of an Account Current by your Petitioner himself as the said Complainant pretended delivered to the said Complainant as a just and true Statement of Accounts between them and fully explained by

by the letters to the Complainants said Bill annexed and thereby and herein before referred to and therefore and thereupon the said Complainant sayd that your Petitioner in denying to stand indebted to the said Complainant by his said Attorney in the said Sum of Two thousand Nine hundred and Seventy two Pags. three Panams and thirteen Cash as in and by his said answer the same appeared had so denied Contrary to the fact and the said Complainant saith notwithstanding any thing to the contrary in your Petitioners said answer Contained that your Petitioner had been in the habits of Transacting Business with and on account of the said Complainant and that the Same would fully appear by the said account Current And the said Letter herein before referred to and that the Mention made in your Petitioners said Answer relative to the said Complainants said Attorney And the Matters and things relative thereto and connected therewith was Impertinent and Irelevant and contrary to the practice of the said Mayors Court and therefore the said Complainant prayed the same might be expunged from the Records and that your Petr. was as the said Complainant had in and by his said Bill of Complaint so stated the fact to be one of the Partners under the firm of Vurgedos Pedambrados and Gungah dos & that he was the Surviving partner thereof and that it is the Custom Amongst the Soucars or Native Bankers to carry

on

on their Transactions in the Name of their Ancestors and that the said Firm goes down from father to Son without alterations With the Son notwithstanding the death of the father and that such custom had prevailed for time immemorial and that your Petitioner in and by his said Answer in endeavouring to deny actually confessed the said Same for that the basiness thereof was carried on by the Said Vazeedoss your Petitioners late father and the Said Pettambradoss your Petitioners Grand father and that they were both dead and that although your Petitioner might have been as in and by his said answer he has stated the fact to be a Minor at the time of the decease of the said Vazeedoss and the said Pettambradoss yet the Complainant said and humbly insisted thereon that at the time he your Petitioner recognized the said Complainants Claim for the said Sum and at the time of delivering unto the said Complainant the said Account Current and at the time of Writing the said said letters relative thereto and explanatory thereof he your Petitioner was of the full age of twenty one years and upwards and that it would further appear by the said Account Current that the Several matters therein contained were not confined to the firm aforesaid but some of them originated with your Petitioner himself Subsequent to the decease of the

Said

Pettambradoss in Consequence of Certain transactions between your Pett. and the said Said Vazeedoss and the said Complainant as he asserted & thereupon the said Complainant sayd that the assertion in your Petitioners said Answer contained that he your Pett. never had any dealings or Transactions in the Way of Trade or Business with them or with either of them was untrue, and that he the Complainant knows nothing of Raganadoss the Gomaste in your Petitioners said Answer mentioned and that he never had any dealings or Transactions with him Whatever either on his the said Raganadoss's own account or on account of the copartnership aforesaid and that the assertion in your Petitioners said Answer contained that he your Petitioner did not furnish the Account Current from which the Account Current to the said Complainants said Bill annexed is made up was untrue for that your Petitioner did furnish the said Complainant with the said Account And further says that your Petitioner notwithstanding his Assertion to the contrary in his said answer contained did write and send to the said Complainant the Letter whereof a Copy is to the Complainants said Bill annexed and did write and send to the Complainant a Number of other Letters alluding to and promising payment of the Amount of the said account Current Copies of two of which said Letters Marked A and B, the said Complainant prayed might be taken as part of the said Complainants Replication from which Letters it would also appear that your Petitioner had contained his

Correspondent

Correspondence with the said Complainants on the Subject of the said account Current and thereby repeating his promise of payment of the amount thereon due to the said Complainant as far down as the Month of February which was in the year of Christ one thousand Seven hundred and Eighty nine at which period the said Repliant averred the same to be the fact that your Petitioner notwithstanding any Assertion to the contrary in his said Answer Contained was not a Minor but had attained the full age of Twenty one Years for that your Petitioner was Twenty Seven years of age and upwards and the said Complainant said that from the several matters and things in his said Replication set forth it would clearly appear notwithstanding the Assertion to the Contrary in your Petitioners said Answer contained that your Petitioner was intimately and fully Acquainted with the Several Transactions in the said Complainants Bill contained and Set forth and the account Current thereunto annexed your Petitioner further Sheweth unto this Honble Court that he did on or about the fourteenth day of June in the said year one thousand Seven hundred and Ninety one file his Rejoinder to the Replication of the said Complainant and thereby set forth that he was not as surviving Partner of the House of Muradad & Beetambrad & and Gungahdass or otherwise indebted to the said Complainant in the Sum of Two thousand nine hundred and Seventy two Rup.s three fanams and thirteen Cash or in any sum of Money whatever and that your Petitioner was not Surviving Partner of and never was a partner in the said firm and that notwithstanding the Assertions of the Complainant he the said Complainant has commenced his Suit illegally against your Petitioner in as much as the said Complainants Bill of Complaint is founded upon an Assignment of the said Account Current annexed to the Complainants said Bill of Complaint which account Current is not legally Assignable and that your Petitioner was advised and humbly Submitted to the Judgement of the said Honble the Mayors Court that the demand of the said Complainant upon your Petitioner was upon the Complainants own Shewing manifestly inconsistent in as much as the said Complainant was prosecuting your Petitioner for the recovery of a demand said to have accrued to the said Complainant upon the foot of an Account Current annexed to the said Bill of Complaint and bearing date the twelfth day of November One thousand Seven hundred and Ninety which account Current and the monies thereupon pretended to be due was by an Assignment bearing date the Ninth day of December One thousand Seven hundred and ninety two days anterior to the Complainants filing his said Bill of Complaint Assigned by the said Complainant to Thomas Richard Fairchild on the Complainants said

Bill

Bill of Complaint named whereby the said Complainants interest in the said Account Current if any he actually had became absolutely vested in the said Thomas Richard Fauche so farras such Assignment could vest the same and that the said Complainant had not by his said Attorney or otherwise any power or authority whatever to sue your Petr. for the recovery of the said Sum of Two thousand Nine hundred and Seventy two Pagodas three fanams and thirteen Cash for that the said Complainant could not and cannot delegate to his said Attorney a power with which the said Complainant is not and never was vested and that the said Sum of Two thousand Nine hundred and Seventy two Pagodas three [illegible] and thirteen Cash did not arise or grow out of an account Current delivered to the said Complainant for that your Petitioner never furnished the said Complainant with any account whatever Neither were such pretended Accounts fully or at all explained by any letter or letters written by your Petr. to the said Complainant and that your Petitioner did not write any letter or letters whatever to the said Complainant and although the said Complainant had by the said letter and Account Current endeavoured to shew that your Petitioner had been in the Habits of transacting Business with and on Account of the said Complainant yet

yet your Petitioner never transacted Business with or upon Account of the said Complainant and that your Petitioner did not write nor cause to be written the letters to the said Complainants replication annexed or either of them and that if the said Complainant had any just Claim upon the Firm or House of the said Verjedofs Petambaradofs he the said Complainant should as your Petitioner is advised and humbly submits to the Judgment of this Honourable Court call upon Goverdanadofs of Masulipatnam the Administrator of the Estate and Effects of the said Verjedofs Petambaradofs who alone was and is answerable for any Claim upon the said Firm and that your Petitioner was at the time in his Answer mentioned a Minor under the Age of Twenty one years —

that Issue having been joined in the said Cause upon the aforesaid proceedings Witness were examined as well on the part of the said Compt. as of your Petitioner and your Petitioner shweth that Gaul Pauker a Witness produced and examined on behalf of the said Complainant deposed that he had known the Complainant forty years or thereabouts and that he had known your Petitioner twenty eight years or thereabouts and to the second Interrogatory the said Deponent deposed that he had Corresponded with your Petitioner and had received letters from him and was thereby acquainted with the Character and manner of your Petitioners hand Writing and that the deponent had looked at the exhibits marked with the letters A and B and № 2 and said the same were in the hand Writing of your

Petitioner

Petitioner who wrote and directed them to the Complainant your Petitioner further sheweth that the said Deponent being further examined on the part of the said Complainant to the third Interrogatory deposed that he knew the time of the birth of your Petitioner which was at Masulipatnam in the year of Christ one thousand Seven hundred and Sixty two or thereabouts and that the Deponent came to the knowledge thereof by having resided at the House of your Petitioner on the Deponents way to Juggernat on a pilgrimage and more the said Deponent said not your petitioner further sheweth unto this Honourable Court that Rama Chunder of Madras Soucar a Witness produced on the part of the Complainant and Aged twenty three years or thereabouts deposed that he had known the Complainant from his infancy and that he had known the Defendant about Eight years and the said Deponent being examined to the second Interrogatory deposed that he had corresponded with your Petitioner and that he had received Letters from him and that he was thereby well acquainted with the character and manner of the hand writing of your Petitioner and that he the Deponent had looked at the exhibits marked with the Letters **A** and **B** and № 2 and that they were in the hand writing of your Petitioner and Written by him and were directed to the Complainant and more the said Deponent said not and your Petitioner Sheweth that Gopaul Row of Madras Aged thirty six years or thereabouts being another witness produced and examined on the part of the said Complainant deposed that he had known the Complainant Twenty years or thereabouts and that he had known your Petitioner fifteen years or thereabouts and the said Deponent being examined to the second Interrogatory deposed that he had been in the habits of Corresponding with your Petitioner that he the Deponent had received

Letters

letters from him and it was thereby well acquainted with the Character and manner of his hand Writing and that the exhibits marked with the Letters **A** and **B** and № 2 are in the hand Writing of your Petitioner and directed to the Complainant and the said Deponent being also examined to the fifth Interrogatory deposed that your Petitioner did soon after the death of Verjeedoss address Letters to the Complainant on the subject of the balance that was due to the Complainant by your Petitioner and that he the Deponent was present at the time of the receipt of such letters and that such letters contained an account of money transactions and that they were shewn to the Deponent by the Complainant and that the said Accounts were signed and transmitted by your Petitioner and that they were in the name of Verjeedoss Pettambaradoss Gungahdoss and were drawn between the aforementioned persons and the Complainant and that a balance was struck to the Amount of Two thousand Two hundred and two Pagodas and some fanams in favor of the Complainant and deposed that the Exhibit № 1 was the Account which had been received by the Complainant and more the said Deponent said not And your Petitioner Sheweth that the said Gopaul Row being cross examined on the part of your Petitioner deposed that he the deponent had lived and resided at Madras ten years and that he was acquainted with the transactions of the House of Verjeedoss and Pettambaradoss and that he first became acquainted with the said Verjeedoss and Pettambaradoss about fifteen years ago and that Verjeedoss died about four years ago and that the deponent has heard that the said Pettambaradoss and Verjeedoss did reside at Masulipatnam and that

deponent

deponent became acquainted with the transactions of the House of the said Peetambaradoss and Verjeedoss by his having had pecuniary concerns with them: and that the Deponent has known your Petitioner fifteen years and the said Deponent deposed that your Petitioner was now twenty eight years of age and more he said not—

Your Petitioner further sheweth unto this Honourable Court that Rade Chrust being also examined as a Witness for the said Complainant deposed that he had known the Complainant and your Petitioner Twenty nine years thereabouts and the said deponent to the third Interrogatory further deposed that your Petitioner was born in the year of Christ one thousand seven hundred and Sixty two and that the Deponent came to the knowledge thereof in consequence of his having lodged at the house of your Petitioner as the Deponent was going on a Pilgrimage to Juggernaut Pagoda and more the said Deponent said not. And your Petitioner further sheweth That Ramalinga Dave being also examined on the part of the said Complainant deposed that your Petitioner was born in the year One thousand Seven hundred and Sixty two at Masulipatnam and that the Deponent came to the knowledge thereof by having received a rupee from your Petitioners Father upon that Occasion and your Petitioner Sheweth that Soobaroya Dave aged Twenty three years being also examined on the part of the said Complainant deposed that he had known your Petitioner eight years or thereabouts and that your Petitioner was a partner in the House of Verjeedoss Peetambaradoss

Peetambradoss and Gungadoss — and that your Petitioner did after the death of Verjeedoss the other partner of the said House carry on conduct and transact the business of the said House under the form of Verjeedoss Peetambradoss and Gungadoss and that it is the Custom of Deponents Cast with respect to Soucars or Native Bankers to carry on the transactions of their House in the Name of their Ancestors and that it is in pursuance of such Custom the rule of Deponents Cast that the same do so godown and be carried on from father to Son notwithstanding the death of the Father and that such Custom has been observed in Deponents cast time immemorial your Petitioner further Sheweth that one Raganaut aged Twenty Sex years being also examined as a Witness on the part of the said Complainant deposed that he had known the Complainant Twelve years and your Petitioner ten years and the said deponent to the fourth Interrogatory further deposed that your Petitioner was a partner in the House of Verjeedoss Peetambradoss and Gungadoss and that he did after the death of Verjeedoss solely carry on and transact the business of the said House and that the same was conducted by your Petitioner in the Name of Verjeedoss Peetambradoss and Gungadoss and proved the Custom of Deponents Cast in manner set forth in the aforegoing Deposition and the said Deponent to the fifth Interrogatory

deposed

deposed that your Petitioner soonafter the death of Verjeedoss addressed letters to the Complainant relative to the balance due to him and that the Deponent Was present at the Receipt of such Letters by the Complainant and that one of them contained accounts of Money transactions between the Complainant and your Petitioner and that they were shewn to the Deponent by the Complainant that the said Accounts were signed and transmitted by your Petitioner and that the Exhibits Marked N°. 1. is the Account that had been received by the Complainant and to the last Interrogatory the said Deponent deposed that your Petitioner paid to Venkoo Ramachandoo Samall Doss a balance due to the said Venkoo Ramachandra Samall Doss after the death of the said Verjeedoss and your Petitioner further sheweth That Rama Seyer But being also examined as a Witness on the part of the said Complainant to the fourth Interrogatory deposed that your Petitioner was a partner in the house of Verjeedoss Peetambradoss and Gungah doss and that your Petitioner did after the death of Verjeedoss the other partner of the said House solely carry on and conduct the business of the said House and that the firm of the said house was conducted in the Name of Verjeedoss Peetambradoss and Gungahdoss and the said Deponent proved the Custom of his Cast to be the same as in the deposition of the said Rade Chrast is Setforth and

mentioned

mentioned and the said Deponent to the fifth Interrogatory further deposed that your Petitioner did soon after the death of Verjeedoss address a Letter to the Complainant relative to the balance due from your Petitioner to the Complainant and that the deponent was present at the time of the receipt of Such letter and that it contained Account of Money transactions between the Complainant and your petitioner and that it was shewn to the Deponent by the Complainant and that the Accounts were signed and transmitted by your Petitioner and that the exhibit marked N°. 1. was the Account that had been received by the Complainant and Shewn to the Deponent and more the said Deponent said not.

Your Petitioner further sheweth unto this Honble Court that Goverdanadoss of Masulipatnam Diamond Merchant aged fifty years being examined as a Witness on the part of your Petitioner in the said Cause deposed that he knew the Complainant about Twelve years and your Petitioner about Twenty years and the said Deponent further deposed that he knew Verjeedoss and Peetambradoss of Masulipatam deceased and that the said Verjeedoss died about four years ago and that Peetambradoss has been dead many years and the said Deponent further deposed that the said Verjeedoss did not leave any stock or effects excepting an House and some outstanding Balance due to him and that the said Deponent

Was

was intimately acquainted with the said Verjeedoss but that your Petitioner was not in Partnership nor reputed to be in Partnership with the said Verjeedoss and the said Deponent further deposed that your Petitioner could not have been in Partnership with the said Verjeedoss without the deponento having known thereof and the said Deponent further deposed to the third Interrogatory that he had very often seen your Petitioner Write and that he had looked upon the paper Writings Marked With the Letters A and B, and had also looked at the Exhibits Marked N.o 1. and N.o 2. and said that not one of them Was in the hand Writing of the said Cundapodo and the said Deponent to the fourth Interrogatory deposed that he knew the time when your Petitioner was born and that your Petitioner was twenty two years of age at the time when the said Deponent Was examined and the Deponent came to the knowledge thereof in consequence of his having resided at Masulipatnam and from his being intimately acquainted with your Petitioners father at the time when your Petitioner was born and the Said deponent further deposed that he obtained Administration of the Goods Chattles and credits of the said Verjeedoss and more the said Deponent said not.

Your Petitioner further sheweth unto this Honble Court that Scharam cloth Merchant of Masulipatnam another Witness examined on the part of your Petitioner deposed That he knew Verjeedoss late of Masulipatnam Soucar and that the said Verjeedoss died about four years ago that the Deponent was intimately acquainted with the said Verjeedoss and that your Petitioner was not ever in partnership, or reputed and that your Petr. could not have been in Partnership with the said Verjeedoss to be in Partnership with the said Verjeedoss Without the deponents having known thereof, and your Petitioner Sheweth that Latchyiny Butt of Madras Soucar being also examined on the part of your Petitioner deposed to the same effect as the said Deponent Scharam deposed unto your Petitioner further Sheweth unto this Honble Court that the said Deponent Latchamana Dave being Cross examined on the part of the said Complainant deposed that he never did reside at Surat but that he had resided at Madras these four years and to the fourth Cross Interrogatory the said Deponent deposed that he was acquainted with the transactions of your Petitioners father in his life time and became so acquainted with him by means of his having gone Several times to the House of your Petrs father for the purpose of purchasing Cloths and the said Deponent to the fifth Interrogatory said That he knew there was Money transactions between the father of your Petitioner and the Complainant but that the Deponent did not know the extent thereof and the said Deponent to the

Sixth

Sixth Interrogatory deposed that no Partnership Subsisted between the father of your Petitioner or any other person and more the said Deponent said not and your Petitioner Sheweth that the said Deponent Scharam being also Cross examined on the part of the said Complainant to the third Cross Interrogatory deposed that he resided at Masulipatam four years in the Capacity of a Cloth Merchant and that he was acquainted with the father of your Petitioner who was a diamond and Cloth Merchant and that your Petrs father was not in partnership with any person or persons and that your Petitioners said father departed this life about four years ago and the said Deponent to the fourth Cross Interrogatory further deposed that he became acquainted with the transactions of your Petitioners father by means of the said Deponent having frequented his House and to the fifth Cross Interrogatory the said Deponent deposed that he did not know any thing of any transaction between the father of your Petitioner and the Complainant and to the Sixth Interrogatory the said Deponent deposed that there was not a partnership Subsisting between the father of your Petitioner or any other person or persons and more the said Deponent to the said Cross Interrogatories said not—

Your Petitioner further sheweth unto this Honble Court that Boother Davy of Madras Cloth merchant being

Being examined upon additional Interrogatories exhibited on the part of the said Complainant deposed that he know Latching but and Latchamanah Davy and that they resided respectively at Madras and that they followed no profession and the said Deponent further deposed that neither of them had been at Masulipatam and that Latchmana Davy has resided at Madras these four years and that Ayaram has only resided at madras eight months and that they came from the Province of Guzarat and your Petitioner Sheweth that Ramasarayer Davey being also examined upon additional Interrogatories on the part of the said Complainant deposed that he know Latchmay Butt and Scharam and said they both respectively reside at Madras but followed no profession and the said Deponent to the third additional Interrogatory deposed that he did not know that they have never been at Masulipatnam and that Latchamana Davy has resided at Madras four years and Scharam about Eight months and that they both came from the Province of Gugerat and your Petitioner Sheweth that Samascher Davy being also examined to the said Additional — Interrogatories on the part of the Complainant deposed to the same effect as the foregoing Witnesses who were examined to the said additional Interrogatories deposed unto. —

Your Petitioner further sheweth unto this Honble Court that Publication having passed in the said

Cause

Cause the said Complainant on the first day of November in the year of our Lord one thousand Seven hundred and Ninety one took & filed an exception to the Depositions of the said Deponent who had been examined on the part of your Petitioner and for cause of exception the said Complainant did allege that the said Coverdanadoss is the Administrator of Verjeedoss One of the deceased Partners of the Louse of Verjeedoss Pettambradoss and Pungahdoss And therefore an Interested person in the Event of this Suit And your Petitioner Sheweth that he did answer the said exception of the said Complainant and for answer thereunto set forth That notwithstanding the said Deponent Coverdanadoss was Administrator to the Estate and Effects of Verjeedoss in the pleadings in this Cause named yet that the said Deponent was not interested in the event of this Cause in as much as the Bill of Complaint in this Cause Seeks to Charge your Petitioner personally with the payment of the Sum of Two thousand nine hundred and Seventy two Pagodas three fanams and thirteen Cash therein mentioned and not directly or indirectly to charge the said Deponent either as Administrator of the said Verjeedoss or otherwise with the payment thereof or of any part thereof and that the said Deponent could neither gain or loose by the event of this Cause — Wherefore your Petr prayed that the Exceptions taken by the said Complainant to the Depositions of the above Named Coverdanadoss in this Cause might be over ruled and set aside at the hearing with Costs to be paid by the Complainant. —

Your Petitioner further sheweth unto this Honble Court that the said Cause having been set down to be heard the same came on to be heard Accordingly before the said Honble the Mayors Court on Friday the Twentieth day of April in the present year of our Lord one thousand Seven hundred and Ninety two when the said Mayors Court was pleased to Order that the Depositions of the said Coverdanadoss should suppressed and the said Mayors Court was further pleased to order and Decree and did accordingly order and Decree that your Petitioner should pay unto the said Complainant the full and just Sum of Two thousand Nine hundred and Seventy two Pagodas three fanams and thirteen Cash with all such Interest as there was or which should thereafter become due thereon until full payment should be made and also all costs of this Suit — From which said order and Decree of the said Mayors Court your Petitioner doth appeal to this Honble Court of appeals as he conceives the said Decree to be erroneous and that your Petitioner is much aggrieved thereby for the following amongst other reasons. —

First. — — — Because the said Mayors Court should not have suppressed the Depositions of the said Coverdanadoss but should have allowed them to have been read upon the hearing of the said

Cause

Cause in as much as the said Goverdanadoss by being Administrator of the Goods and Chattles of the said Veyeedoss Was no more than the Servant of the Ordinary and because that a naked Trust doth not exclude a man from being a Witness

Secondly — Because That the Complainants said Suit being founded upon the Assignment of an Account Current which Account Current is not Assignable so as to enable the Complainant by his Attorney the said Thomas Richard Fairchild in Virtue of the said Assignment or otherwise to Maintain his said Suit or recover therein against your Petr

Thirdly — For that to have made your Petitioner liable as the Surviveing partner of the said Veyeedoss there should have been evedence given by the Complainant of a contract between your Petitioner and the said Veyeedoss to Share Jointly in the profits and loss or that your Petitioner had permitted the said Veyeedoss in his life time to make use of your Petitioners credit and to hold your Petitioner out as one who had been Jointly Answerable to the Complainant with the said Veyeedoss deceased —

Fourthly — Because That the said Decree of the Mayors Court is contrary to Law and unsupported by the Evedence which was given by the said Complainant on the hearing of the said Cause Wherefore the said Mayors Court instead of having pronounced a Decree according to the prayer of the

the Complainants said Bill of Complaint should have dismissed the said Bill of Complaint with Costs and your Petitioner Sheweth that Andrew Ross Esqr the now Mayor of Madraspatnam aforesaid did dissent to the said Decree of the said Mayors Court because the said Complainants Suit was brought upon the Assignment of an account Current which the said Mayor deemed illegal and was therefore of Opinion that the Complainants Bill should have been dismissed which will more fully appear by an extract of the Minutes of the said Court in the said Cause duly attested by the Register of the said Mayors Court and hereunto annexed to which your Petitioner humbly craves leave to refer and which he prays may be taken and received as part of this his Petition and appeal —

For all which causes and Reasons & Such others as may be adduced at the hearing of this appeal your Petitioner humbly prays that the Order of the said Mayors Court for suppressing the Depositions of the said Goverdanadoss may be reversed and that your Petitioner may be allowed to have the full Benefit thereof and that this Honble Court will

the

be pleased to reverse the Decree of the said Mayors Court with Costs to be paid by the said Complainant and that your Petitioner may have such further and other relief in the premises as to this Honble Court shall seem Meet. —

And your Petr will pray.

/Signed/ John White
Solr for the appell

Mayors Court

Mayors Court at Madraspatnam

Friday the 20th day of April Anno Domini 1792 —

Present

Andrew Ross Esqr Mayor,
James Call and John Metford,
Aldermen,

Between Buthavanny Sunker Haredut of Madras Sowcar by his attorney Thomas Richard Fairchild of Madras Gentleman Complainant and Gungah doss of Masulipatnam Inhabitant Surveying Partner of the House of Veeradadoss Peetambradoss Gungah doss Defendant. —

This Cause coming on to be heard and debated this day in the Presence of the Attornies on both sides on Reading the Complainants Bill with Copies of an Account Current and Assignment and Copies of the Translations of an Account Current and Letter annexed The affidavit of Thomas Richard Fairchild the Defendants Answer The Amended Replication with Copies of two Exhibits Marked A and B, Annexed The Amended Rejoinder The Interrogatories and Depositions on the part of the Complainant the Interrogatories

and

and Depositions on the part of the Defendant One Exhibit on the part of the Complainant On Hearing the Pleadings made use of by the Attorneys and on due Consideration had thereon This Court doth think fit to Order and Decree and doth Accordingly Order and Decree that the Defendant do pay unto the Complainant the full and Just Sum of Two thousand Nine hundred and Seventy two Pagodas three fanams and thirteen Cash / Pags. 2972. 3. 13. / together with all such Interest as now is or shall hereafter become due thereon untill full Payment is made also all Costs of this Suit —

By Order

/ Signed / G. Taylor Regr.

Extract

Extract from the Minutes of a Court Held at the Town Hall on Friday the 20th day of April Anno Domini 1792. —

Present,

Andrew Ross Esqr. Mayor,

James Call and John Mitford

Aldermen,

Dubbavany Sunker Haredut by his attorney Thomas Richard Fairchild. —

vers.

Gungadoss

The Mayor Dissents to the Resolution of the Court because the Action is brought upon the assignment of an Account Current which he Considers illegal and therefore of Opinion that the Complainants Bill Should be dismissed. —

A True Extract

/ Signed / G. Taylor Regr.

To

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

Between Gungahdos appellant and
Buttavanny Sunker Waredut of Madras
Sawcar by his attorney Thomas Richard
Fairchild Respondent —

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

This Respondent admits that he did by his attorney
the said Thomas Richard Fairchild exhibit and file
a Bill of Complaint against the appellant in the Mayors
Court of Madraspatnam on or about the time for that purpose
in the appellants petition of Appeal set forth and further that
he did in and by his said Bill of Complaint charge and
so he asserts the fact to be that the appellant did stand
justly and truly indebted unto him this Respondent
in the Sum of Two thousand Nine hundred and Seventy
two Pagodas three fanams and thirteen Cash Current
Money of Madras as in and by the appellants Petition
of Appeal is particularly set forth and this Respondent
Admits that he did charge that the said Sum of Two
= thousand Nine hundred and Seventy two Pagodas three
fanams and thirteen Cash was founded upon and
established

Filed in my Office
the 26th Jan 1792
Chas. White
Atty

established by the documents whereof he did annex Copies to his said
Bill of Complaint for the inspection of the said Mayors Court
in manner and form as the appellant has stated the same in
and by his said Petition of Appeal and this Respondent
says that he did in and by his said Bill of Complaint
shew to the said mayors Court that he had frequently
and in a friendly manner requested payment from the
appellant of the said Sum of Two thousand Nine hundred
and Seventy two Pagodas three fanams and thirteen Cash
but that he the Appellant did absolutely and Wilfully refuse
to pay the Same or to give unto him this Respondent any
manner of Satisfaction touching the premisses and
thereupon did pray a general Relief such as to the said
Mayors Court might appear agreeable to Equity and
good Conscience and did further pray that the appellant
might upon his Corporal Oath full true direct and perfect
Answer make to all and Singular the premises as fully
truly and effectually to all intents and purposes as the
same had been repeated and particularly interrogated and
that he the appellant might be decreed to pay unto this
Respondent the said Sum of Two thousand Nine hundred
and Seventy two Pagodas three fanams and thirteen Cash
together with all such Interest as then was due or that
might grow due thereon — And this Respondent did in & by

his

his said Bill of Complaint pray that the appellant might be Summoned by the Sheriff at the Town of Madraspatnam and the districts thereof personally to be and appear before the said Mayors Court and then and there to Answer this Respondents said Bill of Complaint and further to stand to and abide by such order and Decree therein as to the said Mayors Court should seem meet — and this Respondent admits that the appellant did on or about the time in his Petition of appeal for that purpose Set forth exhibit and file his Answer in the said mayors Court to the Respondents said Bill of Complaint and therein Set forth the Several Matters and things as in and by his said Petition of appeal the same are particularly recited and this Respondent admits that to Such the appellants said answer he the Respondent did on the tenth day of May which was in the year of Christ One thousand Seven hundred and ninety — exhibit and file his Replication in the said Mayors Court and did therein and thereby Set forth and insist upon the several matters and things in and by the appellants said Petition of appeal the same are particularly recited and did say that he would prove the same to the Satisfaction of the said Mayors Court

and further this Respondent did say in opposition to an assertion in the appellants said Answer contained that he this Respondent did deny that the present Suit had been instituted with any other View or to effect any other purpose than that of obtaining the payment of a debt justly due and which assertions of proving the said Several matters and things as set forth in this Respondents said Replication and such his denial of unjust Views in the premises the appellant has omitted to recite in and by his said Petition of appeal and this Respondent — admits that to his said Replication the appellant did on or about the time in the appellants said petition of appeal for that purpose Set forth exhibit and file his Rejoinder in the said mayors Court and did therein Set forth the Several matters and things as in and by his said petition of appeal the Same are particularly recited And this Respondent Admits that upon such the proceedings had issue did join in the said Cause and rules did pass for the examination of Witnesses and that Witnesses were accordingly — examined both on the part of the appellant and on the part of this Respondent and this Respondent humbly Submits to this Honble Court that of the Witnesses produced

on

on the part of the Appellant one of them was Evidently interested in the event of the Suit and therefore not competent to depose respecting any Matter in issue and the others were either Manifestly ignorant of the circumstances to which they were interrogated or such as Absolutely and to all intents and purposes contradicted the Matters and things in the Appellants said Answer contained and as set forth in his said Rejoinder for such are the depositions of the Witnesses obtained by the Appellant upon a Cross Examination of the Witnesses produced in behalf of this Respondent but of which the Appellant has not taken any Notice and this Respondent says that Icharam one of the Witnesses produced on the part and behalf of the Appellant says he is a Cloth Merchant of Masulipatam but Cross examined on the part of this Respondent says he is a Cloth Merchant of Solum in the province of Guzerat which this Respondent submits to this Honble Court as a palpable contradiction and this Respondent further Submits that it was a fact material to the Appellant that the said Icharam should have adhered to the Assertion of his being a Merchant resident of Masulipatam for the purpose of Shewing how and by what means he had a Knowledge of the matters to which he had been interrogated and that having upon his Cross Examination as aforesaid shewed that he was a Merchant of a certain place in the province of Surat

Whilst

Whilst it contradicts his own Assertions is strong proof that he was totally ignorant of the matters and things to which he had deposed on the part of the Appellant and this Respondent further says that the fact as stated by the said Icharam in his Cross Examination relative to his place of Residence is corroborated by the deposition of Brother Davy Ramasyer Davy and Somasher Davy Witnesses Examined on the part and behalf of this Respondent who to the third Interrogatory depose that he the said Icharam has been in Madras Eight Months and that he came from Solem in the province of Guzerat and the said Brother Davy says that he the said Icharam never was at Masulipatnam. —— And the said Brother Davy Ramasyer Davy and Somasher davy deposing to the Second Interrogatory on the part of this Respondent shew that the Said Icharam is not a Cloth Merchant as by him the fact is Asserted for they declare that he is not of any profession that he lieves at an Alms house and is supported entirely by Charity and this Respondent says that the deposition of the Said Icharam is further self contradicted for this Respondent says that the said Icharam in and by his said deposition says he did not know Pedambrado of but knew Verjeedoss and that they never did carry on any partnership trade although he states that the former died forty years ago. that he the said Icharam is only Twenty eight years of age and that he knew the said

Verjeedoss

Verjeedoss only four years as Appears in and by his deposition to the Cross Interrogatories exhibited on the part and behalf of the Respondent and this Respondent says that such contradiction upon the same points and upon the same grounds are equally evident in the Cross deposition of the said Scharam to the Cross Interrogatories exhibited by this Respondent says that Lachyme Butt another Witness produced on the part and behalf of the appellant, deposes to nearly the same points and in nearly the same manner with the said Scharam he says he is a Soucar of Madras but Cross Examined on the part of this Respond.t he states that he is an Inhabitant of aurangabad & which is corroborated by the Testimoney of Ramasyer Davy Somasker Davy and Boother Davy Witnesses Examined on the part of this Respondent and who further Shew that he the said Lachymy Butt, is not a Soucar for that he has no profession of any kind that he lieves at the same Almshouse in which the said Scharam resides and is like him entirely Supported by Charity and the said Lachymy Butt further on the part of the Appellant deposes that he has known the Appellant twenty two years and Cross Examined on the part of this Respondent he says he has known him ten years further deposing on the part of the appell.t

he says he knew Verjeedoss and Peetambradoss and that they did not carry on any partnership Trade at Masulipatam although he says the latter died forty years ago and that he the said Lachymy Butt, is only forty years of age and the said Lachmy Butt, further deposing on the part of the Appellant says that he the said Verjeedoss did leave behind him an House and other effects and outstanding Balances and that the said House effects and outstanding balances were taken possession of by his Gomastah which this Respondent says is contradicted by the Appellant himself in and by his said Rejoinder for he therein says that if this Respondent had any just Claim upon the Firm or house of the said Verjeedoss Peetambradoss he this Respondent should as the Appellant pretended he was advised have called upon Overdanadoss of Masulipatam the Administrator of the Estate and Effects of Verjeedoss peetambradoss who was alone Answerable for any Claim upon the said firm and which assertion of the Appellant this Respondent humbly submits to this Honble Court does fully effectually and to all intents and purposes prove that the said Scharam and the said Lachmy Butt indeposing that no partnership ever subsisted between the said Verjeedoss and peetambradoss have deposed to a falshood for the said Rejoinder shews that a partnership did actually exist between the said Verjeedoss and the said peetambradoss

and

and this the appellant also shews in and by his said answer for he therein says that the Business of the said firm was carried on as he the Defendant believes in the Name of the said Verjeedass his the appellants late father and of Peetambrodass his the appellants Grand father and this fact is further established by the depositions of Gopaul alias Gocul Tauker Gopaul Row and Ramalinga Davy who upon a Cross Examination on the part of the appellant severally shew they were acquainted with the transactions of the house of Peetambradass and Verjeedass and they shew how and by what means they became so acquainted and further say that they are acquainted with the appellant and after shewing how far they have been acquainted with him and by what means declare that he is about twenty years of age and which latter part of the depositions of the said Gopaul alias Gocul Tauker Gopaul Row and Ramalinga davy does effectually destroy that part of the appellants answer wherein he pretends that he is a minor and this Respondent further says that although the appellant in and by his said answer pretends that Shortly before the death of the said Verjeedass he the said Verjeedass sent for his Gomastah named Ragunada dass Who transacted and managed the business of the said Verjeedass and did thereupon as he the appellant best recollects and believes order and direct the said Gomastah to Carry on the

the Business of him the said Verjeedass after his death as he the said Gomastah had done in his life time and although the appellant in his said answer denies that he had made up or furnished this Respondent with any accounts whatever or that he had written or Caused to be written or sent any Letter whatever to this Respondent relative to such accounts & says he believes that the said Gomastah the said Ragoona dass did or might have written or furnished Such account yet this Respondent says that the appellant has not produced the said Ragoonadass as a Witness in the cause which ought to have done if the fact had been as the appellant has stated them to be and further this Respondent says that keeping back the said Ragoonadass if Such a person ever existed is prima facie evidence that the appellants assertions as aforesaid are unfounded and that he has advanced the Same as truths knowing to be otherwise — And this Respondent says that the only Witness produced on the part of the appellant who pretends to give any support to the Defendants said Answer is Goverdanadass a Witness by his own and the appellants own Shewing interested in the event of the said Cause and therefore — incompetent and this Respondent says as hereinbefore — mentioned that he did exhibit and file Exceptions in the said Mayors Court to the Interrogatories exhibited to the said Goverdanadass and the depositions taken thereon to which

Exceptions

Says that Ramalinga Davy Rade Chrust and Paul Tauker to the third Interrogatory did prove the age of the appellant that he was Born in the year one thousand Seven hundred and Sixty two or one thousand Seven hundred and Sixty three and the said Ramalinga Davy supports his testimony by the recital of a circumstance relative to the local custom of the Cast of the appellant for he says that at the time of the Birth of the appellant he received a Rupee from his the appellants Father as a token of Joy on the Birth of his Son and which fact relative to the age of the appellant is as this Respondent has hereinbefore shewn further established by the Evidence upon the Cross Examination on the part of the appellant and this Respondent says that Soobaraya Dave Ruganaut and Ramaseyer Butt to the fourth Interrogatory prove that the appellant was a partner in the House or firm of Vergee dass Pelembra dass and Gungadass that it is the Custom of their Cast with respect to Soucars or Native Bankers to carry on the transactions and Business of his House in the Names of their Ancestors and that the same does descend from father to Son and that such Custom has prevailed in their Cast from time immemorial and this Respondent says that he did prove as hereinbefore mentioned that the two Witnesses Lachmy Butt alias Latchemy Dave and Scharam alias Manusaram Tauker contrary to the assertion in their depositions on the

part

part of the Appellant contained were men without any kind of profession or trade that they lived in an Alms house Supported by Charity that they never had been of Masulipatnam and — consequently that they were ignorants of the Matters to which they had deposed and this Respondent says that upon such the proceedings had and proofs produced the Cause did come on to be heard before the said Mayors Court at the time in the Appellants Petition of appeal for that purpose set forth and that the said Mayors Court were pleased to Order and Decree and did Accordingly Order and Decree as in the Appellants said petition of appeal the same is particularly set forth But this Respondent doth not Admit that the said Decree of the said Mayors Court is in any Wise Erroneous or that he the appellant is aggrieved thereby or that he has any Cause of appeal therefrom to this Honble Court. —

To the appellants First Reason as Cause of appeal this Respondent Says that whenever it appears that a Witness is interested either directly or indirectly in the event of a Suit he is held as incompetent and upon Exceptions his deposition is suppressed & this Respondent says that although a Trustee in a naked trust may be a good Evidence yet he is advised it is otherwise with an Executor or Administrator who may sue or be sued and therefore and for as much as it Appeared by the appellants own shewing in his said Rejoinder contained and by the Shewing of the said Gverdanadoss that he the said Gverdanadoss had obtained Letters of Administration of the Estate and Effects of Vergeedoss the partner last deceased of the house or firm of Vergeedoss pettambradoss and Gungah doss and of which house the appellant is the surviving partner and Sued for as such by this Respondent and for as much as it thereby Appeared that the said Gverdanadoss might be Sued on Account of the said Estate which his deposition went to shew was insolvent and thereby to exonerate himself from the discharge of any Claims thereon the said Mayors Court did think fit to Suppress and did Accordingly Suppress the deposition of the said — Gverdanadoss and the same was not read at the hearing and this Respondent submits to this Honble Court that depositions which are not read in the Court below at the hearing of a cause ought not to be read in this Honble Court and thereupon this Respondent further Submits that the — Appellant ought not to have introduced the depositions of the said Gverdanadoss in his said Petition of appeal and that the same ought to be Expunged therefrom and further this — Respondent Submits to this Honble Court that if the Appellant had been advised that by the Suppression of the deposition of the said Gverdanadoss he was in any manner Aggrieved he should have Submitted such his grievance to this Honble Court and prayed to have been relieved therein. —

And this Respondent to the appellants Second Reason

or Cause of Appeal says that although an Account Current is not in Law assignable yet this Respondent says that Equity which softens the rigor of the Law will aid and assist the fair and Just Creditor according to conscience and the nature of the thing and further this Respondent says that at the time of Exhibiting and filing his said Bill of Complaint in the said Mayors Court and for many years previous thereto it had been the Course of the said mayors Court to allow of a Suit brought upon the assignment of an account Current But this Respondent says that his Suit although brought upon an account Current is founded upon an undertaking of the appellant whereby he promises to pay the Amount of the account Current which he then forwarded which is one of the Accounts Current to this Respondents Bill of Complaint and from which arises the Sum for which this Respondent has brought his Suit against the appellant and thereupon this Respondent says that the manner in which he has commenced his said Suit is regular and that the same is properly cognigable in a Court of Equity so as to enable him to recover therein against the appellant —

In answer to the appellants third Reason or Cause of appeal this Respondent says that he has proved a partnership having subsisted between the appellant and the said

Verjee

Verjeedoss the last deceased partner of the House or firm of Verjeedoss petamba doss and Purgah doss and that the appellant is the Surviving partner of the said House or firm and he has shewn from the Letters of the appellant that the debt by this Respondent charged to be due to him from the appellant as the Surviving partner of the said House or firm was by the appellant acknowledged to be so due and that he promised to pay the same to this Respondent and therefore this Respondent says the assertion of the appellant that this Respondent ought to have given in Evidence that a contract between the appellant and the said Verjeedoss had Subsisted to share Jointly in the profits and loss is frivolous and nugatory for this Respondent humbly Submits that where there is a partnership publickly declared a Stranger is not to know of any private contract between the parties whether they are to share Jointly or otherwise unequally in the profits & loss this Respondent has proved the partnership and as aforementioned the promise of payment under the hand of the appellant which was doing all that was requisite for him to do the one establishing his right of demand against the appellant and the other confirming the Amount of Such demand to be Justly due. —

In Answer to the appellants fourth Reason or Cause of appeal this Respondent says he has fully shewn by the ample testimony of many Witnesses that the matters and things in his Bill

of

of Compleints and Replications contained are true certain and Sufficient in manner and form as the same are therein and thereby charged and Setforth, that is to say he has proved the partnership in the ferm or House of Verjeedoss petambradoss and Gungah doss and that the appellant Gengadoss is the Surveweng partner he has proved the Exhibit of an Account Current to have been sent to him by the appellant together with Letters explanatory thereof and promising payment of the same and that the whole are in the hand writing of the appellant he has also proved that the material points in the appellants Said Answer and Rejoinder contained to be without any foundation in truth, and that the evidence produced on the part of the appellant in support of the [illegible] immaterial points he has thought proper to Examine to have deposed to facts of which they were entirely ignorant and this Respondent has shewn that even these facts are contradicted by the appellant himself and this Respondent has further shewn that other Witnesses Examined on the part of the appellt have given testimony contradicting the assertions advanced by the appellant in short this Respondent has proved amply all that was encumbent on him to prove even had the appellant produced other Testimony than that of the Witnesses now before this Honble Court and Thereupon this Respondent says that the assertion in the appellants said Petition of appeal contained that

that the assertion in the appellants said Petition of appeals said Decree of the said Mayors Court is contrary to Law and unsupported by Evidence is altogether contrary to the truth and further this Respondent says that the Mayors Court could not have done otherwise than decreed upon this Respondents Bill as hereinbefore mentioned and this Respondent Submits to this Honble Court that as no new matter such as was not in issue nor read at the hearing of the Cause in the said Mayors Court can be introduced in an Appeal to this Honble Court and that it is contrary to the practice of this Honble Court to bring forward the opinion of any Judge of the said Mayors Court as matter of evidence for the consideration of this Honble Court and thereupon this Respondt humbly prays that the part in the appellants Petition of Appeal contained begining with the words "and your Petr Sheweth that Andrew Ross Esqr and ending with the words "as part of this his Petition of appeal" May be expunged therefrom together with the dissent to the said petition and appeal annexed containing the reasons of the said Andrew Ross and referred to in the Matter above Excepted to.

For all which Reasons and such others as may be offered at the Hearing this Respondent prays that this Honble Court will be pleased to affirm the said Decree

Decree of the said Mayors Court and dismiss the appellants Petition of appeal with Costs.—

/Signed/ J. Stuart Hall for himself & John Hamiltons Solrs for Respts.

Court of appeals

Court of Appeals at Madraspatnam } for Saturday the 19th day of April Anno Domini 1794.

Between Gungah dosse of Masulipatnam Inhabitant Surviving Partner of the House of Veerada dosse Peetambra dosse Gungah dosse appellant and Butchavany Sunker Waredut of Madras Saucar by his Attorney Thomas Richard Fairchild of Madras Gentleman Respondent.—

This Cause coming on this day to be heard and debated before this Court and upon due Consideration of the Petn. of appeal together with the Decree of the Honble the Mayors Court given in this Cause on Friday the 20th day of April Anno Domini 1792. 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 Thoma Richard Fairchild 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 20th day of April Anno Domini 1792. be reversed and that the Respondent Butchavany Sunker Waredut

do

do pay all Costs in both Courts. —

J Hew,

/Signed/ Chas N White
Clk.

To the Kings Most Excellent Majesty
in Council

Between Buttavany Sunkier
Haredut of Madras Soucar by his attorney
Thomas Richard Fairchild of Madras
aforesaid Gentleman Complainant and
Gungah dos of Masulpatnam Inhabitant
Defendant. —

The Humble Petition and appeal of the abovenamed
Complainant. —

Sheweth,

That your Petitioner did by his said Attorney
some time on or about the Eleventh day of December which was
in the Year of our Lord One thousand Seven hundred and
Ninety Exhibit and file a Bill of Complaint in the Mayors
Court at Madraspatnam against the above named Defendant
thereby setting forth that the Defendant as the Surviving Partner
of the House of Veerad dos's, Peetambrad os's Gungah dos's stood
Justly and truly indebted unto your Petitioner in the full
and just Sum of Two thousand Nine hundred and Seventy
two Pagodas three fanams and thirteen Cash Arrent money of
Madras and which your Petitioner did say would fully
appear by the Copies of an account Arrent and Assignment

Filed in my office
the 2. day May 1794
Chas N. White
Clk

to

to his said Bill annexed — And your Petitioner did en and by his said Bill charge that the said Account Current to his said Bill annexed was made up from an Account Current furnished by the Defendant and sent to your Pet. accompanied by a Letter relative thereto a Copy translation of which Account Current your Petitioner did say was annexed to his said Bill and your Petitioner did thereon pray that the said Defendant might be decreed to pay unto your Petitioner the said Sum of Two thousand Nine hundred and Seventy two Pagodas three fanams and thirteen Cash, with Interest for the same and Costs of Suit — and your Petitioner Sheweth unto your Most Excellent Majesty in Council that the Defendant did about the fifth day of April in the said year of our Lord One thousand Seven hundred and Ninety one, file his answer to your Petitioners said Bill of Complaint and therein set forth, that he was advised and believed that your Petitioner in and by his said Bill of Complaint did Seek to Recover from him the Sum of Two thousand Nine hundred and Seventy two Pagodas, three fanams and thirteen Cash being a ballance pretended by your Petitioner to be due and owing to him by the Defendant upon the foot of the Runing Account by him your Petitioner made up and assigned to one Thomas Richard Fairchild in the said

Bill

Bill of Complaint mentioned thereby Endeavouring as the defendant did pretend to give your Petitioner a colourable right to Sue him the Defendant in the said Mayors Court that he was advised and believed that the said running Account was not transferrable or assignable so as to give to your Petitioner or his Attorney the said Thomas Richard Fairchild any power or authority whatever to Sue him the Defendant in the said Mayors Court for the recovery of the balance thereby pretended to be due and owing in manner aforesaid and the Defendant did further set forth that he was not indebted either to your Petitioner or to his said Attorney the said Thomas Richard Fairchild in the said balance of Two thousand Nine hundred and Seventy two Pagodas three fanams and thirteen Cash or in any other Sum of money whatever, and that he never had any transactions or dealings either mercantile or otherwise with your Petitioner or with the said Thomas Richard Fairchild — and the Defendant did further Set forth that he was not the Surviving partner of the House of Varjeedass by your Petitioner called Veeraddass and Peetambradass and that he never was a Partner of the said firm, but that the Business of the said firm was carried on as he believed in the Name of the said Varjeedass his late father, and of Peetambradass his the Defendants Grand father and that both which persons were dead the said Peetambradass having first departed this life and

after

after him the said Verjeedoss and the said Defendant did by his said Answer positively alledge that he never had any dealings or transactions in the way of Trade or busineſs with them or with either of them but that shortly before the death of the said Verjeedoss he the said Verjeedoss Sent for his Gomastah named Ragoonada doss who transacted and managed the busineſs of the said Verjeedoss and that he the said Verjeedoss did thereupon as the Defendant believed order and direct the said Gomastah to carryon the busineſs of the said Verjeedoss after his death as he the said Gomastah had done in the life time of the said Verjeedoss and the Defendant did further Setforth that the said account Current was not as untruly alledged in and by your Pet.rs Said Bill of Emplaint made up from an account Current furnished by the Defendant for that he did not make up, or furnish any account whatever and that he did not send or write any cause to sent or written any letter whatever to your Petitioner relative to such — account or any account but believed that the said — Gomastah the said Ragoonada doss did or might have written Such letter and furnished Such account that he the Defendant was at the time when Such Account was said to have been furnished and the said Letter was said to have been soon written within the

aged

Age of twenty one years to wit of the age of Eighteen years and no more and was ignorant of and unacquainted with the Several transactions in your Petitioners Said Bill of Complaint and in the account Current thereunto annexed particularly mentioned and alluded to And your Pet.r Sheweth that he did by said attorney on or about the tenth day of May in the year One thousand Seven hundred & ninety one file his Replication to the Defendants said answer and therein setforth that the Defendant as Surviving Partner as before said stood Justly and truly indebted unto your Petitioner in the Sum of two thousand Nine hundred and Seventy two Pagodas three fanams and thirteen Ash as Charged in and by his said Bill of Complaint and which Said Sum of two thousand Nine hundred and Seventy two Pagodas three fanams and thirteen Ash was by your Pet.r previous to the Exhibiting and filing his said Bill really and Bonâfide assigned to his said attorney as by the — Assignment whereof a Copy was to the said Bill of Compl.t annexed reference being thereunto had would more fully and at large appear and your Petitioner did say that the insinuations thereon and in opposition thereto by the Defend.t as in and by his said answer the same appeared were frivolous and impertinent and brought forward with the unjust and inequitous View of defrauding your Petitioner

by

by his said attorney as aforesaid of his just dues and that the matters and things in the said account Current contained were properly assignable agreeable to the practice of the said Mayors Court as by numerous precedents upon the Records thereof would appear and agreeable to the practice of Courts of Equity in General and thereupon your Petitioner did say he had by his said attorney full power and authority to Sue the Defendant in the said Mayors Court for the Recovery of the said Sum of Two thousand Nine hundred and Seventy two Pagodas three fanams and thirteen Cash and the more particularly as the same had arisen and grown out of an account Current by the Defendant himself delivered to your Petitioner as a just and true statement of accounts between them and fully explained by the Letters to your Petitioners said Bill annexed and therefore and thereupon your Petitioner did say that the Defendant in denying to stand indebted to your Petitioner by his said attorney in the said Sum of Two thousand Nine hundred and Seventy two Pagodas three fanams and thirteen Cash as in and by his said Answer the same appeared had so denied contrary to the fact That the Defendant had been in the habits of transacting Business with and on account of your Petitioner and that the same your Petitioner did say would appear by the said account Current and the letter thereinbefore referred to that the Defendant actually was as your Petitioner had in and by his said Bill of Complaint so stated the fact to be one of the partner under the firm of Veyeedoss Peetambradoss and Gungah doss and that he was the Surviving partner thereof, and that it was the Custom amongst the Soucars or Native Bankers to carry on their transactions in the Name of their ancestors and that the said Firm did go down from father to Son without alteration with the Son notwithstanding the death of the father and that such Custom had prevailed for time immemorial and that the Defendant in and by his said Answer in Endeavouring to deny actually confessed the same for that he did therein say that the business thereof was carried on by the said Veyeedoss his late father and the said Peetambradoss his Grand father and that they were both dead and that although the Defendant might have been as in And by his said answer he had stated the fact to be a minor at the time of the decease of the said Veyeedoss and the said Peetambradoss yet that at the time he recognized your Petitioners Claim for the said Sum and at the time of delivering unto him the said account Current and at the time of Writing the said Letters relative thereto and explanatory thereof the Defendant was of the full age of Twenty one years and upwards and that it would further appear by the said account Current that the several Matters therein contained were not confined to the firm aforesaid but some of them originated with the Defendant himself subsequent to the decease of the said Veyeedoss

and.

dos and the said Peetambradoss in consequence of certain
transactions between him and your Petitioner and that
thereupon the assertion in the Defendants said answer
contained that he never had any dealings or transactions in
the way of trade or business with them or either of them was
untrue that your Petitioner knew nothing of Ragunada
dos the Gomastah in the Defendants said answer
mentioned and that he never had any dealings or transactions
with him whatever either on his the said Ragunadoss
own account or on account of the Copartnership aforesaid
and that the assertion in the Defendants said answer
contained that he did not further furnish the account
Current from which the Account Current to your Pets
said Bill annexed was made up was untrue for that
the Defendant did furnish the said Complainant with the
said account and further notwithstanding his assertion
to the contrary in his said answer contained that he did
write and send to your Petitioner the Letter whereof
a Copy was to the said Bill annexed and did write
and send to your Petitioner a Number of other Letters
alluding to and promising payment of the Amount of the
said Account Current Copies of two of which said
Letters marked A and B your Petitioner did annex
and pray the same might be taken as part of his said

Replication

Replication from which Letters it also appeared that the Defendant had continued his correspondence with your Petitioner on the Subject of the said account Current and thereby repeating his promise of payment of the Amount thereon due as far down as the Month of February which was in the year of Christ one thousand Seven hundred and Eighty nine at which period the Defendant notwithstanding any assertion to the Contrary in his said answer contained was not a Minor but had attained the full age of Twenty one years for that he was then twenty Seven years of age and upwards That from the Several matters and things in your Petitioners said Replication set forth it would clearly appear notwithstanding the assertion of the Defendant to the contrary in his said answer contained that he was intimately and fully acquainted with the Several transactions in your Petitioners said Bill contained and set forth and the account Current thereunto annexed and your Petitioner further Sheweth unto your most Excellent Majesty in Council that to your Petitioners said Replication the Defendant did on or about the fourteenth day of June in the said year of our Lord one thousand Seven hundred and Ninety one file his Rejoinder and did therein insert that he was not as Surviving partner of the House of Veerada dos Peetambra dos and Gungah dos or otherwise indebted to your Petitioner in the sum of Two thousand

Nine

Nine hundred and Seventy two Pagodas three fanams and thirteen Cash or in any Sum of Money whatever and that notwithstanding the Assertion of your Petitioner he your Petitioner had commenced his Suit illegally inasmuch as the Same was founded upon an Assignment of the said Account Current which Account Current was not legally Assignable and that he your Petitioner had not by his said Attorney or otherwise any power or Authority whatever to Sue your Petitioner for the recovery of the said Sum of two thousand Nine hundred and Seventy two Pagodas three fanams and thirteen Cash for that your Petitioner could not delegate to his said Attorney a power with which he never was Vested that the said Sum of Two thousand Nine hundred and Seventy two Pagodas three fanams and thirteen Cash did not arise or grow out of an account Current delivered to your Petitioner for that he the Defendant never furnished your Petitioner with any account whatever neither were such pretended accounts fully or at all Explained by any Letter or Letters written by the Defendant to your Petitioner for that he the Defendant did not write any Letter or Letters whatever to your Petitioner and although your Petitioner had by the said Letter and Account Current endeavoured to Shew that the Defendant had been in the habits of transacting business with and on Account of your Petitioner yet that he

he the Defendant ever transacted business with or upon Account of your Petitioner that he the Defendant did not Write nor cause to be written the Letters to your Petitioner Said Replication annexed, or either of them and that if your Petitioner had any Just Claim upon the firm or House of the said Verjeedass Peetambradass he should have called upon Goverdanada dass of Masulipatnam the Administrator of the Estate and Effects of the said Verjeedass Peetambradass who alone was Answerable for any claim upon the said firm—

And your Petitioner humbly Sheweth unto your most Excellent Majesty in Council that upon the Proceedings had if any did join and Rules did pass for the Examination of Witnesses and that Witnesses were Examined accordingly on both sides. —

And your Petitioner humbly sheweth unto your most Excellent Majesty in Council that the Publication having passed on the said Cause the same came on to be heard before the said Mayors Court on the twentieth day of April in the year of Our Lord one thousand Seven hundred and Ninety two when the said Mayors Court was pleased to Order that the Depositions of Goverdanadass taken on the part of the Defendant should stand Suppressed, and the said Mayors Court was further pleased to Order and Decree and did accordingly order and Decree that the Defendant should pay unto your Petitioner the full and Just Sum of

Two

Two thousand Nine hundred and Seventy Two Pagodas three fanams and thirteen Cash with all Such Interest as then was or should thereafter become due thereon untill full payment should be made also all Costs of Suit. —

And your Petitioner humbly Sheweth unto your Most Excellent Majesty in Council that from the said Order and Decree of the said Mayors Court the Defendant did appeal to the Court of Appeals at Madraspatnam as he conceived the said Decree to be Erroneous and that he was much aggrieved thereby for the following amongst other Reasons. —

First Because as he did pretend the said Mayors Court should not have suppressed the Depositions of the said Goverdanadoss but should have allowed them to have been read upon the hearing of the said Cause inasmuch as that the said Goverdanadoss by being Administrator of the Goods & Chattels of the said Vergeedoss was no more than the Servant of the Ordinary and because that a Naked trust did not exclude a man from being a Witness. — Secondly — Because that your Petitioners said Suit being founded upon the Assignment of an account Current which account Current was not as the Defendant did pretend Assignable so as to enable your Petitioner by his attorney the said Thomas Richard Fairchild in Virtue of the said

Assignment

Assignment or otherwise to Maintain his said Suit or recover therein against the Defendant — Third For that to have made the Defendant liable as the Surviving partner of the said Vergeedoss there should have been Evidence given by your Petitioner of a contract between him the Defendant and the said Vergeedoss to share Jointly in the profits and loss, or that he had permitted the said Vergeedoss in his life time to make use of your Petitioner Credit and to hold him out as one who had been Jointly Answerable to your Petitioner with the said Vergeedoss deceased Fourthly — Because that the said Decree of the said Mayors Court was contrary to Law and unsupported by the Evidence which was given by your Petitioner on the Hearing of the said Cause wherefore the said Mayors Court instead of having pronounced a Decree according to the prayer of your Petrs said Bill of Complaint should have dismissed the said Bill with Costs and the Defendant did state that Andrew Ross Esqr. then Mayor of Madraspatnam aforesaid did dissent to the said Decree of the said Mayors Court because your Petitioners Suit was brought upon the Assignment of an account Current which the said Mayor Court deemed illegal And was therefore of Opinion that your Petitioners Bill Should have been dismissed and the Defendant did therefore pray that the order of the said Mayors Court for Suppressing the deposition of the said Goverdanadoss might be reversed

/and,

and that he might be allowed to have the full benefit thereof and that the said Court of Appeals would be pleased to Reverse the Decree of the said Mayors Court with Costs — to be paid by your Petitioner, —

And your Petitioner humbly Sheweth unto your most Excellent Majesty in Council that to the Defendants said Petition of appeal he did Exhibit and file his answer in the said Court of Appeals and did therein amongst other things Set forth that the Witnesses produced on the part of the Defendant were either interested in the event of the Suit and therefore not competent to depose respecting any matter in issue or manifestly ignorant of the circumstances to which they were interrogated or such as Absolutely and to all intents and purposes contradicted the matters and things in the Defendants said Answer contained and as Set forth in his said Rejoinder for such were the deposition Obtained by the appellant upon a Cross Examination of the Witnesses produced in the behalf of your Petitioner but of which the Defendant had not taken any notice and your Petitioner did say that Scharam one of the Witnesses produced on the part and behalf of the Defendant did say that he was a Cloth Merchant of Masulipatnam but cross examined on the part of your Petitioner he did say he was a Cloth Merchant of Salsan in the province of Surat which your Petitioner did Submit was a palpable contradiction and did Submit that it was a fact material to the Defendt

that the said Scharam should have adhered to the Assertion of his being a Merchant Resident at Masulipatnam for the purpose of Shewing how and by what means he had a Knowledge of the matters to which he had been interrogated and that having upon his Cross Examination as aforesaid shewed that he was a Merchant for a certain place in the province of Surat Whilst it contradicted his own Assertion was a Strong proof that he was totally ignorant of the matters and things to which he had deposed on the part of the Defendant that the fact as stated by the said Scharam in the Cross Examination relative to his place of Residence was corroborated by the deposition of Boother Davy Ramaseyer Davy and Ramaseyer Davy Witnesses Examined on behalf of your Petitioner who to the third Interrogatory deposed that he the said Jahram had been in Madras Eight months and that he came from Selam in the province of Guzerat and the said Boother Davy said that he the said Jahram never was at Masulipatnam and the said Boother Davy Ramaseyer Davy and Ramaseyer Davy to the Second Interrogatory on the part of your Petitioner did say that the said Jahram was not a Cloth Merchant as by him the fact was asserted for they declared that he was not of any profession that he lived at an Alms house and was supported entirely by Charity and your Petitioner did say that the deposition of the said Jahram

Was

Was further self contradicted for in and by his said deposition he did
Say he did not know Peetambradoss but that he knew Verjeedoss
And that they never did carry on any partnership trade although
he stated the former died forty years ago and Shewed that he
the said Jaharam was only twenty Eight years of age and further
Stated that he knew the said Verjeedoss only four years as
appeared in and by his deposition to the Cross Interrogatories
Exhibited on the part and behalf of your Petitioner and your
Petitioner did say that such contradictions upon the same
points and upon the said Grounds were equally evident in
the Cross depositions of the said Jaharam to the Cross
Interrogatories Exhibited by your Petitioner that Luchemy Boother
another Witness produced on the part and behalf of the Defendant
deposed to nearly the same points and in nearly the same
manner with the said Jachram that he did say he was a
Soucar of Madras but Cross Examined on the part of your
Petitioner he stated he was an Inhabitant of Ourangabad
and which was corroborated by the testimony of Ramaseyer
Davy Comaster Davy and Boother Davy Witnesses
Examined on the part of your Petitioner and who further
Shewed that he the said Latchemy Boother was not a
Soucar for that he had no profession of Any kind that he
lived at the same Almo House in which the said
Jahram resided and was like him entirely Supported
by

by Charity and the said Latchemy Boother further on the
part of the Defendant deposed that he had known the Defendant
Twenty two years and Cross Examined on the part of your Petitioner
he said that he had known the Defendant ten years and further
deposing on the part of the Defendant he said he knew
Verjeedoss and Peetambradoss and that they did not carry on
any partnership trade at Masulipatnam yet he shewed
that the latter died forty years ago. and that he the said
Latchemy But was only forty years of age and the said
Witness further deposing on the part of the Defendant
did say that the said Verjeedoss did leave behind him
a house and other effects belonging to it and that the said
House effects and outstanding Balances were taken
possession of by his Dinastah which your Petitioner
did say was contradicted by the Appellant himself in &
by his said Rejoinder for he therein did say that if your
Petitioner had any just Claim upon the Sum or House
of the said Verjeedoss Peetambradoss he should have
called upon Coverdanadoss of Masulipatnam the Administrator
of the estate and effects of Verjeedoss Peetambradoss
Who was alone answerable for any Claim upon the
Said Sum and which Assertion your Petitioner
did humbly Submit did fully effectually and to all
intents and purposes prove that the said Jaharam &

the

the said Latchmy But indeposing that no partnership ever Subsisted between the said Verjeedoss and Peetambradoss had deposed to a falsehood and for the said Rejoinder Shewed that a partnership did actually exist between the said Verjeedoss and the said Peetambradoss that such fact were further established by the deposition of Gopaul alias Gocul Tauker Gopaul Row and Ramalinga Davy who upon a Cross Examination on the part of the Defendant actually shewed that they were acquainted with the transaction of the House of Peetambradoss and Verjeedoss and Shewed how and by what means they became so acquainted and that they were acquainted with the Defendant and after shewing how long they had been acquainted with him and by what means declared that he was about twenty eight years of age, and which latter part of the deposition of the said Gopaul alias Gocul Tauker Gopaul Row and Ramalinga Davy did effectually destroy part of the Defendants Answer wherein he pretended that he was a Minor that although in and by his said Answer he pretended that shortly before the death of the said Verjeedoss he the said Verjeedoss sent for his Gomastah named Ragunadadoss who transacted and managed the Business and did thereupon as he the Defendant best recollected and believed order and direct

direct the said Gomastah to carry on the Business of him the said Verjeedoss after his death as he the said Gomastah had done in his lifetime and although the Defendant in his said answer denied that he had made up and furnished your Petitioner with any account whatever or that he had written or caused to be written or sent any Letter whatever to your Petitioner relative to such account and did say that he believed that the said Gomastah did or might have written or furnished such Account yet your Petitioner did say that the Defendant had not produced the said Ragunadadoss as a Witness in the Cause which he ought to have done if the facts had been as he had stated them to be and your Petitioner did say that the only Witness produced on the part of the Defendant who pretended to give any support to his said Answer was Goverdanadoss a witness by his the Deponents own shewing and by the Shewing of the Defendant interested in the event of the Cause and therefore incompetent and that the said Mayors Court taking the same into their consideration were pleased to determine accordingly the said deposition in Consequence thereof was not read at the hearing of the Cause and your Petitioner did say that the Witnesses produced by him did maintain and prove and in every respect Substantiate and Confirm the Several matters and things in his said Bill of Complaint charged

the said Latchmy But indeposing that no partnership ever Subsisted between the said Verjeedoss and Peetambradoss had deposed to a falsehood and for the said Rejoinder Shewed that a partnership did actually exist between the said Verjeedoss and the said Peetambradoss that such facts were further established by the deposition of Gopaul alias Gocul Tauker Gopaul Row and Ramalinga Davy who upon a Cross Examination on the part of the Defendant actually shewed that they were acquainted with the transaction of the House of Peetambradoss and Verjeedoss and Shewed how and by what means they became so acquainted and that they were acquainted with the Defendant and after shewing how long they had been acquainted with him and by what means declared that he was about twenty eight years of age, and which latter part of the deposition of the said Gopaul alias Gocul Tauker Gopaul Row and Ramalinga Davy did effectually destroy part of the Defendants Answer wherein he pretended that he was a minor that although in and by his said Answer he pretended that shortly before the death of the said Verjeedoss he the said Verjeedoss sent for his Gomastah named Raganadadoss who transacted and managed the Business and did thereupon as he the Defendant best recollected and believed order and direct

direct the said Gomastah to carry on the Business of him the said Verjeedoss after his death as he the said Gomastah had done in his lifetime and although the Defendant in his said answer denied that he had made up and furnished your Petitioner with any account whatever or that he had written or caused to be written or sent any Letter whatever to your Petitioner relative to such account and did say that he believed that the said Gomastah did or might have written or furnished such account yet your Petitioner did say that the Defendant had not produced the said Raganadadoss as a Witness in the Cause which he ought to have done if the facts had been as he had stated them to be and your Petitioner did say that the only Witness produced on the part of the Defendant who pretended to give any support to his said answer was Goverdanadoss a witness by his the Deponents own shewing and by the Shewing of the Defendant interested in the event of the Cause and therefore incompetent and that the said Mayors Court Taking the same into their consideration were pleased to determine accordingly the said deposition in Consequence thereof was not read at the hearing of the Cause and your Petitioner did say that the Witnesses produced by him did maintain and prove and in every respect Substantiate and Confirm the Several matters and things in his said Bill of Complaint charged

And on his said Replication further insisted on — Gocul Taulker Gopaul Row and Ramachander to the Second Interrogatory did prove the Exhibits to your Petitioners said Bill of — Complaint and Replication annexed to be in the hand writing of the Defendant, and the said Gopaul Row Rauganaud and Ramasseyer But to the fifth Interrogatory did shew that they were present when the Letters and the account Current in Exhibit produced to them at the time of their Examination were received, and Ramalinga Davy Aoda Crust and Gocul Taulker to the third Interrogatory — did shew the age of the Defendant that he was born in the year One thousand Seven hundred and Sixty two or one thousand Seven hundred and Sixty three and the said Ramalinga Davy Supported his testimony by the recital of a circumstance Relative to the local custom of the Cast of the Defendant for he did say that at the time of the birth of the Defendant he received a Rupee from his the Defendants father as a token of Joy on the birth of his son and which fact — Relative to the age of the Defendant was as your Petitioner had before shewn further Established by the Evidence upon the Cross Examination on the part of the Defendant and Soobaroya Dava Rauganaud and Ramasseyer But to the fourth Interrogatory proved that the Defendant was a partner in the house or firm of Veyiedoss Peetambra — doss

doss and Gungadoss but that it was the Custom of their Cast with respect to Soucars or Native Bankers to carry on the transactions and Business of the House in the Names of their ancestors and that the same did descend from father to Son and that such Custom had prevailed in their Cast from time immemorial — And your Petitioner did in and by his said Answer to the Defendants said Petition of appeal deny that the said Decree of the said Mayors Court was in any wise — Erroneous or that he the Defendant was aggrieved thereby or that he had any Cause of appeal therefrom to the said Court of Appeals to the Defendants first Reason as Cause of appeal your Petitioner did say that wherever it Appeared that a Witness was interested either directly or indirectly in the event of a Suit he was held as incompetent and upon Exceptions his depositions was suppressed that although a trustee in a Naked trust might be a good evidence yet your Petitioner was advised it was otherwise with an Executor or Administrator who might sue or be sued and therefore and for as much as it appeared by the Defendants own shewing in and by his said Rejoinder and by the shewing of the said Goverdana — doss that he the said Goverdanadoss had Obtained Letters of Administration of the Estate and Effects of Veyiedoss the partner last deceased of the House or firm of Veyiedoss Peetambradoss and Gocouldoss and of which house the — appel

appellant was the Surviving partner and as such was Sued by the Respondent and for as much as it thereby appeared that the said Goverdanadoss might be sued on account of the said Estate which his deposition went to Shew was insolvent and thereby to Exonerate himself from the discharge of any Claims thereon the said Mayors Court did think fit to Suppress and did accordingly Suppress the deposition of the said Goculdoss and the same was not read at the hearing and your Petitioner did Submit to the Said Court of Appeals that depositions which were not read in the Court below at the hearing of a Cause ought not to be read in the said Court of appeals and therefore that the Defendant ought not to have introduced the deposition of the said Goculdoss in his said Petition of appeal and that the same ought to be Expunged therefrom; —

And your Petitioner to the Defendants Second Reason for appeal did say that although an account Current was not in Law Assignable yet that Equity would aid and assist the fair and bona fide Creditor according to conscience and the Nature of the thing that at the time of Exhibiting and filing your Petitioners said Bill of Complaint in the said Mayors Court and for many years previous thereto it had been the Course of the said Mayors Court to allow of a Suit brought upon the Assignment of an account Current But your Petr. did say that the account in question although brought upon an account Current was founded upon an undertaking of the Defendt whereby he promised to pay the Amount thereof and which he then forwarded and that from the said account Current arose the Sum for which your Petitioner had brought his Suit against the Defendant and therefore your Petr. did say that the manner in which he had commenced his said Suit was regular, and that the same was properly Assignable in a Court of Equity so as to enable him to recover thereon — against the appellant. —

In answer to the Defendants third Reason of appeal this Petitioner did say that he had proved a partnership having Subsisted between the appellant and the said Verjeedoss the last deceased Partner of the House or firm of Verjeedoss Peetambradoss and Gungahdoss and that the Defendant was the surviving partner thereof and your Petr. did shew from the Letter of the Defendant that the debt by your Petitioner charged to be due to him from the Defendant as the Surviving partner of the said House or firm was by the Defendant acknowledged to be so due and that he promised to pay the same to your Petitioner — and therefore your Petitioner did say the assertion of the appellant that your Petr. ought to have given in Evidence that a Contract between the Defendant and the said Verjeedoss had Subsisted to share Jointly in the profits and loss is frivolous and Nugatory for your Petitioner did humbly Submit that where there was a partnership publickly declared a Stranger was not to know of any private contract between the

parties

Parties whether they were to share Jointly or otherwise unequally in the profit and Loss— your Petitioner had proved the partnership and as beforementioned the promise of payment under the hand of the Defendant which was doing all that was requisite for him to do the one Establishing his right of demand against the Defendant and the other confessing the amount of such demand to be justly due— And in answer to the Defendants fourth Reason of appeal your Petitioner did say that he fully shewn by the ample + Testimony of many Witnesses that the matter and things in his Bill of Complaint and Replication contained were true certain and Sufficient in manner and form as the same were therein and thereby charged and Setforth that was to Say he had proved the partnership in the firm or House of Veyeedass Seetambradass and Goculdass and that the Defendant Dungah dass was the Surviving partner he had proved the exhibit of an account Current to have been Sent to him by the defend.t together with a Letter Explanatory thereof and promising payment of the same and that the Whole was in the hand writing of the Defendant he had also proved that the Material points in the Defendants Answer and Replication contained to be Without any foundation in truth and that the evidences produced on the part of the Defendant in Support of the few immaterial points he had thought proper to examine to have deposed to facts of which they were entirely ignorant and your Petitioner has

Shewn

Shewn that even those facts were contradicted by the Defendant himself and your Petitioner has further shewn that other Witnesses Examined on the part of the Defendant have given testimony + Contradicting the Assertions Advanced by the Defendant in Short your Petitioner had proved Amply all that was incumbent on him to prove Even had the Defendant produced other testimony than that of the Witnesses then before the said Court and your Petitioner did therefore say that the Assertion in the Defendants Petition of appeal contained that the said Decree of the said Mayors Court was contrary to Law and unsupported by evidence was altogether contrary to the truth and further your Petitioner did say that the said Mayors Court could not have done otherwise than decreed upon your Petitioners Bill as therein before mentioned & your Petitioner did Submit to the said Court that as no New Matter, such as was not in issue nor read at the hearing of the Cause in the said Mayors Court could be introduced in an appeal to the said Court and that it was contrary to the practice of the said Court to bring forward the opinion of any judge of the said Mayors Court as matter of Evidence for the consideration of the said Court of Appeals and therefore your Petitioner did humbly pray that the part in the Defendants Petition of appeal contained — begening with the Word — And your Petitioner Sheweth

that

that Andrew Ross Esqr. and ending with the Words," as part
of this his Petition of appeal" may be Expunged therefrom together
with the dissent to the said Petition and appeal annexed
containing the reasons of the said Andrew Ross and refused
to in the matter above Excepted to — And your Petitioner
did thereon pray that the said Court of appeals would affirm
the said Decree of the said Mayors Court and dismiss the
Defendants Petition of appeal with Costs. —

And your Petitioner humbly Sheweth
unto your most Excellent Majesty in Council that the
Defendants said Petition of appeal and your Petitioners said
answer coming on to be heard before the said Court of appeals
on the Nineteenth day of April in the present year of Our Lord
One thousand Seven hundred and Ninety four when the said
Court of appeals instead of ordering the same to be read and
the merits thereof to be argued by the Solicitors on both
Sides according to the usual Course of the said Court did
refuse to have the same and did without entering into the
merits thereof order and Decree that as the Suit appeared
to be between two Natives and that your Petitioners said
Attorney the said Thomas Richard Fairchild had been
made use of merely to evade the Charter that the said decree
of the said Mayors Court should Stand dismissed with
Costs to be paid by your Petitioner as well mensuffy and at large

appear

appear by a Copy of the said Decree of the said Court of appeals
hereunto annexed for the inspection of your most Excellent Majesty
in Council to which your Petitioner humbly begs leave to refer
and prays the same may be taken as part of this your Petitioners
Petition of appeal. —

By which said Decree of the said Court
of appeals your Petitioner doth humbly conceive he is much —
aggrieved and doth therefore appeal therefrom to your Most —
Excellent Majesty in Council for the following amongst other —
Reasons. —

First . . . . Because the said Decree of the said Court of appeals
is as your Petitioner is advised contrary to law, and injurious
to the rights of the Subject. —

Secondly Because the said Court of appeals in refusing to have read
the said Petition and appeal of the Defendant and the Answer
of your Petitioner thereto did not as they ought to have done
determine on the Evidence before them but did ex officio —
determine upon appearance only, and thereby did reverse the
Solemn Decree of the said Mayors Court given as hereinabove
Set forth after having heard read the Several proceedings had
by your Petitioner and the said Defendant the Evidence —
adduced in support thereof and the Arguments offered by the
Attornies on both sides which your Petitioner is advised is
irregular and contrary to Law. —

3dly

Thirdly — Because had the said Court of appeals been pleased to consider that the said Mayor's Court had entertained your Pet.rs said Bill of Complaint and decreed thereon coram non Judice the said Court of appeals in order so to have determined ought to have heard read the Defendants said Petition of appeal and your Petitioners said Answer thereto according to the Course of the said Court in like Cases and not having done so the said Court did in decreeing as aforesaid so Decree contrary to Evidence and to the law, —

Fourthly — Because your Petitioner did regularly Execute an assignment of the account Current in question to his said attorney the said Thomas Richard Fairchild and which was in evidence before the said Court of appeals and therefore had the said Court gone into the merits it would have been apparent that the Suit in question was not between two Natives and that there was not not any eavicion of the Charter and your Petitioner Submits to your Most Excellent Majesty in Council that by the Charter the Natives of Madraspatnam only are prohibited from Suing each other and it appears that your Petitioner is a Gugrattee Soucar or Banker and therefore not within the Said Charter but your Petitioner having a Valuable — consideration assigned over to his said attorney the Said Tho.s Richard Fairchild the account Current upon which the present Suit is brought he has nothing to do therewith further than to protect his said attorney in the premises. —

For all which Reasons and Such others as may be offered at the hearing your Petitioner humbly prays that your Most Excellent Majesty in Council will be pleased to Reverse the said Order and Decree of the said Court of Appeals, and affirm the said Decree of the said Mayor's Court and that your Most Excellent majesty in Council will Vouchsafe to grant unto your Petitioner Such further and other Relief in the premises as to your Most Excellent Majesty in Council shall Seem most meet —

/Signed/ Ja.s Stuart Hall
Solicitor for appell.t

Court of Appeals

Court of Appeals
at
Madraspatnam } for Saturday the 19th day of April
Anno Domini 1794

Between Gungadoss of Masulipatnam
Inhabitant Surviving Partner of the House of
Veeradadoss Pettambradoss Gungadoss Appellant
And Butbavany Sunker Haredat of Madras
Saucar by his attorney Thomas Richard Fauchild
of Madras Gentleman Respondent, —

This Cause coming on this day to be heard and debated before this Court and upon due Consideration of the Petition of appeal together with the Decree of the Honble the Mayor's Court given in this Cause on Friday the 20th day of April Anno Domini 1792 and it appearing to the Court that the Matter in dispute is between two Natives and that the Plantiff in the said Mayor's Court has made use of the Name of Thomas Richard Fauchild 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 Mayor's Court dated the 20th day of April Anno Domini 1792, be reversed and that the Respondent Butbavany Sunker Haredut do pay all Costs in both Courts, —

Chas N. White Clk

A true Copy
/signed/ J. S. Hall Sol.r for the appel.t

To the Honble Major Genl. William Medows
President &c.ca in Council
Fort St George,

In the Honble the
Court of Appeals }

Between Teravercaudoo Ramalinga
Moodelliar of Madras Inhabitant Complainant
and James Stuart Hall late a Captain in the
Service of the United Company of Merchants
of England trading to the East Indies but
Now one of the Attornies of the Honble the
Mayor's Court Defendant. —

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

Sheweth,

That Teroovercaudoo Ramalinga Moodelliar
the above named Complainant did on the twelfth day of May which
Was in the year of Our Lord One thousand Seven hundred and
Ninety Exhibit and file his Bill of Complaint in the Mayor's Court
of Madraspatnam against your Petitioner for the Recovery of the Sum
of Two thousand Eight hundred and fifty Eight pagodas Seventeen
fanams and twenty Cash Current Money of Madras pretending that
the same was due and Owing unto him upon a Bond Executed
by your Petitioner on the Eighteenth day of December Which
Was

Filed in my Office
the 17th May 1792,
Chas N. White
Clk

Was in the year of Our Lord One thousand Seven hundred and Eighty Six with Interest at the rate of twelve per Cent per annum and your Petitioner Sheweth unto this Honble Court that your Petitioner did Appear to the Complainants said Bill of Complaint and did Exhibit and file his Answer thereto and did thereby shew unto the said Mayors Court that the Bond Executed by your Petitioner was so Executed not for money Received by your Petitioner but that James Grierson in your Petitioners Answer named having an Occasion for the Sum of two thousand Pagodas applied to the Complainant on Account thereof who did Agree to lend and Advance the same upon certain conditions in your Petitioners said Answer Set forth and upon the Security of a Bond by the said James Grierson Executed to the Complainant and that same time afterwards the said James Grierson being About to depart for Europe Visvenadoss Moodelliar in your Petitioners said Answer Named as the Son of the Complainant did apply to your Petitioner to take up the Bond so Executed by the said James Grierson upon the conditions in your Petitioners said Answer set forth that your Petitioner did on such condition Execute the Bond upon which the Complainant had commenced his said Suit in the said Mayors Court and that your Petitioner had not either directly or indirectly received any consideration on Account thereof and your Petitioner in his said Answer did further Shew that upon the

the conditions above referred to and in consequence thereof your Petr did Employ the said Visvanadom in the printing Concern in your Petitioners said Answer set forth of which your Petitioner had the management and conducting and that therefrom the said Visvanadom and the family of the Complainant did derive considerable benefit & Advantages that some time after the Execution of the said Bond your Petitioner did become an Attorney of the said mayors Court and did thereupon with the consent and Approbation of the Said Visvanadom Sell and dispose of his Share in the said printing Concern and that being called upon by the Complainant for payment of the said Bond did offer him an Assignment of a Bond Executed to your Petitioner by Vincentio Corbett Esqr for one half of your Petrs Said Share in the said printing Concern and Conditioned for the payment of the said printing Concern and Conditioned payment of the Sum of Two thousand and four hundred Pagodas and that the Complainant did then readily agree to receive the same but your Petitioner did in his said Answer set forth that before the said Assignment could be Executed your Petitioner was taken dangerously ill and that on his recovery the Complainant having become displeased with your Petitioner did refuse to accept the Assignment of the said Bond Executed to your Petitioner by the said Vincentio Corbett and which in Justice and Equity thought to have done and your Petitioner Sheweth unto this Honble Court to his said Answer the Complainant did file his Replication and therein Amongst

other

other things did state that your Petitioner was indebted unto him the Complainant in the Sum sued for and that your Petitioner must have received a consideration for the said Bond denied that your Petr did Execute the same upon any other Condition than therein Expressed that the said James Grierson did apply to him the Complainant for the loan of the said Sum of two thousand Pagodas which he the Complainant did accordingly lend and ~~Advance~~ pay him And which said Sum of two thousand Pagodas so received from the hands of him the Complainant by the said James Grierson was as the Complainant did pretend belief paid unto the hands of your Petitioner and did deny that he the Complainant was under any Obligation to Receive the said Assignment of the Bond Executed by the said Vincentio Corbett as aforesaid And did further deny the Several other Matters and things in your Petitioners said Answer ~~given~~ set forth And your Petr Sheweth that to the Complainants said Replication he did Exhibit and file his Rejoinder and did therein and thereby Maintain and Support the Several Matters and things in his said Answer contained and deny the Matters and things in Objection thereto as in the Complainants said Replication was set forth And your Petitioner Sheweth that thereupon Issue did Join and Rules did pass for the Examination of Witnesses and the Complainant did accordingly Examine two Witnesses who do no more than

Support

Support the Answer of your Petitioner so far as they are interrogated unto or from what is by him therein and thereby confessed to wit they prove the Execution of the Bond which is not denied by your Petitioner and that the Amount for which the said Bond was Executed was money lent and advanced by the said James Grierson for which he the said James Grierson did execute a Bond to the Complainant But your Petitioner Sheweth unto this Honble Court that one of the said Witnesses Caleyaoga Royen to the Third Interrogatory did say that he went to the Complainant by the order of your Petitioner who paid him the said Money that he afterwards put it into the hands of your Petitioner by whom it was paid to the said James Grierson who Executed a Bond for the Amount to the Complainant which your Petitioner Sheweth unto this Honble Court stands contradicted by the Complainant himself who in his said Replication states that he the said James Grierson did apply to him for the said Sum of Two thousand Pagodas and that he the Complainant did himself pay the same into the hands of the said James Grierson And your Petitioner Sheweth unto this Honble Court that upon Such the proceedings had the said Cause was set down for hearing and did come on to be heard before the said Mayors Court on the fourth day of May last past when the said Mayors Court was pleased to Order and Decree and did accordingly Order & Decree that your Petitioner should pay unto the Complainant the

Sum

Sum of Two thousand Eight hundredred and fifty Dag.
Seventeen Sanams and twenty Cash with Interest and Costs as
by the said Decree of the said Mayors Court a Copy whereof is
hereunto Annexed for the inspection of this Honble Court,
Reference being thereunto had may appear By which said
Decree your Petitioner doth conceive himself much aggrieved
and doth therefore Appeal therefrom to this Honble Court for the
following amongst other Reasons, —

First — Because although your Petitioner did Execute
the Bond in question yet that your Petitioner did not
receive any consideration on Account thereof and therefore —
that the Complainant had no right to call your Petitioner
in question before the said Mayors Court nor ought the said
Mayors Court to have given a Decree upon the Complainants
Bill as aforesaid, —

Secondly — Because although your Petitioner had not
received any Consideration on account of the said Bond
yet that as he had Executed the same he was willing to
discharge the condition thereof by the best means in his
power that is to say an Assignment of the said Bond
for the said Sum of two thousand and four hundred Dag.
And that as the Complainant had once Agreed he ought
to be compelled to receive the same in full discharge
of the Amount of the said Bond, —

Tot

For all which Reasons and
Such others as May be offered at the
Hearing your Petitioner prays that the said
Decree of the said Mayors Court may be
Reversed and that this Honble Court will
be pleased to grant unto him Such
further and other Relief in the premisses
as in their Wisdom may seem Most
Meet. —

/Signed/ John White
Sol.r for the appellant

Mayors Court

Mayors Court at Madraspatnam

Friday the 4th day of May Anno Domini 1792.

Present,

Andrew Ross Esqr Mayor,
James Call, and Benj.n Roebuck
Aldermen.

Between Tersovercaudoo Ramalinga Moodelliar of Madras Inhabitant Complainant and James Stuart Hall late a Captain in the Service of the United Company of Merchants of England Trading to the East Indies but Now one of the attornies of this Honble Court Defendant

This Cause coming on to be heard and Debated this day in the presence of the attornies on both sides on Reading the Complainants Bill with Copy of an Account Current & Copy of a Bond or Obligation Annexed, The Defendants Answer the Replication the Amended Rejoinder the Interrogatories and Depositions on the part of the Complainant with a Bond Marked A annexed On Hearing the Pleadings made use of by the attornies and on due Consideration had thereon This Court doth think fit to Order and Decree and doth accordingly Order and Decree that the Defendant do pay unto the Complainant the full and just Sum of Two thousand

Mayors Court

Pd

Two thousand Eight hundred and fifty Eight Pagodas Seventeen fanams and twenty Cash / Pags. 2858. 17. 20. / 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, —

Wm. / Signed / George Taylor Regr.

A true Copy / Signed / John White
Sol.r for the appellant

To

To the Honble Major Gen.l Will.m Meadows
President & Governor &c.a Council of
Fort St George,

In the Honble the
Court of Appeals

Between Seroovercaudoo Ramalingoo
Moodelliar of Madras Inhabitant Complai:
nant and James Stuart Hall late a Capt.n
in the Service of the Honble United Company
of Merchants of England trading to the
East Indies but at Present one of the Attornies
of the Honble the Mayors Court at Madras
patnam Defendant. —

The Answer of the above Named Complainant
to the Petition and appeal of the above named Defendant
This Respondent Saith, that he doth
admit that he did some time on or about the Twelfth day of
May which was in the year of Our Lord One thousand Seven
hundred and Ninety, exhibit and file his Bill of Complaint
in the said Mayors Court, for the recovery of the Sum of
Two Thousand Eight hundred and fifty Eight Pagodas
Seventeen fanams and Twenty Cash from the said
Appellant, charging that the same was due and Owing
upon a Bond given and granted by the Appellant
on

Filed in my Office
the 26.th June 1792
Chas S. White
Clk

on the Eighteenth day of December One Thousand Seven hundred
and Eighty Six, with Interest at and after the rate of
Twelve per Cent per Annum and this Respondent Saith,
that the Appellant did appear to the said Bill and did put
in his Answer thereto, Whereby this Respondent Sheweth that
the said Appellant did not directly admit the Execution of the said
Bond, and did evade Admitting to be indebted unto this
Respondent in the aforesaid Sum Sued for thereon — and
the said Appellant did also deny receiving any Consideration
directly or indirectly for the said Bond, but that the same
was executed upon Conditions by him in his said Answer set forth
and the Appellant did as appears by the said Answer now before
this Honble Court, and by the partial recital thereof in his
said Petition and appeal, undertake and pledge to prove
that the Several Matters thereon contained were true —
Which this Respondent prays to observe he did not in any
Wise do — And which this Respondent insists that had he
so proved the same they would only have testified a Confirmation
of a litigious and evasive defence, without ground of Law or
Equity — And this Respondent Sheweth that he did file
a Replication unto the said Answer the recital whereof the
Appellant hath almost totally Suppressed, — For this
Respondent did therein aver that Appeared by the Appellants
own shewing in his Answer that he stood indebted unto
this

this Respondent in the Sum Sued and that altho' he denied all Consideration for the same it could not be credited that the appellant would have executed a Bond to this Respondent, and have taken up a Bond from another person to this Respondent, without receiving full — Consideration and Satisfaction for the same — and this Respondent hath clearly proved that the appellant did receive full Consideration for the Same. — and this Respondent did Particularly deny that the appellant did execute the said Bond upon the Conditions by him Set forth, which the appellant hath not proved to be the and this Respondent said it was not likely that the appellant would take upon himself the Payment of the Debt of James Grierson in the Proceedings Mentioned at a time when he was about to return to Europe without some equivalent and that it Was Surprizing that the appellant should Say, that he never received the least consideration whatsoever directly or indirectly for the said Bond Because that — The Release of the Said James Griersons debt to him was a good and legal consideration to the appellant for giving his Bond to this Respondent, in like Manner as the Defendants Bond was the Condition upon which this Respondent did release the said James Grierson. — And this Respondent did further observe that whether the appellant had money or goods or whether he obtained the discharge of the said James Griersons Bond from motives of friendship or Charity the law would presume no other consideration than that which was acknowledged by the Appellants own act, nor changed the condition of payment therein agreed to for any other V.ra C.a V.ra and this Respondent saith that the appellant did rejoin unto the said Replication only by conferming the Errors and Tedgious evasions of his Answer, and issue did join thereupon, and Rules did pass for the Examination of Witnesses But no Witnesses were produced by the appellant it is therefore fairly Presumably that he had no Evidence whatever in support of his Answer and this Respondent Saith that it is true that he did examine two Witnesses, and who contrary to the Assertion of the appellant do not only prove the execution of the Bond, but the Consideration on which the same was given, and the Condition of Payment also to be as is therein expressed and declared, and no other — And this Respondent Saith there is not any Contradiction between the Evidence of the Delegoo Bay men, who depose that the Money was paid to the Appellant and that he the Appellant paid it to Jam.s Grierson, and that part of the Replication which states that the money was paid by this Respondent to —

J.n

James Grierson — the Evidence being Clear and the Replication also that this Respondent did pay the same as a Consideration for which James Grierson gave his Bond to this Respondent and this the appellant hath not presume to deny — And this Respondent doth admit that upon these proceedings Publication did pass and the said Cause was Set down for hearing and did on or about the fourth day of May last past come on to be heard when the said Mayors Court were pleased to order and Decree and did accordingly Order and Decree that the appellant should pay unto this Respondent the Sum of Two thousand Eight hundred and fifty Eight Pagodas Seventeen Fanams and Twenty Cash with Interest and Costs as by the Decree extract whereof is Annexed unto the said Petition and appeal — And this Respondent Saith that the appellant cannot possibly be aggrieved thereby and that the reasons given by the appellant are not grounded on matter whereon this Honble Court can extend their Equity or Justice the same being totally Repugnant to those principles but the same are grounded on the Principles of injustice and litigiousness and the Appellant ought not to have insisted in the presence of this Honble Court that he has not received any consideration on account of the said Bond, which is not only a Bad Plea in Law but is also not true in point

of fact — And this Respondent Saith that the tender of an Assignment of another Bond, by the Appellant in discharge of his own to this Respondent, being absolutely denied by this Respondent and on the Contrary of the same being proved to have any connexion with the appellants Bond the Same being disproved to have any Such connexion by the Evidence before the Court, the appellant from an Observance of practical form, as well as from a respect to this Honble Court, ought not to have made the Matter of the Assignment any part of his appeal, which in this and in every other part being not only irregular and irrelevant but also litigious and Calculated for the Sole purpose of totally depriving or at least keeping this Respondent out of the Receipt of his money at a further loss of very considerable Sum of Money expended in defraying the expence of this Suit Contrary to Equity and good Conscience — This Respondent humbly hopes that this Honble Court will deem such an abuse of the previledge of appeals from the Mayors Court as a Case worthy of their Consideration and that they will in discouragement thereof tax the Appellant with exemplary Costs by their Decree in affirmance of that of the said Court —

[Signed] Henry DeRoy
Attorney Respondt

Court

Court of Appeals
at
Madraspatnam } Saturday the 19th day of April
Anno Domini 1794.

Between James Stuart Hall late a Captain in the Service of the Honble united Company of Merchants of England trading to the East Indies but now one of the attornies of the Honble Court — appellant — and Terroovercaudoo Ramalingamoodelliar of Madras Inhabitant Respondent. —

This Cause coming on this day to be heard and debated before this Court by the attornies on both sides upon hearing the Petition of appeal and Answer and the Several Exhibits of the Honble the Mayors Court together with the Decree of the said Court given in this Cause on Friday the 4th day of May 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 and Decree and doth accordingly Order and Decree that the said Decree of the Honble the Mayors Court do stand affirmed and that the appellants Petition be hence dismissed with Costs. —

Wm. Hewr. / Signed / Chas. N. White Clk

To

To the Kings Most Excellent Majesty in Council

Between Terroovercaudoo Ramalinga Moodelliar of Madras Inhabitant — Complainant and James Stuart Hall late a Captain in the Service of the Honble United Company of Merchants of England trading to the East Indies but at present one of the attornies of the Honble the Mayors Court at Madraspatnam Defendt

The Humble Petition of the above named Defendant

Sheweth,

That Terroovercaudoo Ramalinga Moodelliar the above named Complainant died on the Twelfth day of May which was in the year of our Lord One thousand Seven hundred and Ninety exhibit and file his Bill of Complaint in the Mayors Court of Madraspatnam against your Petr for the recovery of the Sum of Two thousand Eight hundred and fifty Eight Pagodas Seventeen fanams and Twenty Cash pretending that the same was due and Owing unto him upon a Bond executed by your Petitioner on the Eighteenth December which was in the year One thousand Seven hundred and Eighty Six with Interest at the rate of Twelve per cent per annum and your Petitioner sheweth unto this Honble Court

Filed in my Office the 2d May 1794
Chas. N. White Clk

Court that your Petitioner did to the Complainants said Bill of Complaint exhibit and file his Answer and did therein and thereby shew unto the said Mayors Court that the Bond executed by your Petitioner was so executed not for money received by your Petitioner but that James Grierson in your Petitioners said Answer named having an Occasion for the Sum of Two thousand Pagodas Applied to the Complainant on Account thereof Who did Agree to lend and Advance the same upon certain conditions in your Petitioners said Answer set forth and upon the Security of a Bond by the said James Grierson executed to the Complainant and that some time afterwards the said James Grierson being about to depart for Europe Viavenadom Moodelliar in your Petitioners said Answer Named the Son of the Complainant did Apply to your Petitioner to take up the Bond so executed by the said James Grierson upon the conditions in your Petitioners said Answer set forth that your Petitioner did on such condition execute the Bond upon which the Complainant had commenced his said Suit in the said Mayors Court and that your Petitioner had not either directly or indirectly received any Consideration on Account thereof and your Petitioner in his said Answer did further Shew that upon the condition above referred to and in consequence thereof your Petitioner did employ the said Viavanadam in the Printing concern in your Petitioners said

Said Answer set forth of wch your Petitioner had the Management and conducting and that therefrom the said Veevanadom and the Family of the Complainant did deceive Considerable benefit and Advantages that sometime after the Execution of the said Bond your Petitioner did become an Attorney of the said Mayors Court And did thereupon with the Consent and Approbation of the said Viavenadom sell and dispose of his share in the said printing concern and that being called upon by the Complainant for payment of the said Bond did offer him an Assignment of a Bond executed to your Petitioner by Vincentio Corbett Esqr. for an half of this Defendants said Share in the said printing Concern and Conditioned for the payment of the Sum of Two thousand and four hundred Pagodas and that the Complainant did then readily agree to receive the same but your Petitioner did in his said Answer set forth that before the said Assignment could be executed your Petitioner was taken dangerously ill and that on his recovery the Complainant having become displeased with your Petitioner did refuse to Accept the Assignment of the said Bond executed to your Petitioner by the said Vincentio Corbett and which in Justice and equity he ought to have done and your Petitioner Sheweth unto this Honble Court that his said Answer the Complainant did file his Replication and did therein Amongst other things state that your Petitioner was indebted unto him the Complainant

in

in the Sum Sued for and that your Petitioner must have received a consideration for the said Bond. denied that your Petitioner did execute the same upon any other condition than therein expressed that the said James Grierson did apply to him to the Complainant for the loan of the Said Sum of Two thousand Pagodas which he the Complainant did accordingly lend and pay him and which said Sum of Two thousand Pagodas received from the hands of him the Complainant by the said James Grierson Was as the Complainant did pretend belief paid into the hands of your Petitioner and did deny the said other matters and things in the Petitioners said Answer set forth And your Petitioner Sheweth that to the Complainants said Replication he did exhibit and file his Rejoinder and did therein and thereby maintain and Support the Several Matters and things in his said Answer contained and deny the matters and things in objection thereto as in the Complainants said Replication Was set forth and your Petitioner Sheweth that thereupon issue did Join and Rules did pass for Examination of Witnesses and the Complainant did accordingly Examine two Witnesses who did no more than Support the Answer of your Petitioner so far as they Were interrogated unto or prove what was by him therein And thereby confessed to wit the execution of the Bond which was not denied by your Petitioner and that the Amount for which the said Bond was executed was Money lent and Advanced to the said James Grierson for which he the said James Grierson did execute a Bond to the Complainant But your Petitioner Sheweth unto the said Court of Appeals that one of the said Witnesses Coley a Moga Royer to the third Interrogatory did say that he went to the Complainant by the order of your Petitioner who paid him the said Money that he afterwards put it into the Hands of your Petitioner by Whom it was paid to the said James Grierson who executed a Bond for the Amount to the said Complainant which your Petitioner Sheweth Stood contradicted by the Complainant himself Who in his said Replication Stated that the said James Grierson did apply to him for the said Sum of Two thousand Pagodas and that he the Complainant did himself pay the same into the Hands of the said James Grierson And your Petitioner Sheweth that upon such the proceedings had the said Cause Was set down for hearing and did come on to be heard before the said Mayors Court on the fourth day of May last past When the said Mayors Court was pleased to Order and Decree and did accordingly Order and Decree that your Petitioner should pay unto the Complainant the Sum of Two thousand Eight hundred and fifty Eight Pagodas Seventeen fanams and Twenty Cash with Interest and Costs as by the said decree of the said Mayors Court reference being thereunto had may appear by which said Decree your Petitioner did conceive himself

himself in well aggrieved and did therefore Appeal therefrom to the Court of Appeals at Madraspatnam for the following amongst other Reasons—

First ..... Because although your Petitioner did execute the Bond in question yet that your Petitioner did not Receive any consideration on account thereof and therefore that the Complainant had no right to call your Petitioner in question before the said Mayor's Court to have given a Decree upon the Complainants Bill as aforesaid—

Secondly Because although your Petitioner had not recovered any consideration on Account of the said Bond yet that as he had executed the same he was willing to discharge the condition thereof by the least means in his power that is to say an assignment of the said Bond for the said Sum of Two thousand four hundred Pags and that as the Complainant had once agreed he ought to be compelled to receive the same in fair discharge of the Amount of the said Bond Executed by your Petitioner as aforesaid and your Petitioner did thereon pray the said Court of Appeals would reverse the said Decree of the said Mayor's Court— And your Petitioner sheweth unto your most Excellent Majesty in Council that to your Petitioner said Petition of Appeal the Complainant did file his Answer and therein Amongst other things in Answer to your Petitioners said first Reason for Appeal did say — that your Petitioner ought not to have insisted that he had not received any Consideration on Account of the said Bond which was not only a bad Plea in law but was also not true in point of fact that the tender of an assignment of another Bond by your Petr.

in

in discharge of his own to the Complainant being absolutely denied by the Complainant and on the contrary of the same being proved to have any connexion with your Petitioners Bond the same being disproved to have any such connexion by the evidence before the Court your Petitioner from an observance of practical form as well as from a respect to the said Court ought not to have made the matter of the assignment any part of his appeal which in that and in every other part being not only irregular and irrelevant but also litigious and Calculated for the sole purpose of totally depriving or at least keeping the Complainant out of the Receipt of his money at a further loss of very considerable Sum of Money expended in defraying the expence of this Suit contrary to Equity and good Conscience and the Complainant did pray that the decree of the said Mayor's Court might be affirmed and your Petitioners Petn. of appeal dismissed with Costs. —

And your Petitioner humbly Sheweth unto your Most Excellent Majesty in Council that your Petitioners said Petition of Appeal and the Complainants Answer coming on to be heard before the said Court of Appeals on the Nineteenth day of April in the present year of Our Lord One thousand Seven hundred and Ninety four the said Court of Appeals Were pleased to Order and Decree and did accordingly Order & Decree that the said Decree of the said Mayor's Court should Stand affirmed and that your Petitioners said Petition of Appeal should stand dismissed with Costs as by Copy of the

Said

Said Order and Decree of the said Court of Appeal hereunto annexed Reference being thereunto had may Appear By which said Decree of the said Mayors Court and Court of Appeals your Petitioner conceives himself much aggrieved and doth therefore Appeal therefrom to your Most Excellent Majesty in Council for the following amongst other Reasons. —

First. . . . Because your Petitioner in his answer to the Complainants said Bill of Complaint did shew that he never had received any consideration for the Bond in question and was not therefore bound to discharge the same but as your Petitioner had upon the Sole consideration of having executed the said Bond to the Complainant had offered him an Assignment of the Bond in the Pleadings Set forth and which was the best Means that were then in your Pet.rs power and as the Complainant had once agreed to accept the Same the said Court of Appeals ought to have decreed accordingly. —

Secondly. — — — Because the Evidence on the part of the Complainant so far from Supporting his said Bill of Complaint do contradict themselves and that therefore the only evidence before the Said Court of Appeals was the Answer of your Petitioner and thereupon the said Court ought to have Reversed the Decree of the Said Mayors Court. —

To

To all which Reasons and Such others as may be offered at the hearing your Petitioner humbly prays that your Majesty in Council may be pleased to Reverse the said decree of the said Mayors Court and Court of Appeals and to give your Pet.r Such further Relief in the premises as to Your Most Excellent Majesty in Council may Seem Meet. —

/Signed/ James Stuart Hall
Sol.r for Appellant

Court.

Court of Appeals
at
Madraspatnam

Saturday the 19th day of April
Anno Domini 1794.

Between James Stuart Hall late a Captain in the Service of the Honble United Company of Merchants of England trading to the East Indies but Now one of the attorneys of the Honble Court Appellant and Teroovercaudoo Ramalinga Modelliar of Madras Inhabitant Respondent

This Cause coming on this day to be heard and debated before this Court by the attorneys on both sides upon hearing the Petition of Appeal and Answer and the Several Exhibits of the Honble the Mayors Court together with the Decree of the said Court given in this Cause on Friday the 4th day of May Anno Domini 1792 upon due consideration had of the Matters therein Severally contained and of the Pleadings and Arguments used by the attorneys on both sides This Court doth think fit to Order and Decree and doth accordingly Order and Decree that the said Decree of the Honble the Mayors Court do stand affirmed and and that the appellants Petr be hence dismissed With Costs. —

A true Copy
Signed/ Cha N. White Clk
Signed/ J. S. Hall Sol for Appt

To the Honble Sir charles Oakeley K. B.
President in Council
Fort Saint George

In the Honble Court of Appeals

Between Sawmy Chittyar and Coety Chittyar of Madras Merchants Complainants and Shake Meerah Saib Mastry and Pattee Mastry of the same place Inhabitant Defendt.

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

Sheweth,

That on the Twenty fifth day of January which was in the year of Christ one Thousand Seven Hundred and Ninety one the above Named Complainants did file and Exhibit a Bill of Complaint against your Petitioners in the Honble the Mayors Court of Madraspatnam And did therein and thereby Charge your Petitioners to be indebted to them the said Complainant in the full and just Sum of Six hundred and Twenty Star Pagodas Current Money of Madras Making in Sterling Money of Great Britain at the rate of eight Shillings for every Pagoda the Sum of Two hundred and forty eight Pounds or thereabouts arising upon a Certain Mortgage Bond or Written Obligation Copy of the Translation Whereof Was to the Said Bill of Complaint Annexed and therein And thereby referred to And your Petitioners shew that a Summon did thereupon

Filed in my Office
the 10th Sept 1792
Cha N. White
Clk

issue

Sir requiring and Commanding your Petitioners to appear before the said Honble Court then and there to answer to the said Bill of Complaint and further to stand and abide by Such order and Decree therein as to the said Court should Seem Meet that being So Summoned your Petitioners did appear and by the means of their Attorney at Law put in an Answer to the Said Bill of Complaint on or About the Twenty fifth of April in the said year One thousand Seven hundred and Ninety one Wherein your Petitioners did state and Set forth that altho they Admitted to have signed the Bond Copy whereof was to the Complainants Bill annexed, yet they positively denied being indebted to the Complainant in the Sum of Six hundred and Twenty Star Pagodas as Charged by them your Petitioners however said they Admitted that they were indebted to the said Complainants in the Sum of five hundred and ~~fifty~~ forty Seven Star Pagodas and Twenty five fanams and no more which Sums they Said they had at all times been and Still were ready and willing to discharge And in order to illustrate the transaction and to shew the reasons on which they Grounded their opposition your Petitioners in their said answer Set forth that some time in the Month of July which was in the year of Christ one Thousand Seven hundred and eighty nine your Petitioner being then in want of Cash to answer a pressing demand made upon them by a certain person named Parryar Applied on that behalf to Coty Chittyar one of the Complainants to advance a Sum of money

Sufficient

Sufficient to enable them to pay off and Discharge the said debt that is this Proposal the said Coty Chittyar having Agreed he the Said Coty Chittyar did on the tenth of July go to the Said Pareyer and then and there did liquidate the Account ~~of~~ Subsisting between your Petitioners and the said Parryer by paying on behalf of your Petitioners the Balance that Was due Amounting to Star Pagodas five hundred and twenty Six upon Receipt of which the said Parryar did deliver unto the said Coty Chittyar the title Deeds of your Pet^{rs} house and Garden which had been by way of Collateral ~~of~~ Security for the Repayment of the aforesaid Sum ~~of~~ Mortgaged unto the said Parryar And your Petitioner did further in their said Answer Set forth that having Occasion for a further Sum of Pagodas Seventy two and twenty three fa^{s} they did again apply to the said Coty Chittyar to Supply them with it desiring that he would add the same to the Money he had advanced as aforesaid and that your Pet^{rs} Would execute a Bond for the Amount and Secure the Repayment thereof by mortgaging the Title Deeds of there House and Garden which had been redeemed as aforesaid your Petitioners further said that to the Proposal the said Coty Chittyar did consent and promise to Supply them with the Sum required and to make out a Bond for the Amount but from time to time he put off the same untill the first of December in the aforesaid year when the said

Coty

Cooly Chitty ar at length drew out a Mortgage Bond Copy whereof was the Complainants Bill Annexed and desired your Petitioner to Execute the Same And your Petitioners said that on perusing the said Bond they found it was drawn out and made payable to the said Cooly Chitty ar Jointly with one Sawmy Chitty ar to whom your Petitioner were perfect Strangers And your Petitioner further Shew that they did also remark that the said Cooly Chitty ar had included the Seventy two Pagodas which he had so repeatedly promised to Satisfy them with but which he had never done and therefore your Petitioners objected to execute a Specialty which Subjected them to pay more than what they had received And your Petitioners further Shew that these Objections were removed by the Solemn Ty Assurances of the said Cooly Chitty ar who faithfully promised to pay the said Balance of Seventy two Pagodas and Twenty two Fs. on the Succeeding day that relying on the Word of the said Cooly Chitty ar they were prevailed on to Execute the aforesaid Bond but without receiving the full Consideration the said balance of Seventy two Pagodas and Twenty two fanams never having been paid to your Petitioners at that time nor at any time since, and your Petitioners further said that on the Succeeding day they waited on the Complainant the said Cooly Chitty ar in the form hope and belief of obtaining the said Balance, but under various frivolous pretences and Excuses he evaded payment that being Convinced from a Series of such Conduct that it was the intention of the said Cooly Chitty ar not to pay the

Balance

Ballance of Seventy two Pagodas and Twenty two fanams They did by themselves and through the Means of Several other persons frequently request him to return the aforesaid Bond & to Accept of one in lieu thereof for the Neat Sum of what he had Advanced to Perryar on their Account to which Just and Equitable Requisition the said Cooly Chitty ar refused to Assent but again faithfully promised to pay the Balance in the Course of a Week your Petitioners however said that he never did so and that in Violation of every principle of Integrety and with a view solely to Harrass and distress your Petitioners he the said Cooly Chitty ar had most unjustly instituted a Suit against them for a greater Sum than he ever advanced your Petitioners further said that the said Cooly Chitty ar also kept in his Possession and detained from them the Mortgage Bond which they had granted to Parryar and which was delivered to him upon paying the Sum of Pagodas five hundred and Twenty Six as aforementioned a measure which your Petitioners said was highly distressing and injurious to them, it being the only Voucher they had to produce that the said money Was paid and to prevent the said Parryer calling upon them again for it and lastly your Petitioners said that they then were as they had at all times been Ready to pay the Complainants the balance which in and by their said Answer they admitted to be due to them And your Petrs

further

further shew that to the answer the said Complainants did on the Twenty fourth day of May in the said year and one thousand Seven hundred and Ninety one file a Replication thereto Setting forth that notwithstanding the Protest of your Petitioners to the Contrary your Petitioners were justly and truly indebted to them in the full and Just Sum of Six hundred and twenty Pagodas as Charged in their the Repliants Bill of Complaint and which appeared by a Copy of the Bond thereunto annexed and for further Replication the Repliants Said that your Petitioners in order to discharge a debt due by them to one Pattoo Mastry amounting to the Sum of five hundred and thirty Pagodas and not five hundred and Twenty six Pagodas as by your Petitioners was pretended they did apply to the Repliants to advance the same together with a further Sum of Ninety Pags and that for the whole thereof amounting to the Sum of Six hundred and twenty Pagodas they did promise to Execute a Bond to the Repliants and make over to them by way of Collateral Security certain Premises that were therefore Mortgaged by your Petitioners to the said Pattoo Mastry and the said Repliants said that being prefsed and Solicited by your Petitioners to Satisfy the demand of the said Pattoo Mastry and to Relieve your Petitioners from their Distrefs they the Repliants did take upon themselves the Debt due from your Petitioners to the said Pattoo Mastry

Mastry as aforesaid and did duly execute to the said Pattoo Mastry a Bond for the Amount thereof and did thereby redeem the Title deeds of your Petitioners house by them Mortgaged to the said Pattoo Mastry as aforesaid and which the Repliants said were afterwards made over by your Petitioners to them the Repliants for the Amount of their then demand and the Repliants in their said Replication further Set forth and Stated that your Petitioners did in Consideration of the premisses tender to them the Repliants the Bond Copy whereof was to their Bill of Complaint Annexed and did therein add to the Sum they the Repliants had become bound to the said Pattoo Mastry on Account of your Petitioners as aforesaid to the said Pattoo Mastry to wit the Sum of five hundred and thirty Pagodas the further Sum of Ninety Pagodas which the Repliants said was not paid at the time the Bond was Executed but the Repliants said they did Shortly afterwards And on Account thereof pay to your Petitioners the Sum of Ninety Pagodas and which Compleated the Amount Principal for which the Bond aforesaid was by your Petitioners granted to them the Repli= =ants a Copy whereof was thereto annexed for the inspection

of

of the said Honble Court and which acknowledgement the said Repliant pretended was so granted as aforesaid upon the final Settlement of accounts between your Petitioners and the Repliants and a Considerable time Subsequent to the Execution of the Bond whereof a Copy was to the Repliants Bill annexed and therefore and upon full Consideration of the matters and things aforesaid The Repliants and that the Several pretences assertions and insinuations of your Petitioners in Opposition to their Claim Was Contrary to Equity and good Conscience and Calculated to promote the artfull designs and fraudulent purposes of your Petitioners." And your Petitioners further Shew that to this Replication they filed a Rejoinder and did therein and thereby maintain "That their said Answer Contained a true just and perfect Statement of every matter relative to the transaction, and that the Replication of the said Complainant did by no means Support their Bill of Complaint, but was in every respect a Total departure therefrom. The same Containing much irrelevant and Extraneous Pleading foreign to the Subject Matter then before the said Honble Court, your Petitioners in their Rejoinder further said that they never were indebted to any Such person as Pattoo Mastry as was falsely stated in and by the said Replication but being indebted to one Paryar in the Sum of five hundred and Twenty Six Pagodas as stated in and by their Said Answer they Applied to the Complainants Cooly Chitty ar to pay off and discharge

Discharge the same who agreed thereto and did accordingly on the tenth day of July liquidate the Amount and received from the said Parryar the Title deed which had therefore been Mortgaged to him your Petitioner further said that it Was not a Sum of Ninety Pagodas which they required in Addition to the Sum which the Complainant Cooly Chitty ar had advanced on their Account to the said Parryar as Was falsely stated in and the said Replication but your Petitioners said that it was Seventy two Pagodas and Twenty two fanams as had already been Setforth and Shewn by them in their Answer upon Oath which Sum though never paid was included in the Bond and together with the Interest arising on the Sum of five hundred and Twenty Six Pagodas Advanced as aforesaid in the month of July being four Months and Twenty one Days came to the neat Sum or thereabouts for which the Bond Was Granted in the begining of December following and upon which the present Action had been brought after deducting three Pagodas by the Consent of the Complainant Cooly Chitty ar as by a true statement thereto Annexed would more fully appear and your Petitioners for further Rejoinder Said that the Repliants in their Said Replication had Setforth acknowledged that at the time of Executing the Said Bond there was a Sum of Ninety Pagodas which they

did not then pay but that they had done so Shortly after=
=wards and which Compleated the amount principal
for which a Bond was by your Petitioners granted
to them the Repliants and a tender made thereof, and
that Such Acknowledgment was granted upon the
final Settlement of Accounts between your Pet.rs
and the Repliants and a Considerable time Subsequent
to the Execution of the Bond your Petitioners for
Rejoinder thereto said that the Exhibit itself did
Clearly refute what had been asserted by the said
Repliants for the date thereof instead of being Subse=
=quent to the Bond upon which the action was
brought was many months anterior to it as by reference thereto more fully appear the one bearing
date the 1st day of December 1789 upon which the action was
founded and the other on the Twenty Seventh day of
February in the same year which Circumstances your
Petitioners said Clearly Shewed the Extraordinary and
Colusive means that the Complainants had Recourse to in
order to Support their very unjust action and your
Petitioners prayed leave again to Repeat that they had
at all times therefore been Ready to come to a fair &
Equitable Settlement with the Repliants and to pay
the Balance which was due to them Agreeably to the
Statement which your Petitioners Annexed to their said
Rejoinder"

And your Petitioners further shew
that

that upon the aforegoing proceedings Issue Joined and Rules
passed for the examination of Witnesses that Witnesses were
examined as well on the part and behalf of the Complainants as
on that your Petitioners and your Petitioners shewn That Tanda=
=vaya Naichen being produced on the part of the Complainants deposed
and said that the Complainants had in his presence repeatedly
demanded from Pattoo Shasty one of your Petitioners payment of the
Sum of Sixhundred and odd Pagodas as being due to the
Complainants but that they did not know whether it was or was
not owing by your Petitioners on their Joint Bond or otherwise
the said Deponents further Deposed and said that your
Petitioner Pattoo Shasty did not object to the Justness of
the demand but did fully acknowledge the Justness thereof
and promised to discharge the same in a few Months to the last
Interrogatory the said Deponents Tandaya Naick said
that he was several times sent by the Complainants to your
Petitioners Pattoo Shasty to demand payment of the Amount
due to the said Complainant at which Several times your
Petitioners did Acknowledge the Justness of the demand and
promised to discharge the same in a Short time." And your
Petitioner further Shew that Tamboo Chitty being also produced
on the part of the said Complainant deposed to the Second
Interrogatory as follows" That he knew that Coly Chitty one
of the Complainants did for and on Account of your Petitioner

pay

pay the Sum of five hundred and Twenty Six Pagodas to one Parryar that the said Money was paid at the Instance of your Petitioners for the purpose of discharging a debt due by them to the said Parryar and to redeem the Bills of Sale of a house and Garden belonging to your Petitioner Pattoo Naatry which was Mortgaged to the said Parryar the said Deponent to the last Interrogatory deposed that the Said Pattoo Naatry / one of your Petitioners / did purchase of the said Cooly Chittyar one piece of Cloth for the Sum of four Pagodas including which your Petitioners stood indebted to the said Cooly Chittyar in the Sum of five hundred And thirty Pagodas And your Petitioners shew that Chella= =Mootaw being also examined on the part of the Complainants deposed to the Second Interrogatory to the Same purport And Effect but to the last Interrogatory said that your Petitioner Pattoo Naatry purchased a piece of Cloth from the said Cooly Chittyar for the Sum of four Pagodas Which Sum was included in a Bond executed by your Petitioner to the said Cooly Chittyar Amounting to the Sum of five hundred and thirty Pagodas your Petitioners further Shew that Ouchaulay a witness also produced and Examined on the part and behalf of the Complainants to the third Interroga= =tory deposed as follows — "That he had looked at the Cadjan Writing produced and Shewn to him at the time of his Examination purporting to be an Acknowledgement from Pattoo Saib to the Complainant and said that the same was Executed by the person therein Named in his the Deponents presence the said Deponent further said that he did not know whether the same Was or was not granted by the said Pattoo Saib to the Complainant for and on Account of a Bond he had theretofore Jointly executed with Shake Meerah Saib to the Complainant but that his the Deponents Name set and Subscribed as a Witness, attesting the Execution thereof, was of his the Deponents own hand Writing" And your Petitioners further Shew that Vencatarayan being also Examined on the part of the Complainant Deposed and said "That he had looked at the Cadjan Writing purporting to be an Acknowledgement from Pattoo Saib to the Complainant And Said that the Same Was not Executed in his presence but that Pattoo Naatry came with Cooly Chitty one of the Complainants to the House of him the Deponent and requested that he would Subscribe his Name thereto which he did Accordingly the said Pattoo Saib Acknowledging that the said Cadjan Writing Was Executed by him the said Deponent further said that he did not know whether the same was or was not granted by the said Pattoo Naatry in full Acknowledgment of the balance by him received from the Complainants for and on Account of a Bond he had theretofore Jointly executed with Shake Meerah Saib Naatry to the Complainant

but

but said that the said Pattoo Saib did Acknowledge in the presence of him the Deponent that he had received the Amount of the Cadjan Writing in Question and further said that his name set and Subscribed to the said Cadjan Writing was of his own hand Writing "And your Petitioners further Shew that Parya a Brahmin being produced as a Witness on the part and behalf of your Petrs deposed as follows That Cooty Chitty an one of the Complainants did Some time in the Month of July in the year One Thousand Seven hundred and eighty Nine Liquidate an Account Subsisting between him the Deponent and your Petitioners That the Amount of the said Debt was five hundred and Twenty Six Pagodas and that it was liquidated by Cooty Chittyar who passed his Bond to him the Deponent for the amount the said Deponent further said that he did thereupon deliver up the Title Deeds of a House and Garden belonging to your Petitioners to the last Interrogatory the said Parya Brahmin deposed that at the time of the Amount of the Debt in question being Discharged by Cooty Chittyar passing his Bond to him the Deponent he the said Cooty Chittyar desired to know of your Petitioners Pattoo Mastry What he proposed to say about the Balance due by him to the said Cooty Chittyar on answer to which he deposes that your Petitioner Pattoo Mastry desired the said Cooty Chitty to add the balance to the Amount of the Bond which he had Executed to him the

Deponent

Deponent in Consequence of which he the said Cooty Chittyar executed the Bond to the Deponent for the Sum five hundred and thirty Six Pagodas although the amount due to the Deponent from your Petitioners was only five hundred and Twenty Six Pags. which induced him the Deponent to endorse on the Back of the said Bond ten Pagodas as received from the Said Cooty Chittyar And your Petitioners further Shew that Yedooram Saib deposed to the third Interrogatory as follows that he had looked at the Bond Paper Writing purporting to be a Mortgage Bond executed by your Petitioner to the Complainants and said that the same was produced by Cooty Chittyar to be executed by your Petitioners in his the Deponents presence & the said Yedooram Saib further deposed that the said Bond Was Drawn out an Account of a Sum of Money which the Complainant agreed to pay to one Parya Brahmin to whom your Petitioners were indebted and the said Deponent said that there was a Certain balance amounting to Ninety four Pagodas wanting to Complete the Amount of the said Bond at the time it was so produced for Execution and that your Petitioners did in Consequence of such Deficient Balance at first Object to execute the said Bond but such Objections were obviated by the Complainants Assuring your Petitioners that he would pay the deficiency whenever he was called upon to do so the Said Deponent

further

further said that the said Cooty Chitty ar did in his presence promise to pay the said Balance to your Petitioner in Consequence of which he the Deponent was frequently sent by your Petr. to demand it And your Petitioners further Shew that all the Witnesses having been examined Publication passed and the Cause was set down for hearing that on Tuesday the 28th. day of August last the same came on to be heard By and before the said Honble Mayors Court when after the Proceedings were read the attorneys for the said Complainants prayed leave to observe to the said Honble Mayors Court that there was a Mistake in the Translation of the Exhibit annexed to the Replication which appeared to bear a date Anterior to the date of the Bond annexed to the Bill of Complaint whereas it ought to be Subsequent and therefore prayed that the Court Interpreter might be called upon to explain the Cause And that the same might be altered And your Petitioners further Shew that although they did through and by the means of their Attorney at Law object to Such alteration upon the Grounds that Such Alteration ought to have been made after the filing of the Rejoinder wherein the inconsistency of the dates was particularly Noticed yet Nevertheless the Said Mayors Court having taken the Same into Consideration were of Opinion, that the said Translation should be rectified and Accordingly ordered it to be rectified and your

Petrs

Petitioners Shew that the said Mayors Court did further order and Decree that your Petitioners should pay unto the Complainants the full and just Sum of Six hundred and Twenty Pags. Current Money of Madras being the Amount Sued for with all Such Interest as then was or should thereafter become due thereon untill full payment was made also all Costs of Suit as by the said Decree accompanying this your Petrs. Petition of appeal relation being thereunto had will more fully and at large appear. — From which said Decree of the said Honble Court your Petitioners doth appeal to this Honble Court. Because they are advised and believe the Same to be erroneous and that they are much aggrieved thereby for the following Among other reasons. —

First — Because It has been set forth by your Petrs. in their Answer upon Oath, and the same is afterwards fully proved in Evidence that the full Consideration Money mentioned in the Bond and for which the present action is brought Never was paid by the Complainants, that the Sum of five hundred and Twenty Six Pagodas was all that they became Answerable for and no more which matters of fact has been admitted by the Complainants themselves in their said Replication But in order to Complete the Amount of the Bond and thereby to establish their very unjust demand it is Set forth in the said Replication that the Sum of Ninety Pagodas

was

was afterwards paid and in proof thereof they refer to a paper Writing Copy whereof is annexed to the Replication which the Complainants Charge to be an Acknowledgment by your Pet.rs of the full Consideration Money mentioned in the said Bond being actually received which your Petitioners never can — admit —

Secondly — Because your Petitioners had Clearly shewn in & by their said Rejoinder that the said Paper Writing is unconnected with the present action and the matters thereon depending — inasmuch as the date of the said Acknowledgment is not only Antecedent in date to the date of the Bond upon which the Present action is brought But from the Names and the Sum mentioned in the said Cadjan Writing or Acknowledgment it appears upon the face of it to be a fabrication of the Complainants brought forward with a View Solely to assist their fraudulent attempts on your Petitioner And your Pet.rs having in their said Rejoinder pointed out the inconsistency of date in the said pretended Acknowledgment they humbly insist that the said Complainants ought then to have prayed leave to rectify the Same / had it only been a Mistake in the Translation / for the Statutes of amendment and Jeofail which provided for Mistakes expressly Say that as Soon as such Mistake is perceived By Challenge of the Party or in other manner It shall be hastily amended in due form: and thereupon your Petitioners humbly —

Conceive

Conceive themselves to have been much aggrieved by the said Mayors Court allowing the date of the said Cadjan Writing or Acknowledgment to be altered at the hearing after the Complainants had allowed one year and more to Elapse without taking Notice of it And your Petitioners are the more aggrieved by the order Because a Material part of the defence hung upon this point for relying on the inconsistency of the date which fully controverts what has been Set forth by the Complainants Relative to the said Cadjan Writing or Acknowledgment your Petitioners had refrained from Examing Witnesses to invalidate it and which if the Original had been at first produced and the Mistake or Error Shewn They would Certainly have done your Petitioner however insert that the Evidence of Cuchala and Vengatavangan Witnesses on the part of the Complainants does not Measure Support the said Cadjan — Writing or tend to prove that the same was granted by your Petitioners by way of Acknowledging that the full Consideration in the Aforementioned Bond was paid on the Contrary they both write in Saying that they do not know Whether the said Cadjan writing was granted in full Acknowledgement of the Balance received from the Complainant for and on account of a Bond theretofore Jointly executed by them to the Complainants —

Thirdly — Because there are many inconsistences and — Contradictions in the Evidence adduced by the said Complainants which at once destroys their Credibility and shews the improper

measures.

Measures that were taken by the Complainant in the present Cause amongst some notorious instances of this kind Chela Moola Chitty in his Answer to the last Interrogatory in order / as it were / to make up the neat Sum of five hundred and thirty Pagodas / which in the Replication is Charged to have been paid on account of your Petitioners deposes and says that your Petitioners Pattoo Mastry purchased a piece of Cloth from Cooly Chittyar for the Sum of four Pagodas which Sum the said Chella Mootoo Say's was included in a Bond Executed by the said Pattoo Mastry to the said Cooly Chittyar Amounting to the Sum of five hundred and thirty Pagodas upon these Circumstances your Petitioners have to remark that no such Bond do appear nor is it mentioned in any part of the pleadings in this Cause. —

Fourthly . . . . . Because your Petitioners desirous of avoiding all litigation and ever ready to come to a fair Reckoning with the Complainant admitted in their Answer the Sum of five hundred and forty seven Pagodas and Twenty five fs. to be due which said Sum of five hundred and forty Seven Pagodas and Twenty five fanams is all they had a right to Claim as is Particularly proved in Evidence and Shewn in and by the Rejoinder and the Statement thereunto annexed to which Statement your Petitioner Craves leave to refer and pray it may be taken as part and parcel of this their Petition of Appeal and your Petitioners humbly Conceive that such —

Admission

admission on their part was Equal to an Actual Tender and payment of Money into Court and ought therefore to have operated as a Bar to the payment of Costs of which ought to have been borne by the Complainant their Claim being Secured by a good and Sufficient Mortgage. —

Lastly . . . . . Your Petitioners shew that all these Circumstances having due weight with the Mayor of the said Honble Mayor's Court he Entered his Dissent to the said Decree being of opinion that the Complainants were Entitled to no more than the Sum which your Petitioners had admitted to be due in their Answer as by the said Dissent accompanying this appeal will more fully and at Large Appear. —

Forall which reasons and Such others as may be adduced at the hearing your Petitioners humbly pray that the Decree of the said Mayor's Court may be reversed and that your Petitioners may be only decreed to pay what they have admitted in their answer to the Bill of Complaint that all Costs of Suit may be borne by the Complainants and that this Honble Court will be further pleased to grand such relief as in their Wisdom shall seem Meet. —

/Signed/ George Chalmers
Sol^r for Appellant

Mayor's

Mayors Court
at
Madraspatnam

Tuesday the 28th day of August
Anno Domini 1792.

Present

Andrew Ross Esqr. Mayor,
William Webb and Benj.n Roebuck
Aldermen,

Between Sawmy Chitty and Coaty
Chitty of Madras Merchants Complainants and
Shake Meerah Saib Master and Pattee Master
of the same place Inhabitants Defendants —

This Cause coming on to be heard and debated this day
in the Presence of the Attornies on both sides on Reading the
Complainants Bill with Copy of the Translation of a Mortgage
Bond annexed the Defendants Joint and Separate Bond
Answer the Amended Replication with Copy of the
Translation of an Acknowledgment annexed the Rejoinder
With one Exhibit annexed The Interrogatories and
Depositions on the part of the Complainants with an Original
Discharge and Translate thereof annexed the Interroga-
-tories and Depositions on the part of the Defendants with
an Original Mortgage Bond and Translate thereof
from the Defendants to the Complainants On Hearing the
Pleadings made use of by the Attornies and on due Considera-
-tion 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 Six hundred and Twenty Star Pagodas /P.s 620/
together with all such Interest as now is or shall hereafter
become due thereon untill full payment is made Also all
Costs of this Suit. —

By the Court
/Signed/ George Taylor
Regr.

Extract

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 28th day of August Anno Domini 1792. —

Present

Andrew Ross Esqr Mayor
William Webb & Benjn Roebuck
Aldermen

Sawmy Chitty & Coly Chitty
vers
Shake Meerah Saib Mastry & Pattoo Mastry

The Mayor Dissents to the Resolution of the Court being of opinion that a Decree should be given only for the Sum of Five hundred and forty Seven Pagodas And Twenty five fanams which is acknowledged in the Answer. —

A True Extract
/Signed/ George Taylor
Regr

To

To the Honble Sir Charles Oakeley Baronet,
President in Council,
Fort St George.

In the Honble
the Court of Appeals

Between Shake Meerah Saib Mastry and Pattoo Mastry Appellants and Sawmy Chitty and Coly Chitty Respondents, —

The Answer of the above Named Respondents to the Petition and appeal of the above Named Appellants,

These Respondents admit that they did on or about the time in the appellants said Petition of appeal for that purpose set forth Exhibit and file a Bill of Complaint in the Mayors Court against the Appellants for the Recovery of the Sum of Six hundred and Twenty Star Pagodas Current Money of Madras arisen and grown due in and upon a certain Mortgage Bond Executed by the Appellants unto these Respondents as by the appellants in their said petition of Appeal is more particularly set forth and these Respondents did in and by their said Bill of Complaint charge that they the Appellants had obstinately and wilfully refused to pay the same or to give unto them these Respondents any manner of Satisfaction touching the premises and thereupon did pray a general Relief and that they the appellants might be decreed to pay unto these Respondents

Filed in my Office the 11th Novr 1792
Chas N. White
Clk

the

the said Sum of Six hundred and Twenty Pagodas with all
Such Interest as was then due or that might grow due thereon
And these Respondents Admit that thereupon a Summons
did issue and that the Appellants did appear thereto and
did shortly afterwards Exhibit and file their Answer to
these Respondents said Bill of Complaint and did thereon
Set forth the Several matters and things as in and by their
Said Petition of Appeal the same are particularly recited
And these Respondents Admit that to the Appellants said
Answer they these Respondents did on or about the time for
that purpose in the Appellants said Petition of Appeal set forth
file their Replication and thereon and thereby state the
Several Matters and things in the Appellants
of Appeal set forth and these Respondents Admit that to
these Respondents said Replication the Appellants did
Exhibit and file their Rejoinder in manner and form
And about the time in the Appellants said Petition of
Appeal for that purpose Set forth And these Respondents
Admit that upon the aforegoing proceedings Issue did
Join and Rules did pass for the Examination of Witnesses
And that Witnesses were Examined accordingly on both
Sides and that the Several Witnesses may have deposed
in manner and form as by the Appellants the same are
in their said Petition of Appeal for that purpose particularly
recited and further these Respondents say that thereupon —

Publication

Publication passed and the said Cause was Set down for hearing
And the same coming on to be heard by the said Mayors Court
these Respondents by their Attornies in Court did pray leave
to Observe to the said Mayors Court that there was a Mistake
in the translation of the Exhibit Annexed to these Respondents
Replication which Appeared to bear a Date Anterior to the
date of the Bond Annexed to their Bill of Complaint instead
of its being Subsequent thereto and that they did pray the Court
Interpreter might be called upon to Explain the same and that
it might be altered and then Respondents say Notwithstanding
the Assertion of the Appellants to the contrary that such prayer
on the part of these Respondents were perfectly regular and
proper and that the Appellants ought not Although the same
Was not made prior to the filing of the Appellants Rejoinder
to have attempted to take an Advantage thereof and these
Respondents Admit that the said Mayors Court taking the
prayer of these Respondents as aforesaid into their Consideration
Were pleased to Order and did Accordingly Order that the
Mistake aforesaid be rectified and further to Order and Decree
And did accordingly Order and Decree that the Appellants —
Should pay unto these Respondents the Full and Just Sum of
Six hundred and Twenty Pagodas Current Money of Madras
with all such Interest as then was or should thereafter —
become due thereon until payment be made also all Costs of

the

the Suit.— But these Respondents do not admit that the appellants are in any wise aggrieved by the said Decree of the said Mayors Court or that they have any Just Cause of Appeal therefrom to this Honble Court And in Answer to the appellants first Reason for Appeal these Respondents say that it no where appears in Evidence as the appellants have in and by their said Petition of Appeal erroneously insisted that the full consideration mentioned in the Bond and for which these Respondents did exhibit and file their said Bill of Complaint in the said Mayors Court was not paid on the Contrary the appellants own Evidence do demonstrate the fact as these Respondents in and by their said Replication have stated it to be and at the same time do fully contradict the appellants said Answer and establish the matters and things in these Respondents said Replication set forth for these Respondents say that the appellants in and by their said Answer assert that the Original Sum advanced by these Respondents was five hundred and Twenty Six Pags that they the appellants did afterwards apply to these Respts for the further Sum of Seventy two Pagodas and Twenty fanams but that these Respondents did put off the advancing the same until the month of December when they these Respondents did demand from the appellants a Bond for the said Sum of Six hundred and Twenty Pagodas that they the appellants did thereunto Object for that these Respondents

Respondents had not paid the said further Sum of Seventy two Pags and Twenty fanams whereas these Respondents in and by their said Replication have shewn that the money first advanced by these Respondents to the appellants was the Sum of five hundred and thirty Six Pagodas instead of five hundred and Twenty Six Pagodas and that the Second Sum advanced by these Respondents to the appellants was the Sum of Ninety Pagodas instead of Seventy two Pagodas and twenty fanams— and these Respondents say that to the first point to wit that the said Sum of five hundred and thirty Six Pagodas was the Original Sum advanced by these Respondents instead of five hundred and Twenty Six Pagodas as asserted by the appellants Parrya Braminy one of the Witnesses produced by the appellants deposing to the last Interrogatory says that at the time of the Amount of the debt in question being discharged by these Respondents Cooly Chitty as passing his Bond to him the Deponent this Respondent Cooly Chitty as desired to know from the Petitioner pattoo Mastry what he proposed to say About the balance due by him to this Respondent Cooly Chitty as that thereupon the Petitioner Pattoo Mastry did desire this Respondent to add the same to the Amount of the Bond by this Respondent Cooly Chitty as Executed to the deponent and that this Respondent Cooly Chitty as did in consequence thereof execute a Bond to the deponent for the Sum of

five

five hundred and thirty Six Pagodas and thereupon these
Respondents say it appears by the Appellants own Shewing
that they the Appellants had Suppressed the truth in and by
their said Answer in stating the Original Sum to have
been five hundred and Twenty Six Pagodas instead of
five hundred and thirty Six Pagodas for which the debt due
to the said Parrya Braminy by the appellants and for
which these Respondents became accountable did not exceed
the Sum of five hundred and Twenty Six Pagodas yet
that there was at the time of Executing the said Bond to
the said Parrya Braminy by these Respondents a
Balance due to these Respondents from the Appellants
and that the said Balance was with the consent or rather
by the directions of the Appellant Pattoo Mastry added to
the said Sum of five hundred and Twenty Six Pags
And that the Whole together made as these Respondents
have hereinbefore shewn the fact to be the Sum of five
hundred and thirty Six Pagodas and these Respondents
Say that to the Second point to wit that the Sum of
Ninety Pagodas was the balance which remained
due to the Appellants instead of the Sum of Seventy
two Pagodas and Twenty Fanams as by them the
Appellants is asserted Cooram Saib a Witness produced
also by the Appellants deposing to the third Interrogatory
Says that he has looked at the paper Writing produced

and Shewn to him at the time of his Examination Marked
N° 1. purporting to be a Mortgage Bond Executed by the
Appellants to these Respondents and says the same was
produced by this Respondent Coty Chitty as to be executed
by the appellants in the Deponents presence and says that
the said Bond was drawn out on account of a Sum of
Money which these Respondents agreed to pay to one Perya
Braminy to whom the Appellants were indebted and the
Deponent says that there was a certain Balance Amounting
to Ninety four Pagodas wanting to Compleat the amount of
the said Bond at the time it was produced for Execution
and the deponent to the last Interrogatory says that he the
Deponent was often sent by the Appellants to demand
the said Balance from these Respondents and these
Respondents in further support of their said demand
and in Order to Shew that the Balance remaining due
at the time of the Execution of the said Bond by the
Appellants to these Respondents was afterwards paid
by these Respondents to the Appellants say that they these
Respondents did exhibit in the said Mayors Court a
Cadjan Writing executed by the Appellants Pattoo Saib to
this Respondent wherein and whereby the Appellants do
acknowledge that all accounts between this Respondent
Cottee Chitty as and him the Appellant Pattoo Saib regarding
the said Bond were adjusted and thereupon these

Respondents

Respondents say that whatever Balance was due to the
Appellants at the time of Executing their said Bond to these
Respondents either of Seventy Two Pagodas and Twenty
fanams as insisted on by the appellants or of Ninety Pags
as stated by these Respondents the same was afterwards
paid to the Appellants by these Respondents and that
every thing was then finally settled to the Satisfaction
of the Appellants and therefore these Respondents say
that the appellants first Reason for Appeal is without
any manner of foundation. —

And these Respondents to the Appellants Second
Reason for Appeal say notwithstanding the shewing
of the Appellants in their said Recpender contained
And by them referred to in and by their said Petn
of Appeal relative to the date of the said Cadjan Writing
a Copy translation whereof is annexed to these Respondents
Said Replication that the said Cadjan Writing is
connected with the matters in Question and that the
date thereof is not antecedent but subsequent to the date
of the said Bond by the Appellants Executed to these
Respondents & this Respondents further say that the Error relied on by the
Appellants relative to the date of the said Cadjan Writing
was apparent only in the translation thereof and not in
the Original instrument itself and it was upon that

Consideration

consideration that the said Mayors Court were pleased to
rectify the said Error at the hearing and the said mayors Court
in order to penetrate the fact and thereon to do substantiate
Justice to the parties did call upon the Interpreter and
in open Court did examine him thereto as by a Copy of
the Extract of the Minutes of the said Mayors Court —
hereunto annexed for the inspection of this Honble Court.
Reference being thereunto had may Appear and the said
Mayors Court being from such the Examination of the
said Translator as aforesaid fully convinced that the
said Error was the Error of the said Translator and not
an Error on the part of these Respondents did order and direct
that the said Translation should be Amended and the same
was Amended accordingly and further these Respondents
say that it was not the Cadjan Writing which was amended
as insinuated by the Appellants in and by their said Petn
of Appeal but the translateon thereof as hereinbefore shewn
by these Respondents for these Respondents say that the said
Cadjan Writing remains as the same was delivered into the
Office of the Examiner of the said Mayors Court by these —
Respondents unaltered and untouched and therefore these
Respondents humbly submit to this Honble Court that the —
Appellants in proceeding upon the translateon without having
Reference to the Original thereof and attempting to take —

Advantage

advantage of an Error in the said Translation which did not Exist in the said Original Instrument have so attempted to Advantage themselves of their own wrong and therefore these Respondents further humbly Submit to this Honble Court that the Appellants were not in any wise aggrieved by the Amendment made by the said mayors Court in the said Translation as aforesaid and these Respondents say that it was not the said Translation but the Original Cadjan Writing that was examined to in the Course of Evidence adduced by these Respondents and notwithstanding the insenuation of the appellants to the Contrary the Original of a Translation is not produced in the course of the Pleadings in the said Mayors Court unless Oyer thereof be prayed by the opposite party and therefore that the Neglect on the part of the appellants to pray Oyer of the Cadjan Writing in question cannot go to Shew any misconduct or improper design in these Respondents although the appellants would insinuate the truth so to be but these Respondents humbly Submit to this Honble Court that the appellants in attempting to take an advantage of an Error in the Translation without praying Oyer of the Original thereof when in their power so to do evince an intention to Suppress or evade the truth by every Means in their power thereby to injure these Respondents in the premises and the More particularly as the appellants in and by their said Rejoinder do admit that these Respondents in and by their said Replication did tender the Original Cadjan Writing Whereof a Copy is to these Respondents said Replication annexed and the appellants have not in and by their said Rejoinder denied the Execution of the said Cadjan Writing but attempting to take advantage of an Error in the translation thereof have evaded the question. — And these Respondents say that Cauchalay and Vancataroyn the Subscribing Witnesses to the said Cadjan Writing do depose fully and clearly to the due execution thereof by the appellant Batta Saib and although as the appellants have asserted that the said Cauchalay and Vancataroyn do not pretend to say that the said Cadjan Writing was granted by the appellants in full Acknowledgment of the Balance received from these Respondents on account of the Bond by the appellants Executed to these Respondents yet the said Vencataroyn deposing to the third Interrogatory says the appellant Pattoo Saib did acknowledge in the presence of him the deponent that he had received the Amount of the Cadjan Writing in question and Tondaray Naicker to the fourth Interrogatory deposes that these Respondents did in his

presence

presence demand from the appellant Pattoo Saib the Sum of Six hundred Pagodas and upwards and that he the said Pattoo Saib did acknowledge the Justness thereof and promise to discharge the same in a few months and thereupon these Respondents say that the appellants said Second Reason for appeal is without any manner of foundation. —

And these Respondents in answer to the appellants third Reason for appeal say that there are not any Contradictions in the testimony of the Witnesses produced by these Respondents and that notwithstanding the Assertion of the appellant to the Contrary the Credibility of the said Witnesses does stand unimpeachable and further these Respondents say that the pretended Notaries instance adduced by the appellants in Support of Such their assertion that the appellant pattoo Saib had purchased a piece of Cloth from this Respondent Cooly Chitty ar for the Sum of four Pagodas and which was included in a Bond — Executed by the appellant Pattoo Saib to this Respondent Cooly Chitty ar has no relation to the matter in question but these Respondents say that the appellants in adverting to impertinent matter in the testimony of one of the Witnesses produced by these Respondents ought not therefrom to assert that there are many inconsistences

And

and contradictions in the Whole of the Evidence Adduced by these Respondents and that their credibility is thereby — destroyed for that would be to render the concurrent testimony of many persons dependant upon the testimony of one — person instead of rendering the testimony of one person — dependant upon the Testimony of Many and thereupon these Respondents humbly Submit to this Honble Court that the Assertions of the appellants in their said third Reason contained are contrary to the truth and in course that the said Reason for appealing to this Honble Court from the said Decree of the said Mayors Court is unfounded. —

And in answer to the appellants fourth Reason for Appeal these Respondents say that the Assertion therein contained to wit that it is particularly proved in Evidence that the Sum of five hundred and forty Seven Pagodas And Twenty five fanams was all these Respondents had a right to claim from the appellants is contrary to the truth for these Respondents say that the two Witnesses produced by the appellants instead of Supporting the defence stood up by the appellants against the Claims of these Respondents do confute and contradict the matters And things in the appellants said Answer and — Rejoinder contained and do Support and Maintain these

Respondts

Respondents said Bell and Replication in manner and form as hereinbefore stated by these Respondents and therefore these Respondents say that the pretended desire of avoideng all litigation and Coming to a fair reckoning with these Respondents as insinuated by the appellants in and by their said fourth Reason of appeal for the Sum of five hundred and forty Seven Pagodas and Twenty five fanams instead of Six hundred and Twenty Pagodas the Sum actually due to these Respondents is altogether fallacious and these Respondents say that the appellants Rejoinder by them referred to in and by their said fourth Reason of appeal is full of evasion and that the appellants instead of giving a fair and Equitable Statement have therein and thereby endeavoured by every Means to Suppress the truth and these Respondents humbly Submits to this Honble Court that the argument of the appellants relative to a tender of the Sum of five hundred & forty Seven Pagodas and Twenty fanams is Contrary to Reason and to the Law for that to make a tender in Order to Bar Costs it is absolutely Necessary that the tender be made in Court and not by expressions as used by the appellants but by tendering the Sum by the Defendant acknowledged to be due and therefore these Respondents say that the appellants said

fourth

fourth Reason for appeal to this Honble Court from the said Decree of the said Mayors Court is unfounded —

And to the last Reason urged by the appellants these Respondents say that the Matters and things therein contained and therein and thereby referred to is new Matter which was not read at the hearing of the Cause and Contrary to a late Order of this Honble Court and to the Course thereof and therefore these Respondents do Object thereto and to every part thereof and do humbly pray that the same may be Expunged with Costs. —

For all which Reasons and Such other as may be offered at the Hearing these Respondents humbly pray that this Honble Court will be pleased to affirm the Decree of the said Mayors Court and to dismiss the appellants said Petition of appeal with Costs. —

/Signed/ Jos L. Wall
for himself &
John Hamilton
Solrs for Respts

Extract

Extract from the Minutes of a Court Held at the Town Hall on
Tuesday the 28th. day of August Anno Domini 1792,

Present

Andrew Ross Esqr. Mayor,
William Webb and Benjamin Roebuck
Aldermen, —

Sawmy Chittyar and Cooty Chittyar

vers.

Shakemeerah Sub masty & Pattoo Masty. —

Bill with Copy of the Translation of a Mortgage Bond
annexed Read. —

Joint and Separate Answer Read,

Amended Replication with Copy of the Translation of an
acknowledgment Annexed Read, —

Rejoinder with an Exhibit Annexed Read, —

Interrogatories on the part of the Complainants with an
Original discharge and Translate thereof annexed Read

Six Depositions taken thereunto Read the Witness No. did not
appear for Examination, —

Interrogatories on the part of the Defendant with an Original
Exhibit and translation thereof annexed Read, —

Two Depositions taken thereunto Read. —

The attornies for the Complainants pray leave to observe
to the Court that there is a mistake in the translation of the
Exhibit

Exhibit annexed to the Replication which appears to bear date
anterior to the date of the Bond annexed to the Bill of
Complaint whereas it ought to be Subsequent and therefore pray
that the Court Interpreter may be called upon to Explain the
Same The Interpreter thereupon informs the Court that there is
a mistake in the Translation of the Exhibit and that the
Original of it bears date Subsequent to the Bond and that
the Translation ought to be dated the 27th. February
1790 instead of 27th. February 1789 the Interpreter by
permission of the Court is asked by the opposite attorney
Whether if there had been an erraseure or alteration in the
Original Cadjan it would have been discovered — he
answers that it must. — the attorney for the Defendants
objects to the alteration prayed for as the application
for it ought to have been made after the filing of the
Rejoinder wherein the inconsistency of the dates was
particularly Noticed. — The Court having taken the
Same into Consideration it is Ordered that the Translation
be rectified according to the Explanation given by the
Interpreter. —

A True Extract

a true Copy / Signed / G. Taylor Regr.

Signed / J.S. Hall
Pothinoly &
John Hamilton } Sols. for Respts.

Court of

Court of Appeals at Madraspatnam } Saturday the 19th day of April Anno Domini 1794

Between Shake Meera Saib Mastry and Battoo Mastry of Madras Inhabitants Appellants and Sawmy Chitty and Coaty Chitty of the same place Merchants Respondents.—

This Cause coming on this day to be heard and debated before this Court by the Attornies on both sides upon hearing the Petition of appeal and Answer and the Several Exhibits of the Honble the Mayors Court together with the Decree of the said Court given in this Cause on Tuesday the 28th day of August 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 and Decree and doth Accordingly Order and Decree that the said Decree of the Honble the Mayors Court do stand Affirmed and that the Appellants Petition be hence dismissed with Costs. And the Court do further Order that as the last reason offered by the Petitioner as Cause of appeal is new matter the same be expunged with Costs.—

Pr Her /Signed/ Cha.s N. White Clk.t

To

To the Honble Major Gen.l Wm. Medows President in Council

In the Court of Appeals at Madraspatnam } Fort St George,

Between Maurvancy Pollam Battoo of Madras Inhabitant Complainant and Stephen Towns Captain in the Service of the Honble the united English East India Company under their Presidency of Fort St George Defendant —

The humble Petition and Appeal of the above named — Defendant

Sheweth,

Filed in my Office the 29th Oct.r 1790 Cha.s N. White Clk.t

That the said Complainant did on the third day of August Now last past file a Bill of Complaint in the Honble the Mayors Court at Madraspatnam against your Petitioner for the Recovery of the Sum of Two thousand five hundred and fifty three Pagodas Charged to be due upon an Account Current and Mortgage Bond or Obligation Copies whereof are annexed to the said Bill of Complaint To which said Bill of Complaint your Petitioner on the Twenty first day of September last past filed his Answer wherein your Petitioner stated that the Complainant ought not to have or maintain his said action against your Petitioner because your Petitioner

said

Said that altho he admitted he signed the Mortgage Bond Copy
Whereof is annexed to the Complainants Bill and altho he also
Admitted that there was due to the Complainant upon the said
Bond for Principal and Interest the said Sum of Two thousand
five hundred and fifty three Pagodas as in the Complainants
Said Bill and Account Current thereunto Annexed is Set forth
Yet he said that the Complainant ought not therefore to have
filed his said Bill against your Petitioner in the said Mayors
Court for Recovery thereof because the Complainant had his Remedy
to recover the Principal and Interest that might grow due
upon the said Mortgage Bond by Virtue of an Authority
or Agreement in the said Mortgage Bond given to him
by your Petitioner to sell the Premises so mortgaged by him
for for Securing the Principal Sum and Interest to become
due thereon by public Outcry in Case Default should be made
in payment of the Principal and Interest on the day and time for
that Purpose mentioned as by Reference to the said mortgage
Bond under Date the first day of August One Thousand Seven
hundred and eighty nine Copy Whereof was annexed as aforesaid
to the Complainants said Bill of Complaint would more fully
And at Large appear — And your Petitioner further said
that the afterwards wrote to the Complainant authorising
him also to Sell the said Mortgaged Premises agreeable
to his said agreement with him for that purpose therefore
your Petitioner Submitted to the said Mayors Court whether

under

under the above circumstances the Complainant had not acted
illegally by filing his said Bill of Complaint against
your Petitioner when he had such a Remedy as above
Stated and your Petitioner further submitted to the Consideration
of the said Mayors Court in Case the should be of Opinion that
the Complainant was warranted in filing his said Bill whether
your Petitioner ought not to be allowed an Indulgence of Twelve
or eighteen Months time or such other time as to the said
Mayors Court should seem meet to pay the Principal money
And Interest due or to grow due on the said Mortgage Bond
And that in the meantime all Proceedings upon the said Bill of
Complaint might be postponed And he was the more encouraged
in the hope of a benign attention from the said Mayors Court
to the peculiar Circumstances of his Situation Because the
Lord Chancellor of Great Britain has set an Example
of the like Clemency during the general Distresses of the late
War by postponing the foreclosure of the Equity of Redemption
on Mortgaged Estates while the War raged and the price of the
Lands were much below their real and intrinsick Value more
especially so as the Complainant had got such an ample Security
for the Payment of his said Mortgage debt and Interest
that might grow due thereon in the meantime for that your
Petitioner had laid out a considerable Sum of Money on the said
Premises and they were much improved thereby —

Your

Your Petitioner Sheweth unto this Honble Court that upon the aforesaid Bill and Answer the Cause was set down for Hearing and Came on to be heard by and before the said Mayors Court on Saturday the Sixteenth day of this Instant October when the said Mayors Court thought fit to Order and Decree and did accordingly Order and Decree that your Petitioner should pay unto the Complainant the said Sum of Two thousand five hundred and fifty three Pagodas together with all such Interest as then was or should thereafter become due thereon until full Payment was made also all Costs of the Suit. —

From which said Decree of the Mayors Court your Petitioner now Appeals to this Honble Court of Appeals as he conceives the same to be erroneous and that he is aggrieved thereby for the Reasons above stated and such others as may be offered at the Hearing. —

/ Signed / Popham
Sol.r for appellant.

Mayors Court

Mayors Court
at
Madraspatnam

Saturday the 16th day of October
Anno Domini 1790.

L.S.

Present,
James Call Esq.re Mayor,
William Webb and Andrew Ross
Aldermen,

Between Maurrancy Poollambutloo
of Madras Inhabitant Complainant and
Stephen Towne Captain in the Service of the
Honble the United English East India
Company under their Presidency of Fort St George
Defendant. —

This Cause Coming on to be heard and debated this Day in the Presence of the Attornies on both Sides on Reading the Complainants Bill with Copies of an Account Current and Mortgage Bond or Obligation annexed, the Defendants Answer On Hearing the Pleadings Made use of by the Attornies and on due Consideration had thereon This Court doth think fit to Order and Decree and doth accordingly Order and Decree that the Defendant Shall pay unto the Complainant the full and just Sum of two thousand five hundred and fifty three Pagodas / Pags. 2553 .. / together with all such Interest

Interest as now is or shall hereafter become due thereon Untill
full Payment is maide also all Costs of this Suit.—

Wur

/Signed/ G. Taylor Regr.

To the Honble Major Genl. Wm. Medows
President in Council of
Fort St George,

In the Court of Appeals
at Madraspatnam

Between Waurnancy
Pollam Battloo of Madras
Inhabitant Respondent and
Stephen Towns Captain in the
Service of the Honble the United
English East India Company
under their Presidency of
Fort St George Appellant,

The Answer of the abovenamed Waurnancy
Pollambattloo to the Petition and appeal of the above
Named Stephen Towns.—

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

This Respondent admits that
he did on the third day of August now last past file a
Bill of Complaint in the Honble the Mayors Court at
Madraspatnam against the said Appellant for the Recovery
of the Sum of Two thousand five hundred and fifty three
Pagodas charged to be due upon an Account Current and
Mortgage Bond or Obligation Copies whereof are
annexed

Annexed to the said Bill of Complaint to which said Bill of Complaint of this Respondent the appellant did on the Twenty first day of September last past file his answer ~~the same~~ wherein the said appellant Stated that this Respondent ought not to have or maintain his said action against the appellant because the appellant said that altho he admitted he Signed the mortgage Bond Copy whereof is annexed to this Respondents Bill of Complaint and altho he also admitted that there was due to this Respondent upon the said Bond for Principal and Interest the said Sum of Two thousand five hundred and fifty three Pagodas as in this Respondents said Bill and account Current thereunto Annexed is set forth yet he said that this Respondent ought not therefore to have filed his said Bill against the Appellant in the said Mayors Court for recovery thereof because this Respondent had his Remedy to recover the Principal and Interest that might grow due upon the said Mortgage Bond by Virtue of an Authority or Agreement in the said Mortgage Bond given to him by the appellant to Sell the Premises so Mortgaged by him for Securing the Principal Sum and Interest to become due thereon by Public Outcry in Case Default should be made in Payment of the Principal and Interest on the day and time for that purpose mentioned as by Reference to the said Mortgage Bond under date the first day of

of August One thousand Seven hundred and Eighty nine Copy whereof was annexed as aforesaid to this Respondents said Bill of Complaint would more fully and at Large appear and the appellant further said that he afterwards wrote to this Respondent authorizing him also to Sell the said Mortgaged Premises Agreeable to his said Agreement with him for that purpose therefore the appellant ~~it~~ Submitted to the said Mayors Court whether under the above Circumstances this Respondent had not acted illegally by filing his said Bill of Complaint against the appellant when he had such a Remedy as above stated and the appellant further Submitted to the Consideration of the said Mayors Court in Case they should be of Opinion that this Respondent was warranted in filing his said Bill whether the appellant ought not to be allowed an Indulgence of Twelve or Eighteen Months time or such other time as to the said Mayors Court should seem meet to pay the principal money and Interest due or to grow due on the said ~~the~~ Mortgage Bond and that in the Meantime all Proceedings upon the said Bill of Complaint might be postponed and he was the more encouraged in the hope of a benign attention from the said Mayors Court to the peculiar Circumstances of his Situation because the Lord Chancellor of Great Britain had set an

Example

Example of the like Clemency during the General Distresses of the late War by Postponing the foreclosure of the Equity of Redemption on Mortgaged Estates while the War Raged and the Price of the Lands were much below their real and intrinsick Value more Especially so as this Respondent had got such an ample Security for the Payment of the said Mortgage Debt and Interest that might grow due thereon in the Meantime for that the appellant had laid out a considerable Sum of Money on the said Premises and they were much improved thereby — This Respondent doth further Admit that upon the aforesaid Bill and Answer the Cause was Set down for hearing & came on to be heard by and before the said Mayors Court on Saturday the Sixteenth day of October when the said Mayors Court thought fit to Order and Decree and did accordingly Order and Decree that the said appellant should pay unto this Respondent the Said Sum of Two thousand five hundred and fifty three Pagodas & together with all such Interest as then was or should thereafter become due thereon untill full Payment was made also all Costs of the said Suit — But this Respondent cannot admit that the said Order or Decree of the said Mayors Court was erroneous or that the appellant could be aggreeved thereby. —

First ——— Because this Respondent has required no more than to be put in possession of his own Just rights as Stated in his Said Bill of Complaint and as fully acknowledged and admitted by the said appellant in his Answer thereto. —

Secondly ——— Because this Respondent cannot without the Sanction and Authority of the Law dispossess the said appellant of the Property now possessed by him notwithstanding Such property is so Mortgaged as aforesaid as a further Security by the said appellant to this Respondent for the Amount of the Purchase money thereof. —

For all which Reasons and Such others as may be offered at the Hearing this Respondent humbly prays that the Decree of the said Mayors Court so made and passed as aforesaid may be affirmed and the Petition of the said appellant be dismissed with Exemplary Costs. —

/Signed/ John Hamilton
Sol.r for Respondent

Court of

Court of Appeals
at
Madraspatnam } for Saturday the 19th day of April
Anno Domini 1794.

Between Stephen Town Captain in the Service of the Honble the united English East India Company under their Presidency of Fort St George Appellant and Waurnancy Pollambattoo of Madras Inhabitant Respondent

The Attorney for the appellant having moved for leave to withdraw his appeal on each party Paying their own Costs and the Attorney for the Respondent having Consented thereto,—

Ordered accordingly

Hur / Signed / Chas N. White
Clk

To the Honble Major General,
Sir Archibald Campbell Kt. &c.,
President in Council
In the Honble the Court of } Fort St George,
Appeals at Madraspatnam }

Between Annah Sawmy of Madras Inhabitant by his attorney Charles Darke of Fort St George Merchant Complainant and Pungatoore Chenglevoy Also of Madras Inhabitant Defendant

The Petition and Appeal of the above named Annah Sawmy,

Sheweth

That your Petitioner by his Attorney the above named Charles Darke did sometime on or about the Seventeenth day of July One thousand Seven hundred and Eighty Eight file and Exhibit a Bill of Complaint in the Honble the Mayors Court against the above named Pungatore Chenglevoy that a Summons did issue thereon to which the said Pungatore Chenglevoy by his attorney Henry Dalley did appear, and Affidavit having been made to the Debt Bail was prayed for by your Petitioner for the Amount of the

Filed in my Office
the 25th August 1788.
Chas N. White
Clk

of the Sum so proven to be due the Same being perfectly confor-
=mably to the long established Rules of the Court and the
instructions sent out with the Charter at its Original
constitution but the opposite attorney having stated Some
Errors in the Bill of Complaint the Honble the Mayors
Court were pleased to refuse the Prayer of your Petitioner
who therefore in order to obtain the same and so procure
that Pledge which was absolutely Requisite to the
Security of his demand and to ensure a Benefit from
the Decree that might be given in his Favor against
the said Pungatore Chengleroy thought it most proper
to amend his Bill of Complaint and did Accordingly
on about the Fifth day of the present Month of
August file an amended Bill correcting therein all Such
Errors as had been stated by the opposite attorney to have
existed in the former Bill and on which he grounded his
argument against Bail being granted to your Petitioner
And thus having obviate every difficulty and Objection your
Petitioner did therefore again make the Usual and
Customary Prayer for Bail to be granted an Oath being
made to the Debt to which the attorney for the said Pungatore
Chengleroy did object alledging that an Amended Bill was
only a Continuation of the Original Bill and that as the
Court had been pleased to grant common Bail only to

Such

Such Original Bill they ought not to allow Special
Bail to the Amended Bill to which mode of Reasoning
your Petitioners attorney did oppose every legal Argument
And state the constant and invariable practice of the Court
in Support of his Right to the Bail he had prayed
but the Honble the Mayors Court were pleased to Order
that the Motion for Special Bail should be over
Ruled as appears by a Copy of Such Order hereunto
annexed for the inspection of this Honble Court marked
A to which your Petitioner begs leave to refer and
prays it may be taken as part of this his Petition and
appeal.

By which said Order of the Honble
the Mayors Court your Petitioner conceives himself much
aggrieved and therefore Appeals therefrom to the Judgment
of this Honble Court for the following amongst other Reasons

First — Because as it is the Practice of Every
Court of Equity and particularly of the Honble the Mayors
Court to grant Bail to a Complainant on Oath being
made to the Debt thereby to render effectual any decree
that might be given in his favor the Honble the Mayors
Court ought to have granted Bail in the first instance
to your Petitioner but having refused so to do on
account of Same Errors stated by the opposite attorney
to have been apparent on the face of your Petitioners

Said

Said Bill of Complaint when such Errors were rectified in order to meet the full approval of the Court — your Petitioner humbly conceives the said Honble the Mayors Court ought to have granted him Bail when Prayed for on his amended Bill without entering into any further discussion on the Subject. —

Secondly ——— Because agreeable to the practice of the Honble the Mayors Court although an amended Bill might be considered as a Continuation of the Original Bill yet Process is had thereon in the same manner as on the Original Bill that is a Summons issues and an Oath being made to the Debt Bail is granted: a practice so frequently arising that every years Record is marked with several precedents, one of which Selected for its recent Occurrence from amongst a Number of others Appears in the Cause Hanamontha Naigue by his attorney James West — vers Mahomed Hussain Tauker Dwn and Abbdellah Dwn: an amended Bill was filed on the Seventeenth day of June in the present year One thousand Seven hundred and Eighty Eight a Summons issued and Bail was prayed on Oath being made to the debt. the attorney for the Defendants objected: but the Court were pleased to Order that Special Bail should be put in or that in default thereof a Warrant of Arrest should issue. — &

Thirdly

Thirdly ..... Because nothing can be more reasonable or more consistent with the Spirit of Justice than that the Defendant Should give Bail to the Plaintiff equal in Value to the Sum Sued for for unless such Security is given, on a decree being obtained in favor of the Plaintiff the Defendant may abscond and so, instead of receiving that Equity which his claim was entitled to and which the Law had Sanctioned the Plaintiff would lose both the Debt Sued for, and the Charges that had arisen from the Necessary process he had carried on for the purpose of obtaining his Right to Strengthen this proposition it is declared in the 4th Instant 270 — that where the Debt Amounts to ten Pounds, Special Bail or Surety must be taken such as subsidy men at least — And they according to the Value" — And to carry the whole with the greater force in favor of your Petitioner — your Petitioner begs leave to Shew that the said Pungatore Chengleroy has filed a demurrer to your Petitioners said Bill of Complaint whereby he acknowledges the Justness of your Petitioners demand for the Books say — "A Demurrer is Admitting the "Matter of fact since it refers the Law arising on the "facts to the Judgment of the Court and therefore the "fact is taken to be true on Such Demurrer or otherwise

"the

" the Court has no foundation on which to make any
" Judgment Gell. N. P. D. 55" dreading therefore
a Decree, which the said Pungatore Chenglroy has by
his said Demurrer shewn he is persuaded will
ultimately go against him he provides against its
consequences by avoiding giving that Bail which
your Petitioner has justly required, and which he is
legally entitled to: and thus Circumstanced your Pet.
is without Remedy and must expect to lose his property
even after the Law may have decreed in his favor
unless this Honble Court will grant him that Remedy
which he has been refused in the Court below.

Your Petitioner therefore most humbly prays
that you will be pleased to Set a Side the
Order of the Honble the Mayors Court of the
Twelfth day of this present month of
August direct the said Pungatore
Chenglroy to be held to Special
Bail agreeable to the Practice of the
Court of Chancery and the Honble the
Mayors Court and further grant unto
your Petitioner such other general
Relief as he may appear to deserve
and which in your Judgment may

Seem

Seem Meet.—

/Signed/ J. Stuart Hall,
Sol.r for the appell.t

Extract

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 12th day of August Anno Domini 1788.—

Present

Edward Garrow Esqr. Mayor,
Sir John Menzies J.r D. Porcher
and Andrew Ross,
Aldermen,

Anna Sawny Executor of Coomba have Comaroo Goroonadeum Decd

vers

Pongatoore Shengleroy

Summons on the Amended Bill returned Served the Defendant appears by his attorney Mr. Henry DeLeon The attorney for the Complainant prays that the Defendant May be held to Bail upon Oath being made to the Debt to which the attorney for the Defendant objects because an Amended Bill is only a continuation of the Original Bill and makes but one Record and as the Court have Already determined that the Defendant Should only be held to Common Bail on the Original Bill he therefore objects to his now being held to Special Bail upon the Amended Bill The Court having taken the Same into Consideration it is ordered that the Motion for Special Bail be Overruled

The attorney for the Defendant prays that he may be allowed one Week to plead or Demur the Bill of Complaint being of a very considerable length and Special to which Mr. Hall attorney for the Complainant objects as the time limitted by the Rules of Court for filing a Demurrer is expired the Court having taken the Same into Consideration it is Ordered that one Week be allowed to plead or Demur.—

A True Extract
/Signed/ Ja.s Taylor Regr.

A true Copy /Signed/ J.S. Hall Solr for appellant

In

In the Honble the Court of Appeals at Madraspatnam

The Answer of Poongatoore Chengleroy Respondent to the Petition and Appeal of Annah Sawmy also of Madras Inhabitant by his attorney Charles Darke of Fort St George Merchant appellant

In the Cause of

Annah Sawmy of Madras Inhabitant by his attorney Chs Darke of Fort St. George Merchant Complainant and Poongatoore Chengleroy Defendant

Filed in my Office the 12th November 1788
Chas S. White Clk

This Respondent admits that the appellant did on the Seventeenth day of the month of July in this present year of Our Lord One thousand Seven hundred and Eighty Eight file a Bill of Complaint in the Honble Mayors Court at Madras for the Sum of fifty three Thousand three hundred and fifteen Pagodas thirty fanams and thirty four Cash But this Respondent doth deny that the appellant did set forth in such his said Bill of Complaint the Sundry matters and things by the appellant Charged to have been therein set forth — and this Respondent saith that the said matters are irregularly introduced

introduced in the said Appeal as not having relation to the proceedings on which the Decree of the said Mayors Court appealed from is founded, and are moreover not truely stated in many parts and in others entirely untrue And void of Reality and this Respondent Saith that the Appellant hath done wrong to make matters part of the proceedings in the Mayors Court as if the Same had been the Grounds of their Decree which did not ever exciet before them, — And the Appellant hath With Submission done a great Contempt Against this Honble Court by making matters part of his appeal which are not Warranted by the proceedings and Decree appealed from — and this Respondent Saith that Such unfair interpotation of matter not Warranted by the Original proceedings doth commence at the Seventh line of this Respondents Office Copy of the Said Petition and appeal after the Words thirty four Cash „ in the Words —". For that Sometime „ and doth end at the Words, judge insufficient in the 69th line composing 610 Words which at Fa. 21. for every ninety Words is Pags. 3„ 3¼„ 30. which the Respondent has paid over and above what was Necessary and practiced in bringing an appeal from a Decree of the Mayors Court to this Honble Court, in doing which no new or foreign matter is admitted and this Respondent

therefore

therefore prays that this Honble Court will be pleased to mark such a Conduct with such disapprobation as they may deem exemplary — And this Respondent Saith that the appellant did withdraw his aforesaid Bill of the said Seventeenth day of July — And did pray to amend it which the appellant did under the Title of Annah Sawmy of Madras Inhabitant Executor to the last will and Testament of Pambavie Comaroo Coroonadom Moodelly deceased under and by Virtue of the Order of this Honble Court by his attorney Charles Darke of Fort St George Free Merchant; And this Respondent doth admit that the appellant did therein refer to an Account Current annexed unto his said amended Bill of Complaint for the particulars of the said pretended Balance thereof being the same amount as Sued by the aforesaid former Bill but the appellant hath not these words in the said amended Bill due to him as Executor as aforesaid And this Respondent Saith that he did appear to the said amended Bill and did pray time to plead and Demurr which was granted and the appellant did pray for special Bail which was denied — And this Respondent saith that he was not convinced in any degree of the justness of the appellants demand and did therefore and upon the Evident and glaring demerits of the said Bill, think it rather Advisable for him to Demurr thereto than fall into the design of the appellant and his

his agent or attorney which was to harrass this Respondent with a litigious and expensive Law Suit — And this Respondent Saith that he did not thereby depart from the line of Equity but did preserve the same with the most practical attention and Observance and it is rather the appellant and his said agent or attorney who have departed from the line of Equity by refusing to conform themselves in their Proceedings to the prescribed Rules of Law and practice — By suing under a proper Title without which the appellant had no Right to commence his said Action — And this Respondent Saith that the said appellant not having sued under a proper Title and addition and for other Defects — This Respondent did Demurr to the said Bill — because he was not bound by Law or Equity to Answer unto the said Bill under the imperfections and defects it contained — And this Respondent Saith that his said Demurr did not contain any Matter than was Necessary for the purpose of pointing out the insufficiency of the said Bill notwithstanding the inconsistency of the appellants Assertion that it is both declamatory and General — And this Respondent saith that the said Demurrer is according to the Strict Rules and

forms

forms of practice of the Right Court of Chancery which is followed by the said Mayors Court — and this Respondent Saith that according to the practice of the said Court the appellant ought to have Stiled — himself Executor of the Last will and Testament of the said Pombavie Comaroo Codroanadeum Moodelliar And that he had duly taken out Probate thereof as Such and had taken upon himself the burthen and Execution of the said last will and Testament and not generally to have alledged that he was Executor to the Last will and Testament under and by Vertue of the Order of the said Mayors Court because the Same is inconsistent and informal — And the appellant was bound by the Rules of practice to have shewn by his said Bill litterally and expresely to declare that he had if so had been the Case duly proved the said last will and Testament and also that he had taken out Probate thereof and moreover to have made a tender of Such Probate of the said Will by his Said Bill and the appellant having been defective in the Smallest and first Requisite to entitle him to Sue this Respondent was not bound to Answer to the said Bill — And the Reason of this practice

is

is consonant to the Rules of Equity and Natural — Justice, because as the appellant is allowed by Law to Sue in Right of another that is under the will of the Testator — It is required by Law that he as Executor has done all those acts which are Requisite to qualify him to the advantage of the Law by bringing actions or otherwise — which the appellant cannot do without proving the will and taking out Probate and this Respondent therefore Saith that the want of Such indispensable parts to the said Bill did render it demurrable in Law and the appellant instead of joining in Demurrer ought to have prayed the Mayors Court to amend his Bill by the addition of Such matters as it was before defective in and this Respondent Saith that no instance can stronger Shew the wilfullness of the appellant in not attempting to be allowed to amend the said Bill than his joining in Demurrer as if thereby he could cure or help any defect in the said Bill — on the Contrary this Respondent Saith that the appellts Joinder doth itself point out the informality of the Said Bill — by the quotation of the Records of the said Mayors Court — Because if the said Joinder doth Shew any thing at all it doth Shew

that

Shew that the appellant had been informal irregular and defective — altho he had it in his Power to be formal Regular and perfect but did not chuse to be so — And this Respondent Saith that if the appellant had had the Merits which he setforth in his said Joinder he ought to have grounded his Bill upon them for the purpose of giving himself a good title to Sue and commence actions because it is the proving of a Will and taking out Probate thereof which at once put in executor in the Right of Suing others and which gives a Right to others to Sue him — And therefore not only necessary to be done but indeed indispensable as the Right of Suing an Executor cannot be grounded but upon his Right to Sue. —

And this Respondent Saith that the said Joinder is informal and irregular and ineffectual to the purpose of establishing the said Bill — Because by an Allowance of the Joinder which contains what ought to be declared upon in the Bill — the Bill cannot be aided or helped in any of its Errors, because the Joinder cannot make up any part of a Record at the hearing of the said Bill upon its Merits

Merits the Joinder only going to the Demurrer consequently the said Bill incase the said Joinder should be allowed will continue and be brought on to a hearing with all the demerits and imperfections which are Now attempted to be Amended and done away by the Joinder. —

This Respondent therefore Saith that he was well advised in bringing his said Demurrer upon the General Grounds he hath done and the same is warranted by the practice of the High Court of Chancery vide Harrison Chancery practice Vol. the 2d. p. 388 — And also the 1 Peer Williams p. 752. —

And this Respondent Saith that it is Necessary for all persons coming before a Court Should observe the Established Rules of practice of that Court And the Course of the Law in General — otherwise every one would Setforth his Title to Sue according to his own Suggestion upon the Right he had to do so — And particularly in Matters of Suits commenced in the Names and Rights of others — a party ought to be first clear of his Title and then to declare upon it According to Law and prescribed form. —

And this Respondent Saith that the appellant having been so wilfull as to proceed to

to Join. in Demurrer after the Errors of his Bill had been Pointed out thereby and the instances in which the Same Should be amended Shewn and also for many other defects and imperfections of the said amended Bill the Said Mayors Court have Equitably and legally judged and determined that the same should be dismissed with Costs. — And unworthy of the Justice and Equity of the Court to Stand in their Records. —

And in particular Answer to the Objections of the said Appellant against the said Decree this Respondent Saith to the First. — That he hopes he hath fully and Clearly Shewn to the Satisfaction of this Honble Court that the said Bill did want and was defective of legal and just Grounds of Law in such Cases — and that the appellant did not Set forth any Right as Executor to the last Will and Testament of the said Pambavie Camaroo Coroonadom Moodelly Sufficient to entitle him to commence his said Action and to Sue for and — Recover any part of the said Estate — Except what the appellant may have set forth by way of Joinder — which only goes to prove the — insufficiency of the Bill and the Obstinacy & litigiousness in the appellant that he did not

4

if he legally could amend it. —

As to the Second Objection this Respondent Saith that the Reasons which Suggested themselves with the Court from the General Want of Equity on the face of the said Bill to dismiss the same — are Such as unquestionably may be combined with the Causes of Demurrer Alledged by this Respondent and this Respondent Saith that the said Bill doth bear that Cast, as to give Room for every Challenge both to its Reality in the first instance — and the fairness of the transaction between Annah Sawmy and the said Charles Darke — because it appears by the said Bill that Annah Sawmy hath made Oath to the Debt this Respondent owing him on the Sixteenth day of July One thousand Seven hundred and Eighty Eight the Sum of fifty three thousand three hundred and fifteen Pagodas thirty fanams and thirty four Ash. and that the Said Charles Darke hath also made Oath that this Respondent did owe the like Sum — and it nevertheless appears that the Assignment of the said Debt dated the Said Sixteenth day of July was for the consideration of thirty thousand Pagodas — and it also appears by the said

Accd

account that the last article of the said account is Near Nine years ago — Except the Amount of two Legacies for which Credit is given as being — bequeathed by the Last will and Testament of the Said Poombavie Comaraa Coroonadum Moodelliar

And this Respondent Saith that he did exhibit an Information before Robert Maunsell Esq.r one of his Majestys Justices of the peace against Paul Benfield late of Fort St George Esq.r as being the maintainer & upholder of the present Suit and action but before any proceedings could be had thereupon the Said Paul Benfield departed from Fort St George to take his departure for Europe. —

And this Respondent Lastly Saith that he refers the present matters in question to the Candid and impartial Equity of this Honble Court humbly hoping they will be pleased to affirm the Decree of the Mayors Court with Costs in that Court — and with exemplary Costs in this for the Appellants litigiousness and Vexatious Conduct. —

/ Signed / Henry Dundas

Sol.r Respond.t —

Court

Court of Appeals
at
Madraspatnam

for Saturday the 19th day of April
Anno Domini 1794

Between Anna Sawmy of Madras Inhabitant by his attorney Charles Darke of Fort St George — Merchant Appellant and Pungatoor Chengleroy also of Madras Inhabitant Respondent. —

The Attorney for the appellant having moved for leave to withdraw his appeal on payment of Costs — and the attorney for the Respondent having Consented thereto. —

Ordered accordingly

/ Signed / Chas N White
Clk

To the Honble Major Genl. Sir Archibald Campbell
K.B. President in Council
Fort St George,

In the Honble the Court
of
Appeals at Madraspatnam

Between Annah Sawny of
Madras Inhabitant by his attorney
Charles Darke of Fort St George Merchant
Complainant and Pungatore Chengleroy
Also of Madras Inhabitant Defendant

The Petition and appeal of the above named
Annah Sawny.—

Sheweth,

That your Petitioner by his said attorney the above named Charles Darke did in the month of July in the present year One thousand Seven hundred and Eighty Eight exhibit and file his Bill of Complaint in the Honble the Mayors Court against the said Defendant for the Sum of Fifty three thousand three hundred and fifteen Pagodas thirty fanams and thirty four Cash for that same time or about the Month of September One thousand Seven hundred and Seventy Eight Pombavie Coonaw Coroonadom Moodelliar of Madras Inhabitant did depart this Life and did in and by his Last Will and Testament Nominate your Petitioner his Heir and Residuary Legate and as your Petitioner was then a Minor your Petitioners Testator did Constitute and appoint Charles Edward Jones and John Snow Esqrs Captain Now Major George Maule Tremanum Arnachellum Moodelliar Davy Naig Moodelliar Balla Chengleroy Moodelliar Pungatore Chengleroy Moodelliar the Defendant Sawny Sah and Sah Sawny Executors to Such his last Will and Testament until your Petitioner Should arrive at age and be enable to transact the Several treats matters and things in his Said Last Will and Testament mentioned and Set forth Whereupon and in consequence thereof they the said Charli Edward Jones John Snow George Maul Tremanam Arnachellum Moodelliar Davy Naig Moodelliar Balla Chengleroy Moodelliar Pungatore Chengleroy Moodelliar or Some or one of them did duly prove the said Will before the Honble Ordinary in the Said Honble the Mayors Court and take out Probate thereof And did thereby Charge themselves with the Burthen of Executors

and

Filed in my Office
the 3d Novr 1788.
Chas N. White
Cler

And did continue therein discharging the duties thereunto belonging until Some time in the year One thousand Seven hundred and Eighty Six when your Petitioner arriving at age and being desirous of fulfilling the intentions expressed and declared as aforesaid in the said Will of the said Pambavie Comroo Coroonadum Modelly did Resolve to take upon himself the Charge and Management of the Several matters therein Setforth and did for that purpose Cite the said Executors to bring the said Probate of the said Will into the said Honble the Mayors Court and in Consequence thereof Probate of the said Will was some time in the Month of March One thousand Seven hundred and Eighty Six granted to your Petitioner who did thereupon enter into the Office of an Executor to the said Last Will and Testament of the said — Pambavie Comroo Coroonadum Modelliar and — indischarging the duties thereof he did amongst other Transactions call upon the said Defendant to bring in his Accounts with the said Estate in order that a proper arrangement and final Settle- -ment thereof might be made but the said Defendant instead of giving in fair and just Accounts which in equity and good Conscience he aught to have done he did produce such as were evidently and

Glaringly

Glaringly false and tending to the Wrong and injury of the said Estate whereupon your Petitioner did object thereto However inorder to avoid litigation and the Vexations of a Suit at Law your Petitioner did agree to Submit the said Accounts to an Arbitration and they were Submitted accordingly but the Arbitrators not agreeing in their Opinions the Same remained unsettled and the Defendant taking Advantage thereof and knowing the peaceably disposition of your Petitioner did endeavour to with hold from the said Estate the aforementioned Sum of Fifty three thousand three hundred and fifteen Pagodas thirty fanams and thirty four Cash which was justly and truly owing thereto from him the said Defendant nor could he be prevailed on to enter into any Plan or mode of Liquidation or adjustment thereof so that your Petitioner was reduced to the absolute necessity of filing his said Bill of Complaint in the said Honble the Mayors Court and did accordingly Exhibit and file the Same as Heir & Residuary Legatee of the said Pambavie Comaroo Coroonadum modelliar by his said Attorney the said Charles Darke against the said Defendant but the Said Title of Heir and Residuary Legatee being Judged insufficient your Petitioner did pray leave

to

to Amend the same and did Accordingly some time on or
about the fifth day of August in the present year
file his Amended Bill under the following title
or description — Annah Sawmy of Madras Inhabitant
" Executor to the Last Will and Testament of Pombavie
" Comroo Coroonadum Moodelliar under and by Vertue of
" an Order of this Honble Court by his Attorney Chas
" Darke of Fort St George Free Merchant — and
did therein and thereby refer to an Account Current
annexed to the said Bell of Complaint for the
Particulars from whence the said Ballance of
Fifty three thousand three hundred and fifteen Pags
Thirty Fanams and thirty four Cash had arisen
and become due to your Petitioner as Executor
as aforesaid — And your Petitioner by his said
attorney begs leave to Shew that the said Defendt
was so throughly convinced of the Justness of your
Petitioners demand that he thought it advisable
to depart from the Line of Equity and instead of
Meeting your Petitioners Charge as he aught
to have done by an answer thereto had recourse
to delatory pleadings and did some time on or
about the Nineteenth August file a Demurrer
to your Petitioners said Bell of Complaint thereby

Confessing

Confessing the facts in the said Will contained in order to
take advantage of the Law arising thereon but your
Petitioner by his said Attorney begs leave to Shew that
the said Demurrer of the said Defendant differing
from the general Principles upon which Demurrers
are grounded entered into a declamatory and general
assertion altogether futile evasive and Nugatory
for the said Defendant as his only Cause of demurrer
did say that the Scope and end of your Petitioners said
Bill of Complaint was to be relieved touching Several
Sums of Money by the Said Bill supposed to be due
from the said Defendant to Pombavie Comaroo
Coroonadum Moodelliar deceased in the said Bill
named which your Petitioner by his said Attorney
would seek by his said Bill to Claim as Executor
to the Said Pombavie Comaroo Coroonadum Moodelliar
and yet had not alledged in and by the said
Bill that he had proved and taken out Probate
of the Will of the said Pombavie Comaroo Coroonadum
Moodelliar or otherwise taken upon him the
burthen or Execution thereof or any way entitled himself
unto the said Estate or to Sue for the Same to which
Said Demurrer your Petitioner by his said Attorney
did on or about the Sixteenth of September file his

Joinder

Joinder and did thereby shew that his said Bill of
Complaint and the matters and things in manner and
form therein contained were good certain and Sufficient
in the Law for your Petitioner to maintain his action
against the said Defendant which said matters &
things your Petitioner did aver he was ready and
willing to maintain and prove in Such manner
and form as the said Honble the Mayors Court should
think fit And for Joinder to the said Demurrer your
Petitioner by his said Attorney did Assert that he had
in and by his said Bill of Complaint alledged and
clearly set forth that he had duly proved the Will of
the Said Pombavie Camaroo Coroonadum Moodelliar
deceased and according to the forms of Law in Such
Cases observed taken out Probate and as and for a
corroboration and proof thereof your Petitioner did
refer to his Said Bill of Complaint in which your
Petitioner did State the following Words were
inserted — "your Orator Annah Sawmy of Madras
" Inhabitant Executor to the last will and Testament
" of Pombavie Camaroo Coroonadum Moodelliar under
" and by Virtue of an Order of this Honble Court" meaning
the Said Honble the Mayors Court and that Such
Words were Justly Stated from the Order or Record

of

of the said Honble the Mayors Court your Petitioner did
give an Extract of the Minutes thereof in the following
Words. — "Tuesday the Seventh day of March Anno
" Domini one thousand Seven hundred and Eighty Six
" Mr. Charles Baker Proctor for Annah Sawmy
" the Heir and Residuary Legatee named in the Last will
" and Testament of Pambavie Camaroo Coroonadum Moodely
" deceased appears and acquaints the Court that the
" Probates heretofore granted to the Several Executors
" in the Said Will named have been delivered in to Court
" and the Parties Cited to Shew Cause if any they have
" why the same should not stand Revoked and Probate
" or Letters of Administration with the said Bill
" Annexed be granted to the said Annah Sawmy
" and as no Cause hath hitherto been Shewen he now
" prays that Probate or Letters of Administration
" with the Will annexed may be granted to the said
" Annah Sawmy as Heir and Residuary Legatee in
" the said Will Named — Original Will Referred
" to the Court having taken the Same in to consideration
" Ordered that Probate heretofore granted do stand
" Revoked and it therefore ordered that Probate do pass
" the Seal upon Annah Sawmy's taking the Oath of
" an Executor — The said Proctor further prays that

Annah

"Annah Sawmy may be permitted to take the Oath of an
"Executor between the days of Adjournment Ordered
"Accordingly — Tuesday Fourteenth day of March Anno
"Domini One thousand Seven hundred and Eighty Six
"the Mayor acquaints the Court that he has administered
"the Oath of an Executor as Heir and Residuary Legatee
"to Annah Sawmy to the last Will and Testament
"of Pombavie Camaroo Coroonadum Moodelliar — And
therefore your Petitioner did humbly insist that he
had well and Sufficiently entitled himself to the Said
Sum of fifty three thousand three hundred and fifteen
Pagodas thirty fanams and thirty four Cash due by the
Defendant in manner and form as set forth in your
Petitioners said Bill of Complaint for such
Sufficiency of Title your Petitioner had resorted to the
Judgment given in his favor by the said Honble the
Mayors Court and as set forth in your Petitioners
said Bill expressed in the Words herein before
Specified and Set forth — And for further Joinder to
the Defendants said Demurrer your Petitioner did
State that his demand against the Defendant as in
his said Bill of Complaint contained was just and
true in manner and form as therein alledged and
Set forth and therefore that your Petitioner ought
not to be deburred or precluded from his Right of

action

action and Judgment thereon for any thing alledged
Charged and Set forth by the said Defendant in his said
Demurrer which your Petitioner shewed appeared
calculated merely to procrastinate and impede the
action brought by your Petitioner and prevent him
as long as might be in the Power of the said
Defendant from receiving that Satisfaction which
your Petitioner then was and now is justly entitled
to — And your Petitioner by his said Attorney further
Sheweth that on the Twenty first day of October last
past the Demurrer of the said Defendant and
Joinder of your Petitioner came on to be heard
when the Honble the Mayors Court were pleased to
Order and Decree that the said Demurrer should
be held good and that your Petitioners Bill of
Complaint should be dismissed with Costs as well for
the Reasons Assigned in the Demurrer as from the
Opinion of the said Honble the Mayors Court that
the matter was in its own Nature not transferable
as more particularly appears by a Copy of the said
Decree hereunto Annexed for the inspection of this
Honble Court to which your Petitioner begs leave to
Refer and Prays the same may be be taken as part
of this his Petition and Appeal by which said Order

and

and Decree of the said Honble the Mayors Court your Petitioner doth conceive himself greatly injured and much aggrieved and doth accordingly appeal therefrom to the Justice and Equity of this Honble Court for the following amongst other Reasons. —

First — Because the said action of your Petr was legally brought upon just grounds and agreeable to the forms of Law in the like Cases for that your Petitioner did sufficiently set forth in his said Bill of Complaint that he was Executor to the last Will of the said Pombavie Comroo Corroonadeen Moodelliar, that he had by such means entitled himself to the Estate of the said Testator that therefore he had become vested with proper powers to Sue for and Recover thereon and that Consequently he had a Right to bring an action against the said Defendant for the Recovery of the Said Sum of Fifty three thousand three Hundred and Sixteen Pagodas thirty fanams and thirty four Cash due to the said Estate. —

Secondly — Because your Petitioners said Cause of action against the said Defendant arose on an Account Current which not being a Chose in action was transferable and that therefore your Petitioner had a right to transfer and assign the Said Sum of Fifty three thousand three hundred and sixteen Pags, thirty fanams and thirty four Cash and which is agreeable to the Practice of the said Honble the Mayors Court to your Petitioners said attorney the said Charles Darke who under and by Vertue of such transfer or assignment had the Power of Commencing the Suit against the said Defendant and even had it been a Chose in action which the Common Law holds to be not transferable yet in Equity even a Chose in action is transferable so that a Bond through a Chose in action may be assigned for a Valuable consideration paid and the assignee alone becomes entitled to the Money &c &c

595 —

Your Petitioner therefore by his said attorney humbly begs leave to refer the Several matters herein set forth to the Wisdom and Justice of this Honble Court and Prays that they will be pleased to Reverse the Said Decree of the said Honble the Mayors Court as contrary to Equity and Order on the part of

of your Petitioner that the said
Defendant shall put in his answer
to your Petitioners said Bill of
Complaint that the said Defendant
may be decreed to pay exemplary
Costs. — for his litigious desposition
and also that this Honble Court will
be pleased to grant such other —
Relief as may to their Judgment
Seem agreeable to Equity and
Justice. —

/Signed/ J. Stuart Hall.
Sol.r for the Appellant.

Extract

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 25th day of October Anno Domini 1785. —

Present,
Edward Parrow Esq.r Mayor,
James Hall. Andrew Ross and
Robert Nutford, — Aldermen,

Annah Sawmy by his attorney Charles Darke
vers
Pungatore Chengleroy

Amended Bill with an Account Current and Assignment annexed Read. —
Demurrer Read. —
Joinder Read.

The Demurrer and Joinder Coming on to be argued and determined this day in the presence of the Attornies on both sides and the Court having had due consideration thereon doth think fit to Order and doth Accordingly Order that the Demurrer be held good and that the Bill of Complaint do stand — dismissed with Costs as well as for the Reasons Assigned in the Demurrer as from a Variety of other Circumstances which appear upon the face of the Bill itself

itself the account Current and assignment annexed and from which the Court are of Opinion that the Subject in dispute in its own Nature is not Transferable. —

A True Extract

/Signed/ G Taylor
Depty Regr

A true Copy
/Signed/ I. S. Hall
Solr for appt.

In the Hon^ble the Court of Appeals at Madraspatnam

The Answer of Poongatoor Chengleroy Respondent to the Petition and appeal of Annah Sawmy also of Madras Inhabitant by his attorney Charles Darke of Fort St George Merchant appellant. —

In the Cause of

Annah Sawmy of Madras Inhabitant by his attorney Charles Darke of Fort St George Merchant Complainant and Poongatore Chengleroy Defendant

The said Respondent doth admit that the Petitioner by his attorney did some time on or about the Seventeenth day of July last past exhibit a Bill in this Hon^ble Court against this ~~Hon^ble~~ Respondent that a Summons did issue thereon and this Respondent did appear by his attorney M^r Henry DuPuy — and affidavit was made to the Sum said for, and that thereupon the Petitioners attorney did pray that this Respondent might be held to Special Bail which was denied upon the face of the Bill of Complaint. — And this Respondent doth — admit that the Petitioner did amend his said Bill

Filed in my Office the 12^th Nov^r 1788.
Cha^s A. White
Cl^k

on

on or about the fifth day of August last — but this Respondent saith that the Petitioner did not correct these Errors which were in the former Bill contained and file an Amended Bill in such manner form and Substance as to weigh with the Judgment of the said Mayors Court to hold this Respondent to Special Bail upon the Such Amended Bill at the prayer for that purpose made by the Attorney for the Petitioner which was denied upon the Grounds expressed in the Order of the Mayors Court, Appealed from by the Petitioner under the date of the Twelfth of August — And this Respondent saith that the Petitioners Attorney could not make use of any legal Argument or state the Constant and invariable practice of the Mayors Court in Support of his Motion for Bail — because the said motion had not any legal argument or practice to Support it — And this Respondent saith that the said Mayors Court did use their discretion in Ordering that this Respondent should not be held to Special Bail in which they did exercise that Right of Jurisdiction which belongs to them as Judges and therefore the Petitioner cannot be aggrieved thereby

And in answer to the Several Reasons of appeal assigned by the Petitioner, this Respondent saith to the, —

First — That it is not the practice of every Court of Equity to grant Bail on Oath being made to a Debt but that the granting of Bail in the Courts of Kings Bench and Common pleas is discritionary in the Judges setting in Court or a Judge at his Chambers not only according the tenor of the Oath or to certainty of a Debt but according to the Purport of the Oath or to Nature of the Debt on which Bail is required and this Respondent saith that the Mayors Court did carefully examine into the said Bill of the fifth of August following, and they did find many demerits therein which did militate against the Nature of holding to Special Bail from Causes arising in the person of Annah Sawmy a Native of India using the Instrument of Charles Darke a Native of Europe to commence an action against this Respondent also a Native of India for the Recovery of so large a Sum as fifty three Thousand three ~~thousand~~ hundred and fifteen Pagodas thirty fanams and thirty four Cash assigned over for the consideration of thirty thousand Pagodas. Altho the said Annah Sawmy and Charles Darke had both Sworn to the full Sum of fifty three thousand

thousand three hundred and fifteen Pagodas thirty fanm and thirty four Cash being Owing them by Affidavits exhibited at the filing of the former Bill, none having been filed with or an Account of the Amended Bill And which Sum is made to arise upon Sundry Articles of Account of a long Standing the last of which is so late as the year One thousand Seven hundred and Seventy nine except the two last Articles which are credited for legacies bequeathed by the last will of Pombarsie Camroo Coorsonadum Moodelly deceased to whose Estate it is stated that all this Money is Owing — And also from further Causes Suggesting themselves with the Justice of the said Court, in addition to that given in their said Order for Common Bail — And Refusal of Special Bail — In — Answer to the Second this Respondent Saith that he is advised that according to the practice of the Mayors Court that an Amended Bill is in every sense esteemed as a continuation of the former Bill — And that the Case of James West — vers Mahomed Hussain Tauher Cawn and Abdellah Cawn is not Similar to the present in point or Merits — it doth not Seem by this Cause that the Defendant had appeared to the Original Bill or that any question had been made of Bail

therein

therein and as every Case is Governed upon its Own principles so this Respondent conceive the present ought to be Governed. —

To the third this Respondent Saith that as nothing can be more Reasonable or consistent with the Spirit of Justice than that a Defendant should give Bail upon a Just Debt or for Such matters as are Judged to be a lawfull Occasion for holding to Special Bail so nothing can be more unreasonable inconsistent oppression and contrary to the Spirit of Justice than to hold a Defendant to Bail, upon a Debt which carries upon the face of it a complection totally void of the Requisite Recommendation of Just or probable Right of action to Warrant an Admittance before a Court — And this Respondent Saith that all the Petitioners proceedings upon the present action were discovered by the Wisdom and penetration of the Mayors Court to Spring from the Same illegitimate Claim as that held forth in the Petition and appeal now before this Court for Bail — And this Respondent Saith that the Petitioner whether to be the said Annah Sawmy or the said Charles Darke have discovered and Shewn thro the whole of their Proceedings that they have been less moved by a desire of Recovering a Debt or demand from the Justice of the Mayors Court than to hold him this Respondent Answerable for one

which

which they will know to be without foundation in Law or Equity and to hold him to Bail for a Sum of Money that they well knew it would not be possible for him to procure to preserve his liberty. — And that they were in hopes by the hardships he should Suffer from a Cruel and long Confinement that he would be reduced to the Extremity of complying with their unjust demands if he should have it in his power to pay the Same or to keep him imprisoned for the Same during his Life — that it cannot be conceived that the Mayor's Court had any other view than that of doing impartial Justice in the question for Bail. —

That the enormities which have been lately discovered by the allowance of transfers of Debts from Natives to Europeans or if for the Sole View of recovering Debts owing by Natives to Natives and that Such transfers had been seldom upon good or bona fide Considerations or that they had arisen from the unavoidable Cause of Trade and Business and for the benefit and advancement thereof — Have Justly and worthily led the Judges of the Said Bench to investigate and discriminate such as Came marked with the Colours of Vexations and oppression from such as bare a Resemblance to right and Justice — That the Charter doth give the said Court the power of holding to Bail as well Common as Special

that

That the Cases in which either should be determined are consequently left to them to judge of — and it is therefore of the greatest importance to the furtherance of Publick Justice that their Judgment thereon Should be left to them as the Original Court from which the first process issues upon all Cases of Action instituted within this Jurisdiction — That if matters of Bail were not left to their Judgment upon Return of mesne process the question of any process at all might as well and with equal reason and Colour of right be a Matter appealable from the said Court — as a Matter of Bail upon the Return of their own Writs and Appearance thereto. —

As to any other Matter or thing Set forth by the Said Petitioner this Respondent doth conceive that the Same is rather Calculated to involve a plain question for the purposes of litigiousness and Vexation than on any other account. he therefore in full Reliance on the Judgement and Equity of this Honble Court prays that the said Appeal may be dismissed with exemplary Costs. —

/Signed/ Henry DePuy
Solr. Appt.

Court.

Court of Appeals
at
Madraspatnam } Saturday the 19th day of April
Anno Domini 1794.

Between Annah Sawmy of
Madras Inhabitant by his Attorney
Charles Darke of Fort St George
Merchant Appellant And Pungatoore
Chenglaray Also of Madras Inhabitant
Respondent.—

The Attorney for the Appellant having
moved for leave to withdraw his Appeal on payment of
Costs and the Attorney for the Respondent having Consented
thereto.—

Ordered accordingly

T Hew
/Signed/ Chas N. White
Clk

Saturday

Saturday the 26th day of April 1794

Present

Sir Charles Oakeley Baronet
Ernst William Fallofield & George Westcott

To the Honorable John Holland Esquire
Governor &c. in Council
Fort St George

In the Honble
the Court of Appeals

Between John Philip Fabricius by
his Attorney William Lewcock of Madras
Inhabitant Complainant and Nellapillay
also of the same place Inhabitant
Defendant—

The Petition and Appeal of the above named
Complainant—

Sheweth

That your Petitioner by his Attorney the above
named William Lewcock did on the fourteenth day of October
Which was in the year of Our Lord One thousand Seven
hundred and Eighty Eight Exhibit and file his Bill of
Complaint

Filed in my Office
the 30th November 1789.
Chas N. White
Clk

Complaint in the Honorable the Mayors Court against the above named Defendant for the Recovery of the Sum of Nine hundred and Seven Pagodas as Justly due and owing to your Petitioner upon a Mortgage Bond duly executed to him by the Defendant and Which your Petitioner did say would more fully and at large appear by a Copy of the said Bond and of an Assignment thereof annexed to his said Bill of Complaint to which he did beg leave to refer and pray the same might be taken as part thereof and that the Originals were in the possession of his said Attorney and Ready to be produced When Required that to such the Bill of Complaint of your Petitioner the Defendant did on the Second day of December following put in his Answer and did therein deny being indebted unto your Petitioner in the said Sum of Nine hundred and Seven Pagodas or in any Sum or Sums of money Whatever yet did Notwithstanding Acknowledge that he had on the Eleventh day of March One thousand Seven hundred and Eighty Eight duly Executed the Bond in question but then he pretended he was not indebted thereupon in the Sum of Nine hundred and Seven Pagodas or in any

any other Sum or Sums of Money whatever for that on the Thirty first day of March he and your Petitioner did come to a Settlement of all Accounts between them that upon such Settlement it Appeared he did owe unto your Petitioner the Sum of Two hundred and Twenty five Pagodas and no more and that for the payment thereof he did execute a Bond in favour of your Petitioner bearing date the said Thirty first day of March aforesaid and payable in Six Months from the date thereof with Interest at the rate of Nine per Cent per Annum that in consideration thereof and of the Settlement of all Accounts between them he pretended that your Petitioner did execute a Release or discharge in full of all other demands and more particularly in full of the said Bond or Obligations Whereon your Petitioners Action was founded and which he Asserted your Petitioner did say he would cancel and give up as by the said pretended Release Translation Whereof was to his said Answer annexed and the Original Ready to be produced When Required might more fully Appear as well as by the Testimony of the Witness present and several Vouchers of the pretended Settlement The Defendant did therefore say that he was not indebted to the Complainant upon the said Bond in the Sum

Sued

Sued for or in any Sum of Money Whatever and did thereupon pray that the same might be given up to be cancelled —

Your Petitioner further Sheweth that to such the Answer of the Defendant he did on the twenty fourth day of March in the present year of Our Lord One Thousand Seven hundred and Eighty Nine file his &c Replication and did therein absolutely deny to have &c settled with the Defendant on the thirty first day of March all or any Accounts and therefore that it could never have Appeared that the Defendant did owe unto him the Sum of Two hundred and twenty five Pagodas and no more nor that he could have Executed a Bond to your Petitioner for the payment thereof and Dated as the Defendant had falsely Asserted on the said thirty first day of &c March and your Petitioner did absolutely deny to have Executed the said pretended Release Whereof a Copy was annexed to the said Answer, but on the Contrary your Petitioner did insist that no Accounts of any kind, ever did subsist between him and the Defendant except that the Defendant did at three or four different times borrow from him several Sums of Money upon Bond that the last

last of such Loans was on the Eleventh day of November in the year of Our Lord One thousand Seven hundred and Seventy five, and that the Bond Executed to your Petitioner for the Amount thereof remained unpaid and unsatisfied until the Eleventh day of March One thousand Seven hundred and Eighty Eight on which day your Petitioner had with much difficulty brought the Defendant to a Settlement so as to grant a fresh Bond that the &c principal Sum of the said Bond and the Interest calculated thereon to the Eleventh day of March One thousand Seven hundred and Eighty Eight Amounted to the Sum of One thousand Four hundred and Seventy two Pagodas Twenty one fanams and fifty Nine Cash that thereon your Petitioner did give the Defendant Credit for the Sum of Five hundred and Sixty Pagodas Twelve fanams and thirty four Cash as so much at different times paid in part thereof and which Sum of Five hundred and Sixty Pagodas Twelve fanams and thirty four Cash together with a part of the said Interest Which your &c Petitioner forgave him reduced the said Sum of One thousand four hundred and Seventy two Pagodas, &c Twenty one fanams and fifty Nine Cash to the Sum of

Nine

Nine hundred and Seven Pagodas for which the Bond in Question was granted and which your Petitioner did say would more fully Appear by a Statement of accounts then made out by your Petitioner in the presence of his Dubash and of the Defendant and Which he did pray might be admitted as part of his Replication — your Petitioner in and by his said Replication did further Shew that although the said Bond was Executed on the Eleventh day of March One thousand Seven hundred and Eighty Eight yet that it was not delivered to him by the Defendant until the Thirty first following &c because that the Defendant did not until then receive from your Petitioner his former Bond dated the said Eleventh day of November One thousand Seven &c hundred and Seventy five as the same had been Deposited in the hands of William Lewcock as a &c Collateral Security for the payment of a Sum of money due unto him the said William Lewcock by your &c Petitioner Which your Petitioner did say would more = = fully Appear by the Copy of an entry made by your Petitioner in his Ledger on the day of delivery of the said Former Bond and the Receipt of the one in question Copy of

of which said entry was annexed to his said Replication and prayd to be admitted as part thereof and that the Original was in your Petitioners posession ready to be produced When Required — Your Petitioner did in and by his said Replication further Shew that previous to the said former Bond being delivered to the Defendant your Petitioners Dubash Groopatham together with a Cash keeper or Merchant Named Permaul Chitty the said William Lewcock a Bricklayer Master and Two other Persons did go to the Defendants House in the Evening of the Twenty Ninth day of March One &c thousand Seven hundred and Eighty Eight in order to measure the same and put a Valuation thereon that the Defendant admitted them into his house and desired them to Value it but prayed and entreated the said &c Groopatham and Permaul Chitty not to measure it for that his family would be very much alarmed and be led to imagine that it was to be sold — Your Petitioner did further Shew that after the said Twenty Ninth day of March that is to say on the day following he did Receive the former Bond belonging to the Defendant from the said William Lewcock and on the next day that

That is to say on the thirty first day of the said Month your Petitioner did through his Dubash deliver the same to the Defendant and receive from him the Bond in question dated the Eleventh day of March One thousand Seven hundred and Eighty Eight And your Petitioner did in his said Replication say that the Assertion of the Defendant Shewing that in the course of Twenty days after having granted the said Bond of the Eleventh day of March One thousand Seven hundred and Eighty Eight that he settled Accounts again and gave another Bond in consequence would Appear to be without any kind of foundation and calculated merely as a subterfuge under which to deprive your Petitioner of his Just right Your Petitioner did also set forth that the Natives of this Country were too Cautious in money Matters to Execute one Bond until a former one had been given up and that in the Instance before the Court there could not have been any great hurry on the part of your Petitioner for the Defendant to Execute the pretended Bond mentioned in his said Answer because that while your Petitioner held a Bond at the

Defendant

Defendant would insinuate for more than the Sum due to him he could not have harboured any apprehen=sions of injury that no Obligee under such Circumstanas would ever ask for a fresh Bond but rest Security and cooly until the Obligor should himself come forward as he alone could have Reason to be alarmed and that such Reason would of course compel him for such would be its principle to demand the Old Bond previous to his executing the new one Which was thereby to be cancelled and your Petitioner did further say that had he granted a Release or Acquittance like that annexed to the Defendants said Answer it was not to be supposed that he would have granted it in the Malabar but in the English Language, the Language the Bond was drawn in, and that had there been a Bond to be delivered up as the Defendant Asserted it would have been Noticed in the Body of the said Release or Acquittance with its condition and date but so far from any declaration that such Bond was in your Petitioners possession the said pretended Release stated only that should there be any Bond in your Petitioners possession - and your Petitioner did then say that According to the

Defendants

Defendants own Shewing a Bond had been executed by him in favour of your Petitioner only Twenty days previous to the date of the said pretended Release to wit on the Eleventh day of March, Yet there could be a doubt of any Bond being in existence and therefore that the Defendant in his attempt to supercede Justice stood self condemned— Your Petitioner did in conclusion beg to remark that about three Months after the Execution of the Bond on which he had commenced his Action the before named Pernaud Chitty met the Defendant and hinted to him that the time Limitted in the said Bond had nearly expired and that it would be adviseable to pay a part of the Amount thereof and that the Defendant answered that he was under no kind of concern for his Person for that in case of failure in his Engagement the Mortgaged premisses would secure him —

Your Petitioner further Sheweth that the Defendant did file his Rejoinder to your Petitioners said Replication and did therein insist that he would in due time prove to the satisfaction of the said Honourable the Mayors Court that your Petitioner and he the Defendant did on the thirty first

first day of March One thousand Seven hundred and Eighty Eight at Vizery aforesaid in the dwelling House thereof your Petitioner settle and finally adjust all Accounts and Reckonings subsisting between them in the presence of several Witnesses Ready to be produced, as were also sundry Vouchers and Accounts supporting the same and did insist that it Appeared upon such Statement and adjustment of their Accounts that there Remained due from him to your Petitioner the Sum of Two hundred and twenty five Pagodas and no more that thereupon your Petitioner did himself draw out a Bond for that Sum in the English Language payable in Six Months with Interest at the Rate of Nine per Cent per Annum and he the Defendant having had the same explained to him did put his name thereto and deliver it so signed to your Petitioner and Required him to give up the former one but that your Petitioner having looked over his papers for some time informed him that he could not find it there but that he would look for it some other time and Return it to him upon which he pretends that he Requested your Petitioner to give him an Acknowledgment of the Settlement of all Accounts between them and Declaration of such Bond being

being Void Which the Defendant pretended he accordingly did that a Copy thereof was annext to his said Answer and that the Original had been delivered into the said Honorable Court for the inspection of your Petitioner — The Defendant did pretend that the settling their Accounts — the drawing and Executing the Bond for Two hundred and Twenty five Pagodas and the drawing and Executing the Receipt and discharge were all Transacted in the Presence of several Witnesses at the Dwelling House of your Petitioner about four or five of the Clock of the Afternoon of the said thirty first day of March One thousand Seven hundred and Eighty Eight as he would in due time fully prove to the Satisfaction of the said Honorable Court and that he was ready to attest the same by his Solemn Oath at the Pagoda of Triplicane should the Court or your Petitioner Require it The Defendant did further say that there were many Transactions between your Petitioner and him and he did admit that he did Execute a Bond to your Petitioner on the Eleventh day of November Which was in the year of Our Lord One Thousand Seven hundred and Seventy five, that the same had been delivered up to him on the said Eleventh day of March One thousand Seven hundred and Eighty

Eighty Eight upon his Executing the Bond in question for Nine hundred and Seven Pagodas and therefore could not be the Bond referred to in the Receipt or Acknowledgment given on the thirty first day of the said Month of March — The Defendant did also say that besides the deductions allowed by your Petitioner on the Eleventh day of March Which reduced the Debt to Nine hundred and Seven Pagodas he had other outstanding demands against your Petitioner Respecting some Shop Debts to a considerable Amount which had not been included in the Bond given in November One thousand Seven hundred and Seventy five but had been Received by your Petitioner and therefore were to be Accounted for by him in their Settlement of accounts and of which he did pretend your Petitioner was well informed and that upon Executing the said last mentioned Bond for Nine hundred and Seven Pagodas — your Petitioner gave him a Written agreement to allow the same and settle all Accounts between them in two or three days as he would duly prove and that Notwithstanding any thing that might have been Suggested to the contrary he did pretend that the Bond for Nine hundred and Seven Pagodas was delivered to your Petitioner on the Eleventh day of March aforesaid the same day on which it was Dated

and

and Executed and immediately Afterwards and not on the thirty first day of March as was stated by your Petitioner and that upon its being Executed your Petitioner had given the Agreement above mentioned to come to a Settlement of all Accounts in two or three days The Defendant in his said Rejoinder did further pretend that your Petitioners Ledger could not be admitted as Evidence in any Suit, but particularly in the present When he is charged with having acted so unfairly, nor could it be an entry in any Ledger as no Debtor or Creditor was mentioned but it appeared to be nothing more than a loose memorandum of his own Referring to nothing and as containing nothing with any precision or Certainty and to prove that the Bond was delivered on the day it was Executed the Defendant had not only his own memorandums and Accounts but many other Vouchers besides the Witness present which he would in due time produce — The Defendant for further Rejoinder did say that the said William Lawrock and some other Person with him did he believed come to his House from the House of your Petitioner on some evening about the time mentioned and asked to Drink some Coconuts but absolutely denied that any conversation Whatever passed about measuring or Valuing the Ground or any thing like it as Asserted by your Petitioner who he said with almost the same breath in another part of his Replication had Asserted that the Bond had not then been delivered to him by the Defendant Which he pretended did point out the inconsistency of what your Petitioner had advanced and of which he did say he would fully prove in proper time — The Defendant for further Rejoinder did say and insist that your Petitioner did really and truly execute the pretended Release and Acknowledgment a Translation Whereof was annext to his said Answer on the day of the date thereof being the thirty first day of March above mentioned finally settling with the Defendant and his giving your Petitioner a new Bond for the Ballance being the Sum of Two hundred and twenty five Star Pagodas as above mentioned and not for any other purpose or in any other manner Whatever, and that it was but lately that your Petitioner had discovered such new way of Explaining it to his own advantage for always before he has constantly said that he never did draw out any such paper and Repeatedly threatened this Defendant with indicting him at the Sessions for forging it in Order to intimidate him from proceeding in his Suit that all he had Declared was really and truly nothing but the plain

plain honest Truth and he did for further Rejoinder say
it was natural and prudent for your Petitioner to give up
an old Bond in which thy principal was not so much for
a new one in which it was more and which was given
for the Balance of an Account According to his own Reckoning
and that it was not very incautious for a Native to give such
Bond as he took the precaution of Declaring that he
had other demands to be deducted from it and took a
Written agreement from your Petitioner so settle and allow
such Deductions in two or three days after — And the
Defendant for further Rejoinder did say that it was well
known that your Petitioner who was not an English
man spoke and wrote Malabar nearly as well as english
neither of them being his Native Language and as he the
Defendant could not Read or Speak English it was not very
Extraordinary that the Acknowledgment should be written
in the Malabar Which was his own Language he being
the person who was to keep it and to be secured by it that
in Regard to the particular Bond not being Noticed &c
therein he trusted intirely to your Petitioner who he did
not suspect of having any design to keep the Bond and
merely wanted as general Acknowledgment that all
matters were settled between them —

Your

Your Petitioner further Sheweth that on the
filing of the Defendants said Rejoinder issue was Joined
and Rules did pass for the Examination of Witnesses and
that both parties did Examine Witnesses Accordingly the
Defendant on his part produced such as he conceived might
best [illegible]ure his Views and so Defeat the purposes of Justice
but the Testimony they have given is in opposition to
common Sense such as Reason must Reprobate and
Equity condumn the absurdity the inconsistency of the
several Matters intended reconcelled with each other by
such Testimony is strickingly Apparent and the real matters
of fact forces itself forward Notwithstanding the stratagems and
plansible pretexts made use of to suppress it The first Witnesses
or agreeable to regularity those who ought to have been the first
produced by the Defendant are Aronogam Pillay and &c
Vencatarama pillay who to the fourth Interrogatory depose
they were present on the Eleventh day of March One &c
Thousand Seven hundred and Eighty Eight When the
Defendant executed a Bond to your Petitioner for the
Sum of Nine hundred and Seven Pagodas that he
then delivered up the Bond dated the Eleventh &c
March One thousand Seven hundred and Seventy
five that previous to the execution of the said Bond

Your

your Petitioner produced an Account by which he stated the Ballance due to him to be the said Sum of Nine hundred and Seven Pagodas that the Defendant objected thereto Asserting that your Petitioner had received several Sums of Money on Account of the Defendant Which he had not taken any Notice of and that he therefore would not execute the said Bond that your Petitioner thereupon Requested him to Execute the said Bond for that it was of very great consequence to him — now it must Appear a Circumstance too absurd to deserve the Attention of a moment that the Defendant after finding as he pretends that your Petitioner had neglected to give him Credit for several Sums of Money Which had been received as he would insinuate on his Account should have given a Bond for the Ballance Set up by your Petitioner or rather without a Consideration for According to the Defendants Shewing there could not have been a Ballance but What is more Extraordinary the Bond so granted for such Ballance was not a common Bond with no other than personal Security but a Mortgage Bond of the Defendants House and priviledges in the Village of Vipperry perhaps of all he possessed in the World, a man very seldom gives his own personal Security Voluntarily even

even for a Just debt, what then must be the opinion formed of the Man who Asserts he gave a Mortgage Bond without a Consideration and thereby subjected the Sale of his property and the ruin of himself and family and to which points the Views of your Petitioner must have been directed According to the Shewing of the Defendant for he says your Petitioner Requested the Execution of the said Bond because it would be of very great consequence to him Which pretended expression of your Petitioner he offers as a Reason for the Execution of the said Bond an expression which ought to have produced the opposite effect for instead of suffering it to lead him into a Compliance with your Petitioners Wishes he ought to have taken the alarm and have supposed Naturally and Justly that any Bond he might execute to your Petitioner would by him be Assigned over in payment or Mortgaged as a Collateral Security for the payment of a Debt due to some pressing Creditor such is the only construction that could be put on such an expression — but then the same Witness says that your Petitioner proposed to Sign and Afterwards did sign an Agreement but which Agreement has never been produced to come to a fair and Just Settlement shortly after so that the Defendant Without the least necessity for so doing gave a Bond with a Mortgage of his property as security for the payment

Payment of Nine hundred and Seven Pagodas although he knew that Sum was not due and was satisfied to receive in exchange an Agreement or Memorandum to come to a fair and Just Account shortly after an Agreement which the Defendant has never produced — The plain Simple questions that arise on this Evidence are that if the Defendant was dissatisfied with the Ballance set up by your Petitioner Why did he grant a Bond for the Amount, why not defer it until the fair and Just Settlement should have taken place and why make such Bond payable at a period so Remote as Six Months When such Settlement was to take place as he Asserts in his Rejoinder in the Cause of Two or Three Days this is a Spirit of Equivocation and Pretext Seldom heard of in a Court of Equity and such as no Man of Common Sense would make use of there is so much contradiction in terms and such an Evident Departure from the Truth throughout as sufficiently to wince the unfair and inequitious conduct of the Defendant and to establishe the Justness of your Petitioners Claims without any further Evidence on his part But the Defendant proceeds in attempting to establish one falshood by another and produces Arnogam Pillay Vencatarama Pillay Mootoo Comara Pillay Valoyada Pillay

Pillay and Taneyachella Pillay who to the Seuand Interrogatory depose they were present on the thirty first day of March One thousand Seven hundred and Eighty Eight at the Settlement of Accounts between your Petitioner and the Defendant that for the Ballance Which Appeared of Two hundred and Twenty five Pagodas your Petitioner drew out a Bond in the English Language Which was first Explained to the Defendant and who then Executed it and on delivering it to your Petitioner did Require the Bond of the Eleventh of the same Month that your Petitioner did took over his papers but not being able to find it said he would took another time and Return it to him and did propose and give an Acknowledgment of all Accounts between them and a Declaration of such Bond being Void - your Petitioner begs leave to press upon the Attention of this Honorable Court this additional proof of the impropriety of the Defendants conduct the inconsistency with Which its Replete Marks its source to have its origin in the most dishonest principles and its Tendency to the Accomplishment of the basest of purposes after he had executed the Pretended Bond

of

of the thirty first March and Which Sums to embarrass him very much he says he Acquired the Bond which he had executed on the Eleventh of the same Month for the Sum of Nine hundred and Seven Pagodas and on Which your Petitioner has grounded his Action but that after your Petitioner had searched for it &c unsuccessfully he said he would search for it some other time So that Without any Cause Assigned or Reason given the Defendant although convinced upon a former occasion that your Petitioners Accounts were unjust gave another Bond as he pretends for the Sum of Two hundred and twenty five Pagodas without having the former Bond given up to him, if as he says it could not then be found why did he not wait until such time as it could be found and the more particularly as the Bond had been executed only Twenty days previous to the pretended search after it for he should upon a Circumstance so Extraordinary have Determined in his own Mind that your Petitioner had Assigned it over to some Creditor or otherwise had disposed of it Remembering that it was as he has pretended executed upon the Express Declaration of your Petitioner that it would be of great consequence to him - If the &c arrangement

Arrangement of Accounts had been made at the instance of the Defendant he must have been satisfied on the Ballance being struck agreeable to his Wishes, the granting a Bond for the Amount of such Ballance did not in the least contribute to render the Settlement of Accounts final if they were not so otherwise so that the Voluntarily &c Execution of sucl. Bond is so far out of the common course of things that under any and every consideration it cannot be reconciled by Reason it is improbable it is absurd The Defendant himself Explaining Matter in his own way and in a way peculiar to himself exerts every Endeavour to support the Assertion that your Petitioner gave him an Acknowledgment of the Settlement of all Accounts between them and a Declaration of such Bond &c meaning the Bond granted on the Eleventh day of March One Thousand Seven hundred and Eighty Eight being Void here it is necessary to refer to the pretended Acknowledgment Which by the most Twisted construction cannot be of any benefit to the Defendant in the &c Defence he has thought proper to make to the Just Complaint Exhibitted by your Petitioner on the &c Contrary it will be the Strongest proof When contrasted with the Defendants Answer and the Deposition of his

his Witnesses that could be adduced in favour of your Petitioner for it will Shew that the Defendant in the Endeavours he has Executed to set aside his own Act and Deed and thereby to deprive your Petitioner of his Just Demands has Trampled upon every moral restraint and not having other means in his power has Dared to introduce the grossist Falshoods with the most Solemn Asseverations of their being Matters of Fact The pretended Acknowledgment as Translated from the Malabars and annexed to the Defendants said Answer runs this "31st of March 1788 I Fabricies an English Missionary of Vipperry do give this Acquittance to Nellapillay of the same place that is to say The Accounts Which subsisted between us commencing from One thousand Seven hundred and Sixty Nine to this day are all Settled and that you have Executed to me a Bond for the Ballance Which Appeared due to me and that should there be any Bond or Obligation previous to this time it is to be null and Void, that I have given you this Receipt and Acquittance with my free Will and consent J. Ph. Fabricies 31st March 1788".

Your Petitioner humbly insists Whatever had this Acquittance as it is called been given by him to the Defendant but which he denies to have been the case it would Amount to nothing and therefore has not nor can have any thing to do in an opposition to the Bond for Nine hundred and Seven Pagodas but the Defendant under the Idea of imposing on the Judgment has endeavoured to give it a very different Complexion for in and by his said Answer Referring to the pretended Acquittance he declares that your Petitioner did then and there in Consideration of the said last mentioned Bond or Obligation and of the Settlement of all accounts between them execute a release or discharge in full of all Demands Whatever and more particularly in full of the said Bond or Obligation Whereon the present Action is brought – now the said pretended release has no such Words in it as a discharge in full of all demands Whatever or any bearing Resemblance thereto, nor does it contains the Words or any Affinity to the Words "more particularly in full of the said Bond or Obligation Whereon the present Action is brought" Indeed so far from a mention of the Bond on which the present Action is brought there is not a Bond of any kind specified or particularised So that the Defendant as far as relates to the said pretended

Acquittance

Acquittance has in and by his said Answer Sworn to or Untruth — Your Petitioner further begs leave to Remark that of the said pretended Acquittance had any foundation by Which to Render it Valed it would bear internal Evidence in favor of your Petitioner for it Would Shew that a Bond had been Executed in favor of your Petitioner and the Subsequent Words that is to say "and should there be any Bond or &c" Obligation previous to this time it is to be null and Void" could not possibly have any allusion to the Bond in Question, the Bond in Question that is the Bond for the Sum of Nine hundred and Seven Pagodas was executed on the Eleventh day of March and the pretended Acquittance According to the Defendants own Shewing was given on the thirty first day of the same Month only elapse of Twenty days that therefore the Doubtfull Bond alluded to must have been of a very Remote Transaction so as to Render a confusion both in the Recollection of the Defendant and your Petitioner Whether there was such a Bond not had the Defendant given the Bond for Two hundred and Twenty five Pagodas as he pretends on the thirty first March and thereby Rendered invalid the Bond for Nine hundred and Seven Pagodas — Executed

Executed on the Eleventh day of the same Month the pretended Acquittance would not have used the Word "Should there be any Bond then it is to be null and Void" but would have Declared in positive Terms that Whereas a Bond was Executed on the Eleventh Instant for the Sum of Nine hundred and Seven Pagodas which Bond is not immediately to be found but When found it is to be delivered up to be cancelled as such Bond is Rendred Null and Void in consequence of a final Settlement of Accounts Which has this day taken place and of a New Bond Executed for the Sum of Two hundred and Twenty five Pagodas the Ballance that Appeared thereon but that is not the case and as it now stands were it of any force or Virtue it would be favourable only to your Petitioner and it may be Worthy of Remark that although three Witnesses depose to the said pretended Acquittance being given by your Petitioner to the Defendant yet there is not a Single subscribing Witness thereto and the Person said to have been the Drawer of it has never been brought forward Just so it is with the pretended Bond for Two hundred and Twenty five Pagodas not one person has Deposed as

a

a Subscribing Witness to the Execution thereof—
But the Defendant has said it was drawn by your
Petitioner in the English Language a Circumstance
Which instead of being serviceable to his purposes &
absolutely destroys them for it

by the Bond in question and that the Defendant did
Shew the said house to the said William Lewcock for the
purpose of having it Valued but did pray him not
to Measure it because that would alarm his family
to oppose the fact so stated by your Petitioner the Defendant
produces Chinadoo Naicken, Appoo Pillay and Veeraragoo
who to the fifth Interrogatory depose that William
Lewcock and other persons did Call at the house of the
Defendant on the evening of the Month of March One
thousand Seven hundred and Eighty Eight but do not
recollect the day and that they did Ask to Drink some
Conversation Whatever passed
Measuring or Valuing the ground or
the evidence Which does not
your Petitioners Refutation
therein your
time of the

the Twenty Ninth day of the Month of March aforesaid
the above named William Lewcock together with several
other People did go to the house of the Defendant in
Order to Measure and as certain its Value as it was a
part of the premisses Mortgaged and discribed in and

Belonging to nobody even were it not further confuted by your Petitioner is to every intent and purpose altogether insufficient and nugatory but your Petitioner has established this point, so absurdly and insufficiently oppose by the Deposition of five Witnesses Who to the Second and fourth Interrogatories depose to the fact in the most positive clear and decisive manner as will hereafter more fully Appear — Your Petitioner having thus gone through the Evidence on the part of the Defendant begs to State that he also did on his part Examine Witnesses in support of his said Bill of Complaint and which they did pointedly and positively in every particular, the due Execution of the said Bond of Eleventh of March One thousand Seven hundred and Eighty Eight is admitted by the Defendant and Goorooputham Moodilliar and Permall Chitty to the Second Interrogatory deposed that at the time of such Execution the Defendant entreated an extension of time that your Petitioner did inform him that the said Bond was to be Assigned to the said William Lewcock and that he would not allow more than four Months — then to Shew the Bond although Executed on the Eleventh day of March was not delivered until the thirtieth day of the same Month the same Witnesses to the same Interrogatory, depose that the Defendant refused to deliver it to your Petitioner until the former Bond granted on the Eleventh November One thousand Seven hundred and Seventy five should be delivered up to him and that on your Petitioners informing him it was deposited with the said William Lewcock he went away and carried with him the Bond in Question — To prove that the said William Lewcock did go to the house of the Defendant for the purpose of Valuing the same and to Shew the Reason for so doing, the same Witnesses to the same Interrogatory, depose that your Petitioner did make an Application to the said William Lewcock for the said Bond executed on the Eleventh of November One thousand Seven hundred and Seventy five but that he refused to comply therewith for some days and declared that he would not Accept a New Bond until he had previously spoken to the Defendant and informed him that it was to be made over to him and that the premises in and by the said Bond Mortgaged and set forth should be first Valued — To prove that the Defendant gave leave to the said William Lewcock to Value the said Mortgaged premises for the special purposes of receiving an Assignment of the said Bond of the Eleventh

Eleventh March that is the Bond on which the present
Action is grounded the same Witnesses to the same &c
Interrogatory, depose that on the Twenty Ninth day
of the said Month of March the said William Lewcock
accompanied by the Witness Goorroopatham Nineapah
a Bricklayer Mastry, Arulaunden and Vengayapah
did go to the Defendants House and that shortly afterwards
the Witness Permaul Chitty went thither also that the
Defendant carried them into his Garden and Shewed
every part thereof for the purpose of estimating it that the
said William Lewcock did Order the House and Garden
to be Measured and Valued by the said Bricklayer in
the presence of the Defendant that the said William Lewcock
did inform the Defendant at the same time that his Bond
was to be Assigned over by your Petitioner for a debt due to
him the said William Lewcock by your Petitioner that the
Defendant did then Request the Witness to prevail upon
the said William Lewcock to have the said House and
Garden estimated otherwise it might tend to less in his
consequence in the Eyes of the public To this point there
are also the Depositions of Nineapah the Bricklayer
Vengayapah and Arroolaunden who to the fifth &c
Interrogatory depose in the most pointed and positive
manner

Manner; Nineapah particularly says that he was together
with others admitted by the Defendant into his House
and that the Defendant did Shew his house and Garden
for the purpose of their being estimated, that the said
William Lewcock did give the Witness Orders to measure
the said house and Garden and put a Valuation thereon
that the Defendant did thereupon beg and entreat the
said William Lewcock not to measure the said House
because that his family would be much alarmed that the
said William Lewcock did thereupon tell the Witness
to Value the same without Measurement, and that he
did Value the premisses for the Sum of Six hundred Pag.
Fifty more or less Vengayapah Arroolaunden Depose exactly
in the same manner and to the same points — To prove
that on the Twenty Ninth day of March at the time of
Valuing the house and Garden of the Defendant and &c
Eighteen days after the Execution of the Bond in Question
that the Defendant confessed the Justness of the same &c
although he now disputes it your Petitioner did produce
four Witnesses Permaul Chitty and Groopatham to the
Second Interrogatory deposed that the Defendant did
faithfully promise to the said William Lewcock to discharge
the Assignment of the Bond agreeable to the terms therein
specified

Specified and Arroolaunden and Vengayapah to the fourth Interrogatory depose that after the Bricklayer had Valued the said House by sight to the Value of Six hundred Pagodas the said William Lewcock did tell the Defendant that his Bond of the Eleventh March One thousand Seven hundred and Eighty Eight for Pagodas Nine hundred and Seven in Mr. Fabricius's name was to be Assigned to him the said William Lewcock and that the Defendant did promise to pay the Amount thereof to the said William Lewcock your Petitioner did also Shew by the Evidence of Groopatham and Permaul Chitty to the Second Interrogatory that on the Twenty Ninth of March at the time the House of the Defendant was estimated the Bond in Question was in the hands of the Defendant and Groopatham Moodeliar to the third Interrogatory further Declared that he had constantly attended on your Petitioner Whenever he settled Accounts with the Natives that he never heard of any Settled on the Thirty first day of March One thousand Seven hundred and Eighty Eight had such been case that your Petitioner would have sent for him and he pointedly declared that to his certain knowledge no Accounts were left unsettled on the Eleventh March between the Defendant and your

Petitioner

Petitioner — And your Petitioner says that he has not for many years past settled any Accounts with the Natives unless the said Goorroopatham was present to Assist him for your Petitioner is very Old and in form Eighty two years of age and it would be utterly impossible for him to arrange and Settle any Accounts with a Native unless he had the Assistance of a Native your Petitioner in Order to Shew that the Defendant many Months after the Execution of the Bond in Question did Acknowledge the Justness of the Sum of Nine hundred and Seven Pagodas therein Conditioned to be paid did produce the said Permaul Chitty Who to the Sixth Interrogatory deposed that about five Months after the said Bond had been Assigned over to the said William Lewcock by your Petitioner he met the Defendant and told him that the time limitted in his Bond was nearly expired and advised him to pay a part of the Money that the Defendant said he would Seize the first Opportunity of Speaking with the said William Lewcock on the Subject and to the last Interrogatory the same Witness deposed that he did Acquaint the Defendant that the said William Lewcock would prosecute him in the Honourable the Mayors

Court

Court for the Recovery of his Money to which the
Defendant Answered that he was not any wise
Apprehensive because the Mortgaged premisses would
Answer the prosecution—

Your Petitioner Sheweth that upon such process had, the said Cause came on to be heard and Determined on the Seventeenth day of this present Month of November when the said Honble the Mayors Court were pleased to Order and Decree and did Accordingly Order and Decree that your Petitioners said Bill of Complaint be dismissed with Costs as by the Copy of the said Decree hereunto annexed for the inspection of this Honourable Court to which your Petitioner begs leave to Refer and prays the same may be taken as part of this his Petition and Appeal will more fully and at large appear — By which said Decree of the said Honourable the Mayors Court your Petitioner doth conceive himself much aggrieved and doth therefore Appeal therefrom to the Wisdom of this Honourable Court for the following Amongst other Reasons —

First —— Because your Petitioner is advised and thereon humbly insists that the said Decree of the said Honourable the Mayors Court does not arise from the several matters under which your Petitioner claimed, and on which he grounded his right of Action in and by his said Bill of Complaint nor from the several matters offered in Evidence by your Petitioner in support thereof, nor from the other Proceedings had thereon but that the same is an evident departure from the one and an entire inattention to the other and therefore ought not to operate against your Petitioner so as to Destroy his Just rights and deprive him of his property —

Secondly —— Because your Petitioner Sheweth that he did by his Attorney the said William Lewcock file his said Bill of Complaint in the said Honourable the Mayors Court upon a Bond granted by the Defendant who did not offer any Plea in bar to the Action commenced thereon by your Petitioner but did in and by his said Answer Acknowledge the due execution thereof on the day and year therein set forth and the Sum thereby conditioned to be paid and therefore your Petitioner humbly conceives that the said Honorable the Mayors Court ought to have given a Decree in his favour agreeable to the prayer of his said Bill of Complaint and According to the Doctrine of the Law and the principles of

Which furnishes another very Strong Reason for Appealing from the said Decree of the said Honourable the Mayors Court—

Fourthly ——— Because the pretended discharge or as it is called in the Translation Acquittance by which alone the said Honorable the Mayors Court were guided in granting the said Decree as your Petitioner has Reason to believe and on which the Defendant Solely Relied is not such a discharge or Acquittance as could be Pleaded in bar to the Condition of a Bond It is a Vague indefinite Memorandum of some thing not specified There is no Seal to it no Subscribing Witness to the due execution thereof nor has one of the Witnesses produced by the Defendant dared to say that they saw your Petitioner subscribe his name to it or that he did deliver the same to the Defendant for the purposes therein contained or for any other purpose whatever but it is every Virtue Rests upon belief for three Witness Examined to the said pretended discharge or Acquittance to the third Interrogatory depose that the signature thereto is of your Petitioners hand Writing and that they believe the same was given by your Petitioner as a full discharge of all demands — but to allow it

The

The force of an Acquittance still it could not be Pleaded in bar to a Bond for a Receipt or Acquittance in full of all demands will discharge all debts except such as are in specially Viz Bonds Bills and other Instruments Sealed and delivered on which Account those can only be destroyed by some other specially of equal force so it is laid down in Jacobs Law dictionary and which Refers to second croke 650 Wherein in the case of Noyes against Hopigood on an Action of Debt upon Bond and to which the Defendant pleaded a discharge it is reported to have been Solemnly adjudged for the Plantiff without Argument so that admitting the said pretended Acquittance to be of the force as sworn to by the Defendant in and by his said Answer and even although he had advantaged himself of the Law in such Cases and had pleaded it in barr to the present Action yet agreeable to Law and equity it would have been insufficient and altogether nugatory but your Petitioner begs to observe that the said Acquittance does not possess those words and pointed expressions which alone could give it the colour of an Acquittance and such as it is said to contain in the Defendants said Answer and which offers another Reason for Appeal —

Fifthly

Fifthly ——— Because the Defendant in and by his said Answer in Order to give strength and Validity to the said pretended Acquittance and so injure your Petitioner and deprive him of his property has Sworn to palpable Falshoods for the said discharge or Acquittance runs in the words following that is to say "The Accounts which subsisted "between us commencing from 1769 to this day are all &c "settled and that you have executed to me a Bond for the "Ballance which Appeared due to me and that Should "there be any Bond or Obligation privious to this time "it is to be null and Void this I have given you this receipt "or Acquittance" and the Defendant in his said Answer Swears positively to the said Acquittance being a Release or discharge in full of all demands and more particularly in full of the said Bond or Obligation Whereon the &c present Action is brought "So that the Defendant agreable to the known Doctrine of the Law by Swearing to a falshood in one part of his Answer has Rendered the Whole thereof of no force or efficacy Whatever and the &c Depositions set up in support of his Defence are by the same means placed in the same predicament for fore of the Defendants Witnesses that is to say Armoga &c

Pillay

Pillay Venkatarama Pillay Modoo Comara Pillay and Tanjachala Pillay to the latter part of the Second Interrogatory Depose that your Petitioner did propose to give the Defendant an Acknowledgment of the Settlement of all Accounts between them and a Declaration of such Bond, meaning the Bond in question being Void and that so he did Accordingly now there is no Bond particularised in the said pretended Acquittance except the one said to have been granted for the ballance of Accounts Which they Shew is not the Bond alluded to. and therefore by Swearing that your Petitioner did give a Declaration of the particular Bond in question being Void they have Sworn to a falshood Which Destroys every part of the Evidence they had given on the Subject And the Witnesses who have Attempted to contradict the Assertion contained in your &c Petitioners Replication Relative to the said &c William Lewcock Valuing the premisses mortgaged and discribed in and by the Bond in question

have

have to the fifth Interrogatory either declared to a falshood or to nothing They depose that the said Wm Lewcock and some other did go to the house of the Defendant some time but they cannot say what particular day in the Month of March One thousand Seven hundred and Eighty Eight and ask to drink some Coconuts but no conversation Whatever passed Relative to the Measuring of the Ground or any thing like it, Now there is no mention made of Ground in the said Replication but of a house the property of the Defendant that if by Ground they mean the Mortgaged premises which by the bye would be carrying Meaning too far they Swear to that kind of Negative which was impossible for them to prove and therefore such Depositions ought to have been Judged against the Defendant but your Petitioner has put the matter beyond a doubt for in support of his said Repliuation he has produced five Witnesses who Swear in the Affirmative and in the most pointed and distinct manner Declare that there was not only a Conversation Relative to the said Mortgaged Premises but that such

Premises

Premises were Valued with the consent of the Defendt who Shewed them to the said William Lewcock for that purpose and prayed the Valuation might be made without Measurement but his family might be alarmed as by Reference to the Depositions of Permal Chitty and Gorroopatham Moodelliar to the Second Interrogatory and Myneapah Bricklayer Mastry Arooaunden Dubash and Vengayapah to the fourth Interrogatory may Appear and here it is worthey of Remark that the Defendants Witnesses Just alluded to are the only Witnesses he has produced who have not Recollected every thing to which they were interro=gated but those have not been able to recollect the particular day in the Month of March One thousand Seven hundred and Eighty Eight on which the said William Lewcock and others went to the house of the Defendant and the Cause of such forgetfulness is Obviaris — they are the only Witnesses produced on the part of the Defendant who have been left to think for themselves for the Fifth Interrogatory to which they Depose is in the words following that is to say did not William Lewcock and some other Persons

call

call at the house of the Defendant in the evening of
some and what day in the Month of March One thousand
Seven hundred and Eighty Eight all the other Interrogatories
are leading or rather anticipating the Answer to be given
to them and are Answered Sub-tum.

Lastly Your Petitioner humbly conceives he has
Sufficient Reason for Appealing from the said Decree of the
said Honorable the Mayors Court because the due
Execution of the Bond on which he filed his said Bill
of Complaint has been admitted by the Defendant in
the fullest manner and because the Defendant did
Eighteen days Subsequent thereto consent to an
Assignment thereof being made to the said William
Lewcock and faithfully promise in the presence of
four Witnesses to pay to him the said William Lewcock
the Amount thereof at the expiration of Six Months
as by the Depositions of Permall Chitty Groopatham
Moodelliar to the Second Interrogatory and
Arolaunden and Vengayapah to the fourth
Interrogatory Reference being thereunto had may
appear

For all which Reasons

and such others as may be offered at
the hearing your Petitioner prays
that this Honourable Court may be
pleased to Reverse the said Decree of
the said Honourable the Mayors Court
and grant your Petitioner such other
further and general Relief on the
Premises as to this Honourable Court
Shall seem meet

/Signed/ J. Stuart Hall
Solicitor for Appellant

Mayors

Mayors Court at Madraspatnam } Tuesday the 17th day of November Anno Dominii 1789

Present

William Webb Esquire Mayor

Andrew Ross & Henry Chichley Michell

Aldermen

Between the Reverend John Philip Fabricius of Vepperry Mesionary by his Attorney William Leveck Inhabitant of Madras &c Inhabitant Complainant and Nullapillay of Vepperry Inhabitant Defendant—

This Cause Coming on to be heard and debated this day in the presence of the Attorney for the Complainant (the Attorney for the Defendant having declined Acting) on Reading the Affidavit of Thomas Jones of Service of Notice of hearing the Complainants Bill with Copies of a Mortgage Bond and an Assignments or Power of Attorney annexed The Defendants Answer with Copy of an Acquittance annexed, The Amended Replication with Copy of an Account annexed — The Rejoinder The Interrogatories & Depositions on the part of the Complainant with Two Exhibits Marked A and B annexed The Interrogatories and Depositions on the part of the Defendant with one Exhibit Marked C annexed on Hearing the Pleadings made use of by the Attorney for the Complainant and on due Consideration had thereon. This Court doth think fit to Order and Decree and doth Accordingly Order and Decree that the Complainants Bill do stand dismissed with Costs—

Vera Copy
/Signed/ G. Taylor
Dept. Regr.

A true Copy
/Signed/ J. Stuart Hall
Solicitor for appellant

Court

Court of Appeals
at
Madraspatnam

Saturday the 26th day of April
Anno Domini 1794

Between the Reverend John Philip Fabricius of Vepery Missionary by his Attorney William Lewcock of Madras Inhabitant Appellant and Nellapillay of Vepery Inhabitant Respondent.

This Cause coming on this day to be heard and debated before this Court and no Answer having been given by the Respondent Nor any Appearance made and no Reason having been Assigned by him for Such Default or Cause Shewn by him against the Prayer of the Appellants Petition of Appeal: This Court doth think fit to Order and Decree and doth Accordingly Order and Decree that the Appellants prayer do stand Good and that the Decree of the Honble the Mayors Court Given in this Cause on Tuesday the 17th day of November Anno Domini 1789 be Reversed with Costs.

Hur / Signed / Chas N. White
Clk

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

In the Court of Appeals
at Madraspatnam

Between Sawmy Moodiliar by his Attorney Charles Canty Complainant and Cottah Moocundoo Naig Defendant—

The humble Petition and Appeal of the above named Defendant—

Sheweth

That on the Twelfth day of March in this present year of Our Lord One thousand Seven hundred and Ninety one the above named Complainant by his said Attorney did file a Bill of Complaint in the Mayors Court of Madras=patnam against your Petitioner for the Recovery of the Sum of Two hundred and Eighty six Star Pagodas Thirty Seven fanams and fifty two Cash charged to be due and Owing to the Complainant by your Petitioner upon an Account Current a Copy Whereof was annexed to the Complainants said Bill of Complaint and your Petitioner further

Filed in my Office
the 12th May 1791
Chas N. White
Clk

Court

further Sheweth that a Summons did issue from the said Mayors Court directing your Petitioner to Appear to and Answer the said Bill of Complaint and Accordingly your Petitioner did Appear by his Attorney at law and the usual Rules having passed for your Petitioner to Answer the said Bill of Complaint your Petitioner Sheweth that before such Answer could be prepared & intime to be filed, the said Mayors Court on the third day of this Instant May at the instance of the Complai= nants Attorney passed an Order or Decree that your Petitioner should pay unto the Complainant the said Sum of Two hundred and Eighty Six Pagodas Thirty Seven fanams and fifty two Cash together with the Interest due or which might grow due thereon as also all Costs of this Suit And your Petitioner Sheweth that Mr Alderman Ross, dissented to the Resolution of the said Court because the Action was founded on an Account Current which in its own nature was not Assignable by law as will Appear by a Copy of the said Order or Decree and the Dissent of the said Alderman Ross at the foot thereof herewith lodged for the inspection of this Honble Court—

From

From which said Order and Decree of the said Mayors Court your Petitioner doth Appeal to this Honble Court as he conceives himself Aggrieved and injured thereby because it is the practice of the said Mayors Court to grant a further time of several Weeks Acording to the Circumstances of the case for a Defendant to put in his Answer therefore your Petitioner humbly submitteth that no Prejudice could have Appened to the Complainant by granting a further time for your Petitioner to file his Answer—

Your Petitioner therefore and for the Reasons contained in the said Dissent prayeth that this Honble Court will be pleased to set a Side the Decree of the said Mayors Court and that a Rule may pass for further time for your Petitioner to file his Answer to the said Bill of Complaint of the Complainant and that the said Complainant may pay all Costs of this Appeal—

/Signd/ S. Popham
Solicitor for Appellant

Extract

Extract from the Minutes of a Court Held at the
Town Hall on Tuesday the 3d day of May
Anno Domini 1791

Present

Josias Dupre Porcher Esqr. Mayor
Andrew Ross and John Mitford
Aldermen

Sawmy Moodiliar by his Attorney Charles Carty
Cottah Moocundoo Naig

The Attorney for the Complai=
=nant produces to the Court a Certificate from the Register
Setting forth that the usual Rules have issued for the Defendant
to Answer the Complainants Bill which he has neglected
doing he therefore prays that a Decree may now pass
to which the Opposite Attorney objects and prays that he
may be allowed a further time of one Week to put in the
Defendants Answer The Court having taken the same
into Consideration it is Ordered that a Decree do pass
Bill Read—

It appearing by the Records of
this Court that the usual Rules have issued for the
Defendant to Answer the Complainants Bill which
he has neglected doing This Court doth therefore think
fit to Order and Decree and doth Accordingly Order and
Decree that the Defendant shall pay unto Complainant
the full and Just Sum of Two hundred and Eighty
Six Pagodas Thirty Seven Fanams and fifty two Cash
/Star Pagodas 286 „ 37 „ 52/ 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—
Mr. Alderman Ross Dissents to the Resolution of
the Court because the Action is founded on an Account
Current which in its own nature is not Assignable
by law—

A true Extract
/Signed/ D. Taylor Regr.

To

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

In the Honble the Court of
Appeals at Madraspatnam

Between Sawmy Moodeliar by
his Attorney Charles Canty Complainant
and Cottah Moocundoo Naig
Defendant

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

This Respondent admits that he did by his
said Attorney sometime on or about the Twelfth day of
March in the Present year of Our Lord One thousand
Seven hundred and Ninety One exhibit and file a
Bill of Complaint in the Honble the Mayors Court at
Madraspatnam against the Appellant charging that
he was indebted unto this Respondent in the full and
Just Sum of Two hundred and Eighty Six Pagodas
Thirty Seven fanams and fifty two Cash Current Money
of Madras but this Respondent begs further to set forth
that

Filed in my Office
the 22d June 1791
Chas N. White
Clk

that this Account Current was made from and Composed
of an Account Current settled by the said Appellant and
Respondent on the Ninth day of January in the year
of Christ One thousand Seven hundred and Ninety and
Signed by the said Appellant as will fully Appear by
Reference to the Copy of a Translation thereof (the Original
being in the Possession of this Respondent Ready to be
produced when Required) annexed to the aforesaid Bill
of Complaint and this Respondent further begs to set forth
that the Circumstances Regarding an Answer to the said
Bill of Complaint as stated by the said Appellant are by
no means Correct for this Respondent says that the usual
Rules to Answer having passed and no Answer having
been filed nor even a Copy of the Bill taken out from
the Registry of the said Mayors Court He this Respondt
did on the Twenty sixth day of April last past pray the
said Mayors Court would pass a Decree, that the Appellant
should pay unto this Respondent the aforesaid Sum of Two
hundred and Eighty Six Pagodas thirty Seven fanams
and fifty two Cash together with the Interest due on the same
together with the Costs of this Suit - When the said Court did
Indulge the said Appellant in a further time of One Week

to

to Answer the said Bill of Complaint at the expiration of which time this Respondent in Consequence of there being then no Answer filed to the said Bill of Complaint nor any Copy of the same taken Out did Again pray the said Mayors Court to pass a Decree in his favor which was Accordingly done as appears by an Extract annexed to the said Appellants Petition and Appeal / from the Minutes of a Court held at the Town Hall on Tuesday the third of May in the present year One thousand Seven hundred and Ninety one And this Respondent admits that it is usual with the said Mayors Court to give time for several Weeks According to the Circumstances of the Case for a Defendant to put in his Answer but this Respondent saith that probable Cause must be Shewn to the said Court to entitle the Defendant to such Indulgence otherwise the said Court will on the expiration of the usual Rules give Judgment for the Complainant and And this Respondent further saith that he Verily and truly believes and that it is Apparent for the Cause aforesaid that it never was the Intention of the said Appellant to put in an Answer to this Respondents said Bill knowing that he must put in the same an Oath, as he could not traverse the Debt, from all Which Circumstances

It is evident the Appellant intended merely to procrastinate the Payment, more particularly as at the time the Decree was prayed for the said Appellant shewed no Reasonable Cause of Objection to passing the same therefore the same did pass and lastly this Respondent sayth that his Cause of Action was and is just and that in law and equity the Appellant is bound to abide the Decree of the said Mayors Court of the third day of May Last past—

From all which Reasons and such others as may be offered at the hearing this Respondent humbly prays this Honble Court will be pleased to Confirm the Decree of the said Mayors Court and dismiss the Appellants said Petition and Appeal with exemplary Costs—

/ Signed / Robt. Williams
Solicitor for Respondent

Court

Court of Appeals
Madraspatnam

Saturday the 26th day of April
Anno Domini 1794-

Between Cottah Moocundoo Naig
of Madras Inhabitant Appellant and
Sawmy Modelliar of the same place
Inhabitant by his Attorney Charles Carty also
of the same place Inhabitant Respondent-

This Cause coming on this day to be heard and
Debate before this Court and upon due Consideration of the
Petition of appeal together with the Decree of the Hon^ble the
Mayors Court given in this Cause on Tuesday the 3d. day
of May 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 Charles Carty 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 Hon^ble the Mayors Court dated the
3d. day of May Anno Domini 1791- be Reversed and
that the Respondent Sawmy Modeliar do pay all Costs in
both Courts-

Clerk / Signed / Chas N. White clk

To

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

In the Court of Appeals
at Madraspatnam

Between John Mitford of Fort St.
George Merchant the Executor named
in the last Will of Robert Mitford
late of Fort Saint George aforesaid Merchant
Deceased Complainant and Stephen
Towns a Captain in the Service of the
Hon^ble the United Company of
Merchants of England Trading to the
East Indies under their Presidency of
Fort Saint George Defendant-

The humble Petition and Appeal of the
above named Defendant-

Sheweth

That on Twenty third day of February Now last
past the above named Robert Mitford did file a Bill of
Complaint in the Mayors Court at Madraspatnam against
your Petitioner for the Recovery of the Sum of One thousand
Three

Filed in my Office
the 20th December 1790
Chas N. White
Clk

Three hundred and fifty Nine Pagodas charged to be due and owing by your Petitioner unto the said Robert Mitford upon an Undertaking in Writing a Copy whereof was annexed to the said Robert Mitfords said Bill of Complaint and your Petitioner further Sheweth that a Summons did issue from the said Mayors Court directing your Petitioner to Appear and to Answer the said Bill of Complaint and Accordingly your Petitioner did appear by his attorney at law –

Your Petitioner Sheweth that before the Rules for Answering the said Bill expired the said Robert Mitford departed this life having first made and executed his last Will and Testament in Writing and thereof Appointed the said John Mitford his Executor who hath duly proved his said Will in the Kings Ordinary in the Mayors Court and taken upon himself the Burthen of the execution thereof

Your Petitioner further Sheweth that the said John Mitford as Executor as aforesaid did on the second day of November now last past file a Bill of Revivor against your Petitioner upon which said Bill of Revivor a Summons did issue for your Petitioner to answer the said Bill of Revivor – your Petitioner also Sheweth that before your Petitioners Answer could be prepared in time to be filed the said Mayors Court did on the Seventh day of December Instant pass a Decree that your Petitioner should pay unto the said John Mitford as Executor as aforesaid the said Sum of One thousand Three hundred and fifty Nine Pagodas together with all such Interest as then was or should thereafter become due thereon untill full Payment was made also all Costs of the Suit –

From which said Decree of the said Mayors Court your Petitioner doth appeal to this Honble Court as he conceives himself Aggrieved thereby because it is the Practice of the said Mayors Court to grant a further time of several Weeks According to the Circumstance of the case for a Defendant to put in his Answer therefore your Petitioner humbly submits that no prejudice could happen to the Complainant by granting a further time for your Petitioner to file his Answer –

Your Petitioner therefore prays that this Honble Court will be pleased to set aside the Decree of the said Mayors Court and that a Rule may pass for further time for your Petitioner to file his Answer to the said Bill of Complaint and Bill of Revivor –

/Signed/ S. Topham
Solicitor for Appellant

Extract

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 7th day of December Anno Domini 1790—

Present

James Call Esquire Mayor.
Andrew Ross — Henry Chichley
Michell and Henry Readhead
Aldermen

John Mitford Executor of Robert Mitford Deceased —
Heirs of
Stephen Toung —

The Attorney for the Complainant produces to the Court a Certificate from the Register setting forth that the usual Rules have issued for the Defendant to Answer the Complainants Bill which he has neglected doing he therefore prays that a Decree may now pass — to which the Opposite Attorney objects and prays that he may be allowed one Week to put in the Defendants Answer — The Court having taken the same into Consideration it is Ordered that a Decree do pass — Bill Read —

It appearing by the Records of this Court that the usual Rules have issued for the Defendant to answer the Complainants Bill which he has neglected doing, This Court doth therefore think fit to Order and Decree and doth Accordingly Order and Decree that the Defendant shall pay unto the Complainant the full and Just Sum of One thousand Three hundred and fifty Nine Pagodas /Pagodas 1359. — — / together with all such Interest as now is or shall hereafter become due thereon untill full & Payment is made also all Costs of this Suit —

A true Extract
/Signed/ G. Taylor Regr.

So

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

In the Court of Appeals

Between Stephen Towns a Captain in the Service of the Honble the United Company of Merchants of England trading to the East Indies under their Presidency of Fort Saint George Appellant and John Mitford of Fort Saint George Merchant the Executor named in the last Will of Robert Mitford late of Fort Saint George aforesaid Merchant Deceased Respondent

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

This Respondent admits that on the Twenty third day of February last past the above named Robert Mitford did file a Bill of Complaint in the Mayors Court at Madraspatnam against the Appellant for the Recovery of the Sum of One thousand Three hundred and fifty nine Pagodas due and owing by the Appellant unto the said Robert

Filed in my office the 31st January 1791
Chs A White Clk

Robert Mitford upon an undertaking in Writing Copy Whereof was to the said Bill annexed and this Respondt admits that upon the usual Process issuing out of the said Mayors Court the Appellant did by his Attorney appear thereto And this Respondent says he does not admit that the said Robert Mitford did depart this life before the Rules for Answering his said Bill had expired as erroneously stated by the Appellant but that the usual Rules and a peremptory Rule had expired previous thereto and so this Respondent says the same will appear by the Bill of Revivor filed by this Respondent and forming a part of the Pleadings before the said Mayors Court in the matter in question Reference being thereunto had—

This Respondent admits that the said Robert Mitford did depart this life having first duly made and published his last Will and Testament in Writing and therein and thereby did appoint this Respondent his Executor and that this Respondent did duly prove the said Will and take upon himself the burthen of the Execution thereof as in the Appellants said Petition of Appeal is setforth and this Respondent admits that as Executor as aforesaid he did on the Second day of November last past file a Bill of Revivor and that a Summons did

did issue thereon and this Respondent says that the Appellant not Shewing Cause to the contrary the Suit did stand Revived and that thereupon this Respondent as Executor as aforesaid was entitled to a Decree in default of Answer but by Reference had to the Extracts from the Minutes of the said Court and whereof a Copy is annexed to the Appellants said Petition of Appeal it may Appear that the Appellant did obtain an indulgence from the said Mayors Court until the Seventh day of December following when the said Mayors Court was pleased to order and Decree and did Accordingly Order and Decree that the Appellant should pay to this Respondent as Executor as aforesaid the said Sum of One thousand Three hundred and fifty Nine Pagodas together with Interest & all Costs of suit — And this Respondent denies that the Appellant is any wise aggrieved by the said Decree of the said Mayors Court and says the only grievance stated by the Appellant as Cause of Appeal therefrom to this Honble Court militates against himself because this Respondent says that the said Mayors Court did grant to the Appellant a further time of several Weeks after the usual Rules for Answering had expired as may appear by Reference to three several Extracts from the Minutes of the said Mayors Court Copies Whereof are hereunto annexed and prayed by this Respondent to be taken as part of this his Answer the Originals being ready to be produced at the hearing and this Respondent further says that the Appellant still neglecting to Answer as by the said Rules Required, and not Shewing any manner of cause Why he could not comply therewith and thereupon to obtain a further extension thereof, the said Mayors Court did Decree as aforesaid —

This Respondent therefore prays that this Honble Court will be pleased to affirm the said Decree of the said Mayors Court and tax the Appellant with exemplary Costs for his litigious conduct in the premises —

/Signed/ I. Stuart Hall for himself and John Hamilton } Solicitors for Respt

Extract

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 16th. day of November Anno Domini 1790.

Present

James Call Esquire Mayor

Andrew Ross & Henry Readhead

Aldermen

John Mitford Executor of Robert Mitford Deceased

Stephen ~~Towns~~ Towns

Summons of Reviver Returned Served — the Defendant appears by his Attorney Mr. Stephen Popham who prays one Week to shew Cause why this Suit should not stand Revived Ordered Accordingly —

A true Extract
Signed/ G. Taylor Regr.

A true Copy
Signed/ I. Stuart Hall for himself & John Hamilton } Solicitors for Respondt.

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 23d day of November Anno Domini 1790.

Present

James Call Esquire Mayor

Andrew Ross & Benjamin Roebuck

Aldermen

John Mitford Executor of Robert Mitford Deceased

Stephen ~~Towns~~ Towns

The Attorney for the Complainant prays that this Cause may stand Revived Ordered Accordingly the Attorney for the Complainant prays that a Peremptory Rule of one Week May pass for the Defendant to Answer to which the Attorney for the Defendant objects and prays that he may be allowed two Weeks to Answer as the Suit has layan dormant for some months Ordered that one Week be allowed —

Further day is given the Defendant till the 30th. Instant to Answer the Complainants Bill indefault of which Judgment will be given for the Complainant —

A true Extract
Signed/ G. Taylor Regr.

A true Copy
Signed/ I. Stuart Hall for himself & John Hamilton } Solicitors for Respondt.

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 30th. day of November Anno Domini 1790.

Present

James Call Esquire Mayor

William Webb Josias Du Pre Porcher

and Andrew Ross Aldermen

John Mitford Executor of Robert Mitford Deceased

Stephen ~~Towns~~ Towns

The Attorney for the Complainant produces to the Court a Certificate from the Register setting forth that

that the usual Rules have issued for the Defendant to Answer the Complainants Bill which he has neglected doing he therefore prays that a Decree may now pass to which the Attorney for the Defendant objects and prays he may be allowed a further time of two Weeks to answer as the Suit was only Revived last Court day the Court having taken the same into Consideration it is Ordered that one Week be allowed further day is given the Defendant till the 7th. December next to Answer the Complainants Bill indefault of which Judgment will be given for the Complainant—

A true Extract

/Signed/ G. Taylor Regr.

Court

Court of Appeals at Madraspatnam } Saturday the 26th. day of April Anno Domini 1794

Between Stephen Towns as Captain in the Service of the Honble the United Company of Merchants of England trading to the East Indies under their Presidency of Fort St. George Appellant and John Mitford of Fort St. George Merchant & Executor named in the last Will of Robert Mitford late of Fort St. George Merchant Deceased Respondent—

This Cause coming on this day to be heard and Debated before this Court by the Attornies on both sides upon hearing the Petition of Appeal and Answer and the several Exhibits of the Honble the Mayors Court together with the Decree of the said Court given in this Cause on Tuesday the 7th. day of December Anno Domini 1790. Upon due consideration had of the Matters therein severally Contained and of the Pleadings and Arguments used by the Attornies on both sides This Court doth think fit to Order and Decree and doth Accordingly Order and Decree that the said Decree of the Honble the Mayors Court

do

do stand affirmed and that the Appellants Petition be hence dismissed with Costs—

Hur

(Signed) Chas N. White
Clk

To the Kings Most Excellent Majesty in Council

Between John Mitford of Fort St. George Merchant the Executor named in the last Will of Robert Mitford late of Fort St. George aforesaid Merchant Deceased Complainant and Stephen Towns a Captain in the Service of the United Company of Merchants of England Trading to the East Indies and their Presidency of Fort Saint George Defendant—

The humble Petition and Appeal of the above named Defendant—

Most humbly Sheweth

That on the Twenty third day of February One thousand Seven hundred and Ninety the above named Robert Mitford did file a Bill of Complaint in the Mayors Court at Madraspatnam against your Petitioner for the Recovery of the Sum of One thousand Three hundred and fifty Nine Star Pagodas charged to be due and owing by your Petitioner unto the said Robert Mitford upon an Undertaking in Writing a Copy whereof was annexed to the

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

To

the said Robert Mitfords said Bill of Complaint and your Petitioner further Sheweth that a Summons did issue from the said Mayors Court directing your Petitioner to Appear to and Answer the said Bill of Complaint and Accordingly your Petitioner did Appear by his attorney at Law—

Your Petitioner Sheweth that before the Rules for Answering the said Bill expired the said Robert Mitford departed this life having first made and Executed his last Will and Testament in writing and thereof appointed the said John Mitford his Executor who hath duly proved his said Will in the Kings Ordinary in the said Mayors Court and taken upon himself the Burthen of the Execution thereof—

Your Petitioner further Sheweth that the said John Mitford as Executor as aforesaid did on the Second day of November One thousand Seven hundred and Ninety file a Bill of Revivor against your Petitioner upon which said Bill of Revivor a Summons did issue for your Petitioner to Answer the said Bill of Revivor your Petitioner also Sheweth that before your Petitioners Answer could be prepared in time to be filed the said Mayors Court did on the seventh day of December then following pass a Decree that your Petitioner should pay unto the said John Mitford as Executor as aforesaid the said Sum of One thousand Three hundred and fifty Nine Pagodas together with all such Interest as then was or should thereafter become due thereon until full Payment was made also all Costs of the Suit—

From which said Decree of the said Mayors Court your Petitioner did Appeal to the Court of Appeals at Madras as he conceived himself Aggrieved thereby because it is the Practice of the said Mayors Court to grant a further time of Several Weeks According to the Circumstances of the case for a Defendant to put in his Answer therefore your Petitioner humbly Submits that no prejudice could happen to the Complainant by granting a further time for your Petitioner to file his Answer—your Petitioner Sheweth that the said Appeal came on to be heard at the Court of Appeals at Madras on the Twenty Sixth day of April last When the Decree of the Mayors Court was confirmed and your Petitioner considering himself aggrieved thereby doth Appeal therefrom and

Most

Most humbly prays that your Most Excellent Majesty in Council will be pleased to Reverse the said Decree and grant your Petitioner time to Answer the Complainants Bill of Complaint—

/Signed/ S. Sopham
Solicitor for Appellant

Court

Court of Appeals at Madraspatnam } Saturday the 26th day of April Anno Domini 1794

Between Stephen Lewins a Captain in the Service of the Honourable the United Company of Merchants of England Trading to the East Indies under their Presidency of Fort Saint George Appellant and John Mitford of Fort Saint George Merchant Executor named in the last Will of Robert Mitford late of Fort St George Merchant Deceased Respondent

This Cause coming on this day to be heard and Debated before this Court by the Attornies on both sides upon hearing the Petition of Appeal and Answer and the several Exhibits of the Honble the Mayors Court together with the Decree of the said Court given in this Cause on Tuesday the 7th day of December Anno Domini 1790 Upon due Consideration had of the Matters therein severally Contained and of the Pleadings and Arguments used by the Attorneys on both sides This Court doth think fit to Order and Decree and doth Accordingly

Order

Order and Decree that the said Decree of the Honourable the Mayors Court do stand Affirmed and that the Appellants Petition be hence dismissed with Costs—

Thur /signed/ Chas N White Clk

To

To his most Excellent Majesty in Council

Between John Mitford of Fort St George Merchant the Executor named in the last Will and Testament of Robert Mitford late of Fort Saint George aforesaid Merchant Deceased Complainant and Stephen Towns a Captain in the Service of the United Company of Merchant of England Trading to the East Indies under their Presidency of Fort Saint George aforesaid Defendant—

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

This Respondent admits that on the Twenty third day of February Which was in the year of Our Lord One thousand Seven hundred and Ninety the above named Robert Mitford did file a Bill of Complaint in the Mayors Court of Madraspatnam Against the Appellant for the Recovery of the Sum of One thousand Three hundred and Fifty Nine Star Pagodas as justly due and owing unto the said Robert Mitford by the Appellant upon an undertaking in writing by him Executed unto the said Robert Mitford and

Filed in my Office the 23d May 1794
Robert Clerk Clk

and Whereof a Copy was to the said Bill of Complaint annexed That upon the said Bill of Complaint Summons did issue directing the Appellant to Appear to and Answer the same and that the Appellant did Accordingly Appear by his Attorney in Court - but this Respondent doth not admit to be true the Asertions in the Appellant Petition of Appealed contained that before the Rules for Answering the said Bill had expired the said Robert Mitford did depart this life for that on the contrary not only the usual but also peremptory Rules had expired previously thereto and so this Respondent says the same may Appear by the Bill of Revivor by this Respondent exhibited and filed in the said Mayors and forming part of the Pleadings in this Cause —

This Respondent admits that the said Robert Mitford did depart this life having first duly made and published his last Will and Testament in writing and thereof appointed this Respondent his Executor and that this Respondent did prove this same and take upon himself the burthen thereof - and admits that he did file a Bill of Revivor in the said Mayors Court as set forth in the Appellants said Petition of Appeal - that Summons did issue thereon and that the Appellant did by his Attorney in Court appear thereto

thereto and pray a time of one Week to shew Cause why the suit should not stand Revived which was Ordered Accordingly as may more fully Appear by a Copy of the Extract of the said Mayors Court hereunto annexed for the inspection of your Most Excellent Majesty in Council, and the Appellant not having shewn such cause the said Mayors Court did order the Cause to stand Revived without any Objection on the part of the Appellant - And this Respondent says that he did then that is to say on the Twenty third day of November Which was in the year of Our Lord One thousand Seven hundred and Ninety pray a Rule of one Week for the Appellant to Answer this Respondents said Bill of Complaint but the Appellants Attorney objecting thereto and praying a further time of two Weeks as the suit had lain dormant for some months the said Mayors Court was pleased to allow him a further time of one Week as may more fully appear by a Copy of the Extracts of Minutes of the said Mayors Court hereunto annexed for the inspection of your Most Excellent Majesty in Council And this Respondent says that the Appellant having neglected to put in his Answer to this Respondents said Bill of Complaint he admits that the said Mayors Court did on the seventh day of December then following Order and Decree that the Appellant should unto this Respondent as Executor as aforesaid

aforesaid the Sum of One thousand Three hundred and fifty Nine Pagodas together with all such Interest as then was or should thereafter become due thereon untill full payment made also all Costs of Suit—

And this Respondent admits that from the said Decree of the said Mayors Court the Appellant did appeal to the Court of Appeals at Madraspatnam but this Respondent doth not admit that the Appellant was any wise aggrieved by the said Mayors Courts said Decree or that he had any Cause of Appeal therefrom to the said Court of Appeals— And this Respondent admits that the Appellant did in and by his said Petition of Appeal state that it was the practice of the said Mayors Court to grant a further time of several Weeks According to the Circumstances of the Case for a Defendant to put in his Answer and that no prejudice could happen to this Respondent by granting a further time for him the Appellant to file his Answer And this Respondent says that to the Appellants said Petition of Appeal he did Exhibit and file his Answer in the said Court of Appeals at Madraspatnam and did therein and thereby shew the fallacy of the Reason by the Appellant adduced and that he had not candidly set forth the Proceedings of the said

said Mayors Court as to the time by the said Court granted to the Appellant but that he had given a partial Extract therefrom And this Respondent did further Shew that owing to the Appellants conduct in neglecting the Rules issuing out of the said Mayors Court for Answering this Respondents said Bill of Complaint and not Shewing any manner of Cause why he could not comply therewith and thereupon to obtain a further extension thereof that the said Mayors Court did Decree as aforesaid—

And this Respondent admits that the said Appeal and this Respondents Answer thereto did come on to be heard before the said Court of Appeals at Madras on the Twenty Sixth day of April last past when the said Court of Appeals was pleased to confirm the said Decree of the said Mayors Court, but this Respondent does not admit that the Appellant is any wise aggrieved thereby or that he has any Cause of Appeal therefrom to your Most Excellent Majesty in Council for this Respondent submits to your Most Excellent Majesty in Council that the only pretext set up by the Appellant is that he had not the indulgence of time allowed by the said Mayors Court which he had prayed Whereas it will Appear by the Extracts of the Minutes of the said Mayors Court hereunto annexed and

of Equity, for a Bond duly Executed is held in equity to be sufficient Evidence of the condition it contains and the right of the Obligee therein and if upon an action commenced thereon the Defendant waives any Benefit of Plea which the Law gives him he cannot afterwards have the advantage thereof

Thirdly —— Because the Defence set up by the Defendant against the Just and equitable demands of your Petitioner is Vague contradictory and wholly insufficient Repugnant to Reason and in opposition to every principle of Equity, for the Defendant after having fully Acknowledge the due execution of the Bond in Question pretends that about Twenty days Subsequent to the execution thereof your Petitioner and himself did come to a Settlement of all Accounts between them that thereon a Ballance of Two hundred and Twenty five Pagodas Appeared in favor of your Petitioner for which he did execute a Bond bearing date the thirty first day of the said Month of March payable in Six Months and that in consequence thereof your Petitioner did execute a Release or discharge in full of all other Demands Whatever and particularly in full of the said Bond or Obligation &c

Whereon

Whereon the Present Action is brought it which shewing of the Defendant is altogether fallacious impertinent and nugatory for with respect to the pretended Bond it is laid down that one Bond cannot be taken in Satisfaction of another and so it was held by North Chief Justice in the Case Bly the against Hell in the Court of Common Pleas and by Justice Atkyns that there were many Authorities and all in point that one Bond could not be given in satisfaction for another so in Crookes Reports first Volume Page 716 and 727 two Cases in point the first Manhood Verse Crick Action was brought upon a Bond for Eight Pounds the Defendant pleaded in bar that he had entered into an another Obligation for the payment of Seven Pounds and which the plantiff had accepted, but the Court without Argument adjudged for Plantiff — with Respect to the pretended discharge, if the Defendant had conceived it to be sufficient to Stop the present Action he should have pleaded it in bar thereto but that having waived such plea the pretended discharge falls to the ground and becomes null and Void but your Petitioner is advised that the Defendant never had any foundation Whereon to ground a Plea in bar to the Present Action and

Which

and hereinbefore referred to that he did obtain two different Rules of seven days each and fourteen days was all he originally prayed for and this Respondent further submits to your Most Excellent Majesty in Council that previous to the decease of this Respondents Testator and to the Bill of Revivor hereinbefore mentioned several Rules did pass for the &c Appellant to file his said Answer and thereupon that it is evident that the Appellant never did mean or intend to put in any Answer to this Respondents said Bill of Complaint and that his Object has been and now is delay — And this Respondent says that the present Suit is brought upon a Note of hand endorsed to this Respondents said Testator and therefore it is to be presumed that the Appellant had it not in his power to set up any defence thereto — And this Respondent further says that although the said Mayors Court may sometimes grant an extension of time beyond the usual Rules for a Defendant to file an Answer yet that such extension is so granted upon &c special Circumstances set forth by the Defendant commonly upon Affidavit and in the present Instance the &c Appellant without Assigning any Reason did obtain a Considerable indulgence of time both anterior and subsequent to the death of this Respondents said Testator

For

For all which Reasons and such other as may be offered at the hearing this Respondent prays that the said Decree of the said Mayors Court and of the said Court of Appeals may be affirmed by your Most Excellent Majesty in Council and that this Respondent may have such other Relief as to your Most Excellent Majesty in Council may Seem Meet —

/Signed/ J. Stuart Hall
Solicitor for Respondt.

Extract

he therefore prays that a Decree may now pass – to which the Attorney for the Defendant Objects and prays he may be allowed a further time of two Weeks to Answer as the Suit was only Revived last Court day – The Court having taken the same into Consideration, it is Ordered that one Week be allowed – Further day is given the Defendant till the 7th December next to Answer the Complainants Bill in default of which Judgment will be given for the Complainant –

Attwe Extract
/Signed/ G. Taylor Regr

Attwe Copy
/Signed/ Ja.s Stuart Hall
Sol.r for Respond.t

To the Honble Major General
Sir Archibald Campbell K.n B.n
President in Council
Fort Saint George

In the Honble the
Court of Appeals &c.

Between Charles Darke of Fort St. George Esquire – Complainant and James Wooley of the same place Esquire Defendant

The Humble Petition and Appeal of the said James Wooley

That on or about the twenty fifth day of September in this present year of Our Lord One thousand Seven hundred and Eighty Eight the above named Complainant did Exhibit a Bill of Complaint in the Mayors Court against your Petitioner and did therein state that the said Complainant did on or about the first day of September Which was in the year One thousand Seven hundred and Eighty Seven file his Bill in the said Mayors Court against your Petitioner as Executor of the late Sir John Clerk and charged your Petitioner with being indebted as Executor as aforesaid unto the said Charles Darke in the Sum of Nine hundred and Eighty Nine Star Pagodas

Filed in my Office
the 22d Dec.r 1788.
Chas. N. White
Clk

To

Pagodas twenty fanams and twenty Cash as Appeared from the Copy of an Account Current annexed to his said Bill of Complaint and the Complainant did further State in his said last Bill of Complaint that he did in his former Bill expressly aver and charge that your Petitioner as Executor as aforesaid had possessed himself of and had Received very Considerable Assets from the Estate of the said Sir John Clerk, and more than sufficient to pay the Whole of the Complainants demand and in particular that your Petitioner had Received and taken into his possession Two Bonds or Obligations of his Highness Wau Lau Jaw Nabob of the Carnatic the one bearing date on or about the fifteenth day of September Which was in the year of Our Lord One thousand Seven hundred and Seventy Six for the Sum of Eight thousand Pagodas and the other bearing date on or about the same day in the said year of Our Lord One thousand Seven hundred and Seventy Six for the Sum of Seven thousand Pagodas that the said two Bonds or Obligations had been given and granted by his said Highness the Nabob of the Carnatic to the said Sir John Clerk in his lifetime and that your Petitioner did possess himself of the said two Bonds or Obligations and had therein your

your Petitioners possession at the time of the Death of the said Sir John Clerk and for some time after and the said Complainant did further State that he did in his said Bill of Complaint interrogate your Petitioner whether he did or did not take the said two Bonds into his possession and after the death of the said Sir John Clerk exchange the same at the Durbar of his said Highness for one Bond from his said Highness payable to Lady Clerk the Widow of the said Sir John Clerk for the Sum of Twenty thousand Pagodas or some other or what Sum and that your Petitioner might set forth a full true Just and particular Account of the Personal Estate of the said Sir John Clerk and what had come into your Petitioners hands Custody or power, and What was become of the said Two Bonds and how your Petitioner or any other Person for him had Applied and disposed of them and that your Petitioner might be Decreed to pay unto the Complainant the aforesaid Sum of Nine hundred and Eighty Nine Pagodas twenty fanams and twenty Cash with Interest and Costs of Suit and the said Complainant did further Shew that your Petitioner did on or about the Ninth day of October in the year One thousand Seven hundred and

and Eighty Seven file a Plea and Answer to the Com=
=plainants said Bill of Complaint and that therein
your Petitioner did Plead the statute of limitation made
and passed in the twenty first year of the Reign of King
James the first and prayed the benefit of the same against
the Bill of Complaint of the Complainant and that in
your Petitioners Answer your Petitioner did admit the
Receipt of the two Bonds as above mentioned and that your
Petitioner had exchanged them as the Complainant had
alledged for one Bond of his said Highness the Nabob of
the Carnatic payable to Lady Clerk the Widow of the said
Deceased Sir John Clerk and that they were to the
Amount of Fifteen thousand Pagodas and that your
Petitioner did also annex to his said Plea and Answer
an Account of the Personal Estate of the said Sir John
Clerk over and above the Amount of the said Two
Bonds Amounting to One thousand Nine hundred
and Seventy three Pagodas and fourteen fanams
Which your Petitioner admitted to have Received and
the said Complainant did further state that he did
file his Replication to the said Plea and Answer
To which your Petitioner did Rejoin and Issue being
Joined

Joined thereon, and publication having passed the
said Cause was set down for hearing & did come on to
be heard on Tuesday the thirteenth day of May last
past when the Mayors Court were pleased to Order and
Decree and did Accordingly Order and Decree that
your Petitioner should pay unto the Complainant
out of the Estate and Effects of the said Sir John Clerk
Deceased the full and Just Sum of Nine hundred and
Eighty Nine Pagodas twenty fanams and twenty Cash
with all such Interest as then was or should there=
=after become due thereon untile full payment was
made also all Costs of Suit, and he did further state
that fourteen days being the time allotted for appealing
from the Decrees of the Mayors Court to this
Honorable Court having Elapsed without any
Appeal having been lodged by your Petitioner the
Complainant did sue out Execution under the Seal
of the said Mayors Court for the said Sum of Nine
hundred and Eighty Nine Pagodas twenty fanams
and twenty Cash so Decreed as aforesaid and did
deliver the same into the hands of the Sheriff who
Returned the same into the said Mayors Court Mayors
Court

Court endorsed "no Goods or Chattels to be found" Whereupon the Complainant did pray another Execution Which is now in the hands of the Sheriff and the Complainant avers and expresly charges as the Plea and Answer of your Petitioner so filed and of Record did clearly Shew that the said Sir John Clerk did Die possessed of a Considerable property that your Petitioner did posses himself of the same and had Received several Sums of Money on Account of the said Bond both before and since the Decree so made and passed by the said Mayors Court Which said Several Sums of Money (as the Complainant charged) were Assets in your Petitioners hands and that your Petitioner was and is bound to pay off and discharge the Sum so Decreed by the said Mayors Court out of the said Monies and the Complainant further charged that your Petitioner had Wasted and Expended the same to the Injury of the Complainant and other the Creditors of the said Sir John Clerk and had not paid the Complainant the whole or any part of the said Sum of Nine hundred and Eighty Nine Pagodas twenty fanams and twenty Cash so Decreed as

as aforesaid and which (as the Complainant says) your Petitioner ought to have done because his Debt was Confirmed and Sanctioned by the Decree of the said Mayors Court so made and passed as aforesaid and therefore became a Debt of an higher Degree than any other of the Debts of the said Deceased and that your Petitioner was bound to take Notice of the said Decree and to pay the Sum of Money thereby adjudged to the Complainant in preference to any other Debts — To which said Bill of Complaint your Petitioner did on or about the fourth day of November last file his Plea and Answer and did therein set forth that if the Complainant ever had any Cause of Suit Against your Petitioner for or concerning the Matters or Transactions in the said Bill of Complaint mentioned which your Petitioner did in no sort admit the same did Accrue and arise above Six years before filing the said Bill and above Six years before Serving your Petitioner with any process to Appear to And Answer the same and your Petitioner for further Plea said and did aver that he did not at any time within Six years before the filing the Complainants said Bill of Complaint nor within Six years before

your

your Petitioner was served with process to Appear and Answer thereto ever promise or Agree to come to any Account for or to pay or in any wise satisfy the said Complainant any Money for or Concerning the Matters and transactions in the said Complainants said Bill of Complaint contained Charged or alledged on the Contrary your Petitioner said that he is not the Executor of Sir John Clerk Deceased as Erroneously stated in the Complainants Bill of Complaint nor did the said Sir John Clerk to your Petitioners knowledge ever make any Will before or at the time of his Decease nor did your Petitioner ever administer to his Estate and your Petitioner further stated that the said Sir John Clerk departed this life on or about the tenth day of October Which was in the year of Our Lord One thousand Seven hundred and Twenty Six which was then about Eleven years past and the Complainant did not take any Step at law or otherwise against your Petitioner to Substantiate his demand from the day of the death of the said Sir John Clerk to the time of filing the present Bill and therefore your Petitioner did plead the Act of parliament or Statute of limitation made in the twenty first year of the Reign of King James the first and prayed that the benefit of the said Act of parliament for limitation of Actions might be allowed to him and your Petitioner in no wise waiving the benefit of the said Plea but fully Relying thereon for further Plea said that it Appeared by the Complainants said Bill of Complaint that the purport and Intent thereof were to Compel your Petitioner to pay the Sum of Nine hundred and Eighty Nine Pagodas twenty fanams and Twenty Cash under pretence that your Petitioner was the Executor of the said Sir John Clerk and that he had Received Considerable Assets from the Estate of the said Sir John Clerk Whereas it would Appear by an Account Current annexed to your Petitioners said and Answer that he is not possessed of any Estate Whatever of the said Sir John Clerk all which Matters your Petitioner did aver and plead in bar to the Complainants said Bill and his pretended demand and humbly prayed the Judgment of the said Mayors Court &c Whether he need make any other or further Answer thereto and that he may Received the full benefit thereof And your Petitioner by no means Waving his said Plea but fully Relying thereupon for Answer to the Residue of the said Complainants Bill of Complaint

Complaint or to so much thereof as your Petitioner was
Advised to Answer. unto your Petitioner Answered and
said that he admits the Complainant did file a
Bill of Complaint against your Petitioner at the
time and for the purpose setforth in his Bill of
Complaint to which your Petitioner did file a Plea
and Answer and that your Petitioners Plea was that
the Complainant was barred of his Right of Action
by force and Virtue of the above mentioned Statute
of limitation and by other matters as above setforth
And your Petitioner did in his Answer and Rejoinder
filed in the said Mayors Court to the Bill and Bill Replica=
=tion of the above named Complainant admit that he
came into possession of certain Assets or Effects belonging
to the Estate of the said Sir John Clerk Deceased to a
Certain Amount the Account Whereof was Annexed
to the Plea and Answer of your Petitioner in the former
and present Suit — Your Petitioner did further
setforth that the said Account States the particular
manner in which your Petitioner Applied and &c
Disposed of the said Effects — your Petitioner admitted
that at the time of the Decease of the said Sir John
Clerk your Petitioner in possession as a Person who
was

was then in the Service of his Highness Wauw law Jaw
Ze.a Ge.a Nabob of the Carnatic) of Two Bonds which were
in the Persian Language and as your Petitioner believed
were Bonds for payment unto the said Sir John Clerk
of the specific Sums stated in the Complainants Bill
of Complaint and your Petitioner said that from the &c
manner in which your Petitioner became in possession
thereof the intent and meaning Which Actuated his
said Highness in Executing the said Bonds the manner and
expressions of the said Sir John Clerk When your Petitioner
mentioned his having Two such Papers and lastly the fact that
the said Sir John Clerk never had in his Actual Custody or
possession either of the said Bonds induced your Petitioner to
consider it as his duty to Return the said Bonds to his said &c
Highness the Nabob as your Petitioners Master and the
Person from whom he Received them all which and the motives
of your Petitioners conduct in the premises your Petitioner
had fully setforth and explained in his said Answer and &c
Rejainder to the Complainants former Suit filed and now of
Record in the said Mayors Court to which Answer and
Rejoinder your Petitioner prayed leave to Refer and that
the same might be Read at the hearing of this Cause and
your Petitioner for the same Reasons as stated in the said

Answer

Answer and Rejoinder in the former Suit humbly insisted that the said Bonds never were part of the said Sir John Clerk's Estate your Petitioner positively said that the Complainant gave up his Claim on the Estate of the said Sir John Clerke without any Reserve whatever and he therefore submitted whether he could have any Right to resume the same especially after so long alapse of time and under all the Circumstances of the Case—

Your Petitioner admitted that he Received from the said Nabob a new Consolidated Bond payable to Lady Clerk being the Widow and Relict of the said Sir John Clerk for the Amount of Fifteen thousand Star Pagodas and that ~ Interest hath been Received thereon by your Petitioner to a larger Amount than the Complainants present demand Which Money your Petitioner Asserts to be the property of the said Lady Clerke having always Considered such Bond as a present graciously made by the said Nabob to the said Lady Clerk and in no wise belonging to the Estate of the said Sir John Clerk and therefore your Pet.r humbly ~ submitted that the said Mayors Court could not make any Order or Decree which can affect the Principal if not the only Provision which the said Lady Clerk now hath and of which She has come to the posession since the Death of her said Husband—

Your

Your Petitioner Sheweth that the said Bill and Plea and Answer were set down for hearing and came on to be heard by and before the said Mayors Court on Tuesday the Ninth day of this Instant December When the said Mayors Court did think proper to Order and Decree and did Accordingly Order and Decree that your Petitioner should pay unto the Complainant out of the produce of the Nabobs Bond in ~ question the full and Just Sum of Nine hundred and Eighty Nine Pagodas twenty fanams and twenty Cash together with all such Interest as then was or should thereafter become due thereon until full payment was made also all Costs of the Suit—

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

First ——— Because the Statute of limitation Pleaded by your Petitioner ought to have barred the Defendant for ever from any Remedy after a dereliction of his Claim for more than Eleven years more especially as it Appears by your Petitioners Answer that the Complainant had given up the Claim in question without any Reserve ~ Whatever

Whatever many years ago altho' Solicited by your Petitioner to take charge of the Affairs of the said Sir John Clerk and pay himself the Debt he said was owing to him but the Complainant instead of so doing Declared he would give up the debt rather than have any thing to do with the Affairs of the Deceased in consequence of Which your Petitioner took posession of the Effects of Sir John Clerk, and after Sale thereof Applied the produce towards the payment of sundry demands on his Estate as Appears by your Petitioners Account delivered into Court, during all which time the Complainant was at Madras and gave no interruption Whatever for the Proceedings of your Petitioner in the premises—

Secondly —— Because your Petitioner in the first instance acted as the servant of his Highness the Nabob and as such carried the Persian Papers to Sir John Clerk to be delivered to him by Order of His Highness and When Sir John Clerke Refused to take them he returned the said Papers to his Highness so that Sir John Clerke was not at any one time in posession of the said Persian Papers or Bonds and their existence as far as Related to the said Sir John Clerk ended with the Redelivery thereof to his said Highness—

Thirdly —— Because the Creditors of the said Sir John Clerk have no Right whatever to the property of his Widow acquired

acquired after his Death which is the Case of the Bond in Question, being in her name and bearing date since the death of Sir John Clerk—

Fourthly —— Because it appears by the Proceedings that his said Highness did not owe any debt or Sum of Money to Sir John Clerk and therefore the Creditors of Sir John Clerk cannot Complain of any injury nor have they any Right whatever to attach His Highness's Bounty Voluntarily given to Lady Clerk since her Husbands Death for her individual Provision—

Fifthly —— Because the Bond in question being the property and in the name of Lady Clerk no Decree can Affect the same unless Lady Clerke be made a party to the Bill of Complaint Whereon the Decree be founded Whereas in the present Case your Petitioner is made Defendant and the Decree is against the property of Lady Clerk of which she has been in the posession for many years unimpeached in Title and undisturbed by any one of the Numerous Creditors of the said Sir John Clerk nor is it in the power of your Petitioner to deliver up the Bond in question without an Authority from Lady Clerk to that Effect—

Sixthly —— Because the Sheriff cannot convey a title under a Warrant of Execution to a Purchaser, unless the property at the time of Seizure belongs to the Defendant in the

the Cause —

Seventhly ——— Because the Bond in question being a "chose in action" cannot be seized by the Sheriff under the Writ of Execution which upon the same principle does not Warrant the Seizure even of the Notes of the Bank of England they being considered as "Choses in Action" —

For all Which Reasons and such others as may be offered at the hearing your Petitioner most humbly prays that the Decree of the said Mayors Court be Reversed with Costs of Suit to be paid by the Complainant —

/Signed/ Stephen Popham
Attorney for Appellant

Mayors

Mayors Court at Madraspatnam } Tuesday the 9th day of December Anno Domini 1788 —

Present
Edward Garrow Esquire Mayor
James Call Vincentio Corbett and
Andrew Ross Aldermen

Between Charles Darke of Fort Saint George Esquire Complainant and James Wooley of Fort Saint George Esquire as Executor of the late Sir John Clerk Knight Deceased Defendant —

This Cause Coming on to be heard and Debated this day, in the Presence of the Attornies on both sides on Reading the Complainants Bill, The Plea and Answer of the Defendant thereto as also the Plea and Answer and Rejoinder in a former Cause instituted by the said Complai=nant against the said Defendant as Executor of Sir John Clerk Deceased On Hearing the Pleadings made use of by the Attornies and on due Consideration had thereon This Court doth think fit to Order and Decree and doth Accordingly Order and Decree that the Defendant shall

shall pay unto the Complainaint out of the Produce of the Nabobs Bond in Question the full and Just Sum of Nine Hundred and Eighty Nine Pagodas Twenty ~~Nine~~ fanams and twenty Cash / Pagodas 989.. 20.. 20 / together with all such Interest as now is or shall hereafter become due thereon or until full payment is made also all Costs of this Suit –

Your
/ Signed / James Taylor Regr

Extract

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

Present

William Webb Esquire Mayor
Andrew Ross & John Mitford
Aldermen

Charles Darke
John ~~Balfour~~ Watts & Nath.l Edw.d Kindersley Executors of
James Wooley Deceased –

Summons or Revivor Returned Served The Defendants appear by their Attorney Mr. Stephen Popham who has no Objection to the Suit being Revived – Ordered that the same do stand Revived Accordingly

A true Extract
/ Signed / G. Taylor Regr

To

To the Honble John Holland Esquire
President in Council
Fort Saint George

In the Honble the
Court of Appeals

Between Charles Darke of Fort
= Saint George Esquire Respondent and
James Wooley of the same place Esquire
Appellant

The Answer of the above named Charles Darke to the
Petition and Appeal of the above named James Wooley

This Respondent admits that on or about the
Twelfth day of September in the year of Our Lord One thousand
Seven hundred and Eighty Eight that he did Exhibit a
Bill of Complaint in the Honble the Mayors Court against
the Appellant and did therein state that this Respondent
did on or about the first day of September Which was in
the year of Our Lord One thousand Seven hundred and
Eighty Seven file his Bill in the said Mayors Court against
the Appellant as Executor of the late Sir John Clerk and
charged the Appellant with being indebted as Executor
as aforesaid unto this Respondent in the Sum of Nine Hundred
hundred and Eighty Nine Pagodas Twenty fanams and
Twenty

Filed in my Office
the 27th March 1789
Chas N. White
Clk

Twenty Cash as appeared from the Copy of an Account Current
annexed to his said Bill of Complaint And this Respondent
did further state in his said last Bill of Complaint that
he did in his former Bill expressly aver and charge that
the Appellant as Executor as aforesaid had possessed &
himself of and had received very considerable Assets from
the Estate of the said Sir John Clerk and more than &
Sufficient to pay the whole of this Respondents demand
and in particular that the Appellant had received
and taken into his possession two Bonds or Obligations
of His Highness Wauw law Jaw Nabob of the &
Carnatic the one bearing date on or about the fifteenth
day of September Which was in the year of Our Lord
One thousand Seven hundred and Seventy Six
for the Sum of Eight thousand Pagodas and the other
bearing date on or about the same day in the said year
of Our Lord One thousand Seven hundred and Seventy
Six for the Sum of Seven thousand Pagodas that the
said two Bonds or Obligations had been given and
granted by his said Highness the Nabob of the Carnatic
to the said Sir John Clerk in his life time and
that the Appellant did possess himself of the said
Two Bonds or Obligations and had them in his the
Appellants

Appellants posession at the time of the Death of the said Sir John Clerk and for some time after, and this Repliant did further state that he did in his said Bill of Complaint interrogate the Appellant whether he did or did not take the said Two Bonds in his Posession and after the death of the said Sir John Clerk exchange the same at the Durbar of his said Highness for one Bond from his said Highness payable to Lady Clerk the Widow of Sir John Clerk for the Sum of Twenty thousand Pagodas or for wether and what Sum And that the Appellant might set forth a full true Just and particular Account of the Personal Estate of the said Sir John Clerk and what had come into the Appellants hands Custody or Power and what was become of the said Two Bonds and how the Appellants or any other Person for him had Applied and disposed of them and that the Appellant might be Decreed to pay unto this Respondent the aforesaid Sum of Nine hundred and Eighty Nine Pagodas twenty fanams and twenty Cash with Interest and Costs of Suit And this Respondent doth further Admit that the Appellant did on or about the Ninth day of October in the year

year One thousand Seven hundred and Eighty Seven file a Plea and Answer to this Repliants Bill of Complaint and that therein the Appellant did plead the Statute of Limitation made and passed in the twenty first year of the Reign of King James the first and prayed the benefit of the same against the Bill of Complaint of this Respondt And that he the Appellant in his said Answer did admit the Receipt of the two Bonds as abovementioned And that the appellant had Exchanged them as this Respondent had alledged for one Bond of his said Highness the Nabob of the Carnatic payable to Lady Clerk the Widow of the said Deceased Sir John Clerk and that they were to the Amount of Fifteen thousand Pagodas And that the Appellant did also annex to his said Plea and Answer an Account of the Personal Estate of the said Sir John Clerk over and above the Amount of the said Two Bonds Amounting to One thousand Nine hundred and Seventy three Pagodas and fourteen fanams Which the Appellant admitted to have Received And this Respondent did further State that he did file his Repliation to the said Plea and answer

Answer to which the Appellant did Rejoin and
Issue being Joined thereon and Publication
having passed the said Cause was set down for
hearing and did come on to be heard on Tuesday
the thirteenth day of May last past when the
said Mayors Court were pleased to Order and Decree
and did Accordingly Order and Decree that the
Appellant should pay unto this Respondent out of
the Estate and Effects of the said Sir John Clerk
Deceased the full and Just Sum of Nine hundred
and Eighty Nine Pagodas twenty fanams and twenty
Cash with all such Interest as then was or should
thereafter become due thereon until full payment
was made also all Costs of this Suit This Repliant
admits that he did further State that fourteen days
being the Term allowed for Appealing from the
Decree of the said Mayors Court to this Honble
Court having elapsed without any Appeal having
been lodged by the Appellant this Respondent did
Sue out Execution under the Seal of the said Mayors
Court for the said Sum of Nine hundred and
Eighty Nine Pagodas Twenty fanams and twenty
Cash so Decreed as aforesaid and did deliver the
same

same into the hands of the Sheriff who returned the same
into the said Mayors Court endorsed no Goods or &c
Chattels to be found Whereupon this Respondent did
pray another Execution which is now in the hands
of the Sheriff And this Respondent did expressly
charge that as the Plea and Answer of the Appellant
so filed and of Record did clearly Shew that the said
Sir John Clerk did die possessed of considerable property
That the Appellant did possess himself of the same and
had received several Sums of Money on Account of the
said Bond both before and since the Decree so made
and passed by the said Mayors Court which said
several Sums of Money as this Respondent charged
were Assets in the Appellants hands And that the
Appellant was bound to pay off and discharge the
Sum so decreed by the said Mayors Court out of the
said Monies And this Respondent did further charge
that the Appellant had wasted and expended the
same to the Injury of this Respondent and other the
Creditors of the said Sir John Clerk and had not
paid this Respondent the whole or any part of the
said Sum of Nine hundred and Eighty Nine
Pagodas Twenty fanams and Twenty Cash so
Decreed

Decreed as aforesaid and which as this Respondent insists the Appellant ought to have done, because this Respondents Debt was confirmed and Sanctioned by the Decree of the said Mayors Court so made and so passed as aforesaid And that therefore it became a debt of an Higher degree than any other of the Debts of the said Deceased and that the Appellant was bound to take Notice of the said Decree and to pay the Sum of Money thereby adjudged to this Respondent in preference to any other Debt This Respondent also admits that the Appellant did on or about the fourth day of November in the said year file his Plea and Answer That he again pleaded the Statute of Limitations in bar to the demand of this Respondent that he was not Executor to the said Sir John Clerk and therefore was not bound to pay the demand of this Respondent and did further introduce in his said Plea and Answer several evasive and frivolous Matters entirely foreign and unconnected with the Question and in no sort Worthy of Attention This Respondent admits that the said Bill and Plea and Answer were set down for hearing and came on to be heard by and before the said Mayors Court on Tuesday the Ninth day of December last when the said Mayors Court did think proper to Order and Decree and did Accordingly Order and Decree that the Appellant should pay unto this Respondent out of the Produce of the Nabobs Bond in question the full and Just Sum of Nine hundred and Eighty Nine Pagodas Twenty Fanams and Twenty Cash together with all such Interest as then was or shall thereafter become due thereon untill full Payment was made also all Costs of the Suit but this Respondent cannot admit that the said Order and Decree of the said Mayors Court was erroneous or that the Appellant could be aggrieved thereby

First Because it was in consequence of the Misrepresentations of the State of the affairs of the Deceased Sir John Clerk made by the Appellant to this Respondent which induced this Respondent to let his Claim on the said Estate lay dormant that it appears by this Respondents Replications That the Appellant did Represent the Estate of the said Deceased as altogether and Totally insolvent that in such his Representations he entirely and Totally concealed his having Received the two

Persian

Persian Bonds mentioned in the Pleadings or that the deceased ever possessed at the time of his Death such Articles of Appeard Furniture Horses &c. as would have raised any Sum of Money Whatever that by such his Misrepresentations he lulled this Respondent to an entire forgetfulness or indifference of the debt due to him by the said Deceased This Respondent therefore insists that for the above Reasons he cannot be bared of his right of Action by the Plea of the Appellant nor can the Appellant be allowed to come forward and take Advantage of his own wrong as he hath Attempted

Secondly —— Because the Station which the Appellant held at the Durbar of his Highness the Nabob at the time of the Deceased of the said Sir John Clerk has nothing to do with the matter now before this Honble Court that the Gift of the said Bonds from his said Highness was formal and complete upon his delivery of them to the Appellant for the express and declared use of the said Deceased and their existence as far as Related to the said Deceased was by no means Terminated by the improper and illegal Redelivery thereof by the Appellant to his said Highness —

Thirdly —— Because the Bond in Question is not nor ever was the property of Lady Clerk the Widow of the said Deceased although it is in her name the same having been obtained by an unfair and illegal exchange of property which property as it undoubtedly belonged to the Deceased Sir John Clerk in his life time and he was legally possessed of it in the event of his Death became the property of his Creditors who have therefore a legal and fair Claim upon it however it may have been Transferred or otherwise attempted to be taken from them —

Fourthly —— Because although it does not appear that his said Highness did owe any Debt or sum of Money to the said Sir John Clerk yet still the Appellant cannot presume to say that his said Highness had not a right to give any Sum or Sums of Money or Bond for the Payment of Money to the said Sir John Clerk as a present if his Highness should please so to do That such gift Whether in Money or security for Money became to all intents and purposes the property of the said Sir John Clerk as fully and absolutely as if the same had been given

given or paid by his said Highness in discharge or liquidation of a Debt and is therefore subject to the Claim of his Creditors —

Fifthly —— Because it was not necessary to make Lady Clerk a party to either of the Bills filed &c Against the Appellant, the Appellant having &c illegally and improperly interfered and intermedled with the Estate and Affairs of the Deceased Sir John Clerk became thereby what the Law calls an executor in his own wrong and Answerable and liable to all the Debts of the Deceased so far as Assets should come to his hands that it could be [illegible] Lady Clerk a party to either of the said Bills as She was perfectly Ignorant of the Circumstances in which her said Husband Sir John Clerk died and of the subsequent exchange of the Bonds the whole of that Business and the entire Management of the Estate of the said Deceased having been negociated and taken by the Appellant he was the proper and only Person to be made a Defendant as being the only Person who could give any Account of them. The Decrees of the Honble the Mayors Court were therefore well and properly made against the Appellant and

And this Respondent must again deny that any &c Decree was made against the property of the said &c Lady Clerk that the Bond in Question never can be considered as her property because She never was legally or fairly entitled to it And her having received the Devidends and Profits of it for many years unimpeached in title and undisturbed by any one of the numerous Creditors of the said Sir John Clerk arises not from any conviction of the said Creditors of the Bond in Question being the property of the said Lady Clerk, but because they are from the private and Secret manner the said Bond was obtained in the name of the said Lady Clerk ignorant of the whole Transaction —

Sixthly —— Because under the special Circumstances of the Case the Sheriff can convey a title to this Respondt because the property does Virtually belong to the Appellant as Executor and of course Representative of the said Sir John Clerk —

Seventhly —— Because the Bond in question by Virtue of the Decree last made and past by the Honble the Mayors Court ceases to be a Chose in Action that it would be to little purpose for the said Mayors Court to pass Decrees if they could not enforce them that

that they Certainly have full power to Order Sale to be made of the property of a Deceased Person even tho' that property should consist in such Bonds and this Their power is as consistent with Reason as it is Acording to Law for otherwise as a Warrant of Commitment cannot issue against an Executor or Administrator to compel him to perform the Decree or Judgment of a Court passed against him the Creditors of Deceased Persons would loose their several Claims if the property of the Deceased should happen to be in such Bonds and it would be in the power of any Person to defraud his Creditors by converting the whole of his property into Bonds of the same Nature as the one in Question before his Decease —

For all which Reasons and such others as may be offered at the hearing this Respondent humbly pray's that the Decree of the said Mayors Court so made and &c passed as aforesaid may be &c affirmed and that the Petition of the said Appellant be dismissed with Exemplary Costs —

[Signed] P. Spencer
Sol.r Respnd.t

Court

Court of Appeals at Madraspatnam } Saturday the 26th day of April Anno Domini 1794 -

Between James Wooley of Fort St. George Esq.r Appellant and Charles Darke of the same place Merchant Respondent -

This Cause Coming on this day to be heard and Debated before this Court by the Attornies on both sides / and the Appellant having departed this life pending the same and it having been Revived on the 15th day of September Anno Domini 1789 by his Executors John Balfour and Nathaniel Edward Kindersley / upon hearing the Petition of Appeal and Answer and the several Exhibits of the Honble the Mayors Court together with the Decree of the said Court given in this Cause on Tuesday the 9th day of December Anno Domini 1788 upon due Consideration had of the Matters therein severally contained and of the Pleadings and Arguments used by the Attornies on both Sides This Court doth think fit to Order and Decree and doth Accordingly Order and Decree that the said Decree of the Honble the Mayors Court do stand &c affirmed and that the principal Sum of Pagodas &c 989 „ 20 „ 20 be paid to the Respondent out of the &c

Nabobs

Nabobs Bond alluded to in the said Decree of the Honourable the Mayors Court or if the said Bond be not in the hands of the Executors of the Appellant that then the said principal Sum be paid out of the Estate of the Appellant together with all Interest and Costs in both Courts—

Hur

/Signed/ Chas. Ste. White
Clk

To

To the Kings Most Excellent Majesty in Counc

Between Charles Darke of Fort Saint
George Esquire Complainant and James
Wooley of the same place Esquire
Defendant—

The humble Petition and Appeal of John
Balfour Nathaniel Edward Kindersley and Sir John Menzies
Baronet Executors named in the last Will and Testament
of the said James Wooley Deceased—

Most Humbly Shew

That on or about the Twelfth day of
September Which was in the year of Our Lord One thousand
Seven hundred and Eighty Eight the above named
Complainant did Exhibit a Bill of Complaint in the
Mayors Court against the said James Wooley and did therein
state that the said Complainant did on or about the first
day of September Which was in the year One thousand
Seven hundred and Eighty Seven file his Bill in the
said Mayors Court against the said James Wooley as
Executor of the late Sir John Clerk and charged the said
James Wooley with being indebted as Executor as aforesaid
unto the said Charles Darke in the Sum of Nine hundred

And

and Eighty Nine Star Pagodas Twenty fanams and twenty Cash as Appeared from the Copy of an Account Current &c annexed to his said Bill of Complaint and the Complainant did further state in his said last Bill of Complaint that he did in his former Bill expresly aver and charge that the said James Wooley as Executor as aforesaid had possessed himself of and had Received very Considerable Assets from the Estate of the said Sir John Clerk, and more than sufficient to pay the whole of the Complainants demand and in &c particular that the said James Wooley had Received and taken into his possession Two Bonds or Obligations of his Highness Wawlaw Jaw Nabob of the Carnatic the one bearing date on or about the fifteenth day of September Which was in the year of Our Lord One thousand Seven hundred and Twenty Six for the Sum of Eight Thousand Pagodas and the other bearing date on or about the same day in the said year of Our Lord One thousand Seven hundred and Seventy Six for the Sum of Seven thousand Pagodas that the said Two Bonds or Obligations had been given and granted by his said Highness the Nabob of the Carnatic to the said Sir John Clerk in his life time and that the said James Wooley did possess himself of the said Two Bonds or

Obligations

Obligations and had them in his possession at the time of the Death of the said Sir John Clerk and for sometime after and the said Complainant did further state that he did in his said Bill of Complaint interrogate the said James Wooley whether he did or did not take the said two Bonds into his possession and after the Death of the said Sir John Clerk Exchange the same at the Durbar of his said Highness for one Bond from his said Highness Payable to Lady Clerke the Widow of the said Sir John Clerk for the Sum of Twenty thousand Pagodas or some other or what Sum and that the said James Wooley might &c set forth a full true Just and particular Account of the Personal Estate of the said Sir John Clerk, and what had come into his hands Custody or power and what was become of the said Two Bonds and how the said James Wooley or any other Person for him had Applied and disposed of them and that the said James Wooley &c might be Decreed to pay unto the Complainant the aforesaid Sum of Nine hundred and Eighty Nine Pagodas twenty fanams and Twenty Cash with Interest and Costs of Suit and the said Complainant did further Shew that the said James Wooley did on or about the Ninth day of October in the year One thousand Seven hundred

and

and Eighty Seven file a Plea and Answer to the Complainants Bill of Complaint and that therein the said James Wooley did Plead the statute of Limitations made and passed in the Twenty first year of the Reign of King James the first, and prayed the benefit of the same against the Bill of Complaint of the Complainant and that in the Answer the said James Wooley did admit the Receipt of the two Bonds above mentioned and that the said James Wooley had Exchanged them, as the Complainant had alledged for one Bond of his said Highness the Nabob of the Carnatic payable to Lady Clerke the Widow of the said Deceased Sir John Clerke and that they were to the Amount of Seven thousand Pagodas and that the said James Wooley did also annex to his said Plea and Answer on Account of the Personal Estate of the said Sir John Clerke over and above the Amount of the said two Bonds Amounting to One thousand Nine hundred and Seventy three Pagodas and fourteen fanams Which the said James Wooley admitted to have Received and the said Complainant did further state that he did file his Replication to the said Plea and Answer To which the said James Wooley did Rejoin and Issue being joined thereon and Publication having passed the said Cause was

was set down for hearing and did come on to be heard on Tuesday the thirteenth day of May then last past When the Mayors Court were pleased to Order and Decree and did accordingly Order and Decree that the said James Wooley should pay unto the Complainant out of the Estate and Effects of the said Sir John Clerk Deceased the full and Just Sum of Nine hundred and Eighty Nine Pagodas Twenty fanams and Twenty Cash with all such Interest as there was or should thereafter become due thereon untill full payment was made also all Costs of Suit, and he did further state that fourteen days being the term allowed for appealing from the Decrees of the Mayors Court to the Court of Appeals at Madras having elapsed without any Appeal having been lodged by the said James Wooley the Complainant did sue out Execution under the Seal of the said Mayors Court for the said Sum of Nine hundred and Eighty Nine Pagodas Twenty fanams and Twenty Cash so Decreed as aforesaid and deliver the same into the hands of the Sheriff who Returned the same into the said Mayors Court endorsed "no Goods or Chattels to be found" Whereupon the Complainant did pray another Execution which was in the hands of the Sheriff and the Complainant avers and expressly charges as the Plea and Answer of the said James Wooley

Wooley so filed and of Record did clearly shew that the said Sir John Clerke did die possessed of a Considerable property that the said James Wooley did possess himself of the same and had received several Sums of Money on Account of the said Bond both before and since the Decree so made and passed by the said Mayors Court which said several Sums of Money (as the Complainant charged) were assets in the hands of the said James Wooley and that the said James Wooley was and is bound to pay off and discharge the Sum so Decreed by the said Mayors Court out of the Monies of the said Sir John Clerk so charged to be in the hands of the said James Wooley and the Complainant further charged that the said James Wooley had wasted and expended the same to the Injury of the Complainant and other the Creditors of the said Sir John Clerke and had not paid the Complainant the whole nor any part of the said Sum of Nine hundred and Eighty Nine Pagodas Twenty fanams and Twenty Cash so Decreed as aforesaid and Which (as the Complainants says) the said James Wooley ought to have done because his Debt was Confirmed and sanctioned by the Decree of the said Mayors Court so made and passed as aforesaid and therefore became a Debt of an higher Degree than any other

other of the Debts of the said Deceased and that the said James Wooley was bound to take Notice of the said Decree and to pay the Sum of Money thereby adjudged to the Complainant in preference to any other Debts — To which said Bill of Complaint the said James Wooley did on or about the fourth day of November in the said year of Our Lord One thousand Seven hundred and Eighty Eight file his Plea and Answer and did therein set forth that if the Complainant ever had any Cause of Suit against the said James Wooley for or concerning the Matters or Transactions in the said Bill of Complaint mentioned which the said James Wooley did in no sort admit the same did accrue and arise above Six years before filing the said Bill and above Six years before serving the said James Wooley with any Process to Appear to and Answer the same and the said James Wooley for further Plea said and did aver that he did not any time within Six years before the filing the Complainants said Bill of Complaint nor within Six years before the said James Wooley was served with process to Appear and Answer thereto ever promise or agree to come to any Account for or to pay or in any wise satisfy the said Complainant any Money for or concerning the Matters and transactions in the said Complainants said Bill of Complaint contained charged or

or alledged, on the Contrary the said James Wooley said that he was not the Executor of Sir John Clerke Deceased as erroneously stated in the Complainants Bill of Complaint nor did the said Sir John Clerke to the knowledge of the said James Wooley ever make any Will before or at the time of his Decease nor did the said James Wooley ever Administer to his Estate and the said James Wooley further stated that the said Sir John Clerk departed this life on or about the tenth day of October Which was in the year of Our Lord One thousand Seven hundred and Seventy Six Which was then about Eleven years past and the Complainant did not take any Step at law or otherwise against the said James Wooley to substantiate his demand from the day of the death of the said Sir John Clerk to the time of filing the then present Bill and therefore the said James Wooley did plead the Act of Parliament or Statute of Limitation made in the Twenty first year of the Reign of King James the first and prayed that the benefit of the said Act of Parliament for Limitation of Actions might be allowed to him and the said James Wooley in no wise waving the benefit of the said Plea but Relying thereon for further Plea said that it appeard by the Complainants Bill of Complaint that the &c

purport

purport and intent thereof were to Compel the said &c James Wooley to pay the Sum of Nine hundred Eighty Nine Pagodas twenty fanams and twenty Cash under pretence that your Petitioner was the the Executor of the said Sir John Clerke and that he had Received considerable Assets from the Estate of the said Sir John Clerke Whereas it Would Appear by an Account Current annexed to the Plea and Answer of the said James Wooley that he was not possessed of any Estate whatever of the said Sir John Clerke all which matters the said James Wooley did aver and Plead in bar to the Complainants said Bill and his pretended demand and humbly prayed the Judgment of the said Mayors Court whether he Need make any other or further Answer thereto and that he may Receive the full benefit thereof and the said James Wooley by no means waiving his said &c Plea but fully Relying thereupon for answer to the Residue of the said Complainants Bill of Complaint or to so much thereof as the said James Wooley was advised to Answer unto he answered and said that he admitted the Complainant did file a Bill of Complaint against him at the time and for the purpose set forth in his Bill of Complaint to which the said

James

James Wooley did file a Plea and Answer and that the said James Wooleys Plea was that the Complainant was barred of his right of Action by force and Virtue of the above mentioned Statute of limitation and by other matters as above setforth and the said James Wooley did in his Answer and Rejoinder filed in the said Mayors Court to the Bill and Replication of the above named Complainant admit that he came into posession of certain Assets or Effects belonging to the Estate of the said Sir John Clerk Deceased to a Certain Amount the Amount Whereof was annexed to the Plea and Answer of the said James Wooley in the former and present Suit—

The said James Wooley did further setforth that the said Account States the particular manner in which the said James Wooley applied and disposed of the said Effects—the said James Wooley admitted that at the time of the Decease of the said Sir John Clerke the said James Wooley was in posession / as a Person who was then in the Service of his Highness Walaw Jaw Gc. a Jc. Nabob of the Carnatic / of two Papers Which were in the Persian Language and which the said James Wooley believed were Bonds for payment unto

unto the said Sir John Clerk of the specific Sums stated in the Complainants Bill of Complaint and the said James Wooley said that from the manner in which the said James Wooley became in posession thereof the intent and meaning which Actuated his said Highness in &c Executing the said Bond, the manner and expressions of the said Sir John Clerk when the said James Wooley mentioned his having two such Papers and lastly the fact that the said Sir John Clerk never had in his actual Custody or posession either of the said Bonds induced the said James Wooley to consider it as his duty to Return the said Bonds to his said Highness the Nabob as the said James Wooley's Master and the Person from &c whom he Received them all which and the motives of the said James Wooley's Conduct in the premises he had fully setforth and explained in his said Answer and Rejoinder to the Complainants former Suit filed and now of Record in the said Mayors Court to which Answer and Rejoinder the said James Wooley prayed leave to Refer and that the same might be Read at the &c hearing of this Cause and the said James Wooley for the same Reasons as stated in his said Answer and Rejoinder in the former Suit humbly insisted that the said Bonds never

never were part of the said Sir John Clerkes Estate —

The said James Wooley positively said that the Complainant gave up his Claim on the Estate of the said Sir John Clerke without any Reserve whatever and he therefore submitted whether he could have any right to Resume the same especially after so long a lapse of time and under all the Circumstances of the Case — The said James Wooley admitted that he Received from the said Nabob a new consolidated Bond payable to Lady Clerk being the Widow and Relict of the said Sir John Clerk for the Amount of Fifteen thousand Star Pagodas and that Interest hath been Received thereon by the said James Wooley to a larger Amount than the Complainants present demand which Money the said James Wooley asserted to be the property of the said Lady Clerk having always considered such Bond as a present graciously made by the said Nabob to the said Lady Clerke and in no wise belonging to the Estate of the said Sir John Clerk and therefore the said James Wooley humbly submitted Whether the said Mayors Court could make any Order or Decree which can affect the principal if not the only Provision which the said Lady Clerke now hath and of which She has come to the posession since the

the death of her said Husband —

Your Petitioners Shew that the said Bills Plea and Answer were set down for hearing and came on to be heard by and before the said Mayors Court on Tuesday the Ninth day of December in the year of Our Lord One thousand Seven hundred and Eighty Eight when the said Mayors Court did think proper to Order and Decree and did Accordingly Order and Decree that the said James Wooley should pay unto the Complainant out of the produce of the Nabobs Bond in question the full and Just Sum of Nine hundred Eighty Nine Pagodas twenty Fanams and Twenty Cash together with all such Interest as then was or should thereafter become due thereon until full payment was made also all Costs of the Suit

From which said Order and Decree of the said Mayors Court the said James Wooley did Appeal to the Court of Appeals at Madraspatnam as he conceived the same erroneous and that the said James Wooley was much Aggrieved thereby for the following Among other Reasons —

First — Because the Statute of limitation Pleaded by the said James Wooley ought to have barred the

the Complainant forever from any Remedy after a dereliction of his Claim for more than Eleven years more especially as it Appears by the Answer of the said James Wooley that the Complainant had given up the Claim in Question without any Reserve Whatever many years ago altho solicited by the said James Wooley to take charge of the Affairs of Sir John Clerke and pay himself the Debt he said was owing to him but the Complainant instead of doing so declared he would give up the debt rather than have any thing to do with the Affairs of the Deceased in consequence of which the said James Wooley took possession of the Effects of Sir John Clerke and after Sale thereof Applied the produce towards the payment of sundry Demands on his Estate as appears by the said James Wooleys Account delivered into Court — during all which time the Complainant was at Madras and gave no interruption Whatever to the Proceedings of the said James Wooley in the premises —

Second — Because the said James Wooley in the first Instance acted as the Servant of his Highness the Nabob and as such carried the Persian Papers to Sir John Clerke to be delivered to him by Order of his Highness and when Sir John Clerke refused to take them he Returned

Returned the said Papers to his Highness so that Sir John Clerke was not at any one time in possession of the said Persian Papers or Bonds and their existence as far as related to the said Sir John Clerke ended with the Redelivery thereof to his said Highness —

Third Because the Creditors of the said Sir John Clerke have no right Whatever to the property of his Widow acquired after his Death Which is the case of the Bond in question, being in her name and bearing date since the Death of Sir John Clerke —

Fourth Because it appears by the Proceedings that His said Highness did not owe any Debt or Sum of Money to Sir John Clerke and therefore the Creditors of Sir John Clerke cannot Complain of any injury nor have they any right Whatever to attach His Highness's bounty Voluntarily given to Lady Clerke since her Husbands Death for her individual Provision —

Fifth Because the Bond in question being the property and in the name of Lady Clerke no Decree can affect the same unless Lady Clerke be made a party to the Bill of Complaint Whereon the Decree be founded Whereas in the present Case the said James Wooley is made Defendant and the

the Decree is against the property of Lady Clerke of which She has been in possession for many years unimpeached in Title & undisturbed by any one of the numerous Creditors of the said Sir John Clerke nor was it in the Power of the said James Wooley to deliver up the Bond in question without an Authority from Lady Clerke to that Effect –

Sixth Because the Sheriff cannot convey a Title under a Warrant of Execution to a Purchaser unless the Property at the time of Seizure belongs to the Defendant in the Cause –

Seventh Because the Bond in question being a "Chose in Action" cannot be seized by the Sheriff under the Writ of Execution Which upon the same Principle does not Warrant the seizure even of the Notes of the Bank of England they being considered as "Choses in Action" –

To which said Petition and Appeal your Petitioners Shew that the said Complainant did file his Answer therein setting forth many evasive matters and things but your Petitioners shew that before the said Petition and Answer came on to be heard by and before the said Court of Appeals the said James Wooley departed this life having first made and executed his last Will and Testament in writing and thereof appointed your Petitioners his Executors and the Complainant hath since revived the said Suit –

your Petitioners further Shew unto your Most Excellent Majesty in Council that the said Petition and Appeal of the said James Wooley and the Answer of the said Charles Darke came on to be heard by and before the said Court of Appeals on the Twenty sixth day of April last past When the said Court of Appeals thought proper to Order and Decree that the said Decree of the Mayors Court do stand affirmed and that the Principal Sum of Pagodas Nine hundred and eighty Nine Twenty fanams and twenty Cash be paid to the said Charles Darke out of the Nabobs of Bond alluded to in the said Decree of the said Mayors Court or if the said Bond be not in the hands of the Executors of the said James Wooley that the Principal Sum be paid out of the Estate of the said James Wooley together with all Interest and Costs in both Courts – as by the said Orders of the said Mayors Court and Court of Appeals as well as by the several other Proceedings hereinbefore Set forth

setforth and herewith Transmitted to your Most
Excellent Majesty in Council may more fully appear
to which your Petitioners most humbly pray Reference
and to have such full and ample benefit therefrom and
from each of them as if they were herein fully setforth—

By which said Order of the said
Mayors Court and Court of Appeals your Petitioners
as the Executors of the said James Wooley do consider
themselves aggrieved and do therefore Appeal therefrom
to your Most Excellent Majesty in Council for the reasons
above stated in the said Petition and Appeal of your
Petitioners to the Court of Appeal at Madras, and for
and for the following among other Reasons—

First ——— Because the said Decree of the said Court
Appeals at Madras departs ifsentially from the ru
Spirit and purport of the said Decree of the Ma
Court, which had only in view to follow up the
supposed property of the Estate of the said Sir John
Clarke and to make the same subject to the paym
of the Claim of the said Complainant against th
said Sir John Clarke—

Second ——— Because the said Decree of the Court of
Appeals

Appeals is in the Nature of a Personal Judgment or
Verdict of Damages against the said James Wooley
Which is incompatible with Law, inas much as the said
James Wooley was Dead before such Decree or Judgment
was given—

For which Reasons and
such others as may be offered at the hearing your
Petitioners pray that the said Decrees of the Mayors
Court and Court of Appeals may be Reversed and the
Complainants Bill of Complaint be dismissed with
Costs to be paid by the Complainant—

Signed S. Topham
Solicitor for appellant

Court

Court of Appeals
at
Madraspatnam

Saturday the 26th day of April
Anno Domini 1794

Between James Wooley of Fort St. Geo
Esquire Appellant and Charles Darke of
the same place Merchant Respondent —

This Cause coming on this day to be heard and
debated before this Court by the Attornies on both sides
and the Appellant having departed this life pending the
same and it having been revived on the 15th day of
September Anno Domini 1789 by his Executors
John Balfour and Nathaniel Edward Kindersley
upon hearing the Petition of Appeal and Answer and
the several Exhibits of the Honble the Mayors Court
together with the Decree of the said Court given in this
Cause on Tuesday the 9th day of December Anno
Domini 1788. upon due Consideration had of the
Matters therein severally Contained and of the Pleadings
and Arguments used by the Attornies on both Sides
This Court doth think fit to Order and Decree and
doth Accordingly Order and Decree that the said
Decree of the Honble the Mayors Court do stand
affirmed and that the principal Sum of Pagodas
989 " 20 " 20 be paid to the Respondent out of the
Nabobs Bond alluded to in the said Decree of the
Honble the Mayors Court or if the said Bond be
not in the hands of the Executors of the Appellant
that then the said principal Sum be paid out of the
Estate of the Appellant together with all Interest
and Costs in both Courts —

Test
(signed) Chas N. White
Clk

To

To the Honble Sir Charles Oakeley Kt & Bt
President in Council
Fort Saint George

In the Honble the Court of Appeals }

Between Shashasala Moodilia of Madras Inhabitant Complainant and Solay Pillay Administrator of the Estate and Effects of Chinnayah Pillay Deceased Defendant—

The Humble Petition and Appeal of the above named Defendant—

Sheweth

That on the Ninth day of May which was in the year of Christ One thousand Seven hundred and Ninety two the above named Complainant did file and Exhibit a Bill of Complaint against your Petitioners in the Honble the Mayors Court of Madraspatnam and did therein and thereby charge your Petitioner as Administrator of all and singular the Goods Chattels Rights and Credits of Chinnayah Pillay Deceased to be indebted to him the said Complainant in

Filed in my Office
the 11th November 1793
Chas N. White
Clk

in the full and Just Sum of Two hundred and Seven Star Pagodas and thirty eight fanams Current Money of Madras making in sterling Money of Great Britain at the rate of Eight Shillings for every Pagoda the Sum of Eighty three Pounds two Shillings and Nine Pence or thereabouts and in proof thereof the said Complainant did annex to and Exhibit with his said Bill of Complaint an Account compised of the several Items on which he pretended to found his said Claim And your Petitioner Sheweth that a Summons did thereupon issue Requiring and Commanding your Petitioner as Administrator as aforesaid to be and Appear before the said Honble Court then and there to Answer to the said Bill of Complaint and further to stand to and abide by such Order and Decree as to the said Honble Court should seem meet That your Petitioner being so Summoned Appeared by the means of his Attorney at law and on the Third Day of July in the said year of Christ One thousand Seven hundred and Ninety two filed an Answer to the said Bill of Complaint wherein your Petitioner did state That some time in or about the year One thousand Seven hundred and Eighty his Intestate the said Chinnayah Pillay had a small House on Hog Hill which House with several others that lay Contiguous to it were Ordered to be

be pulled down by the Honble Company for the purposes of Enlargeing the esplanade that he Applied on this occasion to the said Complainant with whom he the said Chinnayah Pillay was on terms of Strict intimacy and friendship for a spare place to deposit the Old materials on which the said Complainant Readily consented to and Accordingly pointed out a place in his back yard for that purpose about thirty feet in length and fifteen in Breadth Wherein all the old materials and rubbish were placed And your Petitioner for further Answer said that he had always heard And therefore believed that the said Complainant never meant to charge his Intestate with any Rent for the said piece of Ground but that he permitted him to have the use thereof from Motives of Courtesy and friendship nevertheless your Petitioner said that if the said Complainant had Applied to him in an Amicable manner and had satisfied him that this was not the case and if he had confined his demand within the bounds of Moderation that your Petitioner as Administrator of the said Chinnayah Pillay would in that Case have considered it incumbent on him to have paid due attention to such Claim, but from the mode which the said Complainant had pursued and from the very loose and

and unspecific manner in which the Account was framed that your Petitioner considered it as a Duty which he owed to the Trust reposed in him as Administrator to Refuse payment of the balance charged therein or of any balance whatsoever until such time as the said Complainant proved that he was entitled to charge Rent and if so to what specific Sum your Petitioner further said that the peice of Ground alluded to in the Account Current and for which the Complainant had charged the Sum of Two hundred and Sixty Eight Pagodas for Twelve years and Three Months if Rented out would not have brought in or fetched more than one Quarter or three Eighths of a Pagoda per Month as your Petitioner could have very easily proved even Houses worth Seven or Eight hundred Pagodas Value Rented for no more amongst the Natives than two Pagodas per Month and if that was the Case a small Piece of Ground of the Dimensions which that in contest was could not be intitled to a Rent nearly equal thereto moreover your Petitioner said that from the particular Situation of the said ~~of the said~~ piece of Ground the Complainant could have felt little or no inconvenience from the materials Remaining thereon if he had he would have certainly taken Measures to have them Removed before that

that time or to have secured the Payment of some Certain and regular Rent your Petitioner admitted that the sums in the Credit side of the Account Current to the Complainants Bill annexed might have been paid by his Intestate yet your Petitioner said that such Sums were not paid on Account of any stipulated Rent for the said piece of Ground but must have had been advanced to the said Complainant by your Petitioners Intestate for the purpose of Assisting him and your Petitioner declared that it was not from any Wish to dispute the Payment of a Just demand that he had been led to Defend the Suit but that he considered it his bounden duty as an &c Administrator to Resist an imposition so notorious and which if he was to have acceded to, would have been doing much injustice to the Estate which had been committed to his care And your Petitioner further Sheweth that to the Answer of your Petitioner the said Complainant filed a Replication on or about the thirty first day of July which was in the year One thousand Seven hundred and Ninety two Resting as follows That although your Petitioner had denied the fact he had admitted the Premises from whence the fact was deduced for your Petitioner had admitted that he the Repliant had allowed your

Pet.rs

Petitioners Intestate a piece of Ground Whereon to keep certain materials of a House Which had been pulled down upon Hog Hill but that your Petitioner had set up a pretext that he the Repliant did grant the said piece of Ground to your Petitioners said Intestate from &c motives of Friendship and that he never meant to charge Rent on Account thereof and again your Petitioner had said that if the Repliant had Applied to him in an amicable manner and had Confined his demand within the bounds of Moderation he would as Administrator as aforesaid have thought it incumbent on him to have paid due attention to such Claim by which the said Repliant drew this conclusion that your Petitioner was convinced that as Administrator as aforesaid he was indebted unto the Repliant but that from pique and Resentment he would not admit the same And the Repliant for further Replication said he denied that he did ever allow your Petitioners said Intestate to have the use of the said Piece of Ground upon any other terms than paying Rent for the same and further said that at the time he did so allow your Petitioners said Intestate the use of the said Piece of Ground as &c aforesaid there was Verbally a specific Agreement entered into between them the Repliant and your Petitioners said

Intestate

Intestate by which it was agreed that he your Petitioners said Intestate should pay unto the Repliant the Sum of Two Pagodas per Month and that he should pay and he did Accordingly pay to the Repliant the Sum of Ten Pagodas as an advance for five Months and the Repliant solemnly Declared it was upon that Account and no other that he permitted your Petitioners said Intestate to occupy the said piece of Ground as aforesaid And the Repliant further said that although your Petitioner had insinuated that the Repliant never did Apply to him in an Amicable manner the Repliant said he had frequently done so both previous and subsequent to your Petitioners Obtaining Letters of Administration as aforesaid and the Repliant said he made no doubt of proving to the satisfaction of the said Honorable Mayors Court that your Petitioner was privy to and well acquainted with the several matters and things therein before setforth and that your Petitioner frequently craved from the Repliant the indulgence of time for the liquidation of the Debt due from your Petitioners Intestate and for the Recovery of which the Repliant had at length been forced to bring his Suit in the said Honble Court and the Repliant further said that some time after the said Agreement your Petitioners said Intestate

did request the Repliant to make an Abatement in the Rent of the said piece of Ground And the Repliant did upon the Reasons suggested by your Petitioners said Intestate agree to make a deduction or Abatement in the said Rent and did Accordingly instead of two Pagodas agree to Receive the Sum of One Pagoda and thirty seven fanams Monthly And the Repliant said that your Petitioners said Intestate in his life time never did refuse to pay unto him the Repliant the said Sum of One Pagoda and thirty seven fanams Monthly as and for the Rent of the said piece of Ground And the Repliant further said that about three years after the Agreement aforesaid he went to the Southward and Resided there for many years And that Returning again to Madras some short time before the Death of your Petitioners said Intestate he did apply to him by means of an Attorney at Law for payment of the balance then due and owing to him the Repliant Copy of Which said letter of demand was to his said Replication annexed And to which he begged leave to Refer and prayed the same might be taken as part of his Replication and the Repliant said that some few days afterwards and before your Petitioners said Intestate had paid and satisfied the said

said demand he did depart this life but the Repliant said that before he did so depart this life he did Acknow-=ledge the Justness of his the Repliants said Demand and did faithfully promise to pay off and discharge the same and the Repliant for further Replication said that the said piece of Ground by him let to your Petitioners said Intestate as aforesaid was Seventy feet in length and fifty feet in Breadth that the same was worth upwards of two Pagodas per Month and the Repliant said that previous to his letting the same to your Petitioners said Intestate the same was a Garden from which he the Repliant derived upwards of two Pagodas per Month and further said that besides the said piece of Ground he did permit your Petitioners said Intestate to put some materials of his said House in another piece of Ground the property of the Repliant and Where a Veranda had formerly been built and for which he had made no charge and thereupon the Repliant said that the Motives of friendship as your Petitioner asserted in his Answer had great Weight with the Repliant in his Transaction as aforesaid with your Petitioners said Intestate And Lastly the Repliant said that the Sums in the Credit side of his Account Current to his said Bill annexed were

were paid by your Petitioners said Intestate in his life time in part payment of the Rent aforesaid and not advanced as your Petitioner would insinuate to assist him the Repliant and the Repliant further said it must appear very extraordinary that he should be in such distress as to have stood in need of a few fanams now and then and yet suffer your Petitioners said Intestate from pure motives of friendship to occupy a piece of Ground which he could at any time have Rented for more than your Petitioners said Intestate so advanced him as a kind of Charitable aid. And your Petitioner further Sheweth unto this Honble Court that to this Replication of the said Complainant your Petitioner filed a Rejoinder on or about the fourth day of September in the said year One Thousand Seven hundred and Ninety two Wherein your Petitioner denied that because he set forth that if the Repliant had Confined his demands within the bounds of moderation he your Petitioner would have thought it incumbent on him to have paid attention to such Claim that such words were an Acknowledgement by your Petitioner of the Debt your Petr. said that he only meant thereby to convince the said Honble Court that in defending the Suit he was not actuated by litigious motives and that if the Repliant had made a demand for such Rent as the said piece of Ground was Reasonably

Reasonably worth and in an amicable Manner had taken pains to convince your Petitioner that it never had been his intention to let the said piece of Ground to your Petitioners Intestate without Rent That then and in such Case your Petitioner would have Conceived it to be his Duty as Administrator to have taken the same into consideration and if he had been satisfied after due investigation that the whole of his Claim or part of it was Justly founded he would in that case have agreed to pay such Sum in proportion with other Creditors of the same Degree as far as the Assets of the Estate would extend after the same were Realized your Petitioner however considered it as his duty to Resist a Claim brought forward in the very irregular manner in which the Repliant had done his without specifying What Monthly Rent was to have been paid but on the Contrary lumping the whole in one gross and Aggregate Sum far beyond what he had a right to charge even admitting that it was the intention of your Pet.rs Intestate to pay Rent for the same your Petitioner however said that such was not the Case and thereupon denied that any specific Agreement ever took place between the Repliant and your Petitioners Intestate either Verbally or otherwise but that the said Repliant permitted your Petitioners Intestate to have the use of the said piece of Ground from Motives of Friendship

Friendship only and that he did not intimate Originally any intention of demanding Rent for the same and therefore that the Repliants attempt to prove that an Agreement was made for that purpose by stating that Ten Pagodas was paid as an Advance for five Months was done with a View to impose on the said Honorable Court for that the Repliant Received the same for a different purpose and some time before the old materials of the House belonging to your Petitioners Intestate were deposited on the Repliants Ground And your Petitioner positively denied that the Repliant did ever demand from him the payment of any Rent for the aforesaid Premises either previous or subsequent to your Petitioner Obtaining letters of Administration to the Estate and Effects of his said Intestate nor did your Petitioner ever Crave the indulgence of further time for the discharge of his said demand your Petitioner said that so far from the Repliant Applying to him in an Amicable Manner for the payment of his pretended Debt that the first intimation he had of it was from a Summon delivered by the Sheriff of Fort St. George Requiring him to Appear before the said Hon.ble Court to Answer to the said Bill of Complaint and your Petitioner said it was usual and Customary in all Cases where a Defendant was not Expected to leave the Jurisdiction for a Complainant to instruct

Instruct his Attorney to Write a letter of demand previous to the institution of the Suit When an Executor or Administrator was concerned it was always done and indeed it formed part of a Bill of Complaint. For the Complainant therein charged that he has frequently and in an amicable manner demanded payment And your Petitioner thereupon submitted to the said Honble Court whether such wanton Coercion as the Repliant had thereon adopted ought to have been tolerated in any Suitor And your Petitioner said that the Repliants Assertion that your Petitioners Intestate did some time after the said Pretended Agreement took place Request him the Repliant to make an Abatement in the said Rent and that he did Accordingly agree to Receive one Pagoda and thirty Seven fanams per Month instead of two Pagodas was also untrue For your Petitioner said the invariable Rule adopted by the Natives in settling Rent was well known to be in a progressive Proportion of Eighths and Quarters of a Pagoda &c. and not in the manner in which the Repliant had stated it by deducting a few fanams Whereas it manifestly Appeared that no such Abatement could have been made and Consequently no such Agreement had ever been entered into your Petr. said that the letter of demand annexed to the Repliants said Replication bearing date Ninth day of March One

One thousand Seven hundred and Ninety requiring the Payment of one hundred and fifty Eight Pagodas and fifteen fanams was wrote only one Week before your Petitioners Intestate departed this life and at a time When the Repliant knew him to be Dangerously ill that although the Repliant had Resided in Madras for the space of two years after his Return from the Southward he had never during the whole of that time made any such demand but Reserved it till a period when he knew his demand could not be called in question by Reason of his Extreme illness And your Petr. positively denied that the said piece of Ground Contained Twenty feet in length and fifty in breadth as set forth by the Repliant for as the said Materials were still Remaining thereon your Petitioner said he would in due time prove to the satisfaction of the said Honble Court that the said piece of Ground Contained no more than thirty feet in length and fifteen in breadth as your Petitioner in and by his said Answer had already set forth And your Petitioner for further Rejoinder said that the Sums on the Credit side of the Repliants Account Current were what your Petitioners Intestate advanced in Rice and other Provisions which he supplied the said Repliant with during the War with the late Hyder Ali Cawn When Rice and Grain of all kinds were

were very scarce in consideration of the intimate friendship which subsisted between them and not as the Repliant had stated on Account of the Rent for the said piece of Ground And your Petitioner further said that the Repliants object on the occasion was to establish himself as a Judgment Creditor upon a Vague and unfounded Claim, which conduct your Petitioner considered as a Duty incumbent on him to Resist in Justice to the Bond Creditors of the Estate, who had not then Received payment of their Debts The Assetts of the Estate not having had been Realized and Lastly your Petitioner said that by the same Rule upon which the Repliant had demanded Payment of the Sum of Two hundred and Seven Pagodas and thirty Eight fanams for the Rent of a piece of spare Ground he might have demanded double and treble that Amount—

And your Petitioner further Sheweth that issue having Joined on the aforegoing Proceedings the usual Rules passed for the Examination of Witnesses and that Witnesses were Examined as well on the part of the Complainant as on that of your Petitioners on the part of the Complainant Imala a Dancing Girl being produced and Sworn deposed to the Third Interrogatory That She did not know whether the said Chinnayah Pillay

Pillay did or did not at or about the time he Applied to the Complainant to Rent a piece of Ground in the backyard of the Complainants House apply to the Complainant for the use of some other spot of Ground in the front of the Complainants House The Deponent said That she did not know whether the Complainant did or did not permit him the said Chinnayah Pillay to occupy the same or whether he Required any Rent for the same—

To the last Interrogatory the said Depment said that the said Chinnayah Pillay did at the time of hiring the Ground in the backyard of the Complainant agree to pay a Rent of two Pagodas per Month agreable to which he did pay in the presence of the Deponent at two different times the Sum of Sixteen Pagodas for Eight Months Rent of the said Ground—

And your Petitioner further Sheweth that Poonah Pillay being also produced and Examined as a Witness on the part of the Complainant to the fourth Interrogatory deposed That he was not present sometime in the year of Christ One thousand Seven hundred and Eighty nor at any time when Chinnayah Pillay did Request the Complainant to make some Abatement in the Rent of a Certain piece of Ground Which the said Chinnayah Pillay had some time previous thereto Rented from the Complainant The Deponent said that

the

the Complainant informed him the Deponent, that he did at the special Request of the said Chinnayah Pillay make an Abatement of a Quarter of a Pagoda per Month in the Rent of the said Premises The Deponent said that he could not say Whether the said Chinnayah Pillay was or was not satisfied with the Abatement of the Rent of the said Ground so made by the Complainant that he did not know whether the said Chinnayah Pillay did or did not express any sense of the favor which the Complainant had done to him Respecting the Premises—

To the fifth Interrogatory the Deponent said that he did not know whether your Petitioner was or was not privy to the Agreement entered into by the said Chinnayah Pillay with the Complainant for the Renting of the beforementioned Ground—

And to the last Interrogatory the said Deponent said that about Seven or Eight years ago the Complainant went to Tinnavelly and Appointed the Deponent as his Attorney to Transact all the Complainants business in his absence That in consequence thereof he demanded the Rent then due of the Ground aforesaid from Chinnayah Pillay who put off the payment thereof from time to time under Various pretences Which induced the Deponent to Threaten to sue him in the Mayors Court who thereupon Requested the Deponent to allow him a few days, at the expiration of which he promised to discharge the Amount due during which period the Complainant arrived from Tennavelly and demanded the said Rent from the said Chinnayah Pillay but finding him dilatory in discharging the same he directed an Attorney to Write him a letter of Demand in consequence of which the said Chinnayah Pillay sent a Message to the Complainant through the means of the Deponent and through other Persons offering to pay the Sum of Ninety Pagodas on Account of the said Rent but the Complainant Refused to Receive the same because it was not the full Amount of his Demand that Venkatasawmy being also produced as a Witness on the part of the Complainant To the Sixth Interrogatory deposed and said that the Complainant did not in the presence of him the Deponent demand payment from your Petitioner of the Balance of the Rent Which had been due and owing unto him the Complainant from the said Chinnayah Pillay but said that the said Chinnayah Pillay did not dispute or offer any objection to the Complainants said Demand but that he the said Chinnayah Pillay did promise payment and urge the want of Money as a Reason for not discharging the

the same and that he did thereupon pray further indulgence for paying it until he Recovered from an illness Which he then laboured under To the Last Interrogatory he deposed that some time after the decease of the said Chinnayah Pillay your Petitioner came to him the Deponent and made an offer of selling the Materials which were in the House and Premises belonging to the said Chinnayah Pillay Deceased, provided he the Complainant would pay him your Petitioner for the same the Sum of Ten Pagodas in addition to the Rent due to the Complainant from the Estate of the said Chinnayah Pillay And your Petitioner further Sheweth, that Yevelapah Mondelly was also produced as a Witness on the part of the Complainant and to the Eighth Interrogatory Deposed and said That the Complainant did send him to Chinnayah Pillay previous to his Decease to demand from him the payment of the balance of the Rent of a Certain piece of Ground by him the said Chinnayah Pillay Rented from the Complainant That the said Chinnayah Pillay did not discharge the same but promised to do so as soon as he Recovered from an illness under which he laboured at that time That Nellatomby another Witness on the part and behalf of the Complainant To the said Eighth Interrogatory Deposed That he the Deponent went by direction of the Complainant sometime previous

previous to the Decease of the said Chinnayah Pillay to demand from him the Balance of the Rent of a Certain piece of Ground by him Rented from the Complainant but that the said Chinnayah Pillay did not discharge the same but promised to wait on the Complainant in four or five days to settle the Account betwixt them and that he would then pay off the balance And to the Last Interrogatory deposed and said that the said Complainant did Request him the Deponent to go and Ask the said Chinnayah Pillay to sell the Complainant Four thousand Bricks which the said Chinnayah Pillay did Accordingly

And your Petitioner further Sheweth that Witnesses were also Examined on the part and behalf of your Petitioner The first of whom Ramalinga Chitty being examined to the Second Interrogatory Deposed That he was Acquainted with Chinnayah Pillay in his life time That the said Chinnayah Pillay was on Terms of strict intimacy and friendship with the Complainant that the said Chinnayah Pillay did Reside in a House on Hog Hill and that the same was pulled down by Order of the Honble Company for the purpose of Enlarging the Esplanade That the said Chinnayah Pillay did not apply to the Complainant but that

That the Complainant offred of his own Accord a spare piece of Ground to the said Chinnayah Pillay to depisit the old materials of his House and that the Complainant did allow the said Chinnayah Pillay to have the use of a piece of Ground for that purpose that the said piece of Ground was so granted to the said Chinnayah Pillay by the Complainant of his own Accord and that he did not Require any Rent for the same That Cundapah another Witness was also produced and Examined on the part of your Petitioner And to the third Interrogatory Deposed and said, that he knew the piece of Ground in the Pleadings mentioned and said that the said piece of Ground was in length from North to South about thirty feet and in breadth from East to West about fifteen feet and that the real Value thereof was about fifty Pagodas and that fourteen fanams was the utmost at which the same ought to have ban Rented That the Monthley Rent usually paid for Houses of the Value of Seven or Eight hundred Pagodas was three Pagodas per Month And your Petitioner further Sheweth unto this Honble Court that Chellapah Bricklayer Mastery Inhabitant of Madras was also produced and Examined on the part of your Petr And to the third Interogatory deposed that he knew the Piece of Ground in the Pleadings mentioned belonging to the Complainant That the extent of the said piece of Ground was in length Thirty feet and in breadth fifteen feet and situated in the back yard of the Complainant that the Real Value thereof in his the Deponents Opinion was about Sixty or Seventy Pagodas and that the utmost for which it ought to have ban Rented was about fifteen or Sixteen fanams per Month That about Two and a half or three Pagodas was usually pay'd for Houses of the Value of Seven or Eight hundred Pagodas —

That Venatanarnapah Naick Dubash a Witness also produced and Examined on the part and behalf of your Petitioner To the fourth Interrogatory deposed and said that he was the owner of several Houses and pieces of Ground That the said Houses were worth from Four hundred to One thousand Pagodas each That he Received three and three Quarter Pagodas for his said House Valued at One thousand Pagodas and for his other Houses in proportion That he had three pieces of Ground Valued at Eight hundred Pagodas for which he Received fourteen fanams per Month and that his charge for Rent was the same as was Customary Amongst the Natives and he further declared that he had seen the Piece of Ground in dispute and that the Real Value of

of set in his Opinion was about thirty five Pagodas and that a Rent of about five fanams per Month ought only to have been paid for the same According to the usual Custom in such Cases And your Petitioner further Sheweth that Valoyadoo Merchant of Madras was also produced and Examined on the part of your Petitioner and to the said Fourth Interrogatory Deposed that he was owner of several Houses and Piece of Ground that one of his said Houses was worth one thousand Two hundred Pagodas one worth Four hundred and the other Eight hundred Pagodas and that he received a Rent of One Pagodas and Six fanams per Month for the House Valued at Four hundred Pagodas That his charge for Rent was the same as was Customary Amongst other Natives that he had seen the piece of Ground in dispute and that it was in his opinion worth about Sixty Pagodas And that a Rent of not more than Six fanams per Month ought only to have been paid for the same According to the usual Custom —

And your Petitioner further Sheweth that Publication having passed the said Cause was set down for hearing And on Tuesday the Twenty Ninth day of October in the year One thousand Seven hundred and Ninety three came on to be heard and Determined by and before the said Honble the Mayors Court when the said Court did think fit to Order and Decree and did Accordingly Order and Decree that your Petitioner should pay unto the Complainant out of the Estate and Effects of his Intestate the said Chinnayah Pillay the full and Just Sum of Two hundred and Seven Pagodas and thirty Eight fanams together with all such Interest as then was or should thereafter become due thereon untill full payment was made also all Costs of the Suit which the said Mayors Court Decreed your Petitioner to pay out of his own pocket as by the said Decree of the said Honble the Mayors Court Copy Whereof is hereunto annexed for the inspection of this Honble Court, Relation being thereunto had doth and will more fully and at large Appear From which said Decree your Petitioner doth Appeal to this Honble Court conceiving the same to be erroneous and unjust and that he is aggrieved thereby for the following amongst other Reasons —

First — Because when a Suitor Applies to a Court of Judicature for Redress the Law Requires that he shall State his Complaint with clearness and precision and which Rule the Complainant in the present instance has not attended

attended to but in illustration and support of the Action Which has been brought has simply Reference to an Account Current full of incongruities wherein your Petitioner is debited for the Rent of a Piece of Ground said to be let by the Deceased in his life time instead of to the Deceased and Occupied by your Petitioner after his Decease from the Tenth day of January in the year of Christ One thousand Seven hundred and Eighty to the Tenth day of April One thousand Seven hundred and Ninety two Comprehending a period of no less than Twelve years and three Months Which said Account Current is very inconclusive to found an Action upon in as much as it does not Shew that your Petitioners Intestate ever entered into any written or other Agreement to pay Rent for the said piece of Ground but on the Contrary it has been shewn in Evidence that the same was lent by the Complainant to your Petitioners Intestate from motives of friendship to deposit the materials of an old House pulled down by Order of the Honble Company for the Enlargement of the Esplanade and of this fact conclusive proof is drawn from the Circumstance of the Complainant having allowed so many years to elapse without taking Measures to enforce payment of the same —

Secondly

Secondly —— Because even on the supposition that the Complainant had a Right to charge Rent for the said piece of Ground yet the Rent which he has debited your Petitioner with is far above its worth and Real Value, in as much as your Petitioner has Shewn in his Answer to the said Bill that the Dimensions of the said piece of Ground are only Thirty feet in length and fifteen feet in Breadth And although the Complainant in his Replication denies the Assertion and says the piece of Ground so Rented is Seventy feet by fifty yet your Petitioner adhering to what he had set forth upon Oath in his said Answer Respecting the Dimensions of the said piece of Ground, insisted that it was only thirty feet by fifteen that Notwithstanding the Complainant was thus called upon to support what he had Asserted yet he had adduced no proof Whatever in support thereof Whereas your Petitioner by the Testimony of several Credible Witnesses Bricklayers by Profession clearly proved that the said piece of Ground was only thirty feet in length and fifteen in breadth And by the Testimony of the same Witnesses as well as other Responsible People owners of Houses and pieces of Ground your Petr proved that the Premises in Question was not worth more than Sixty Pagodas and that the very utmost which it

Ought

Ought to have Rented for was fourteen or fifteen fanams per Month for the said Witnesses proved that According to the usages and Customs of the Natives Houses worth Eight hundred Pagodas Rented for no more than Two Pagodas and a half per Month and Houses worth Four hundred Pagodas for one Pagoda and Six fanams or thereabouts Wherefore your Petitioner humbly insists that the said Mayors Court provided they were of opinion that the Complainant had a Right to charge Rent for the Ground in Question should have Reduced it from the Exorbitant Rate charged by him to the medium Assessed by the Testimony of the said Witnesses —

Thirdly —— Because on the principles upon which the said Complainant has charged Rent and for which the said Mayors Court have given a Decree, The Complainant might as well have demanded five or Ten Pagodas per Month instead of one and three Quarters, no proof whatever having been adduced to Shew that it was worth that Sum per Month or that your Petitioner or his Intestate had ever Acquiesced in the charge on the Contrary such of the Complainants Witnesses as were interrogated Respecting the demand of Rent in General terms depose that they demanded Rented but carefully avoid specifying what the Rate was —

Fourthly —— Because several of the Witnesses on the part of the Complainant have Shewn much inconsistency in the Evidence Which they have given particularly Tremala a Dancing Girl who in her Answer to the third Interrogatory first Deposes to her ignorance of the Subject Matter And in her Answer to the Last Interrogatory to her entire knowledge thereof And Because the said Tremala has Deposed that She was present When your Petitioners Intestate paid Sixteen Pagodas in part of the Rent Whereas by a Reference to the Account Current Copy Whereof is to the Bill annexed Credit is not given for any such Sum from Which Circumstance your Petitioner has a Right to conclude her Testimony to be false —

Fifthly —— Because your Petitioner is further Aggrieved by the Decree of the said Mayors Court in Ordering your Petitioner to pay the Costs of Suit out of his own pocket and which cannot legally be done, but in Cases Where Executors and Administrators mismanage the Estate contrary to the Trust Reposed in them or set up Litigious Defences to the prejudice and delay of Just Suitors in the present instance your Petr. humbly submits that he was warranted to Resist the Action brought by the Complainant Because no Agreement or Memorandum in Writing was produced to Shew that he had a Right to charge Rent And the Materials of the House having

having lain so many years upon the Ground without the Complainant having distreined the same or taken any other measures in the life time of Chinnayah Pillay to enforce the payment of the Rent your Petitioner had a Right to conclude and believe that no Rent was intended Originally to be charged And your Petitioner was further Authorized to defend the Suit upon the principles which he had done because the said Complainant instead of Applying to your Petitioner in an Amicable Manner and taking pains to Convince him that he had a Right to charge Rent at once instructed his Attorney at Law to proceed against your Petitioner and who without making any previous demand of the same immediately filed a Bill of Complaint against your Petitioner and your Petitioner was further Authorized to Defend the Suit because the Amount for which the Bill is filed is four times more than the Value of the Ground in Question And therefore if your Petitioner had at once satisfied this pretended debt without setting forth in Defence those matters which he had done in his Answer and taking the Judgment of the Court thereon he would in that Case have been guilty of a Devastavit and would have been liable to an Action at the Suit of such as had well founded

founded Claims on the Estate —

For all which Matters and Things and such other Reasons as may be offered at the hearing your Petitioner humbly prays that the Decree of the said Honourable Mayors Court may be altogether Reversed but of this Honble Court of Appeals should be of Opinion that the Complainant has a Right to charge Rent for the Premises in Question that in such case they will be pleased to Decree payment of the same Acording to the Real Value of the Ground and its just Dimensions as proved by the witnesses on the part of your Petitioner and as the Complainant has been the Cause of this Wanton and unnecessary litigation that he may be Decreed to pay all Costs of Suit —

Signed/ G. Chalmer
Solicitor for Appellant

Mayors Court

Mayors Court at Madraspatnam

Tuesday the 29th day of October Anno Domini 1793.

Present

John Stafford Esquire Mayor

James Call & Alexr Eckburn

Aldermen

(L.S.)

Between Shaikasalay Moodelliar of Madras Inhabitant Complainant and Solay Pillay Administrator of all and singular the Goods Chattles and Credits of Chinnayah Pillay Deceased Defendant—

This Cause Coming to be heard and Debated this day in the presence of the Attornies on both sides on Reading the Complainants Bill with Copy of an Account Current annexed the Defendants Answer the Replication with Copy of a letter annexed The Amended Rejoinder The Interrogatories and Depositions on the part of the Complainant The Interrogatories and Depositions on the part of the Defendant on Hearing the Pleadings made use of by the Attornies and on due Consideration had thereon This Court doth think fit to Order and Decree and doth Accordingly Order and Decree that the Defendant do pay unto the Complainant out of the Estate and Effects of Chinnayah Pillay deceased the full and Just Sum of Two hundred and Seven Pagodas and thirty Eight fanams / Pags. 207.38. / together with all such Interest as now is or shall hereafter become due thereon until full Payment is made and it is further Ordered and Decreed that the Defendant do pay the Costs of this Suit out of his own Pocket—

Mayors Court

True Copy

/Signd/ G. Taylor Regr.

/Signd/ G. Chalmer

Solicitor for Appellant

To the Honble Sir Charles Oakeley Baronet
President & Governor &c. in Council
Fort Saint George

In the Honble
Court of Appeals

Between Sashaiala Moodeliar
of Madras Inhabitant Complainant
and Solay Tillay Administrator of the
Estate and Effects of Chinnayah Tillay
Deceased Defendant

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

Filed in my office
the 2. December 1793
Chas. N. White
Clk

This Respondent admits that he did
Exhibit and file a Bill of Complaint in the Mayors
Court against the Appellant as Administrator as aforesaid
at the time and in manner and form as in and by the
Appellants Petition of Appeal the same is setforth and
this Respondent says that the Account Current to this
Respondents said Bill annexed is a Just and true
Account of the Transactions between this Respondent
and the Appellants Intestate Regarding Certain premises
by this Respondent let to the Appellants said Intestate
as in the Appellants said Petition of Appeal is setforth
and

And this Respondent admits that upon his said Bill of
Complaint process did issue as in the Petitioners said Petition
of Appeal the same is particularly setforth and that
thereupon the Appellant did by his Attorney in Court and
on or about the time in the Appellants said Petition of
Appeal for that purpose setforth Exhibit and file his Answer
to this Respondents said Bill of Complaint And this
Respondent admits that the said Answer so filed by the
Appellant might have been the same in manner form
and substance as in the Appellants said Petition of Appeal
the same is Recited And this Respondent further Answering
says that he admits to the said Answer of the Appellant
he did file his Replication and that the same may have
been nearly in Substance as Recited by the Appellant in
and by his said Petition of Appeal and this Respondent
admits that to his said Replication the Appellant did file
a Rejoinder and did therein setforth the several Matters
and things as Recited by the Appellant in and by his said
Petition of Appeal and that thereupon Issue did Join and
Rules did pass for the Examination of Witnesses and
that Witnesses were Examined Accordingly both on the
part of the Appellant and on the part of this Respondent
And this Respondent says that Notwithstanding the

the pretentions and insinuations of the Appellant to the Contrary this Respondents Witnesses did give a clear connected uniform Testimony in support of his this Respondents said Bill of Complaint and did clearly Shew that the Appellants Intestate had Rented from this Respondent the premisses in question that the Amount due from him had been frequently demanded and that he had promised to discharge the same and on the other hand this Respondent says that the Witnesses produced on the part of the Apponent were inconsistent and Contradictory in some Measure contradicting the Appellants Answer by him given upon Oath — And that the greatest part of them did little more than give their opinion as to the Points at issue And this Respondent for further Answer says that he admits that publication did pass and that the Cause was set down to be heard and that the same did Accordingly come on to be heard before the said Mayors Court on or about the time in the Appellants said Petition of Appeal for that purpose set forth And this Respondent doth further admit that the said Mayors Court did Order and Decree in manner and form as in the Appellants said Petition of Appeal the same is set forth but this Respondent doth not admit that thereby or by Reason thereof the Appellant was

was in any wise Aggrieved or that he has any Just Cause of Appeal from the said Decree of the said Mayors Court to this Hon^ble Court but on the Contrary this Respondent humbly Submits to this Hon^ble Court that the said Decree of the said Mayors Court is both Equitable and Just grounded upon Evidence and Conformable to the nature of the thing and that the Reasons offered by the Appellant as several Causes of Appeal do not by any means go to Shew any Error in the said Decree of the said Mayors Court but to confirm the same as Reasonable and Right —

In Answer to the first Reason this Respondent says that if a Bill of Complaint be in any wise defective the Defendant has it in his power to take a legal Advantage thereof by a Demurrer thereto and as the Appellant did not take any Exception to this Respondents said Bill in question when he was at liberty so to do he ought not at this period to call this Respondents said Bill in question for any imaginary uncertainty or want of precision but this Respondents submits to this Honorable Court that his said Bill of Complaint is not Defective in manner form and substance that it is brought for the balance of Rent due from the Appellant as Administrator as aforesaid to this Respondent Amounting to the Sum of Two hundred and Seven Star Pagodas and Thirty

Thirty Eight fanams that the Account Current thereunto annexed is so annexed in conformity to the Course of practice of the said Mayors Court and which is illustrative of the Charges setforth in this Respondents said Bill of Complaint and conclusive as to the facts upon which the same is grounded and although it does not setforth any written Agreement between this Respondent and the Appellants Intestate as to the terms of Rent of the premises in Question yet it setforth the mode observed by him in liquidating a part of such Rent And this Respondent submits to this Honble Court not only the absurdity but the hardiness of the Appellant in Asserting that it has been Shewn in his Evidence that the Premises were lent by this Respondent to the Appellants Intestate from Motives of friendship, for this Respondent further submits to this Honble Court that although one of the Appellants Witnesses has been daring Enough to Swear to a negative to demonstrate that the Appellants Intestate never did apply to this Respondent for the use of the Premises in question, but that this Respondent did of himself make a Voluntary offer of the same to him and did not Require any Rent yet the Appellant in his answer upon Oath declares positively in the affirmative to the Contrary, and says that his Intestate did Apply to this Respondent for the premises in question and that this Respondent did Consent so that such the Shewing of the Appellant as Cause of Appeal from the said Decree of the said Mayors Court is pregnant with a Palpable untruth solemnly deposed to upon Oath, and further this Respondent says that he this Respondent has proved an Agreement by the Appellants Intestate to pay Rent at and after the rate of Two Pagodas per mensum for Tremala in her Deposition to the last Interrogatory says that the Appellants Intestate did at the time of hiring the Ground in the back yard belonging to this Respondent agree to pay a Rent of Two Pagodas per Month and in conformity thereto he did pay in her the Deponents presence at two different times the Sum of Sixteen Pagodas for eight Months and Ponapillay to the last Interrogatories shews, that he was appointed in the absence of this Respondent his this Respondents Attorney, and that in consequence thereof he did Apply to the Appellants Intestate for payment of the Rent due for the premises in Question, but that he the Appellants said Intestate did under Various pritences put off the same till at length he the Deponent did threaten to prosecute him, that a few days Indulgence were thereupon prayed and granted and that before they Expired this Respondent arrived and did himself demand the Rent and upon now Compliance on the part of the Appellants said

said Intestate did Cause his Attorney at Law to apply to him and that in consequence thereof the Appellants said &c Intestate did send a Message to this Respondent through the Deponent and others offering to pay the Sum of Ninety Pagodas on Account but that this Respondent refused to receive the same, and Yellapah Nellatombey and Vencatasawmy corroborate that part of the Testimoney of Poonapillay that goes to prove the demand of Rent from the Appellants Intestate and his entire Acquiescence in the Justness thereof - his &c promising to pay the same and craving the Indulgence of time and Vencataswamey to the last Interrogatory Shews that the Appellant himself some time after the decease of his said Intestate was so fully satisfied with this Respondents right to the Sum demanded for Rent as aforesaid that he did offer to this Respondent to pay the same by selling to him the property &c deposited on the premisses provided this Respondent would give to him the Appellant the Sum of Ten Pagodas as a Kind of &c difference between the Rent due and the Value of the said property All which this Respondent humbly submits to this Honble Court doth in the Amplest manner support this Respondents said Bill of Complaint and his right to recover the Amount Decreed by the said Decree of the said Mayors Court and doth also shew the vacant of foundation of the insinuation of the &c

Appellant

Appellant that this Respondent did suffer a many years to &c Elapse without taking any measures to enforce the payment of the Rent for which he has at length been compelled by the unfair &c Conduct of the Appellant to bring his Action -

To the Second Reason of the Appellant this Respondent says that the Rent by him charged is not as the Appellant attempted to Shew extravagant and although the Appellant has Shewn that instead of Seventy feet by fifty the Ground in Question is only thirty feet by fifteen yet here he only speaks of one piece of Ground and there were two pieces of Ground occupied by his Intestate as Appears &c admitted in the Pleadings but this Respondent submits to this &c Honble Court that that is not the fact in issue it is whether the &c Appellants Intestate did or did not Rent a piece of Ground from this Respondent at a Certain Rate and which this Respondent has &c hereinbefore fully proved to be the fact and therefore it is a matter of no consequence whether it was fifty or One hundred feet the Appel-lants Intestate Judged it worth the Rent he agreed to pay for it at the time he Rented it and it was his own pleasure that he Occupied it so long and of course the Opinions of the people as to what ought to have been the Rent charged is irregular and impertinent Contrary to the law in such as it is to Reason, for were it to be otherwise a man who to suit his convenience had hired a piece of Ground would when the Rent agreed on should be

be demanded in Order to Relieve himself from payment of the Amount due take the opinion of People to Shew that he had made a bad Bargain and ought not to abide by it and further to illustrate the falley as well as the injustice of the Act this Respondt prays leave to Shew that the Witness on the part of the Appellant thus introduced to gave their opinion differ so widely that they leave no criterion Whereon to form a Judgment some of them say that the Value of the Ground is about Sixty or Seventy Pagodas and ought to be Rented at fifteen or Sixteen fanams another who although he admits that the ground is Worth Sixty Pagodas says it ought to be Rented for Six fanams only and another says that the ground is in his opinion not worth Twenty five Pagodas and that it ought to be Rented at five fanams only — And as to the Rent of Houses of a Certain Value as stated by the Appellant upon the Opinion of his Witnesses is Equally fallacious —

To the Third Reason of the Appellant this Respondent says that it was altogether unnecessary for this Respondent to Shew that the Rent of the premises in question was what he ought to have Charged because the Appellants Intestate had himself Confirmed that point by his Agreeing thereto and he was Certainly the best Judge at the time he entered into such Agreement and that he did agree to the said Rent so charged this Respondent doth aver Notwithstanding the Asertion of the Appellant to the contrary And this Respondent further says that the same is proved by the Testimony

Testimony of the Witnesses produced on the part of this Respondt as hereinbefore particularly shewn and although the Witnesses might not have deposed to the Amount due as the Appellant has Asserted yet one of them Tamala has Shewn the rate of Rent Originally agreed upon and Poonapillay this Respondts Attorney proves that this Respondent did Cause his Attorney at Law to Write a letter of demand to the Appellants Intestate a Copy whereof is to this Respondents Replication annexed and Poonapillay further Shews that in consequence of such letter of demand the Appellants said Intestate did send a message through him the Deponent and by others offering to pay the Sum of Ninety Pagodas in part thereof but that this Respondt refused to Receive the same as it was not the full Amount —

To the fourth Reason of the Appellant this Respondent says Notwithstanding the Asertion of the Appellant to the contrary that no one of his this Respondents Witnesses has Shewn any inconsistency whatever and as to the Testimony of Tremala had the Respondent considered it with candour or rather if he had not placed a construction thereon contrary to the true and Clearly expressed meaning thereof he would have Shewn that it was not impeachable for this Respondent says that he did let to the Appellants said Intestate two pieces of Ground one in the back yard and one in the front of this Respondents House as setforth in the Pleadings and the said Tremala is

Interrogated

interrogated whether at the time the Appellants Intestate ~~&~~ Applied to this Respondent to Rent a piece of Ground in the back yard he did not also apply to this Respondent for some other spot in the front of this Respondents House and the said ~~&~~ Iremala in Answer thereto deposed that she did not know and further and consequently that she did not know whether this Respondent did or did not permit the Appellants Intestate to occupy the same and afterwards speaking to the last Interrogatory She Shews that although She knew nothing of the Appellants said Intestate Renting a piece of Ground in the front part of this Respondents House yet that she was perfectly well Acquainted with the Circumstance of his Renting a piece of Ground in the back yard of this Respondent which are the premisses for which this Respondent has made a charge of Rent / that he the Appellants said Intestate did agree to pay a Rent of Two Pagodas per Month on Account thereof and that he did actually pay in her the Deponents presence at two different times the Sum of Sixteen Pagodas for Eight Months Rent and further this Respondent says Notwithstanding the Assertion of the Appellant to the contrary Credit is given for those two Sums in the Account Current to this Respondts said Bill of Complaint annexed that is to say on the Tenth day of January One thousand Seven hundred and Eighty for the Sum of Ten Pagodas and on the thirteenth day of June One thousand Seven hundred and Eighty two for the Sum of Six Pagodas, which Corresponds Entirely

Entirely with the Deposition of the said Iremala and therefore the conclusion drawn by the Appellant Regarding the Evidence of the said Iremala being false is entirely unfounded and unjust—

In Answer to the Appellants fifth Reason this Respondent says that there are some Cases where the said Mayors Court mark their disapprobation and they no doubt conceived the present a proper subject for that purpose and therefore Ordered the Appellant to pay Costs out of his own Pocket, and this Respondent submits to this Honble Court that it could not have been for any other purpose that the said Mayors Court did Order the Cost to be paid because the Appellant is the Heir at Law of his said ~~&~~ Intestate and although the Apponent attempts to Defend his Conduct under pretext that he Believes that no Rent was originally intended to be charged and Asserting that this Respondent did not apply to settle in an Amicable manner with him the Appellant but did in the first instance have recourse to coercive Measures yet this Respondent says that it Appears in evidence that the Appellant was sufficiently apprised of the Amount due from his Intestate to this Respondent and that amicable measures must have ban proposed by this Respondent in so much as it Appears that he the Appellant did agree to settle the Rent provided this Respondent would Receive the Property deposited on the Ground in question in lieu of the Rent thereof and give to him the

the Appellant the Sum of Ten Pagodas, nor has the Appel=
=lant denied in and by his said Answer that this Respondent
did let certain premises to his the Appellants said Intestate for a
Certain Rent, he only Resists the Quantum as charged by this Respondt
and this Respondent further submits to this Honble Court that the
Asseration in the Appellants Reason contained cannot possibly be
offered as a Reasonable Cause of Appeal for he says that if he had not
taken the Judgment of the said Mayors Court upon the defence by
him set up, he would have been guilty of a devastavit and been liable
to an Action at the Suit of such as had well founded Claims on
the Estate, because this Respondent submits to this Honble Court
that having met the Judgment of the said Mayors Court, such the
Apprehensions of the Appellant were Removed and therefore in or
Appealing from the said Decree of the said Mayors Court he has
pursued an unjustifiable litigation —

For all which Reasons and such others as
may be offered at the hearing this Respondent
humbly prays that this Honble Court will
be pleased to Affirm the said Decree of the said
Mayors Court that the Appellants said
Petition of Appeal may be dismissed with Costs
that this Respondt may have such further and
other Relief as in the Wisdom of this Honble
Court shall Seem meet —

/Signed/ J. S. Hall
Solicitor for Respondt

Court of Appeals
Madraspatnam ss

Saturday the 26th day of April
Anno Domini 1794

Between Solay Pillay of Madras
Inhabitant Administrator of the Estate and Effects
of Chinnayah Pillay Diceased Appellant and
Thashazala Moodeliar of the same place Inhabi=
=tant Respondent —

This Cause coming on this day to be heard and debated
before this Court and this Court being of Opinion that the matter is between
two natives who are by the Charter Restricted from suing each other
and that Letters of Administration granted to a Native of the Estate
of a Native does in no wise alter the case doth think fit to Order and
Decree and doth Accordingly Order and Decree that the said Decree
of the Honourable the Mayors Court Dated the 29th Day of October
Anno Domini 1792 be reversed with Costs —

Per Cur
/Signed/ Chas N White Clk

Jc

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

In the Honble the
Court of Appeals
at Madraspatnam

Between James Austen of Fort St. George
Merchant Complainant and James Flower of
Madras Horse Dealer Defendant—

The humble Petition and Appeal of the above named
Defendant—

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

Sheweth That the above named Complainant did sometime
on or about the Sixteenth day of February in the year of Our Lord
One thousand Seven hundred and Ninety, file and Exhibit his Bill
of Complaint in the Mayors Court at Madraspatnam against
your Petitioner for the Recovery of the Sum of Ninety one Pagodas
and Twenty seven fanams Current Money of Madras stating
that some time in or about the Month of November then last
past he the Complainant being possessed of a good quiet and
Sound Saddle Horse of the Value of Eighty star Pagodas and
upwards as he pretended and being desirous of disposing of the same
and instead thereof to purchase a Horse fit to draw a Single Horse
Chaise commonly called a Bundy he Applied to your Petitioner
to provide him with the same Proposing to give the one he then
Possessed in Exchange and that if there should be any difference in
the Value of their respective Horses to settle the same in a Reasonable
manner that your Petitioner did on or about the Twenty seventh or
Twenty eighth day of November last call on the Complainant with
Three Horses for Sale that the Complainant having fixt upon one
he Requested your Petitioner to let him have a Trial of the said Horse
in a Bundy previous to his agreeing about the Purchase which
your Petitioner Refusing the Complainant pretended he Acquainted
your Petitioner that he was Determined not to let his Horse be tried
it was not very material but that the only thing in question was
Whether he your Petitioner knew the said Horse was Sound and
Whether he would be Answerable that he was a Sound quiet and
good Bandy Horse and falsely asserted that your Petitioner did
thereupon say he warranted the said Horse to be as Sound and
quiet a Bandy Horse as any in the Country and that thereupon
the Complainant took the said horse from your Petitioner and deliv-
=ered him in Exchange his own Horse and the Complainant did
further state that as soon after as the Weather did Permit the
Complainant tried the said Horse and immediately discovered that
he was Lame occasioned by a Blood spavin in one of the Joints
of his hinds legs and that he was otherwise unsound that
thereupon he gave Notice to your Petitioner thereof and desired him
to receive back the said Horse and Return the one he had received
in

in Exchange or pay him the Complainant the Sum of Eighty Star Pagodas and your Petitioner Sheweth that on the Sixth day of April in the said year of Our Lord One thousand Seven hundred and Ninety your Petitioner did put in his Answer to the Complainants said Bill of Complaint and did therein deny being indebted to the Complainant in the Sum of Ninety one Pagodas and Twenty seven fanams Current Money of Madras or in any other Sum or Sums of Money whatever but did admit to have sold to the Complainant the Horse mentioned in his said Bill of Complaint on or about the time and for the Sum of Money in his said Bill of Complaint &c particularly set forth and your Petitioner Sheweth that in and by said Answer he did positively deny that at the time &c he did so sell and dispose of the said Horse to the Complainant that he did warrant him to be as sound and quiet a Bandy Horse as any in the Country or that he did make use of any words to that purport or Effect and your Petitioner did most Solemnly declare that in the Disposal of the said Horse to the Complainant as in the Disposal of many other Horses to different Gentlemen in the Settlement he never took upon himself to Warrant more than what he could from a Certainty as certain that is to say that the horse was free from Vice, that with respect to the horse in question he had informed the Complainant that he was as quiet a Bandy horse as any in the Country and that the Complainant being fully satisfied therewith the Bargain was concluded and your Petitioner heard no more of the Complainant or of the said horse for nearly the Space of one Month during which time he had been in the Complainants posession and your Petitioner did in his said &c Answer say that after such a lapse of time he was much surprized to learn from the Complainant that the horse was lame and that he therefore Requested your Petitioner would take him back again And your Petitioner did further say that if the said horse was really lame he might have contracted disorder or been lamed whilst in the posession of the Complainant—

To which said Answer of your Petitioners your Petitioner Sheweth the said Complainant did file his Replication and did therein pretend that Notwithstanding any thing mentioned &c contained in your Petitioners said Answer he was Justly and truly Indebted unto him the Complainant in the Sum sued for and &c mentioned in his Bill of Complaint and that your Petitioner &c having admitted in his said Answer as the Complainant falsly &c Insinuated that the horse in question was sold by him to the &c Complainant and that the Complainant had paid or satisfied unto your Petitioner the Sum of Eighty star Pagodas and your Petr. having also admitted as the Complainant did further falsly &c insinuate that the said Horse was unsound and not nearly worth that Money it remained only for the Complainant to prove that your Petitioner did warrant the said Horse to be sound and to that end he the Complainant did annex the Copy of an Affidavit of one William

William Grocut and the Complainant did further state that in every Bargain of this Sort and particularly regarding Horses a General Warranty was Implied that the Horse had no concealed defects within the knowledge of the Seller without his mentioning them to the buyer—

And your Petitioner Sheweth that to the Complai=nants said Replication your Petitioner did file his Rejoinder and did therein and thereby maintain and support his said Answer to the Complainants said Bill of Complaint and did fully and Amply deny and confute his the Complainants said Replication And your Petitioner did further insist that the Complainant had no Right Whatever whereby to call your Petitioner in Question before the said Mayors Court and that he was advised that the introduction of an Affidavit in the course of Proceedings was altogether irregular and improper and ought not and with Submission could not be Received in Evidence and the more particularly as the Affidavit in question was made before the present Suit was commenced And your Petitioner did say that if the said Affidavit was to be good &c Evidence instead of its being as it was a nullety it would be rather more in favor of your Petitioner than of the Complainant for it Shewed that the Horse was chosen out of a number and under went an examination by a Quarter Master of Cavalry who was supposed to be a Competent Judge and who upon &c

Examining

Examining his feet found as he said they were in a bad condition and that he informed the Complainant thereof but that he did not at that time discover any spavin in the said Horse and which was a disorder your Petitioner did aver that seldom escaped the immediate Notice of a Judge of Horses—

And your Petitioner Sheweth that issue did &c thereupon Issue and Rules passed for the Examination of Witnesses and that Witnesses were Examined by the Complainant Accordingly but your Petitioner Sheweth that the said Witnesses so far from Supporting the Charges in the Complainants said Bill contained and in and by his said Replication set forth that the same was either impertenent irrelevent or did absolutely support the Defence set up by your Petitioner thereto—

And your Petitioner Sheweth that on the above Proceedings being had the said Cause come on to be heard before the said Mayors Court on the Thirteenth day of April last past When the said Mayors Court was pleased to Order and Decree and did Accordingly Order and Decree that your Petitioner should pay unto the Complainant the said Sum of Ninety one Pagodas and Twenty seven fanams together with Interest and Costs of Suit as by a Copy of the said Decree hereunto annexed will Appear By which said Decree of the said Mayors Court your Petitioner doth conceive himself much Aggrieved and doth therefore Appeal therefrom to this Honble Court for the following Amongst &c

other

other Reasons—

First ——— Because it appears by the Complainants own Shewing that no specifice Sum was ever paid by the Complainant to your Petitioner for the horse by him Received from your Petitioner but that the same was a matter of barter and exchange that he did in Return for the said horse give another horse his property to your Petitioner—

Secondly ——— Because the Complainant has not proved the Value of the Horse by him given to your Petitioner in Exchange as aforesaid or that the same was a sound Horse consequently he has not Shewn that the Value and condition of the one was Superior to the Value and condition of the other and therefore the said Mayors Court had no foundation whatever whereon to ground the said Decree—

Thirdly ——— Because the Complainant has not proved that your Petitioner did warrant the Horse in question to be a Sound Horse and that your Petitioner by reason thereof had taken an unfair advantage of the Complainants Ignorance but on the contrary it appears by the Complainants own Shewing in and by his Replication to your Petitioners said Answer that the horse by him Received from your Petitioner was at the time he so Received him examined by a Quarter Master of Cavalry and who it is to be presumed was a Judge of Horses and by the Deposetion of John Story examined on the part of the Complainant it is proved that the horse he the Deponent had sold to your Petitioner and which the Complainant pretends to be the Horse in question was so blemished that it was apparent to any Judge of Horses—

Fourthly ——— Because the Answer of your Petitioner is upon Oath and the matters and things therein and thereby setforth a denial of the charges in the Complainants said Bill contained stand uncontroverted by evidence and for as much as where there is only one Evidence produced in the part of a Complainant in support of the Charges by him setforth in his Bill and denied by the Defendants Answer no Decree can be given your Petitioner humbly insists that the Decree of the said Mayors Court is erroneous and contrary to Law—

Fifthly ——— Because the said Mayors Court has admitted as Evidence in the Cause the Voluntary Affidavit of a stranger taken before the commencement of the suit and as the said Mayors Court was in some Degree governed thereby and as the Voluntary Affidavit of a Stranger cannot be received as Evidence nor Read at the hearing of a Cause the Decree of the said Mayors Court as grounded thereon is Erroneous and contrary to Law—

Lastly ——— Because your Petitioner is Ordered by the said Decree of the said Mayors Court to pay unto the Complainant the Amount charged in and by his said Bill and because by the said Decree the Complainant is not Ordered to deliver up unto your

your Petitioner the said horse from him Received by the Complain
and by the Complainant acknowledged to be in his posefsion and
thereupon your Petitioner does humbly insists that the said Decree
of the said Mayors Court is erroneous and contrary to Equity

For all which Reasons and such others as
may be offered at the hearing your Petitioner prays this Hon^ble
Court will be pleased to reverse the said Decree of the said Mayors
Court and further to grant to your Petitioner such other and gener
Relief in the premises as in the Wisdom of this Hon^ble Court shall
seem most Meet —

/Signed/ I. Stuart Hall
Solicitor for Petitioner

Mayors

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

Present

L S

Josias Du Pre Porcher Esquire Mayor
Andrew Ross and Benjamin Roebuck
Aldermen

Between James Austin of Fort St. George
Merchant Complainant and James Flowers of
Madras Horse Dealer Defendant —

This Cause Coming on to be heard and Debated this
Day in the presence of the Attornies on both sides on Reading
the Complainants Petition Copies of an Account and a Letter
annexed The Defendants Answer The Replication with Copy of an
affidavit annexed The Rejoinder The Interrogatories & Depositions
on the part of the Complainant On Hearing the Pleadings made
use of by the Attornies and on due Consideration had thereon This
Court doth think fit to Order and Decree and doth Accordingly Order
and Decree that the Defendant do pay unto the Complainant the
full and Just Sum of Ninety one Star Pagodas and Twenty Seven fanams
/Star Pag^s 91 " 27 " / 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 — Exam /Signed/ G. Taylor Reg^r

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

To

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

In the Honble the
Court of Appeals at
Madraspatnam

Between James Austin of Fort Saint George
Merchant Complainant and James Flower
of Madras Horse Dealer Defendant

The Answer of the above named James Austin to the
Petition and Appeal of the above named James Flowers

This Respondent admits that he did on or about the
Sixteenth day of February in the year of Our Lord One thousand
Seven hundred and Ninety file and Exhibit his Bill of Complaint
in the Honble the Mayors Court at Madraspatnam against the
above named James Flowers for the Recovery of the Sum of Ninety
one Pagodas and Twenty seven fanams Current Money of Madras
And that he did state therein that some time in or about the Month
of November then last past this Respondent was possessed of a good
quiet and Sound Saddle Horse of the Value of Eighty Star Pagodas
and upwards, and being desirous of disposing of the same, and instead
thereof to purchase a Horse fitted to draw a Single Horse Chaise
commonly called a Bandy, he did apply to the said James
Flowers

Filed in my Office
the 27th June 1791
Chas N. White
Clk

James Flowers to provide him with the same proposing to give the one he then possessed in Exchange and that if there should be any difference in the Value of their Respective Horses to settle the same in a Reasonable manner and that the said James Flowers did on or about the Twenty seventh or Twenty Eighth day of November last, call on this Respondent with three Horses for Sale and this Respondent having fixt upon one he requested the said James Flowers to let him have a Trial of the said Horse in a Bandy previous to his Agreeing about the Purchase and that the said James Flowers did refuse the same and that he Acquainted the said James Flowers that if he was determined not to let his Horse be Tried it was not very material but that the only thing in Question was whether he the said James Flowers knew the said Horse was sound and whether he would be Answerable that he was a sound quiet and good Bandy Horse and that the said James Flowers Replied that he had bought the said Horse of a Moorman out of about Seventy other Horses and had paid for Eighty Pagodas for him and that he the said James Flowers had had him Three Weeks in his possession and that he had rode and drove him to and from Pondamalee and the Amount thro very bad Roads and that he never found but that he was a Sound quiet good Bandy Horse and that he this Respondent did further state that the said James Flowers having

having Refused to let the Horse be tried he was Determined not to take the Horse unless he was in the fullest manner warranted to be sound and that he Acquainted the said James Flowers with such his Determination and that thereupon the said James Flowers Replied that he warranted the said Horse to be as Sound and Quiet a Bandy Horse as any in the country to all Intents and purposes and that upon this this Respondent took the said Horse from the said James Flowers and delivered him in Exchange his own Horse which was fairly and Reasonably Worth the Sum of Eighty Pagodas and which the said James Flowers soon after disposed of for that Sum and that this Respondt as soon after as the Weather did permit tried the said Horse and immediately discovered that he was Lame occasioned by a blood Shavin in one of the Joints of his Hind legs and that he was otherwise unsound and that thereupon he gave Notice to the said James Flowers thereof and desired him to Receive back the said Horse and Return the one he had received from this Respondent in Exchange or pay to this Respondents Eighty Star Pagodas which his said Horse was undoubtedly worth and that he did make divers offers to the said James Flowers to Accomodate the matter by Arbitration in an Amicable manner and that he informed him of the proofs he had to support his Charge and that he tendered the Horse to the said James Flowers in a formal manner before the Commencement of the Suit —

And this Respondent admits that on the Sixth day of April in the same year the said James Flowers did put in his Answer to this Respondents said Bill of Complaint and did therein deny being indebted to this Respondt in the Sum of Ninety one Pagodas and Twenty seven fanams Current Money of Madras or in any other Sum or Sums whatever but did admit that he had sold to this Respondt the Horse mentioned in his said Bill of Complaint on or about the time and for the Sum of Money therein set forth And this Respondent admits that the said James Flowers did in his said Answer positively deny that at the time he did so sell and dispose of the said Horse to this Respondent that he did Warrant him to be as Sound and quiet a Bandy horse as any in the country or that he did make use of any Words to that purport or Effect and that the said James Flowers did therein most solemnly Declare that in the Disposal of the said Horse to this Respondent as in the Disposal of many other Horses to different Gentleman in the Settlement he never took upon himself to warrant more than what he could from a certainty as certain that is to say that the Horse was free from Vice that with Respect to the Horse in question he had informed this Respondent that he was as quiet a Bandy Horse as any in the

the country and that this Respondent being fully satisfied therewith the Bargain was concluded and that the said James Flowers further states in his said Answer that he heard no more of this Respondent or his said Horse for nearly the space of one Month during which time he had been in this Respondts possession and that he ded in his said Answer say that after such a lapse of time he was much surprized to learn from this Respondent that the Horse was laine and that this Respondent therefore Requested the said James Flowers could take him back again and that the said James Flowers ded further say that if the said Horse was really laine he might have contracted Disorder or been lamed whilst in the possession of this Respondent —

And this Respondent admits that to this Answer he did in due time file his Replication and did therein insist that notwithstanding any thing mentioned or contained in the said Answer that the said James Flowers was Justly and truly indebted unto this Respondent in the Sum sued for and mentioned in his Bill of Complaint and that the said James Flowers having admitted that the said Horse was sold by him to this Respondent and that this Respondent did pay or satisfy the said James Flowers in the Sum of Eighty Pagodas and that the Horse is unsound

and

and not nearly worth that Money it remained only for this Respondent to prove that the said James Flowers did warrant the said Horse to be sound which he certainly did although the said James Flowers knew at the time he was not sound having bought the said Horse at an under price on Account of that defect and that this Repliant ded annex to his said Replication the Copy of an Affidavit of William Grout wherein is Stated the particulars of the whole Transaction and who positively Swears that the said James Flowers did expressly warrant the said Horse to be sound and that he further stated in his said Replication that the said James Flowers purchased the said Horse not long before of John Storey of Madras Horse Dealer for the Sum of Twenty Seven Pagodas as an unsound Horse and that the said John Storey previously pointed out to and informed the said James Flowers of the unsoundness of the Horse as he had a spavin in one of his hinder Legs for which Reason the price was settled at Twenty seven Pagodas being much less then the horse would have been worth if he had been sound and that in every Bargain of this Sort and particularly Regarding Horse a General warranty was implied that the Horse had no concealed defects within the knowledge of the Seller without his mentioning them to the Buyer and if the Seller fails in this the bargain is Void and the Property not changed by such Void Bargain and that he believed it was between Ten and fourteen days that he had the Horse in his

his possession, before he discovered his being unsound as it happened in the Middle of the Monsoon and the incessant Rain that fell or several Days successively prevented him from being able to try the horse and that in the mean time he remained properly taken care of in his Stable and that on the very same day on which he first mounted him and discovered him to be unsound he informed the said James Flowers thereof and required him to take the said Horse back —

And this Respondent admits that to this his Replication the said James Flowers did in due time file his Rejoinder and did therein insist that his Answer to this Respts Bill of Complaint was sufficient but this Respondent does by no means admit that the said James Flowers did fully and amply deny and confute this Respondents Replication as he falsely Asserts but this Respondent admits that he did in his said Rejoinder insist that he this Respondent had no Right whatever to call him the said James Flowers in question before the said Honble the Mayors Court and that he the said James Flowers was advised that the introduction of an Affidavit in the course of Proceedings was altogether irregular and improper and ought not and with submission could not be received in Evidence and the more particularly as the Affidavit in Question was made before the present Suit was commenced and that the said James Flowers did say that if the said

Affidavit

Affidavit was to be good Evidence instead of its being as it was a Nullity it would be rather more in favor of your Petitioner than of this Respondent for it Shewed that the Horse was chosen out of a Number and under went an Examination by a Quarter Master of Cavalry who was supposed to be a compitent Judge and who upon Examining his feet found as he said they were in a bad condition and that he informed this Respondent thereof but that he did not at that time discover any spavin in the said Horse and which was as the said James Flowers did aver a disorder that seldom escaped the immediate Notice of a Judge in Horses —

And this Respondent further admits that Issue did thereupon Join and Rules passed for the Examination of Witnesses and that Witnesses were Examined by the Complainant Accordingly but this Respondent absolutely denies what is so grossly and erroneously stated by the Appellant that such Witnesses did not support the Complainants Suit — on the contrary this Respondent says and insists that they did in the fullest manner Support and prove the same as will fully Appear by Refering thereto for first in the Affidavit annexed to the Replication which as the Person who made it is now in England was such Evidence as might will be admitted particularly as he Subjected himself thereby to the

Same

same Penalties or any other Witness did if the matters Sworn to was not true and more particularly as the Appellant admits the truth thereof by Admitting part of it in his said Rejoinder the whole Transaction as Stated in his Bill of Complaint is therein particularly Sworn to and no one that Reads it over can doubt of the truth thereof Notwithstanding any thing that may be alledged to the contrary by the Appellant - but this Respondent absolutely denies that it was on that Ground the Court gave Judgment in favor of this Respondent but upon the General fair and Equitable ground that the Bargain was an unfair one a mere piece of Jockey ship the over reaching of a Horse Dealer in a Bargain with an ignorant Chap= -man for a Horse - which has been often severely punished by the Courts of Law in England and is so common as to have become provided in bargains of a more serious and important Nature where the party has bound himself by the legal Solemnity of a Deed a Court of Equity in case there be any Deception or Misrepresentation either in Suppressing the truth or suggesting what is false will set it aside (See Equity cases abridged Second Volume Page 1180) and in the present Case it very evidently appears there was a very Gross Misrepresentation and suppression of the Truth for one of the Witnesses Examined namely John Storey who is by profession a Horse Dealer

and

and was the former propuetor of the Horse in question Swears that he knows the Horse - that he was sold by himself to the Appellant for Twenty seven Pagodas - That he was then unsound - That the Appellant was informed and fully Acquainted therewith previous to his buying him - That the price agreed on was much lower on Account of such Defect - and he specifies the disorder the Horse had and to the third Interrogatory he Answers that he is a Dealer in Horses and that he would not have offered the Horse in Question to any Person for Sale as a sound Horse but first have informed such Person of the Horse being unsound and the other Witness who is examined namely James Smith Swears to the same facts as are Sworn to by Storey - he says that the Horse was disordered long before he was sold by the Defendant to the Complainant that the Defendant bought him as an Unsound Horse and that he does not know how many days the Defendant kept the Horse before he sold him to the Complainant but he was still unsound when he sold him That he hath dealt in Horses and that he would not have offered the Horse in question for Sale without informing the Person to whom he offered him of his being unsound - Which two Witnesses not being Controverted by any other Witness fully and Clearly prove that the Horse was

Unsound

unsound at the time he was sold - That the Defendant knew that he was unsound and had bought him at a much lower price on that Account that this Circumstance the Complainant was not informed of that he bought him for a Sound Horse and paid an Adequite price for him as if he Were Sound the Bargain therefore was not a fair one it was altogether Misunderstood by the Buyer who bargained for a sound Horse and Received one that was unsound and therefore of Course the Bargain was of itself Void and never took place but the Horse continued to be the property of the Defendant and the Money Received by the Defendant the property of the Complai=nant all which the Honble the Mayors Court has Confirmed by their Decree by which the Defendant has been no way aggrieved nor has he any Just Cause to Appeal therefrom neither for the Reasons enumerated in his Petition of Appeal or for any other Reason whatever - and in regard to the several Reasons this Respondent Replies to them severally in the manner following

To the first which States that this Respondent never gave any specific Sum for the Horse but only another horse in exchange this Respondent says that the Horse delivered is Stated by the Bill of Complaint to be fairly and Reasonably worth Eighty Pagodas and that the Appellant soon after sold him for that Sum - This Sum is charged too in the Account

Annext

annext to the Bill of Complaint and the Defendant admits in his Answer upon Oath that he did sell the Horse in Question for the Sum of Money mentioned in the Bill of Complaint so that there can be no doubt that he Actually Received that Sum or if he did not and will return the Horse he Received it will be equally Satisfactory to this Respondent which is also full Reply to the Second Reason alledged by the Appellant which says that this Respondent has not proved the Value of the Horse he delivered to the Appellant -

To the third Reason which States that the Appellant did not warrant the Horse and that his being disordered was Apparent to any Judge of Horses and that he was examined by a Lawful Master of Cavalry this Respondt Replies that if the Appellant makes use of any part of the Testimony adduced by this Respondent he must take the whole and then it will Clearly Appear by the Testimony of this Quarter Master of Cavalry that the Appellant did in the Strongest and fullest manner warrant the Horse to be Sound and as to the Blemish being Apparent Two Dealers in Horses have both positively Sworn that they would not have sold the Horse to any one without informing the Person who was about to buy him of his being unsound

To the fourth Reason which speaks of the Appellant Answer being upon Oath - it is sufficient

to

to say that there are Two Witnesses both of Credit and entirely disinterested who prove the bargain not to have been a fair one according to the Custom of Dealers — and to the fifth this Respondent says that it does not appear that the affidavit was inadmisable or that the Decree was in any manner influenced thereby — The only Question before this Court was if the bargain was a fair one Two Witnesses are produced who very evidently prove that it was not because the Seller did not inform the Buyer of the Horse being unsound which they say he ought to have done — the Appellant does not pretend to say he did — and therefore of Course the truth was suppressed and the bargain void and the Hon^ble the Mayors Court could not do otherwise then Decree so — To the last Objection this Respondent says that in regard to the Delivery of the Horse he has been at all times ready to deliver him up to the Appellant as he well knows and he has repeatedly tendered him to the Appellant for that purpose — This Respondent therefore humbly trusts that this Hon^ble Court will be pleased to confirm the Decree of the said Hon^ble the Mayors Court with Exemplary Costs —

/Signed/ P. Walker
Atty & Solicit^r for Resp^t

Court

Court of Appeals at Madraspatnam } Saturday the 26th day of April Anno Domini 1794

Between James Flowers of Madras Horse Dealer Appellant and James Austin of Fort St. George Merchant Respondent —

This Cause coming on this day to be heard and Debated before this Court by the Attornies on both sides upon hearing the Petition of Appeal and Answer and the several Exhibits of the Hon^ble the Mayors Court together with the Decree of the said Court given in this Cause on Saturday the 30th day of April Anno Domini 1791 upon due Consideration had of the Matters therein severally Contained and of the Pleadings and Arguments used by the Attornies on both Sides This Court doth think fit to Order and Decree and doth Accordingly Order and Decree that the said Decree of the Hon^ble the Mayors Court do stand affirmed and that the Appellants Petition be hence dismissed with Costs —

Hur /Signed/ Cha^s N White
Cl^k Cur^t

So.

To the Honorable John Holland Esq.r

Governor in Council &c.a

Fort St. George

In the Honble the Court of Appeals.

Between Henry Readhead George Read-
=head by his attorney Henry Readhead and
Thomas Readhead by his attorney Josias
DuPre Porcher Surviving Residuary Legatees
under the last Will and Testament of John
Readhead deceased Complainants.

and

William Petrie and Alexander Brodie
Executors of the said John Readhead deceas.d
Defendants—

The Humble Petition and Appeal of William
Petrie one of the above named defendants

Sheweth

That the above named Complainants did on the twelfth day of december which was in the year of our Lord one thousand Seven hundered and Eighty Eight file and Exhibit their Bill of Complaint in the Honble the Mayors Court at Madraspatnam against your Petitioner and the abovenamed Alexander Brodie and soon after-
=wards to wit on the twentieth day of January in this present year of our Lord one thousand Seven hundered and Eighty nine did file an amended Bill against your Petitioner and the said Alexander Brodie and did therein Setforth and charge that the said John Readhead deceased having been possessed of a considerable personal Estate did duly make and publish his last Will and Testament

Filed in my Office
the 1.st October 1789
Chas N White
Clk

Testament in Writing under date the thirtieth day of September which was in the year of our Lord one thousand Seven hundered and Se-
=venty Eight and which they therein did Setforth in the following Words or Effect-Viz.t The Last Will and Testament of me John Readhead of Madraspatnam "In the name of God Amen I John Redhead being Found in mind do make this my last Will and Testament in the Words following Viz.t To my Father and mother William and mary Redhead of Penreth incumberland or to the Survivors of them I leave and bequeath Five thousand Pounds to Each of my Brothers George Thomas William and Henry I leave and bequeath one hundered Pounds to M.rs James Simpson of Cheapside London Five hundred Pounds to M.rs Mary Mawson Two thousand Pounds to her child if it should prove a Boy Two thousand Pounds, and if a Girl one thousand pounds my large deamond Ring I leave and bequeath to my friend M.r William Petrie my small deamond I leave and bequeath to my Friend M.r William Richardson and should there be any overplus of my Estate more than I have already bequeathed I leave it to be de-
=vided amongst my four before mentioned Brothers; but should my Estate fall short in payment of the Request, I have herein made each and every Request must suffer proportionably for the-
Executors of this my last Will and Testament I hereby appoint William Petrie, alexander Brodie and Henry Basemayor Esq.rs to be my Executors to the two last of whom I leave each a Ring value Four hundred Pounds- Witness my Hand and Seal this Thirtieth day of September one thousand Seven hundred and Seventy Eight and they the said Complainants did further shew unto

unto the Honble court that the said John Readhead deceased some-
time after or about the time of making the said Will added a Codecil
or memorandum thereto in the Words Characters and to the Report
and Effect following N. B. as the nabob Ameer ul omrah has an
order from his Father to pay me the sum of one Lack of Rupees
I hope his Regard to me will be such as to induce him to pay
the same in order to enable the payment of the Requests of this my
Will and Testament my attornies in England are General Joseph
Smith Edward Law, Henry Hansom and James Simpson Esqrs
London Signed - J Readhead and which said Will and Codecil or
Memorandum they the said Complainants did further state
were respectively and duly Executed by the said John Readhead
according to the laws of England and that as the said John Read-
=head died afterwards depart this life on or about the day of in the
year of our Lord one thousand Seven hundred and Seventy Eight
without revoking or altering his said Will and Codecil or memorandum
that the said Will and Codecil or memorandum were duly proved
in the Kings ordinary of the said Honble court soon after his the
said John Readheads decease by your petitioner and the said
Alexander Brodie two of the aforesaid Executors therein named, the
said James Henry casamajor the other Executor having renounced
his Right of Executorship and refused to act under the said Will your
Petitioner and the said Alexander Brodie did take upon themselves
the sole Burthen and Execution thereof and did thereby profess them-
=selves or himself of the Estate Effects and other property belonging to
the

the said Testator to a very considerable amount and the said Com-
=plainants did further therein state that your Petitioners and the
said Alexander Brodie or some or one of them did likewise profess
themselves or himself of divers Mortgages Bonds Notes, Tops
and other Securities for money and also divers and Sundry other
paper narratives names crepts and Writings of great use and
value belonging to their said Testator John Readhead deceased
and particular of certain Manues crepts being a narrative of
the administration of Sir Thomas Rumbold heretofore Governor
of Fort Saint George aforesaid as well also of manes crept of
Correspondence with the said Sir Thomas Rumbold and notes of
Conversation at which were present Some of their mutual Friends
and also of an agreement in writing with William Rumbold
Son of the said Sir Thomas Rumbold for the loan of money
upon and remittances from the Tanjore country several Bills of
Exchange and other Testemonies and proofs of money corruptly
Received by the said Sir Thomas Rumbold during his said ad-
=ministration from Omeer ul Omrah late devaun to Hes High-
ness the Nabob of the Carnatic deceased from the Rajah of Tan-
jore and the Rajahs Vizeram Rauze and Setteram Rauze ma-
=nuscript Copy of the said John Readheads correspondence with
Hyderally late Rajah of mysore respecting a perpetual Treaty
proposed by the said Hyder ally out of Friendship with the
English

English nation and also many other manuscripts and papers of importance relating to the affairs of the English East India Company and the said Complainants did therein further state that your Petitioner and the said alexander Brodie or some or one of them did upon the decease of their said Testator John Readhead enter into and take possession of a great part of the Estate and Effects of their said Testator John Readhead deceased but that the said Executors or some or one of them did not attend in the least or followed the direction of the Will or Intentions of them said Testator therein and that they the Complainants well hoped they your Petitioner and the said alexander Brodie or some or one of them would have Complied with such his reasonable request as in Equity and Justice they or some or one of them ought to have done— But they the said Complainants did further therein shew to the said Court that your Petitioner and the said alexander Brodie combining and confederating themselves or himself to and with divers other persons whose names were then unknown to them and who when discovered they prayed might be inserted therein with apt words to charge them contriving how to defraud them and to defeat them of the benefit intended by the devise in the said Will they your Petitioner and the said alexander Brodie refused to give or render to them or any of them as Residuary Legatees in Fort Saint George or else where a just account

account of their said Testators personal Estate or of the Interest Issues and profits thereof and to let them on the possession of the said personal Estate— your Petitioner and the said alexander Brodie sometimes pretending that the personal Estate of the said Testator was very small and inconsiderable in value and not sufficient to pay the debts and Legacies and Funeral Expences of the said Testator Whereas they the said Complainants did charge and so state the truth to be that the said Testator did possessed of a considerable personal Estate much more than sufficient to pay all his just debts Legacies and Funeral Expences with a great overplus and they the said Complainants did charge that your petitioner and the said alexander Brodie had out of the moves arising from the personal Estate of the said Testator paid all his debts Legacies and funeral expences or ought so to have done and that hereafter having a great overplus in their hands, did mismanage the Estate and Effects of their said Testator by squandering and misapplying the same contrary to the Trust and confidence reposed in them and by paying and discharging demands of debts upon them as Executors as aforesaid which they in their consciences well knew were not justly due and owing and if at all existing that the same did arise upon Corrupt and illegal Considerations without any

vouchers

or Receipts and discharges taken for the same and by omitting to bring to the Credit of the said Testators Estate many Sums of money by them received on account thereof and also by neglecting to receive or if received to bring to account the aforesaid one Lack of Rupees due from the said Omeer ul Omrah but that instead of so doing and of Recovering and receiving Sundry other large Sums of money by the said Omeer ul Omrah unto their said Testator in his life time owing your Petitioner and the said alexander Brodie had allowed of and paid the said Omeer ul Omrah several large sums of money out of the personal Estate of the said Testator and generally by wasting and mis= =employing the said Estate by Sundry illegal and unjustifiable acts to the great prejudice of them the complainants, and the Complainants did expressly charge that your Petitioner and the said alexander Brodie did pay out of the said personal Estate of the said Testator sundry very considerable Sums of money at Sundry times unto Dugald Campbell then a Captain in the Ser= =vice of the Honble Company without the said Dugald campbell having any just or Lawful claim or demand on the said Testator in his life time or afterwards upon his Estate in any manner or wise - To wit on the thirty fist day of may one thousand Seven hundred and Seventy nine, the Sum of Seventeen thousand Six hundred and five Pagodas and thirty Nine fanams and Secondly on the Eighth

Eighth day of September in the same year a further Sum of Eight thousand Pagodas and thirdly on the Eighth day of december in the like year the Sum of four thousand five hundred and Seventy four pagodas thirty one fanams and Sixty nine Cash making together the principal Sum of Thirty thousand one hundred and Eighty pagodas twenty five fanams and Sixty nine Cash and the Complainants did also charge that your Petitioner and the said alexander Brodie did Receive from one Ruzeram moodely the sum of four thousand Pagodas In full payment and discharge of the Sum of nine thousand pagodas by the said Ruziagava moodely unto the said Testator in his life time owing or about the Twenty ninth day of march one thousand Seven hundred and Seventy nine which they did assert your petitioner and the said alexander Brodie had not brought to the credit of the account of the Estate of the said Testator as they ought to have done But did pretend that the said Sum of Four thousand pagodas were paid by the said Ryragava moodely and received by them on quite a different account - and the complainants did shew that your Petitioner and the said alexander Brodie did pretend that the Estate of the said Testator did stand indebted unto the said Dugald Camp= =bell for the Sums of money by them paid out of the Estate of the said Testator before and at the time of payment thereof. For that the said

said Testator as they pretend had in hes life time To wit sometime on or about the twenty second day of June One thousand Seven hundred and Seventy Eight became bound unto Omer ul Omerah Bah=awder then Devan or Prince menister of the Nabob of the Carnatich in the principal Sum of Twenty Eight thousand Star pagodas being the amount of a certain writing in the Malabar Langiage a Translation whereof was as followeth To wit, I Caunjaporam Patcheappah do give thes Teep to the Circar an Omer ul Omrah Bahder Whereas I do hereby engage to pay you on the 15th. Paralausey or 25th. September next the Sum of /28000/ Twenty Eight thousand pagodas which I agreed on account of Trimalapah moodely regarding the districts of Tennavelly Segned &c Caunjeeporam patcheapen - that your Petitioner and the saeed alexander Brodie did pretend that the Testator did bind himself hes Heirs Exeeutors and administrators by reason as they did pretend that the said Testators name being under signed at the bottom of the said Writing and that your Petitioner and the said alexander Brodie as Executors as aforesaid became bound unto the said Dugald campbell for the payment of the said Sum and Interest thereon because the saeed Omeerul Omrah Bahawder had endorsed over the saeed writing unto him the said Dugald campbell - Whereas the complainants did charge that your Petitioner and the said alexander Brodie did well know that the said Testator was not bound in law Equety or conscience to pay the amount of the said Note to the said

Omeer ul Omrah or any part thereof, and that he could not have recovered the amount or Sum of money pretended to have been paid by your Petitioner and the said alexander Brodie on account of the said Writing in an actional Law or Equity from the said Testator in hes life time if he had attempted so to do and as the Complainants did believe your Petitioner and the said alexander Brodie, were or might have been advised of by counsil learned in the Law and that your Pe=titioner and the said alexander Brodie must therefore have well known or could have been informed as they the complainants did pretend they did really believe that the said Omeer ul Omrah Bahaw=der could not legally endorse the said Writing to the said Dugald Campbell or give the said dugald Campbell a right of demand for payment of the said Writing or any part of the money pretended to have been due and owing thereon even if the said Testator had signed the same which the Complainants did not admit and that the said Writing was a corrupt and unlawful contract between the said &c Patchapah and the said omeerul Omrah Bahawder in a foreign language and whereto the said Testator was not nor could from the nature thereof become a party bound or responsible - The complai=nants did also say that as other times your Petitioner and the said alexander Brodie did confess and acknowledge that they had paid the said Several Sums of money unto the said dugald Campbell &c

and

and that they could not have done otherwise as the said Dugald Campbell did threaten that he would bring an action against them in Case of their refusing to pay the same and that they were therefore justified in taking up and discharging the said pretended debt to the said Dugald Campbell upon the said writing endorsed to him as aforesaid by the said Ameerul Omerah Bahawder that your Petitioner and the said alexander Brodie did also Confess and acknowledge that they had received the said Sum of Four thousand pagodas from the said Vizagarava moodely But that the same was not paid on account of any Sum of money owing by him to the Testator in his life time but an another Seperate account Whereas the Complainants did expressly charge that the said Vizagarva Moodely did pay the said Sum of Four thousand Pagodas on account and in full payment and discharge of his aforesaid debt to the Testator in his life time owing and on no other account and that the said Sum of Four thousand Pagodas was so received by your Petitioner and the said alexander Brodie upon a Bill of Exchange remitted them by the said vizigarva moodely on account and in the name of the said Testator as might more particularly appear by a Translation of the said Bill of Exchange in the Guzerat language to their said Bill of complaint annexed and prayed to be admitted as part thereof the same being as the Complainants pretended a Translation thereof annexed unto the said

said Vizagarva moodelys answer on Oath on the Records of the said Honble the mayors Court at the Suit of your Petitioner and the said alexander Brodie - and the Complainants did also charge that the aforesaid Papers Narratives Manuscripts and Writings wherewith the complainants had as aforesaid charged your Petitioner and the said alexander Brodie to have possessed themselves of belonging to the said Testator in his life time were of great use and value to his Estate and the complainants, particularly as they did say might more particularly appear by a Copy of a letter written by the said alexander Brodie unto your Petitioner soon after the death of the said Testator - To Wit on or about the Eleventh day of october in the year one thousand Seven hundred and Seventy Eight to their said Bill of Complaint annexed and prayed to be admitted as part thereof that all such actings and doings of your Petitioner and the said alexander Brodie and the other Confederates were contrary to right Equity and good Conscience and did tend to the great Injury of the complainants -

And your Petitioner further Sheweth that the complainants did in and by their said Bill of complainant Pray that your Petitioner and the said alexander Brodie might upon their corporal oaths true and perfect answer make to all and singular the premisses as fully and particularly as if the same were

were there again repeated and particularly interrogated and that your Petitioner and the said alexander Brodie might Setforth whether the said John Readhead the Testator did not make such last Will and Testament as in the said Bill of Complaint before setforth or any other and what Will and whether the Testator died not depart this life on or about the day of one thousand Seven hundred and Seventy Eight without altering or revoking the said will and whether on his death your Petitioner and the said alexander Brodie alone did not prove the same in the Kings ordinary of the said Honble the mayors court or in any other and what Ecclesiastical Court and whether your Petitioner and the said alexander Brodie or either and which of them did not by Vertue thereof receive and get into their hands the Custody possession or power of all or any such part of the Testators personal Estate as they could come by and that your Petitioner and the said alexander Brodie might Setforth a true and perfect account of all & singulars the personal Estate of the said Testator which he did possessed of or entitled unto and the natures Kinds quantities and qualities thereof and in what the same consisted and how much and what part thereof severally and particularly came to the hands Custody power or possession of your Petitioner and the said alexander Brodie or of any person or persons for their or either of their use and how and in what manner the

the same has been paid applied or disposed of and how much and what part thereof remained unpaid or undisposed of and where and in whose hands custody power or possession all or any part thereof did then remain - and that your Petitioner and the said alex: =ander Brodie might Setforth whether the said Testator did not by his said Will give and devise the residue and remainder of his Estate unto the Complainants and the said John Readhead deceased in the manner and form charged and setforth and whether the complainants by themselves and their said attornies had not sever: =ally demanded from your Petitioner and the said alexander Brodie or either and which of them on account of the personal Estate of the said Testator and of what the same consisted and also on account of the Interests Issues and profits thereof and in what manner the same had been paid and applied and how much thereof did remain in their hands and also that they might pay unto the Complainants as Surviving Residuary Legatees under the said Will what upon Balance of such account should be due to them and also to assign over unto them such part of Testators personal Estate as consisted in Mortgage Bonds and Securities remaining in their or either of their hands and whether they had not Refused to comply and did according to such reasonable to: request to give and render such account and for what reason or

to

to pay unto the complainants the Balance of such account, and to assign over unto them such part of the Testators personal Estate remaining as might remain in their or either of their hands as Consisted in mortgages Bonds and Securities and that your Petitioner and the said alexander Brodie might Setforth a full and true account of the debts, and Legacies and funeral Expences and the Sums of Money by them or either of them severally paid on account thereof and that they might Setforth the different nature all such debts paid by them or either of them, and that they might produce the Vouchers upon which the same were severally demanded whether upon specially or otherwise and what Receipts they had for such payment and to whom the same were particularly made — and that they might produce the same and that your Petitioner and the said alexander Brodie might setforth whether they or either and which of them did or did not pay unto the said dugald Campbell the Several Sums of money on the accounts and at the times in the said Bill of Complaint charged and declared or any other and what Sum and Sums of money out of the Estate of the said Testator, or in any other account and at any other time and times, and or what other account particularly and at any other and what time or times — and that they might Setforth whether they or either of them did or did not in their Conscience Know that the said Dugald Campbell had not any lawful demands upon the Estate of the said Testator and that your Petitioner and the said alexander Brodie might Setforth and discover whether they or either of them and to eachothers Knowledge had not directly or indirectly and how any demand upon Bond account or otherwise against the said dugald Campbell at or before the time and times of such payment or any of them being made and whether such demand was not in some manner and how satisfied by means of the payment or allowance of the said debt of the said Dugald Campbell upon the said Testator and that they might also setforth whether they or either of them did or did not take any and what writing of indemnity or other act or deed to indemnify them or either of them from the said dugald Campbell or some other person on hes behalf for the Repayment of the said Several Sums or any of them and whether they or either of them were in possession of such Writing of Indemnity and what was become thereof, and that they might produce the same — and also that your Petitioner and the said alexander Brodie might setforth and discover whether they or either and which of them did not some time in the year of our Lord one thousand Seven hundred and Seventy nine and in what month and day of the Month and in what year received from Vizagapatam moodely or from some other person or persons on hes account the Sum of Four thousand Star Pagodas, or the Equivalent thereof in some other and what pagoda or coin on account of, and in full discharge of the said

said Vezagaravas debt to the said Testator or any other and what ac-
=count, and whether the said Vezagarva Moodely did not remit to
them or either of them a Bill of Exchange for the sum of Four thou-
=sand five hundred and twenty Portnova Pagodas on account of the
said Testator and whether the copy of the Translation to the said Bill
of Complaint annexed was not a true copy of a Translation thereof
annexed unto the said Vezagarava Moodeliars answer in the said
honble the mayors court at the Suit of your Petitioner and the
said alexander Brodie or whether the same was not of the Tenor
and purport of the therein before mentioned Oreginal Bill of
Exchange by the said Vezagarva moodeliar to them or either of
them remitted on the account by the Complainants charged or
on what account and whether they or either and which of them did
not receive the amount thereof and whether they had or had not
brought the same to the account of the Estate of the said Testator
and if not why not and to what other account the same had been
carried and by whom and for what Cause and reason - and also
that your Petitioner and the said alexander Brodie might set-
=forth whether they or either and which of them had or had not poss-
=essed himself or themselves with divers Mortgage Bonds notes Teps
and other Securities for money and also divers and sundry other papers
Narratives Manuscripts and writings of very great use and value
belonging to the said Testator John Readhead and particularly a
certain manuscripts being a Narrative of the administration of Sir Thomas

Rumbold

Rumbold heretofore Governor of Fort St. George aforesaid and also
of a Manuscript or correspondence with the said Sir Thomas
Rumbold and notes of Conversation at which were present some of
their mutual friends and also an agreement in writing with
william Rumbold Son of the said Sir Thomas Rumbold for
the loan of money upon and Remittances from the Tanjore coun-
=try and also of several Bills of Exchange and other Testimonies
and proofs in writing of money corruptly received by the said Sir
Thomas Rumbold during hes said administration from the afore-
=named Omeer ul Omerah late dewan to His Highness the nabob of
the carnatick deceased, and also from the Rajah of Tanjore, and the
Rajahs Nuzeram and Setteram Rauze and also a manuscript or
Copy of a manuscript of the said John Readheads correspondence
with Hyderally late Rajah of the mysore country respecting a
perpetual Treaty proposed by the said Hyderally with the English
nation and also many other Manuscripts and papers of importance
relating to the affairs of the English East India Company and
what was become thereof and if the same or any of them had been
destroyed by whom and which of them were they in the possession of your
Petitioner and the said alexander Brodie or either and which of them
— and the Complainants did further Pray that Your Petitioner
and the said alexander Brodie might set forth and discover whether
they or either of them or any one for them had not received the said
One Lack of Rupees charged to have been the amount of an order
from the said Nabob to the said Omeer ul Omrah or some one.

What

what part thereof and if they should alledge that they did not receive the same that they might setforth whether they or either of them had ever de=manded payment thereof- and that they might also setforth whether they did or did not know or were not informed that the said Omeerul Omrah was indebted in any other Sum or Sum of money unto the Testator at the time of his decease, and if they should alledge that the said Testator was indebted unto the said Omeerul Omrah that they might setforth and shew on what account and how, and whether they had or had not paid any and what Sum or Sums of money belonging to the said Testator unto the said Omeerul Omrah or unto any other person or persons for him, and on his behalf and to whom and on what account and that your Petitioner and the said alexander Brodie might be decreed to come to a just and fair account with the complainants for the said Estate of the Testator and for the Interest Issues and profits thereof which had come to their or either of their hands custody or possession or which had been received by them or either of them, or by any other person or persons by their order and for their or either of their use and that they might pay unto the complainants the aforesaid Sum of Thirty thousand one hundred and Eighty pagodas twenty five fanams and Sixty nine Cash and also the Sum of Four thousand Star Pagodas which together with Interest from their respective dates according to a Schedule or account to the said Bill annexed did make the Sum of Seventy two Thousand Five hundred and fifty Six Pagodas twenty four fanams and Sixteen cash and also such other Sum and Sums of money or Balance as upon such account should appear to be further due to them-

and that your Petitioner and the said alexander Brodie might also deliver up unto the complainants the aforesaid Sundry papers Narratives Manuscripts in their said Bill of complaint particular=ly setforth and described or such of them as they or either of them had not destroyed and were then remaining in their or either of their Custody power or possession and that they might be further decreed to pay all costs of the said Suit and the complainants might have such further or other relief in the premisses as to the said Honble the mayors Court might seem meet

To which said Bill of Complaint your Pe=titioner one of the defendants named therein having appeared thereto did on or about the third day of February in the present year of our Lord one thousand Seven hundred and Eighty nine file his seperate answer in the said Honble the Mayors Court wherein thereby admit that the said John Readhead died depart this Life at the time mentioned in the complainants said Bill of complaint and that the said John Readhead died previous to his decease make his last will and Testament and duly execute the same, as also a codicil thereunto annexed and that the same might have been in the Words and to the Tenor and purport as in the said Bill of complaint was Setforth that he did appoint your Petitioner and the said Alexander Brodie and James Henry casamayor Esquire his Executors to such will and that your Petitioner and the said alexander Brodie duly prove the same and obtain probate thereof under the Seal of the said Honble

Honble Court and your Petitioner did admit that the said James Henry
casemajor the other Executor did renounce the office of Executor and that
thereupon your Petitioner and the said alexander Brodie did take upon
themselves the Burthun and Execution of the said Will of the said John
Readhead But your Petitioner did say that being at the time of the
death of the said John Readhead at his Station as Resident at Nagore
he did not take possession of any Mortgages Bonds notes Deeps and other
Securities for money belonging to the said Estate but that the whole as he
did believe was received by and kept in the Custody of the said alexander
Brodie because the said Alexander Brodie was then on the Spot and therefore engaged in the immediate attenteon
due to the execution of the said Will and took upon himself the active
and indeed sole management of the Several Matters and things belong-
ing to or connected with the said Estate and as your Petitioner believed
did in such Situation and under such circumstances exert every endeavour
and to the utmost as far as his Judgement and abelities would
enable him prosecute every means for the benefit of the said Estate and
in discharge of the Trust Reposed in and by the Will of the said Testator
Your Petitioner did further say that some short Time after the decease of
the said John Readhead he returned to madras where he gave the
said alexander Brodie such assistance as lay in his power in exami-
ning the papers belonging to the said John Readhead and consulting
with him and the Lawyer on the best mode to be adopted for arranging
the affairs of the Estate and in so doing he gave his advice on every thing
Submitted to him by the said alexander Brodie with all the bare fide-
lity and attention due to the trust imposed by the Will of the said John
Readhead.

Readhead but that he never took any charge whatever of the said Estate
nor was it possible he could have done so with any degree of propriety
his residence at madras being merely Casual and his Station at a very
great distance from it and where the duties of his office required his
constant attendance, and as the said alexander Brodie consented to
take the trouble upon himself of Transacting the concern of the said
Estate your Petitioner had no direct concern whatever therein that
indeed he was rendered incapable had he been inclined or had there
been a necessity for him so to do by a severe indisposition with which
he was attacked a few days after his arrival at madras) of attending
to any kind of business and which indisposition continued until his
return to Nagore nor was he in possession of any Voucher relative or
belonging to the said Estate nor did he ever see any of them during the
Time the said alexander Brodie remained in India except for the
Moment only in which the examination into the papers of the said
John Readhead and advising and consulting with the Lawyer
as therein before just mentioned, took place after which they remained
in the possession and Sole charge of the said alexander Brodie
and your Petitioner did further say that finding his health
decline very fast he resolved on going to Europe and accordingly
left India for that purpose some time in the beginning of the year
One thousand Seven hundred and Eighty and had not at that time
in his custody or possession any Voucher for money or any Document
whatever in any wise interesting to the said Estate, or by which it could
in any manner whatever be benefited — and your Petitioner did

further

further say that the said alexander Brodie having as is above
setforth taken posession of all Bonds Papers Books and Effects
belonging to the said Estate of the said John Readhead and conte:
=nued to act alone in the Management therein your Petitioner
could not say what such Bonds Books papers and Effects consis:
=ted of nor did he know how they were applied other then as appears
by the account Current delivered in by the said alexander Brodie upon
oath and now of record as your Petitioner had heard and believed in
the said honble the mayors court and other than as appeared by the
Inventory and account Current to the said answer annexed and
which contained all that had come to your Petitioners custody and
posession since his return from Europe in the month of april which
was in the year of our Lord one thousand Seven hundred and Eighty
Six except as appeared by a Set of Books which since that period
he had received from the said Henry Readhead and John
Tullah the attorneys of the said alexander Brodie which Books
were delivered to Mr Henry Readhead some months previous
to the seling of your Petitioners said answer when your Petitioner
was at Tanjore on public Busness upon the application and request
of the said Henry Readhead That your Petitioner did discover
some irregularities in form in the Books kept by the said alexander
Brodie and employed a Book keeper to make out a complete
and regular Set and which were in the posession of your Petitioner
and ready to be produced when required either by the said Honble the
Mayors court or by the said Complainants or either of them and

Your

Your Petitioner did beg to observe that the said alexander Brodie
died previous to his departure for Europe same time in the year of
our Lord one thousand Seven hundred and Eighty three as your
Petitioner had heard and believed leave the above named Henry Read:
=head Forester Rose and the said John Tulloh Jointly under a Spe=
=cial power of attorney for that purpose in the charge and manage
=ment of the affairs belonging to the said Estate of the said John
Readhead, and that all the papers and Books belonging thereto
were left by the said alexander Brodie in the posession of the said
John Tullah that about the Month of may or June one thousand
Seven hundred and Eighty three the said Henry Readhead applied
to the said John Tullah for the said Books and papers and which
being with the consent of the said Forester Rose delivered up to
him he kept the same for some months and then returned them
that about the begining of year One thousand Seven hundred and
Eighty five he again requested that the said Books and papers
might be deliver up to him, and his request being granted he re=
=tained the posession of them until some time after your Petitioners
Return from Europe as above mentioned, although frequently sole:
=cited by the said John Tullah to return them all which circumstances
your Petitioner did not doubt of proving empley and satisfactory to
the said honble the mayors court and from whence it might appear
that the said Henry Readhead had been in the posession of all

documents-

documents, Vouchers and accounts belonging to the said Estate of the said John Readhead for many years, and consequently the charge Exhibited in the Complainants said Bill of complaint that your Petitioner and the said alexander Brodie had refused to give or render to the above named Complainants a just account of the said Testator personal Estate was entirely groundless and without any kind of Foundation either in Truth Justice or candour, and to give additional force to this assertion your Petitioner did say that he had at different Times conversed with the said Henry Readhead relative to the said Estate of the said John Readhead and most amply and fully communicated to him both Verbally and by Letter every particular of his Conduct as Executor to the said John Readhead from the time he your Petitioner had taken upon himself the charge of the said Estate and which was in the month of april in the Year of our Lord one thousand and Seven hundred and Eighty Six and never with held any Information that was in his power to give and your Petitioner did say that every Book paper document and every other matters belonging to the said Estate in his possession was always open to the said Henry Readheads inspection or the Inspection of the other Residuary Legatees whenever he or they might have thought proper to call for them, and indeed some time in the year One thousand Seven hundred and Eighty Seven when the above named Thomas Readhead came round from Bengall to Madras he had accest to all the Books and papers belonging to the said Estate of the said John Readhead, and on the possession of your Petitioner and received from him every communication thereon and that was in his power to give him Your Petitioner

did

did deny all manner of combination what ever either with the said alexander Brodie or with any other person and did aver that so far from conspiring how to defraud the said Complainants he had exerted his utmost powers as far as he was concerned therein for the Benefit of the Estate of the said John Readhead and Consequently for the Emolument and advantage of the Complainants, and he firmly believed that the conduct of the said alexander Brodie was influenced by the Friendship he entertained for the said John Readhead, and that his invariable object was to fullfill his the said John Readhead intentions as far as in him lay and by all ways and means to pursue such measures as appeared best calculated to promote the Interest of the said Estate your Petitioner did therefore express his astonishment at the charge brought forward by the Complainants against himself and the said alexander Brodie, for that had the said alexander Brodie possessed the disposition, and been inclined to defraud the Estate he never would have named the said Henry Readhead one of his attorneys in the joint Trust of all the Books documents and papers relative or belonging thereto- your Petitioners therefore for himself did say that such charge was as untrue as it was ungenerous your Petitioner did say that he never did at any Time pretend that the personal Estate of the said Testator was trifling in its value on the contrary he did readily avow the same to have been considerable, but he had informed those who made any enquires thereof that it was not in Specie nor in property which could easely be relieved but involved in durbar intricacies and liable to be disputed by the natives who were concerned in it, so that it was very precarious and the greatest part of it for the Time unproductive, Requiring

Every

every exertion management and address to give it a degree of permanency and place it in a Train of Liquidation and recovery as by the several Items contained in the said account current to your Petitioners said answer annexed might appear—and your Petitioner did say that during the short time he had the Estate of the said Testator under his charge he acted therein with all that warmth of Friendship which he entertained for the said John Readhead when living, and that he was most Zealous in his endeavours to discharge his duty as an Executor and your Petitioner for himself did deny that any part of the said Estate was mismanaged or Squandered or Misapplied and did say that he never discharged whilst acting as Executor to the said Estate any debt that had arisen upon a corrupt or illegal Consideration nor any debt whatever that in his conscience he did not think justly due nor did he ever neglect to take a Voucher for any Sum or Sums of money which he may at any time have paid away on account of the said Estate and your Petitioner did positively deny that he had ever omitted to bring to the credit of the account of the said Testators Estate any Sum of money by him received for and on account thereof that with Regard to the charge Exhibited in the amplainants said Bill of complaint that he your Petitioner had neglected to receive, or if he received to bring to account a Lack of Rupees due from Omeer ul omrah in opposition to which charge so very untrue your Petitioner did say that it appeared from the Books and papers of the said John Readhead that he had

had been promised a Lack of Rupees by the said Omeer ul Omerah to the best of the recollection and memory of your Petitioner under an order of his Father the Nabob, your Petitioner had waited on the said Omeer ul Omerah in consequence thereof some time in the year one thousand Seven hundred and Seventy Eight or in the year One thousand Seven hundred and Seventy Nine and required the payment of the said one Lack of Rupees enforcing such his application by reminding his Highness of the Friendship he had entertained for the deceased, and his profession of regard for his memory and using many other arguments which he thought might give the necessary weight to the Subject and induce his Highness to pay an attention thereto, but that the said Omeer ul Omrah refused to pay the said Lack of Rupees or any part thereof Nor had he ever paid the same or any part thereof as your Petitioner did believe or had been able to discover, to any person acting for the said Estate—Your Petitioner did say he never paid to the said Omeer ul Omerah any large or other Sums of money out of the Estate of the said John Readhead and denied as he had already denied any waste or misapplication of the said Estate by sundry illegal and unjustifiable acts—and your Petitioner in the most Solemn manner positively did deny ever having had any Concern either directly or indirectly in the payment of a certain Peep for the Sum of Twenty Eight thousand Pagodas charged by the complainants said Bill of Complaint to

to have been made unto dugald campbell then a captain in the Service of the said Honble company out of the Estate of the said John Readhead to the best of his Memory recollection and belief nor did he ever give nor was his concurrence ever required thereto and he did solemnly declare that he was totally Ignorant of the circumstances connected there with as setforth and charged in the complainants said Bill of Complaint and Equally so of the periods when such payments were respectively made, for your Petitioner did declare he had not at the time setforth in the complainants said Bill of Complaint nor for some years after=wards any management in the said Estate of the said John Read=head, and he did further declare most unequivocally that he know nothing further of the Transaction than as he had learnt by the Books of the said alexander Brodie and from conversation=s particularly in England that passed since the said Transaction took place, and as a further proof that your Petitioner never had any the least concern thereon he did also declare that to the best of his Knowledge and belief he never had at any period of his life any manner of Money dealings with the said Dugald campbell on any account whatever therefore he did say that the said charge of the said complainants was as far as it anywise Related to or concerns your Petitioner fallacious imper=tinent and totally without any foundation; that equally so was the=s charge that your Petitioner had received from one Vuzagarava moodely the

the Sum of Four thousand Pagodas, for your petitioner did say that at the time transaction is stated in the complainants said Bill of complaint to have taken place your Petitioner resided near two hun=dred miles from madras and had not as he had before declared taken upon himself any part of the charge of the said Estate of the said John Readhead but that the whole and every part thereof was under the entire management of the said alexander Brodie. Your Petitioner did say that to his Knowledge he never saw the said Vizaga=rava moodely - and your Petitioner for himself did say that he never pretended that the Estate of the said John Readhead stood indebted to the said dugald Campbell for the Sum of Money paid out of the Estate of the said Testator before and at the time of payment thereof or any other Sum of Money whatever, for that your Petitioner was not as he had before solemnly declared engaged in the Transaction nor had he at the time such Transaction took place as setforth in the said Bill of Complaint any concern in the affair of the said Estate but that the same was under the immediate charge and sole Management of the said alexander Brodie who acted therein agreeable to the dictates of his own judgment and will. That your Petitioner to the best of his Knowledge had never seen the said Tesp or promissary Note for the said Sum of Twenty Eight thousand pagodas but that on his return to madras in the year One thousand Seven hundred and Eighty Six as before=

before mentioned and which was some years after the said amount had been discharged he was furnished with a copy of the said Teep by the said Henry Readhead the original of which was still brought to be in the posession of the said Henry Readhead together with the probate of the Will and some law proceedings relative to the Estate which he the said Henry Readhead retained in his posession—

From all which Circumstances it will plainly appear and so your Petitioner did declare the truth to be that he could not have known the Conditions purport or intent of the said Teep or by whom, or in whose favor it was Executed your Petitioner did say he had never received any advice thereon either from counsel learned in the law or from any other person nor did know whether the said Ameer ul Omerah could or could not legally or otherwise endorse the same to the said dugald Campbell or give the said dugald Campbell a right of demand for payment thereof under any proves or circumstance whatever— your Petetioner did say that on his arrival in England about the month of September one thousand Seven hundred and Eighty one Sometime in the year one thousand Seven hundred and Eighty three and one thousand Seven hundred and Eighty four he was called upon by the above named George Readhead for Information respecting the management of the Estate of the said John Readhead and who at different times expressed much dissatisfaction with the unfavorable accounts he had received upon the Subject from India and

and particularly blaming the Executors for the payment of the said Twenty Eight thousand Pagodas to the said dugald Campbell

That your Petitioner candedly gave the said George Readhead every Information in his power relative thereto which however could be but trifling from the circumstances in his said answer before setforth and acquainted him that as your Petitioner had never acted in the charge of the Estate of the said John Readhead he was but very imperfectly instructed on the Subject and therefore referred him to the said alexander Brodie, who was then shortly expected in England for a full and perfect account— That your Petitioner had also several conferences with the said George Readhead in conjuction with the said Brodie who produced several Books papers and vouchers to the said George Readhead explanatory of hes the said alexander Brodies conduct and Transactions as Executor and to the best of your Petitioners Judgment appeared at all times extremely ready to give every Information to the said George Readhead that was required from him and in hes power so to do, Your Petitioner then again repeated what he had in his said answer before repeated that he knew nothing of the payment of the said Teep until long after such payment had been made by the said alexander Brodie he never had any

Communication

communication with the said Dugald Campbell Relative to the said Trust nor did he ever Know further than as he had learnt by the complainants said Bill of Complaint that the said Dugald Campbell had threatened to bring an action against your Petitioner and the said Alexander Brodie or either of them in the event of their refusing to pay the same, That the Business was transacted by the said Alexander Brodie as in your Petitioners said answer was before mentioned without his concurrence or approbation, therefore in that particular as well as in every other in which the said Alexander Brodie acted of him= =self in the affairs of the said Estate independant of your Petitioner he the said Alexander Brodie was of himself accountable for any devastavit if any had been committed, and that your Petitioner must stand Exonerated and wholly free therefrom, for that by the law of the Land it was laid down that one Executor should not be charged with the devastavit made by his Companion, for the act of one Executor should not charge the other any further then the Goods of the Testator in his hands amounted unto, and not to charge him of his own goods- Brs Eliz. P. 318" your petitioner did say as he had before said that he was and had been at all times ready and willing to give every satisfaction in his power and render an account of all his Transactions Relative to the Estate of the said John Read= head to the Complainants or any or either of them, and was ready to deliver unto the said Honble the Mayors Court or to such person or persons as they might be pleased to order to receive the same any monies that might be in his hands belonging to the said Estate, or if it should have been the said Courts pleasure to give him their Sanction there= =for he would devide the same agreeable to the Will of the deceased but that your Petitioner having received a Knowledge of the com= =plainants despositions from what they had manifested in their several charges against him and the said Alexander Brodie felt the necessity of acting with the utmost caution and Circum= =spection in any matters belonging to the Estate of the said John Readhead and therefore could not consistent with the duty he= owes to his own character and Interest deliver up property of any description whatever belonging thereto until he might be duly= authorised so to do by the orders of the said Honble Court= your Petitioner in answer to the Interrogatory in the complainants said Bill of Complaint contained which went to Establish a charge that he had possessed himself of certain papers narratives Manuscripts and writings belonging to the said John Readhead did say that he had lived in the habits of the strictest intimacy confidence and Friendship with him the said John Readhead for some years previous to his death that they came to India in the same Ship in which also came Sir Thomas Rumbold and that during-

during the passage, as they had but one Cabbin between them they had various Conversations on the Political State of the Madras Govern= =ment, and upon the measures which they Judged the said Sir Thomas Rumbold ought to pursue on his arrival in India many me= =morandums and writings upon these Subjects were enterchanged by them reciprocally and the same confidential correspondence was carried on between them and continued after their arrival in India until the death of the said John Readhead on which Event your Petitioner who was then at Nagore wrote to the said Alexander Brodie and George Moubray Esquire requesting they would take particular care of the papers of the deceased until he should return to Madras where on his arrival about a month afterwards the said Alexander Brodie delivered to your Petitioner some parcels of papers endorsed in the said John Read= heads own hand Writing and which endorsement was as far as your Petitioner could recollect in the following Words "to be= delivered to Mr. Petrie in case of an accident to me that those papers consisted to the best of your Petitioners recollecton of his correspondence with the said John Readhead from Tanjore, Sundry notes and memorandums of Occurrences on which they had mutually acted when in England and various communications with—

with the said Sir Thomas Rumbold and if his memory did not deceive him that he destroyed the greatest if not every part thereof at the time he received them and he had the best Sanction for so doing for that a man might in the confidence of inviolable Secrecy communicate many things to a Friend, to do which under other circumstance it would be very improper and some Times highly condemnable, as in such a cor= =respondence opinions were given of men and Measures which no other Consideration could induce— Your Petitioner did say that he also received some common place Books Extracts from Books he had been reading Memorandums on Political Subjects and other papers of a Similiar description, and which were either lost or destroyed at Balsore or Bassime during your petitioners illness there except some that were destroyed at Goa previous to his Embarkation for Europe that such= precaution had been rendered necessary from the probabilety of their falling into the hands of some of the powers then at War with Great Britain That your petitioner did remember a draft or fair copy of an Agreement= he did not recollect which between the deceased and Captain William Rumbold relative to their undertaking the Tanjore Lists, that it was in had agitation when your Petitioner was resident at Tanjore and that he corres= =ponded with the said John Readhead thereon but supposed the Scheme had been dropt some time before the death of the said John Readhead on account of the disagreement which had taken place between him the—

the deceased and the said Sir Thomas Rumbold that your Petitioners could not speak particularly to the time but that he remembered that the said draft of an agreement was delivered by the said Alexander Brodee, or by your Petitioner himself for that he could not speak positively as to the real matter of Fact to the said Sir Thomas Rumbold in consequence of an application for that purpose that your Petitioner did also think he recollected that amongst the said Memorandums there might have been, and that it was probable there was some account of a proposed Negociation between Hyder ally and this Government, but that he could not take upon himself to say such account was really amongst such memorandums as the Idea might have arisen from the Circumstance having been the frequent Subject of his Thoughts and Common Topic of Conversation and Correspondence between him and the said John Readhead as they entertained the same Idea of the measure and wished to see it carried into execution that your Petitioner did say that there were amongst the notes some remarks on the calling down of the Northern Zemindars to madras against which Measure the said John Readhead had strongly advised the said Sir Thomas Rumbold but that your Petitioner could not charge his memory with any particular detail or Narration Regarding the two Brothers Sitteram Tauze and Vizeram Tauze and that your Petitioners did say that the whole of the said papers that so came into his

possession

possession or custody or he has Setforth and was charged by the complainants to be of great importance to the said Estate ever of no moment or Interest thereto nor could the said Estate have derived any the least advantage therefrom, but as they were chiefly written as your Petitioner had in his said answer before declared under the Sanction of Friendship and inviolable Secrecy or for the private purposes of the said John Readhead that they contained Strictures on Men and Measures and were interspersed with ancidotes of a very delicate nature that might if exposed to public investigation, have proved a Source of uneasiness to individuals, contrary to the intentions of the said John Readhead, for to what other purpose your Petitioner did beg leave to ask could have been applied the several Bills of Exchange and other Testimonies and proofs in writing of money corruptly received by the said Sir Thomas Rumbold during his said administration as setforth in the complainants said Bill of Complaint that such papers as these in question, might in the possession of some men have led to the gratification of a malevolent and ungenerous mind, but that the consequences might have thrown a stain on the memory of the deceased, and have greatly injured his Reputation for the World at large your Petitioner did observe which neither Conceived nor combined but Judged from appearances only might have condemned him the said John Readhead for sentiments to which he was ever a Stranger and charged him with a

disposition

disposition at which is feelings had ever Revolted that therefore your Petitioner or any other person who destroyed the memorandums Narratives and other of the papers alluded to by the Complainants and then the Subject of discussion before the said Honble the Mayors Court paid a Tribute due from Friendship to the memory of the deceased and discharged a duty which as a man, he owed to Society, That thus your Petitioner had shewn that the said Manuscripts memorandums Narratives and other papers so far from being of use or benefit to the said Estate of the said John Readhead were of such a Nature as required their destruction, But that your Petitioner did humbly insist that he had no right to answer any Interrogatory or give the complainants any manner of Satisfaction touching or concerning the said manuscripts and the other papers belonging to the said John Readhead and which your Petitioner had become possessed of at the Time of his decease as in his said answer had been before Setforth for that it appeared clearly by the Endorsement on the back of the said papers in the hand writing of the said John Readhead that they were intended to be delivered over to your petitioner to be dealt with as his Judgement might Suggest, for that such was the simple meaning implied by the Words "To be delivered to Mr. Petrie in case of an accident to me" — and your Petitioner did for the Satisfaction of the said

Honourable

Honble the Mayors Court and to discharge a duty due to his own Character beg leave to state that on his return to India he found the Estate embarrassed with heavy and unproductive demands upon the durbar, for which there was hardly a Legal document to be shewn, for one of those demands amounting to Twenty thousand pagodas and upwards your Petitioner had obtained jointly with the said Henry Readhead a Consolidated Bond and on which your petitioner had received the devidends Regularly until it was Sold at Sixty per Cent discount with the Concurrence and approbation of the said Henry Readhead who with the consent of your Petitioner negociated the Business and that the amount of Sale thereof was accounted for in the said account Current to your Petitioner said answer annexed and that reference being thereunto had the same might appear that no Bonds were ever possessed by your Petitioner or as he had heard and believed by the said Alexander Brodie either from the Nabob or from his Son the said Ameer ul Omerah for the said Sum of Twenty Eight thousand Pagodas which the said Alexander Brodie had paid as had been before stated to the said Dugald campbell and for which the Executors were then called in question before this Honble Court, but that in the Month of November in the year of Our Lord one thousand Seven hundred and Eighty Six His Highness was prevailed upon to Execute a Bond to the Executors

for

for that Sum with Interest calculated to the Twenty fifth of that month Amounting in the whole to Star Pagodas Fifty five thousand four hundred and forty and payable in twelve Months that such Bond was in the posession of your Petitioner who had repeatedly demanded payment of the debt as often as the orders of the company prohebiting all intercourse between their Servants and the durbar, except by the permission of the Governor would allow him personally so to do and that he had used every means in his power since his Return to India to procure payment of the said Bond that if he failed in his Efforts and indeed it could not be hoped he would succeed at least not Speedily surely he died say the fact was not chargable to him— That your Petitioner had also addressed the Governor in council praying that on account of the circumstances which he then Selforth they would admit the said claim into the arrangement of the cavalry debt of His Highness the nabab but which your Petitioner was informed by the Secretary to the Board could not be done— that your petitioner did then address the court of directors through this Government explaining fully every circumstance of the Transaction and requesting their Orders that the said debt might be admitted to the Benefit of the arrangement made for the Cavalry Creditors, and it was understood and your Petitioner believes from good authority that the court of directors received so favorably the representation

of

of your Petitioner that they were induced to grant his request but that afterwards for reasons with which your petitioner was unacquainted they had signified in their General Letter to this presidency that they could not receive the demand with the class of Cavalry Creditors— That thus your Petitioner had Sworn to the said honble the Mayors Court and he hoped to their Satisfaction that the Several charges exhibitted against him in the Complainants said Bill of Complaint was either futile vexatious impertinent or altogether without foundation that immediately on the death of the said John Readhead the said alexander Brodie possessed himself of every part of the Estate of the said John Readhead and was in the Sole and entire management thereof until and after your Petitioners departure for Europe, and that during such time he the said alexander Brodie paid the said Sum of Twenty Eight thousand pagodas to the said dougald Campbell and received the said Sum of Four thousand Pagodas from the said Nizagarava Moodely without as in your petitioners said answer had been before mentioned the Concurrence or Knowledge of your Petitioner, that your Petitioner had since taken upon himself the charge of the Estate of the said John Readhead exerted himself to benefit the same by every means in his power that he had ever been ready to render an account of his Executorship

to

to the Complainants or either of them and that his Books relative to and his Transactions in the affairs of the said Estate had been ever open for their inspection and that he was not only ready but exc= =tremely desirous of giving up all papers, documents Vouchers and monies belonging to the said Estate and then in his possession whenever he might be properly authorized so to do

Your Petitioners further Sheweth that to such his said answer the Complainants did on the fifth of may last past and in the present year of our Lord one thousand Seven hundred and Eighty nine file their Replication and did therein Set forth that as your Petitioners had admitted of the Tenor and purport of the last Will and Testament and the appointment of himself and the said Alexander Brodie and James Henry Casamajor Executors of the said Will and that he your Petitioner and the said Alexander Bro= =die had alone proved the same and obtained probate thereof and that the said James Henry Casamajor did renounce the office of Executor and that as your Petitioner and the said Alexander Brodie had taken upon themselves the Burthen and Execution of the said Will of the said Testator the Complainants did say that your Petitioner and the said Alexander Brodie were answerable and Responsible to them as Residuary Legatees under the said Will for the several Matters in their Bill charged and Set forth

set forth That it was mere evasion in your Petitioner to Assert in his said Answer, that because he was absent at the time of the death of the said John Readhead at his Station as Resident at Nagore that he did not therefore take possession of any Mortgages Bonds Notes Deeps and other Securities for Money belonging to the Estate of the deceased as they did say your Petitioner had not set forth how long he was at Nagore and whether he had or had not Approved of the Management of the Estate by the said Alexander Brodie and Acted therein when he did come to Fort St. George which they did allege that your Petitioner had and that he had acted so far as an Executor under the said Will that the said Alexander Brodie had only acted under the direction of your Petitioner and that the said Alexander Brodie would not have Accepted of the said Executorship upon any terms then of your Petitioners Acting Jointly and taking upon himself the charge and Management of the Estate of the said Testator and the Complainants did say that your Petitioner must not only have been informed of the Transactions of the said Alexander Brodie but must have Approved thereof by the Justification he gave thereof by Asserting that the said Alexander Brodie did exert every endeavour and to the utmost as far as his Judgement and Ability would unable him Prosecute every means for the benefit of the Estate and in Order further more particularly to Shew that your Petitioner was informed of the said

Transactions

Transactions of the said Alexander Brodie therein the
Complainants did pray to annex to their said Replication
Copy of a letter N.o 1 as they therein pretended from your Petition
to the said Alexander Brodie dated at Nagore whereby they
did say it was proved that your Petitioner had Actually known
and Approved of the Management of the said Alexander
Brodie and did also thank him for the Steps he had taken
thereby which Copy the Complainants did pray might be
admitted as part of their said Replication the Original Whereof
they did say was in their posession and ready to be produced
when required — The Complainants did also say that your
Petitioner in his said Answer had Acknowledged that some
short time after the decease of the said Testator he did return to
Madras and did Act as an Executor of the said last Will and
Testament by giving such Asistance as lay in his power in
Examining the Papers belonging to the said deceased and by
consulting with the said Alexander Brodie and the Lawiyer
on the best mode to be adopted for Arranging the Affairs of the
Estate and that in doing so he gave his advise on every thing
submitted to him by the said Alexander Brodie by which it
seemed as if your Petitioner would have had it believed that
the said Alexander Brodie did not submit every matter
relating to the Estate whether of Monies to be collected and

Received

Received and Sums owing by the Estate to be liquidated and paid
which the Complainants did maintain that he had and that
your Petitioner was well informed of all the Transactions done
by the said Alexander Brodie relating to the Estate and the Com-
-plainants did say they were advised that the actual posession
of any particular part of the Estate was not necessary to make your
Petitioner as Executor an Active party under the Will and that
an Executor might Act by giving Asistance in arranging the
Affairs of an Estate and by advising upon the matter concerning
it in the manner your Petitioner had Acknowledged he did —
Altho as the Complainants did say your Petitioner would wish
to Exonerate himself and throw the whole burthen of Answering
upon the said Alexander Brodie by saying that he had no
direct concern whatever in Transacting the Concerns of the Estate
And the Complainants did say that the pretence of your Petitioner
that he left India in the beginning of the year One thousand
Seven hundred and Eighty and that he had not at that time in
his custody or posession any Voucher for Money or any
Document whatever in any wise interesting to the said Estate
or by which it could in any manner whatever be benefited
was Equally evasive and unsatisfactory as the former part of
his your Petitioner's said Answer because that the greatest
part of the mismanagements and misapplications
of the Estate charged in the said Bill had been

done

done and committed previous to that period at which your Petitioner had retired from India that your Petitioner by such Excuse for his Conduct Virtually had admitted that he had in his possession some Voucher for Money and Documents belonging to the Estate before the time that he left India, by saying only that he had not any at that time in any wise Interesting to the Estate or by which the Estate could in any manner be benefited - that your Petitioner had by such evasions suppressed those Vouchers by not declaring what they were had endeavoured to exculpate himself from such Act of injustice by his own Opinion that they were not interesting to the Estate without Shewing that he had the Assent of the other Executor or the knowledge or consent of the Legatees for so doing and that such instance of your Petitioner's conduct did alone Shew the necessity and Justness of the Complainants calling him to an Account for his mismanagement of the affairs of the deceased that as a strong instance of Wilful backwardness in him to give an Account thereof your Petitioner had also admitted that he knew what such Bonds Books Papers and Effects belonging to the Estate were previous to his departure from Madras by saying that he did not know otherwise than by an inventory and Account Current annexed to his Answer as containing all

all that had come to his Custody and possession since his return to India in April One thousand Seven hundred and Eighty six except as had Appeared by a sett of Books by which the Complainants did pretend that your Petitioner had certainly and clearly admitted that he did know and had had in his possession all the several Bonds Books and Effects belonging to the Estate as the whole of the said Estate would necessarily Appear by the Inventory and Account and the Books of Accounts of the Estate and no where else and that your Petitioner had Acted in the management of the several Matters relating to the Estate notwithstanding he would make it Appear that he was prevented by absence and Sickness and other avocations - And the Complainants in their said Replication did say that your Petitioner had Acted in divers Concerns relating to the Estate of the Deceased and that so far from having the whole management thereof to the said Alexander Brodie the Complainants did pray to annex to their said Replication Copies of five letters No. 2.3.4.5.6 said to have been written to your Petitioner as Executor of the said Last Will and Testament and addressed to him singly as if it was considered that your Petitioner was the Acting Executor under the said Will and not the said Alexander Brodie as was pretended by him which said letters Appeared to be in Answer to

to demands made by your Petitioner alone as being the acting Executor as aforesaid to Alexander Cuthbert late of Madras Merchant and to Antonio De Souza of Madras Merchant the Originals whereof were as the Complainants did say in their Posession and ready to be produced when required The Complainants did say that your Petitioner had taken upon himself the burthen charge and Responsibility of an Executor by proving the Will and by accepting of a Diamond Ring bequeathed by the Testator Valued at One thousand Pounds Sterling and upwards and acting as an Executor and that it was his duty not to have been uninformed of any matter relating to the Estate and that it could not be believed that your Petitioner was uninformed of any matter relating thereto and the Complainants did say that Henry Readhead one of the Complainants had acted under a special power of Attorney jointly with Forster Rose and John Tulloh in the charge and management of the Estate of the Deceased, after the departure of the said Alexander Brodie for Europe in One thousand Seven hundred and Eighty three which charge the said Henry Readhead had accepted as a lawful means of coming to a knowledge of the affairs of the Estate which he could not otherwise have acquired and they did also say that the said Henry Readhead

Was

Was certainly the properest Person to have posession of the Books of the Estate and that the demand of them by the said John Tulloh in the manner expressed by your Petitioner did evidently Shew the necessity of his keeping them as he had not only an equal right with the said John Tulloh as Joint Attorney but had also a property therein by being one of the Residuary Legaties of the Estate whereto those Books of Accounts referred and that altho the said Henry Readhead was in the manner aforesaid in posession of the said Books your Petitioner had refused to give or render to them a Just account of the Testators Personal Estate as Appeared by their Bill of Complaint and by the Account thereto annexed that your Petitioner not having done so was the Cause of the Complainants present Action - and the Complainants did say that the backwardness of your Petitioner and the said Alexander Brodie to come to a fair and Just Reckoning touching the said Estate appeared by the Answer delivered in by your Petitioner which was entirely evasive and inconclusive and by no means direct and Satisfactory but on the contrary that your Petitioner had taken the Advantage of the said Alexander Brodies absence to throw the whole Responsibility upon him and to exonerate himself contrary to the Trust and Confidence reposed in him by the Testator the

Complainants

Complainants did maintain the Combination wherewith they had charged your Petitioner the said Alexander Brodie and their pretended confederates and did deny that your Petitioner and the said Alexander Brodie had done their utmost for the benefit of the Estate of the Testator, and for the emolument and Advantage of the Complainants and they did deny that the conduct of the said Alexander Brodie or of your Petitioner was influenced by friendship for the deceased or that their object was to fulfill the Testators intentions and by any means to promote the Interest of the Estate the Complainants therefore did say that your Petitioners astonishment at the charge brought forward by them, must have been pretended as your Petitioner must have been conscious that the Complainants could not in Justice Acquiesce in the manner adopted by your Petitioner in the Execution of their Trust so prejudicial to the Estate and injurious to them individually and the Complainants did say that the naming of the said Henry Readhead by the said Alexander Brodie one of his Attornies in the Joint Trusts of Books and Documents and Papers Relative or belonging to the Estate did not Shew that Disposition or inclination your Petitioner would wish should Appear therefrom because that the said Alexander Brodie did only do what the said Henry Readhead had a right to demand and that their charge was neither ungenerous nor untrue but founded upon right truth and Justice —

And the Complainants did say that your Petitioner must have pretended that the Estate of the said Testator was trifling in its Value or he could not have produced the Account thereof he then had whatever he might otherwise pretend the better to Colour his Mismanagement and misapplication thereof and did say that the pretended intricacies in which the said Estate was involved should have made him more Cautious in admitting of demands made upon the Estate which he ought thoroughly to have investigated and have required the best legal Evidence of their reality and Justness before he or the Executors did pay the same and not on the contrary to have Anticipated the right of demand of doubtful debts by Admission and payment thereof at a Period before payment thereof could have been lawfully demanded or your Petitioner legally Justified in making it And the Complainants did absolutely deny that your Petitioner or the said Alexander Brodie did exert that management and address in putting in a train of liquidation and Recovery any part of the Estate of

of the Testator nor did the same Appear they did say by the small instance thereof Exhibited in the partial Account annexed unto your Petitioner's said Answer and the Complainants did maintain that your Petitioner and the said Alexander Brodie had discharged under Colour of the Office of Executors wherewith they had been instructed by the Testator sundry Debts that had arisen upon corrupt and illegal Considerations and such as they in Conscience did well know were not Justly due and that they had neglected to take Vouchers for Sundry Sums of Money paid away on Account of the Estate and the Complainants did also maintain that your Petitioner and the said Alexander Brodie had omitted to bring to the Credit of the Account of the Estate sundry Sums of Money by them received for and on Account of the said Estate that your Petitioner had particularly neglected to receive or if he received to bring to Account the Sum of One Lack of Rupees due by Omeer ul Omarah that your Petitioner and the said Alexander Brodie to favor certain interested or malicious purposes had greatly prejudiced the said Estate in respect of the said demand upon the said Omeer Ul Omrah and that Notwithstanding what your Petitioner might pretend that from it Appearing upon the Books and

Papers

Papers of the Testator that the said Sum was owing That he did wait on the said Omeer Ul Omarah in consequence thereof some time in the year One thousand Seven hundred and Seventy Eight or in the year One thousand Seven hundred and Seventy Nine and had required payment of the said Sum of One Lack of Rupees which demand your Petitioner had said he enforced by reminding him the said Omeer Ul Omrah of the friendship he had entertained for the deceased and his profession of Regard for his Memory and by using many other Arguments which he thought might give the necessary Weight to the subject and induce him to pay an Attention thereto but that Notwithstanding the said Omeer Ul Omrah had refused to pay the said One Lack of Rupees the Complai=nants in Reply whereto and in Order to Shew as they pretended the Duplicity of your Petitioners Conduct in this and other instances and as an observation on the confidence that ought to be put in your Petitioners Assertions and Attestations Respecting his Management of the Estate throughout his Answer and how little his Conduct had Corresponded with his pretended disinterestedness and friendship for the Concerns and Memory of the Deceased and how much he had on the contrary been guided and influenced by his interest or other motives equally injurious to the Residuary Legatees as

Detrimental

Detrimental to the memory of the Testator The Complainants did say that when your Petitioner had been Examined before the Committee of the House of commons after his return to England in One thousand Seven hundred and Eighty respecting the aforesaid debt and demand on the said Omeir Ulomrah of one Lack of Rupees your Petitioner had on that occasion declared that he had never waited on the Nabob for the purpose of demanding Payment of the said One Lack of Rupees as might Appear by the following questions put to your Petitioner as they pretended by the said Committee and your Petitioners Answer thereto Viz.t "after the death of Mr. Bradshaw were any steps taken to recover the Money from the Nabob" Whereto your Petitioner Answered there were Mr. Brodie asked me to go along with him and I did intend to go with him the next day to the Nabob Son but I was prevented by publick busines — Mr. Brodie went but Received evasive Answer from the Nabob's Son as he told me — I myself thought unnecessary to make the Application but the Lawyer who was Employed and the other Executor thought differently Question why did you not object to the Application knowing as you did that the Money was not due the Object not being obtained Answer I believe it will Appear from several of my Answers I did Object I mean and to the Lawyer and Mr. Brodie that I thought it unnecessary To the best of my Recollection it did not Appear necessary to me then to make a regular and formal Objection to their Applying for the Money and that your Petitioner did in the course of his said Examination declare that he saw in some Memorandums in the Testators hand Writing that such Sum of Money was promised in consequence of his Assistance or influence with his friends in England to bring about a repeal of the Measure for the restoring of the Rajah of Tanjore which your Petitioner did well Know to be false that your Petitioner was induced to make such Misrepresentations at the instigation and by the direction of interested motives to which he betrayed the Trust and confidence the Testator had placed in him, and which he continued in the last act of his life by entrusting him with the charge and management of his Estate as one of his Executors the Complainants did therefore think proper to oppose the declaration of your Petitioner before the Committee of the House of commons whereby it Appeared that your Petitioner had not demanded the said one Lack of Rupees to his Attestation on Oath in his said Answer Wherein he declared that he had demanded it in Order that the said Honble the Mayors Court might

Determine

Determine on the Credibility of your Petitioners said Answer in other matters however Solemnly and positively the same were therein declared – And the Complainants did further say that your Petitioner must not only have believed but must have well known that Sundry Sums of Money had been paid to the said Omeer ul omrah out of the Estate of the Testator Notwithstanding the said demand of One Lack of Rupees owing by him to the Estate as aforesaid and the Complainants did say that your Petitioner being well informed of the reality of the said Debt and demand on the said Omeer ul omrah for the said Sum of One Lack of Rupees and the payment whereof, he in his said Answer did say that he himself had demanded in One thousand Seven hundred and Seventy Eight or One thousand Seven hundred and Seventy nine It could not be believed that he did not know also of the Tesp in question said to have been given by the Testator unto the said Omeer ul Omrah in his life and that so knowing of the existence of the said Tesp it could not be believed but that he had known of the payment thereof having been demanded by the said Douglad Campbell and of the payment thereof having been Actually made or pretended to have been made thereof and did say that the Transaction of the demand of the said One Lack of Rupees from the said Omeer ul omrah owing to the said Testator and that of the pretended demand and payment of the said Tesp said to have been given by the Testator to the said Omeer ul omrah and by him pretended to have been endorsed over to the said Douglad Campbell having been concurrent Transactions and happening at the same time it could not be supposed that your Petitioner could be informed of the one without having been also informed of every Circumstance attending the other, That your Petitioner must certainly have failed in his Memory and recollection When he declared in his Answer that he had not directly or indirectly any concern in the payment of the said Tesp of Seventy Eight Thousand Rupees to the said Douglad Campbell And the Complainants did also say that it was not at all probable that the said Tesp was paid without the Total Concurrence of your Petitioner It appearing by the said Alexander Brodie's Letter annexed to the Complainants Bill that he therein declared that he would not take any Step without previously consulting with your Petitioner who did absolutely approve of the Conduct of the said Alexander Brodie in the whole of the Management of the Estate of the Testator in the said Letter so referred to and by Sundry Acts subsequent thereto, altho he then spoke quite evasively as to his knowledge of any part of the said Management had by the said Alexander Brodie

Brodie and that it did not appear that your Petitioner did ever disapprove of the said Alexander Brodies paying the said Teesp which from its Extraordinary Tenor and the largeness of the Amount and being in the possession of and presented by a third Person and under the Endorsement of a Debtor must &c have naturally created some pause at least presentment, that would have led to a desire of a particular investigation of the &c Consideration on which it was given or whether it was actually given by the Testator and whether his Name was Subscribed thereto and if it was whether the Estate of the Testator was bound to pay the same before means had been taken to recover payment from Pachapah in whose name the said Teesp was drawn as the Obligor and also whether the said Teesp was negotiable and that after all such and other Objections naturally Opposing themselves against an allowance of the right of the said Douglad Campbell to demand payment of the said Teesp which right could only have existed in the right of the said Omeer Ubomah to Endorse it over to him, the said Douglad Campbell your Petitioner ought not nor could not have consented to the payment thereof consistent with the duty and faithful discharge of his Trust as Executor while the demand the Testator had upon the said Omeer Ubomeah remained disallowed and unadmitted but that Notwithstanding all such evident Objections it did not

Appear even by your Petitioners said Answer that any Steps had been taken to investigate the Consideration on which the Teesp had been Originally given by the said Pachapah or whether the same had been signed by the said Testator and if it had upon what Consideration and whether the said &c Consideration was legal or illegal or whether it had been at all &c performed nor was any advice taken as to the right of demand of payment of the said Teesp from the said Executors or of their Obligation in that Capacity to discharge it on the contrary the Complainants did pretend that your Petitioner and the said Alexander Brodie seemed to have given that pretended preference to all other demands upon the Estate as if they feared they should not have property left in their hands sufficient to discharge it and therefore sett about such Act of injustice so speedily after the Death of the Testator as Eight &c Months and the Complainants did say that the Assertions made use of by your Petitioner to exculpate and exonerate &c himself from this Act of paying the said Money and the &c Responsibility consequent thereupon were not founded in &c truth nor upon the smallest probability of truth as your Petitioner in his said Answer did not pretend that the said Alexander Brodie did pay the said Money in an underhand or concerted manner nor that he used any means to keep him

him ignorant of the demand of payment being made on him by Douglas Campbell for the Amount of the pretended Teesp or of his intention to make payment thereof and finally that he had Compleated such intentions by payment nor did he pretend that he in any progress of such Act of injustice as the Complainants pretend such Act to be had signified his disapprobation thereat but on the contrary that he avowed and Approved of the Conduct of the said Alexander Brodie in paying off and discharging the said Teesp whom he said he believed by so doing and otherwise, and in his Situation as Executor of the Deceased exerted every endeavour, and to the utmost as far as his Judgment and abilities would enable him prosecute every means for the benefit of the Estate and discharge of the Trust reposed in him by the Testator and in further Reply the Complainants did say that your Petitioners Assertion of his not having had to the best of his knowledge and belief any Money dealings with the said Douglas Campbell was no proof as he would wish to establish of his not having had any Concern in the payment of the said Teesp and that he was not responsible to the Complainants for the injury as the Complainants pretend they had sustained thereby and that your Petitioner on his said Answer had further said that he never pretended that the Estate of the Testator was indebted unto the said Douglas Campbell for the Sum paid out of the Estate before

before and at the time of payment thereof alledging that he was not engaged in the said Transaction but that your Petitioner did not pretend that he did not know that the said Douglas Campbell had demand payment of the Sum so paid out of the Estate on Account of the said Teesp nor did he pretend that he did not know upon what compromise the said Agreement was made whether he was consenting thereto or whether he took any measure to prevent the said payment being made on the contrary it Appeared by the whole of your Petitioners conduct and even from his Answer that he did know of the demand, and that he Assented to the payment of it all which the Complainants did say your Petitioner might have promoted the Effecting of without having the said Teesp which he pretended he did not, to the best of his knowledge until the year One thousand Seven hundred and Eighty six — And the Complainants did say that your Petitioner Shewed how willing he had been to enter into any Acquiescence that could have favored the payment of the said Teesp and how fearfull he was to take any steps that might have disturbed the plan of injustice as the Complainants pretended had been projected against the Estate to convert the lawfull Assets thereof to the discharge of unjust demands by Acknowledging in his Answer that altho he pretended he did not know the condition purport or intent of the said Teesp or by

by whom or in whose favor it was Executed — That he never received and of course never admitted that he did not ask any advice thereon either from Council learned in the law or from any other Person nor did not know whether the said Omeer ul omrah could or could not legally or otherwise have endorsed the same to the said Douglad Campbell or have given the said Douglad Campbell a right to demand payment thereof which assertion the Complainants hoped in due time to prove to be entirely untrue and that your Petitioner did know of the Tenor of the said Teep, that he did know that payment could not have been legally demanded and that he never the less had objected to the payment thereof and that he had paid the same with the design of favoring as the Complainants pretended his own interested Schemes at the Durbar and in the hopes of repairing the injurious he had done to the Estate by the repayment of the said Teep at some early opportunity — and that your Petitioner having been deceived in his expectations at the time that he in the manner before charged sacrificed the confidence of the Testator and the duty of his Trust as an Executor did afterwards put in practice many means to secure himself against that future Responsibility he knew in his conscience he might be called upon to render the Complainants by putting such fair constructions on the payment

Payment of the Teep to the Government of this Presidency of Fort St. George as he hoped would induce them to an interference in favor thereof as having been made for Arrears due to a Regiment of Cavalry Commanded by the said Douglad Campbell, but that your Petitioner finding himself not attended to in such his Views had finally endeavoured as much as in his power to procure and Obtain payment from the Durbar of the Sum of Money he had so unjustly and unwarrantably paid away belonging to his Testator and that failing therein he had accepted the best terms of payment he could obtain by receiving a Bond from the Nabob for the individual Sum by him paid for the said Teep and whether which Bond the Complainants did say the Nabob would not have given if the Sum of Money for the said Teep had been Justly owing by the Testator that the Complainants had before shewn by the Exhibits they had annexed unto their said Replication your Petitioner did take an Active and separate part in the Execution of the last Will and Testament of the said Estate that he demanded and received payments of Money unassisted by the said Alexander Brodie and that he knew his own right by receiving his Legacy

Legacy and that it was but just and reasonable to
suppose that those were not the only Acts of Executorship
wherein he had been any way concerned altho your
Petitioner had in various parts of his Answer denied that
he had taken upon himself any part of the charge of the
Estate but that the whole and every part thereof was under
the entire management of the said Alexander Brodie
which denial in that part of your Petitioners Answer being
directed in many parts of the Complainants said
Replication did furnish a strong proof that the other
other parts of his Answer wherein he had prevaricated
and evaded as the Complainants pretended were equally
undeserving of Credit or belief

That your Petitioner had said no Bonds were ever passed
by him or as he believed by the said Alexander Brodie
either from the Nabob or his Son the said Omeer obliged
for the said Sum of Twenty Eight thousand Pagodas
which your Petitioner had said that the said Alexander
Brodie had paid to the said Douglad Campbell and
for which he and the Executors were then called in
question before the said Honble the Mayors Court but
the Complainants did say that there was every reason
to believe that your Petitioner and the said Alexander
Brodie

Brodie did take from the Nabob or his Son some Bond
or other Security for the said Sum of Twenty Eight thousand
Pagodas and that your Petitioner in a letter addressed to the
Government of the Presidency of Fort Saint George in the
year One thousand Seven hundred and Eighty Six giving
an Account of the Payment of the said Money did expressly
Shew that Security of some nature which he did not think
proper to discover was given previous to the Payment thereof
an Extract of which the Complainants did say was as follows
to wit "In the year One thousand Seven hundred and
Seventy Eight his highness the Nabob being considerably
indebted to Captain now Lieutenant Colonel Douglad
Campbell for Arrears due to the Cavalry
and also on Account of his Contract for feeding the Horses of
the Regiment made over to him a Teep of the late John
Readhead for Twenty Eight thousand star Pagodas which
was only conditionally payable and from a failure in the
performance of the said condition and the Death of Mr.
Readhead which happened about this time, never could
have come into legal operation against the Estate
That the Teep was presented by Captain Campbell
to Mr. Brodie the Acting Executor who from motives
of friendship to that Officer and at the pressing and
earnest

earnest Solicitation of Captain Campbells friends &c discharged the said Teep in full but not till he had &c received the most positive Assurances from the Darbar that failing the performance of the Clause the Estate should be reimbursed the full extent of that payment and Accompanying these Assurances with Apparent Securities which Mr. Brodie had reason to think would fully indemnify the Estate from all risk from the Transaction — and the Complainants did say that the presumption of Securities having been demanded and given previous to the discharge of the said Teep was not only Justified by your Petitioners said Answer but was proved by him therein actually to have been the case — your Petitioner Acknowledging that in the Month of November One thousand Seven hundred and Eighty six his Highness was prevailed upon to Execute a Bond to the Executors for that Sum with Interest calculated to the Twenty fifth day of that Month Amounting to Fifty five thousand four hundred and forty star Pagodas payable in twelve Months which Bond your Petitioner did say was in his possession — and that he also spoke of Various schemes and plans he had contrived and framed to procure back this large Asset &c which your Petitioner and the said Alexander Brodie had

had in the manner Complained of misapplied and paid away without any legal consideration well knowing that the same was a misapplyment and waste of the Estate all which Proceedings of your Petitioner and the said Alexander Brodie and your Petitioners taking the said Bond from the Nabob in lieu and payment of the said Sum of Twenty Eight thousand Pagodas so unwarrantably paid away out of the Testators Estate did point out a just line of Equity to measure the right of the Complainants Claim and that the said Sum of Twenty Eight thousand Pagodas ought by even and fair Justice to be Decreed Assets remaining in the hands of the Executors as also the Interest thereon as charged in the Complainants Bill of Complaint —

And the Complainants did in their said Replication maintain that the charge of Cash Received from Vizagarava Moodelly being the Sum of Four thousand Pagodas and not brought to the Account of the Testators Estate your Petitioner had by no means exonerated himself from he was in possession of the &c different Accounts of the Estate and consequently of the knowledge of the several Sums due thereto by different Persons, it appeared also that your Petitioner had been

Active

Active in the Office of an Executor in the year One Thousand Seven hundred and Seventy Eight and One Thousand Seven hundred and Seventy Nine – and that it appeared also that that Sum which was charged to have been received on Account of the Estate and not brought to Account was so received early in One thousand Seven hundred and Seventy Nine and all the Answer that your Petitioner had made thereto was that at the time the said Transaction was stated to have taken place your Petitioner was residing near Two hundred miles from Madras and had not taken upon himself any part of the charge of the Estate of the Testator but that the whole and every part thereof was under the Sole management of the said Alexander Brodie and that to his knowledge he never saw Vizagarava Moodelly whereto the Complainants did say that they had already in their said Replication detected such Assertion of your Petitioners not having had any part in the management of the said Estate by Shewing that he had an active part and as to the evasion that he had not to his knowledge seen the said Vizagarava Moodelly the Complainants did say that your Petitioners might be ignorant of him Personally and received the Sum charged in the manner that it was done to wit by Bill of

of Exchange and the Complainants did say that it appeared that your Petitioner did depart from India in the begining of the year One thousand Seven hundred and Eighty and that it was not probable that he would take his departure without some knowledge of the affairs of the Estate, and to Assert that he was ignorant thereof was a gross imposition on the Sagacity and Wisdom of the said Court and an Acknowledgement of the most wilful inattention and abandonment of his Trust and the Complainants did say that the Arguments used by your Petitioner to exonerate himself from the Responsibility he was called in question for were in themselves an Equitable and Just ground of Decree against him, even without the Evidence there Appeared of his having unwarrantably and illegally Squandered mismanaged and misapplied the Estate of the Deceased in the manner he was charged to have done and acted therein

And They did say that by way of Reply to that part of your Petitioner Answer whereby he made it Appear, he had given every information and satisfaction to the demands and enquiries made by George Readhead after his your Petitioners arrival in England that such informations could by no means be satisfactory, but on the

the contrary did clearly Demonstrate the Duplicity and unfairness of your Petitioner and the said Alexander Brodie in the management of the Estate of the Testator and the Complainants from the evasive and unsatisfactory Accounts as they pretended at all times given by your Petitioner and the said Alexander Brodie had been compelled to commence their Action against your Petitioner and the said Alexander Brodie before his your Petitioners departure another time from Madras without doing them that Justice in discharging his Office and Trust of Executor to the Deceased, that he was long before in duty and conscience bound to render them

And the Complainants did again deny that your Petitioner had been at all times or at any time ready and willing to give any satisfaction in his power and render an Account of all his Transactions relative to the Estate to the Complainants or any of them and the Complainants did say that the tender made by your Petitioner According to the Account annexed to his Answer was in no sense a Tender of that right and Justice which they leave Claimed from him and of course not any satisfaction at all and the Complainants did say they had manifested no disposition towards your Petitioner in their demands upon him &c previous to and by the present Action than such as did naturally arise from a sense of the Injurioss that had been unjustly dealt to them by your Petitioner and the said Alexander Brodie by with holding from them that right which they were bound by the most sacred Obligation to &c dispense to them unsolicited and undemanded without &c Obliging them to seek for that right by an expensive and Tedious litigation and which your Petitioner had attempted to render as intricate and involved as had been in his power by putting in an evasive and inconclusive answer

The Complainants did further say that their charge that your Petitioner and the said Alexander Brodie had possessed themselves of sundry Papers Narrative manuscripts as particularly set forth and described in their Bill and their Prayer that your Petitioner and the said Alexander Brodie might deliver up unto them such thereof as they or either of them had not destroyed and were then remaining in their or either of their custody &c power or possession was such as they the Complainants were entitled to make against them and pray of the said Honble the Mayors Court that they found by the said Answer that your Petitioner was the Person who had &c Acted as sole Executor of the Testators Will in that part of his Estate and that he had unwarrantably and illegally taken

taken upon himself to Appropriate and convert to his own use the said Papers narratives and manuscripts without any Title under the said Will and without which the Complainants did say your Petitioner could have had no right to take away the said Papers from the Estate and Appropriate the same to himself without even giving any inventory or Account thereof And the Complainants did say that the reasons given by your Petitioner for his said conduct was highly blameable and that having taken away the said papers without giving in an Account thereof left the Degree of Injury that they had sustained thereby uncertain that they did by no means admit that the intimacy confidence and friendship between your Petitioner and the Testator of which your Petitioner they did pretend would wish to avail himself as giving him a title to the said Papers did give them a better right to that individual property than of any other property of the Estate that they were advised that if it was true what your Petitioner had said of the Endorsement on some parcells of Papers in the hand Writing of the Testator directing that the same were to be delivered to your Petitioner in case of any Accident happening to him the said Testator which they did by no means

Admit

Admit that the said Endorsement and writing did not give your Petitioner any legal right to the said papers without that such writing was proved in the Ecclesiastical Court to have been the Testators hand writing and that his intent and meaning was that the said papers should be posessed by your Petitioner and then not untill Sentence had passed on the said Writing by the said Court, allowing of the said Writing and Endorsement to be a Codicil to his the said Testators Will without which the Complainants did say that your Petitioner could not have legally Appropriated the said Papers and at any rate that it was the duty of your Petitioner as Executor of the said Testator to have delivered in an Inventory of the said Papers as he could not pretend that he had not acted as an Executor in that part of the management of the Estate that they were advised that the said papers were as much the property of the Estate as any part of the property belonging to the Testator at the time of his decease — And that your Petitioner was not Authorized to Appropriate to himself the same under any Title whatever by him pretended or otherwise nor was he Authorized to destroy the same as he pretended he was for the reasons by him given that your Petitioner might by the same reasons and with equal

Right

right have suppressed destroyed and Appropriated any other part of the Estate but the Complainants did say they had grounds for believing that your Petitioner had not destroyed them but that he had made use of the said Papers to promote his own interest and Advantage by communicating the contents thereof as the result of his own labours to Persons in power or by otherwise publishing the same to his own gain and profit or that if he hath destroyed any of them he had a View to his own Interest and advantage therein by Secreting many important publick concerns at the Solicita-tions of private Persons whose interest it was that the same should be suppressed and concealed — and the Complainants did say that the manner of your Petitioners possessing himself of the said papers and not allowing of any one to inspect the same and keeping the Title and purport of the said several Papers narratives and manuscripts Secret and not giving in any Inventory thereof to the said Honble the Mayors Court or to any other Court or suffering these Repliants to be satisfied that they were of no use to the Estate were all Evidences of a fraudulent breach of Trust in your Petitioner by converting the same to his own use and also in the said Alexander Brodie in confederating with him and conniving at a Conduct so unworthy of the confidence

Reposed

Reposed in them by the Testator and by which the Com-plainants had been wronged and injured as Residuary Legaties of the said last Will and Testament of the Testator and as to any other part of your Petitioners Answer whereto the Complainants had not Replied they did say that the same was evasive untrue and insufficient for them so to reply unto —

And your Petitioner further sheweth that immediately after filing his said Answer to the Complai-nants said Bill of Complaint and some Months previous to the filing of the Complainants said Replication your Petitioner did depart from Madras for Europe leaving Benjamin Roebuck of Fort St George Esquire his Agent or Attorney for the management of his Affairs during his Absence and your Petitioner further Sheweth that the Complainants having so filed their Replication they did Pray the usual Rules for your Petitioner to rejoin thereto and that such Rules did issue Accordingly that several peremptory Rules did also issue from time to time in Order that the said Benjamin Roebuck might have an opportunity of Searching the books Accounts letters Vouchers and Instructions deposited with him by your Petitioner previous to his departure for the purpose of procuring

Materials

Materials necessary to rejoin to a part of the said Replication of the Complainants; for your Petitioner Sheweth that the said Replication did not maintain the Complainants said Bill of Complaint but did materially Depart therefrom in as much as it did Contain new matter by the introduction thereon of Extracts of a pretended Examination before a Committee of the House of commons and referred to Certain Letters annexed thereto pretended to be part of a Correspondence between your Petitioner and the Debtors to the Estate of the said John Readhead Deceased

Your Petitioner further Sheweth that the said Benjamin Roebuck having examined the books Accounts letters Vouchers and Instructions of your Petitioner and being unable to procure the materials necessary to rejoin to the Complainants said Replication he did on the first day of the Month of September last past exhibit and file a Petition in the said Hon^ble the Mayors Court setting forth that the Complainants had on the Twelfth Day of December which was in the year of Our Lord One thousand Seven hundred and Eighty Eight filed a Bill of Complaint in the said Hon^ble the Mayors Court against your Petitioner and the said Alexander Brodie and

and that for certain Causes to the Complainants best known did on the Twentieth day of January in this present year of Our Lord One thousand Seven hundred and Eighty Nine file an Amended Bill to which your Petitioner did on the third day of February the following and last past put in his Answer and did shortly afterwards depart from Madras to Europe

That your Petitioner in his said Answer had followed all the several charges in the said Bill of Complaint contained and explained his conduct therein so as to clear himself as he had hoped from the said charges thereof to the satisfaction of the said Hon^ble the Mayors Court

That on the fifth day of May last past the Complainants had filed a Replication and thereunto annexed certain Letters said to contain a correspondence between your Petitioner and certain Debtors of the Estate of the said John Readhead and did in the said Replication insert a partial Extract from an Examination charged to have been had before the Hon^ble the House of commons of Great Britain whereupon and from the said Letters it was implied that your Petitioner had stated matters in his Answer which were contradicted by the said Correspondence and Examination

That

That he the said Benjamin Roebuck had Examined all the Papers Letters and Books of your Petitioner and had not been able to derive therefrom that Explanation of the matters in question which he has persuaded your Petitioner could give for clearing his conduct fully on the premisses

That he the said Benjamin Roebuck therefore Prayed the said Honble the Mayors Court would be pleased to grant unto your Petitioner two years time to file a Rejoinder or to Amend his Answer on payment of Costs as to your Petitioner might be most advisable and in the latter case the said Benjamin Roebuck did pray that Archibald Montgomery Campbell Ross Mill Ross and John Innes all of London Esquires or any two of them might be Appointed Commissioners to Swear your Petitioner to such Amended Answer as he might be advised to make in the above Cause — a Copy of which Petition of the said Benjamin Roebuck is hereunto annexed for the inspection of this Honble Court to which your Petitioner begs leave to refer and prays the same may be taken as part of this his Petition and appeal the Original of which being of Record in the said Honble the Mayors Court and your

Petitioner

Petitioner further Sheweth that the said Benjamin Roebuck did at the time of filing his said Petition to wit on the first day of September last past file and Exhibit in the said Honble the Mayors Court an Affidavit in support thereof purporting that the contents of the said Petition were true a Copy of which said Affidavit is hereunto annexed for the inspection of this Honble Court to which your Petitioner begs leave to refer and prays the same may be taken as part of this his Petition and Appeal the Original of which is now of Record in the said Honble the Mayors Court And your Petitioner Sheweth that the said Petition and Affidavit of the said Benjamin Roebuck came on to be heard before the said Honble the Mayors Court on the Eighteenth day of September last past when the said Honble the Mayors Court taking the same into consideration were pleased to Order and did Accordingly Order that the said Petition of the said Benjamin Roebuck should be dismissed with Costs and that issue should Join between the Complainants and your Petitioner as by a Copy of which said Order or Extract hereunto annexed for the inspection of this Honble Court to which your Petitioner begs leave to refer and prays the same may be taken as part of this his

Petition

Petition and Appeal will more fully and at Large appear the Original whereof being in your Petitioners possession and ready to be produced at the hearing —

By which said Order of the said Hon^ble the Mayors Court your Petitioner doth conceive himself much aggrieved and doth therefore Appeal therefrom to this Hon^ble Court for the following amongst other Reasons —

First —— Because The introduction of the said pretended Extracts of an Examination before the house of commons is a departure from the Complainants said Bill of Complaint and the Law says that a Replication is to contain certainty and not vary from the declaration but must pursue and maintain the Plaintiffs Cause of Action Co. Lit 304 that it ought to be short and must directly and pertinently pursue the substance of the Bill and must by no means be a departure from it Chan: Ca 392 —

Secondly —— Because the letters annexed to the Complainants said Replication are matters not contained in the Complainants said Bill of Complaint and it is laid down in the Books that matters shall not be put in a Replication which are not contained in the Bill of Complaint —

Thirdly —— Because the said New matters brought forward by the Complainants in their said Replication were so brought forward with the View of taking advantage of your Petitioners situation who not being on the Spot was unable to defend himself by furnishing such Instructions as might confute the intentions of the Complainants to the prejudice of your Petitioner and contrary to Equity and good conscience — and which will more particularly appear by a reference to your Petitioners said Answer for being present at the filing thereof he that therein unequivocally admitted or fully and sufficiently confuted every charge or Argument urged against him by the Complainants in their said Bill of Complaint —

For all which Reasons and such others as may be offered at the hearing your Petitioner prays that the said Order of the said Hon^ble the Mayors Court might be over ruled that this Hon^ble Court may be pleased to grant him two years time to file a Rejoinder or to Amend his said Answer on payment of Costs as he may deem most adviseable That they will be pleased to grant him such other benefit and relief as is —

Prayed

Prayed for in and by the Petition of
the said Benjamin Roebuck and
that this Hon^ble Court will further
grant him such other general Relief
as in their Wisdom may Seem Meet

/Signed/ { S^r Sophiam
I. Stuart Hall
Solicitors for Appellant

My

N.1

Nagore 6^th October

My Dear Sir

Being greatly indisposed from a trifling
Accident which however has given me much fever at present,
I hope you will forgive me if I only write a few lines by to nights
Tappal, to return you my sincere thanks for the very essential
Service you have rendered me, by consenting to Act, Jointly, with
me, in the execution of a Sacred trust from Deceased friends —
Accept my best Acknowledgements for the steps you have already
taken, and allow me earnestly to request that, upon no
Solicitation whatever any other person but you and our Friend
Moubray be permitted to inspect the Papers of the Deceased —

I remain
My Dear Sir
your Most Obed^t & much Obliged
/Signed/ W^m Petrie

Alexander Brodie Esq^re

True Copy
/Signed/ G^o Taylor
Dup^t Reg^r

True Copy
/Signed/ H^y Dupuy
aux Repli^ts

N.2

Fort S^t George Oct^r 31^st 78

Sir.

I am favored with your Note of yesterday, in Answer
to which I beg leave to inform you, that some time before —
M^r Readheads Death he engaged verbally with M^r Edward
Coles, and me, to advance to us Pag^s 10000 to be remitted by us
to London on the Queen store ship in which we reckoned would
Sail

Sail from Fort Marlbrough for England in April next, by the
Governor and Council of Bancoolen their Bills on the Court of
Directors at the rate of 7/16 ℔ Current Pagodas allowing as the
Money 6 Months free of Interest on or before the expiration of which
period we were to forward 1st. of Bills for Value Amt. Pags. 10,000 if
longer Interest to run untill the Bills were forwarded or deliver to
Mr. Readhead —

Mr. Cooles in consequence of this engagement with
Mr. Readhead, and some other Moneys taken upon similar
terms was at Porto Novo purchasing goods proper to effect the
remittance to Bencoolen, when Mr. Readhead paid to me the
Pagodas 5500 in part of his engagement, and for which I gave
receipt untill the whole should be paid up and Mr. Cooles here
when Bonds expressing the Transaction was to have been execute
by Mr. Cooles and me in favour of Mr. Readhead —

The event which soon followed prevented the
Affairs being settled as intended, however from these Circumstances
part of which in the knowledge of Mr. Brodie you will perceive
that its a hardship on Mr. Cooles and me, to repay at Madras
Money which we had invested and have sent for purposes at
Bancoolen — I do not mean to insist on the Agreement with Mr.
Readhead, on the contrary, I shall be happy to close the
Transaction in such manner as will be most agreeable to the
Executors

Executors but request for Mr. Cooles and myself that we be
indulged untill the end of February next, when I will repay
the star Pagodas 5500 with Interest granting my Bond
for the same payable on the forementioned period —

I am with perfect respect
Sir
your most Obt. humble Servant
/Signed/ Alexr. Cuthbert
for Mr. Edward Cooles & self

William Petrie Esqr.

True copy
/Signed/ G. Taylor
Dept. Regr.

True Copy /Signed/ Hy. Dupuy
Attg. Repltr.

N. 3

Fort Saint George Nov. 12th 76

Dear Sir.

I have the favour of your letter of the 9th Instant
on the subject of Mr. Cooles and my debit to the Estate of
Mr. Readhead —

I am sensibly obliged to you for making the
payment convenient to me, and will send you the Pags. 5500
next week with my Bond for the Balance payable in
Febry. —

I am
Dear Sir
your most Obedt. humble Servant
/Signed/ Alexr. Cuthbert

William Petrie Esqr.

True Copy
/Signed/ G. Taylor
Dept. Regr.

True Copy
/Signed/ Hy. Dupuy
Attorney Repltr.

N.4

Dear Sir

I promised you three days ago to write about fixing the day, to pay the balance I owe to the Estate of Mr. Readhead all; I have been able to do, in my way of Collection is to get about 500 Pagodas — wch I send you now by the bearer - for which you will please to give me a Receipt in part payment - I will not beat rest, till I have closed the said concern, & as Money come you will permit me to send it to you & I hope, at the close of this Month, also to close the Acct I have with the said Estate at farthest, I am still little indisposed which makes me keep at home; or else I would wait on you

The 16th Novr 1778

William Petrie Esqr

I am Dear Sir
your Most Obedt humble Servant
/Signed/ Antonio De Souza

True Copy
/Signed/ G. Taylor
Deptz Regr

True Copy
/Signed/ Hy Dupuy
Attorney Repltes

N.5

Dear Sir.

I have received your letter of this day I am sorry as I cannot this day point out the early day possible to me with any certainty to discharge the balance of my Bond to the Estate of Mr. Readhead, I am Obliged to you and the other Executors for the Attention & I shall not fail in the course of Tomorrow or the Day day after to Acquaint you, the day I shall pay the aforesaid balance in such manner; I am realy sorry not being in my power to do it, as could not subject a days delays, for the Adjustment, of that Account & its payment wch would afford me a very great satisfaction — I am very glad to learn, you are well; I have not been so well as I would wish for few days past, but, to day I am good Deal better and did go out; I shall soon take an Opportunity to call on you

Madras
the 12. Novr 1778

To William Petrie Esqr

I am Dear Sir
Your most Obedient humble Servt
/Signed/ Antonio De Souza

True Copy
/Signed/ G Taylor
Deptz Regr

True Copy
/Signed/ Hy Dupuy
Attz Repltes

N.6

Madras the 3. Novr 1778
at 12 Clock Noon

Dear Sir.

Your letter as Executor to the Estate of the deceased John Mr Readhead demanding the payment of my Bond for Pags 3734 . 9 . 50 at ten P Cent Interest thereon from the 1st of January 1778 I received this Morning here wch came back from Cuddalore I arrived from my Journey yesterday - I have on Account of the said Bond, on the 26th July 78. paid Mr Readhead as

To

N.4

Dear Sir

I promised you three days ago to write about fixing the day, to pay the balance I owe to the Estate of Mr. Readhead all; I have been able to do, in my way of Collection is to get about 500 Pagodas — w.ch I send you now by the bearer - for which you will please to give me a Receipt in part payment - I will not beat rest, till I have closed the said concern, & as Money come you will permit me to send it to you & I hope, at the close of this Month, also to close the Acct I have with the said Estate at farthest, I am still little indisposed which makes me keep at home; or else I would wait on you

I am Dear Sir
your most Obedt. humble Servant
/Signed/ Antonio De Souza

Madras
the 12th Nov.r 1778

To William Petrie Esq.r

True Copy
/Signed/ G. Taylor
Dep.ty Reg.r

The 16th Nov.r 1778

William Petrie Esq.r

True Copy
/Signed/ H.y Dupuy
Attorney Repl.ts

N.5

Dear Sir,

I have received your letter of this day I am sorry as I cannot this day point out the early day possible to me with any certainty to discharge the balance of my Bond to the Estate of Mr. Readhead, I am Obliged to you and the other Executors for the Attention & I shall not fail in the course of Tomorrow or the Day day after to Acquaint you, the day I shall pay the aforesaid balance; I am realy sorry not being in my power to do it, as could not subject a days delays, for the Adjustment, of that Account & its payment w.ch would afford me a very great satisfaction — I am very glad to learn, you are well; I have not been so well as I would wish for few days past, but, to day I am good Deal better and did go out; I shall soon take an Opportunity to call on you

I am Dear Sir
Your most Obedient humble Serv.t
/Signed/ Antonio De Souza

True Copy
/Signed/ G. Taylor
Dep.ty Reg.r

/Signed/ H.y Dupuy
Att.y Repl.ts

N.6

Madras the 3. Nov.r 1778
a 12 Clock Noon

Dear Sir.

Your letter as Executor to the Estate of the deceased Mr. John Readhead demanding the payment of my Bond for Pag.s 3734.9.50 at ten P.Cent Interest thereon from the 1.st of January 1778 I received this Morning here w.ch came back from Cuddalore I arrived from my Journey yesterday - I have on Account of the said Bond, on the 26th July 78. paid Mr. Readhead as

This Receipt Pags 2000 I owe now Pagodas 1734 . 9 . 50 with the Interest on the Principal which I hope to pay you in few days as soon as I can collect in little Money & beg you will allow me a Convenient time to do it, for which I shall be Obliged to you

I am Dear Sir
Your most Obedient humble Servant
/Signed/ Antonio De Souza

To William Petrie Esqr.

True Copy
/Signed/ G. Taylor
Dpt. Regr.

True Copy
/Signed/ Hy. Dupuy
Attz Reptt.

True Copies
S. Topham
S. Stuart Hall
Solicitors for Appellant

To

To the Honble the Mayors Court at Madraspatnam

In the Cause of Henry Readhead, George Readhead by his Attorney Henry Readhead and Thomas Readhead by his Attorney Josias Dutre Porcher Surviving Legatees under the last Will and Testament of John Readhead deceased Complainants, and James Henry Casamajor William Petrie and Alexander Brodie Executors of the last Will and Testament of the said John Readhead Defendants

The humble Petition of Benjamin Roebuck Senior Merchant in the Service of the United Company of Merchants of England Trading to the East Indies under their Presidency of Fort St. George, and Acting Attorney or Agent for the said William Petrie

Sheweth

That the above named Complainants did on the Twelfth day of December Which was in the year of Our Lord One thousand Seven hundred and Eighty Eight file a Bill

This Receipt Pags 2000 I owe now Pagodas 1734 . 9 . 50 with the
Interest on the Principal - which I hope to pay you in few days, as soon
I can collect in little Money & beg you will allow me, a Convenient
time to do it, for which I shall be Obliged to you

I am Dear Sir
Your most Obedient humble Servant
/Signed/ Antonio De Souza

To William Petrie Esqr.

True Copy
/Signed/ G. Taylor
Deptd Regr

True Copy
/Signed/ Hy Duprey
Attr Reptie

True Copies
S. Topham
/Signed/ S. Stuart Hall
Solicitors for Appellant

To

To the Honble the Mayors
Court at Madraspatnam

In the Cause of Henry Readhead, George
Readhead by his Attorney Henry
Readhead and Thomas Readhead by
his Attorney Josias Dutre Porcher
Surviving Legatees under the last Will
and Testament of John Readhead deceased
Complainants, and James Henry
Casamajor William Petrie and
Alexander Brodie Executors of the last
Will and Testament of the said John
Readhead Defendants

The humble Petition of Benjamin Roebuck
Senior Merchant in the Service of the United Company of
Merchants of England Trading to the East Indies under their
Presidency of Fort St. George, and Acting Attorney or Agent for
the said William Petrie

Sheweth

That the above named Complainants did on the
Twelfth day of December Which was in the year of Our
Lord One thousand Seven hundred and Eighty Eight file a
Bill

Bill of Complaint in this Hon^ble Court against the above named Defendants William Petrie and Alexander Brodie and for certain Causes to the Complainants best known did on the Twentieth day of January in the present year of Our Lord One thousand Seven hundred and Eighty Nine file an Amended Bill to which the said William Petrie on the third day of February then following and last past put in his Answer and did shortly after depart from Madras for Europe —

your Petitioner Sheweth that the said William Petrie in his said Answer followed all the several charges in the said Bill of Complaint contained and explained his conduct therein so as to clear himself as he hoped, and your Petitioner hopes from the said charges to the Satisfaction of this Hon^ble Court —

Your Petitioner further Sheweth that on the fifth day of May last past the Complainants filed a Replication and thereto annexed certain Letter said to contain a Correspondence between the said William Petrie and certain Creditors of the Estate of the said John Readhead and did in the said Replication insert a partial Extract from an Examination charged to have been had before the Hon^ble the House of Commons of Great Britain whereform and from the said Letters it is implied that the said William Petrie hath stated matters in his Answer which are contradicted by the said Correspondence and Examination —

your Petitioner Sheweth that he hath Examined all the Papers letters and Books of the said William Petrie and he has not been able to derive therefrom that Explanation of the matters in Question which he is persuaded the said William Petrie could give for clearing his conduct fully in the premises —

Your Petitioner therefore prayeth that this Hon^ble Court will be pleased to grant unto the said William Petrie two years time to file a Rejoinder or to Amend his Answer on payment of Costs as to the said William Petrie may be most advisable and in the latter case your Petitioner prays that Archibald Montgomery Campbell Ross Mill Ross and John James all of London Esquires or any two of them may be appointed Commissioners to swear the said William Petrie to such Amended Answer as he may be advised to make in the above Cause —

A true Copy
Signed S. Popham
S. Stuart Hall
Solicitors for Appellant

In.

In the Hon^ble the Mayors Court at Madraspatnam

In the Cause of Henry Readhead & George Readhead by his Attorney Henry Readhead and Thomas Readhead by his Attorney Josias Du Pre Porcher Surviving Legatees under the last Will and Testament of John Readhead Deceased Complainants and James Henry Casamaijor William Petrie and Alexander Brodie Executors of the last Will and Testament of the said John Readhead Defendants

The Affidavit of Benjamin Roebuck Senior Merchant in the Service of the United Company of Merchants of England trading to the East Indies under their Presidency of Fort Saint George

The above named Benjamin Roebuck maketh Oath and saith that he is the Acting Agent or Attorney of the above named William Petrie and that he hath read the Replication filed on the fifth day of May last by the Complainants in the above Cause which containeth Certain Letters and other new matters charged against the said William Petrie and whereof no mention hath been made in the Bill of Complaint or in the Answer of the said William Petrie filed and sworn by the said William Petrie on the third day of February last past previous to his the said William Petries departure for Europe

This Deponent further saith that he hath very carefully Examined into all the Papers of the said William Petrie and he hath not discovered any Paper Writing Memorandum or other information to enable this Deponent to Answer to such new matter as is contained in the said Replication or to form such a Rejoinder as may explain the conduct of the said William Petrie in so full a manner as the charges require and as this Deponent only believes the said William Petrie could do if at Madras or when furnished with a Copy of the said Replication

/Signed/ Benj^n Roebuck

Sworn in Court this 1st day of September 1789 before me /Signed/ W^m Webb Mayor

A true Copy
Signed { S^r Popham / S^r Stuart Hall
Solicitors for Appellant

Extract

Extract from the Minutes of a Court Held at the Town Hall on Friday the 18th. Day of September Anno Domini 1789.

Present

William Webb Esquire Mayor
James Call Edward Garrow
Vincentio Corbett Andrew Ross
Robert Mitford James Landon
John Mitford and Henry Chichley Michell

Aldermen

Henry Readhead George Readhead by his Attorney Henry Readhead and Thomas Readhead by his Attorney Josias Du Pre Porcher Surviving Residuary Legaties under the last Will and Testament of John Readhead Deceased

Wm. Petrie Alexander Brodie and James Henry Casamajor

Extracts from the Minutes of the 18th. August and 1st. September Read

Petition and Affidavit of Mr. Benjamin Roebuck filed 1st. September Read

The Court having taken the same into consideration it is Ordered, that the Petition of Mr. Benjamin Roebuck be thrown out with Costs, The Prayer of the same being highly irregular, and it is further Ordered that Issue do Join between the Complainants and the Defendant William Petrie

Issue Joined

Day is given the Parties Complainants and the Defendant William Petrie till one Week to Examine Witnesses

A true Extract

/Signed/ James Taylor Regr

To

To the Honble John Holland Esquire
President in Council
Fort St George

In the Honble the
Court of Appeals

Between Henry Readhead George
Readhead by his Attorney Henry Readhead
and Thomas Readhead by his Attorney Josias
Du Pre Porcher Surviving Residuary Legatees
under the last Will and Testament of John
Readhead Deceased Complainant and
William Petrie and Alexander Brodie
Executors of the said John Readhead
Deceased Defendants

Filed in my office
the 29th Decr 1739
Chr N. White
Clk

The Answer of the above named Complainants
to the Petition and Appeal of William Petrie one of
the above named Defendants—

These Respondents do admit that they did Exhibit their
Bill of Complaint against the said William Petrie and Alexander
Brodie Executors of the said John Readhead Deceased in the
manner and for the purposes in the said Petition and
Appeal

Appeal set forth and they do also admit that the said William
Petrie did Answer thereunto in the like manner therein
also set forth, and they do also admit that they these Respondents
did on or about the fifth day of the Month of May in this
present year of Our of Lord One thousand Seven hundred
and Eighty Nine file a special Replication to the said
Answer— These Respondents do also admit that the said
William Petrie did depart from Madras for Europe, leaving
for any thing they these Respondents to the contrary know
Benjamin Roebuck of Fort Saint George Esquire his Agent
or Attorney for the Management of his Affairs during his
absence— And these Respondents shew, that soon after
filed their said Replication on the said fifth day of May
they did pray the usual Rule for the said William Petrie
to Rejoin, and several Peremptory Rules did Issue from
time to time in Order that the said Petitioner should
Rejoin, and under pretence that he the said Petitioners
Attorney might have time to search the Books Accounts
Letters Vouchers and instructions deposited by the said
William Petrie with his said Attorney previous to his
Departure for the purpose as is now pretended of procuring
materials necessary to Rejoin to the said Replication—

And

And these Respondents do not admit, but deny that thier said Replication did not maintain their said Bill of Complaint or that it did materially or otherwise depart therefrom or that it contain true matter, because Copies of the Examinations before the Committee of the House of commons and certain letters were thereto annexed — Because the said Matters are in support of thier said Bill and in contra= =diction of the said Answer, by Shewing that the said William Petrie had been an Active Agent in the Executorship of the said last Will and Testament of the said John Readhead — which he had in his Answer positively denied —

These Respondents say that the said Benjamin Roebuck might for any thing they know to the contrary have Examined the Books Letters Vouchers and Instructions of the said William Petrie, and that he might not be able, nor is it likely that he should be able therefrom to procure Materials to Rejoin to the said Replication, because the materials for him to Rejoin were in fact the matter set forth therein and could not be else where found — These Respondents do also admit that the said Benjamin Roebuck did on or about the first day of September last past Exhibit and file a Petition in the said Honble Mayors Court setting forth that these Respondents had on the Twelfth day of December One thousand Seven hundred and Eighty Eight filed a Bill of Complaint in the said Court against the said William Petrie and Alexander Brodie and that these Respondents had on the Twentieth day of January in this present year of Our Lord One thousand Seven hundred and Eighty Nine, Amended their said Bill, and that the said William Petrie did on the third day of February then following, or thereabouts put in his Answer thereto and did shortly afterwards depart from Madras to Europe — But these Respondents do say that the said William Petrie did follow all the several charges in the said Bill of Complaint contained and Explained his conduct therein, so as to clear himself, nor could he hope thereby so to do, from the said Charges thereof, Because that he did deny in several parts of his said Answer that he had Acted in the Executorship of the Will of the said John Readhead — The falsity whereof these Respondents did detect by Adverting to and charging the said William Petrie in their Replication with sundry Acts done and Transacted by him as an Executor as Appears by the said Petition and Appeal —

And

And these Respondents do admit that they did file their said Replication, on the said fifth day of May and did annex thereunto a certain Correspondence Between your Petitioner and certain Debtors of the Estate of the said John Readhead and these Respondents did also annex an Extract from an Examination charged to have been had before the Honble House of commons of Great Britain, wherefrom these Respondents do admit and charge in the very words of the said Petition and Appeal, it is not only implied but Shewn, that the said William Petrie had stated matters in his Answer, which were contradicted by the said Correspondence and Examination And the said Benjamin Roebuck did in the said Petition also set forth that he had examined all the Papers, Letters, and Books of the said William Petrie and had not been able to derive therefrom that explanation of the matters in question - which he pretends he was persuaded the said William Petrie could give for clearing his conduct fully in the premisses - which these Respondents do not conceive it possible for the said William Petrie to do

That the said Benjamin Roebuck did upon these unwarrantable Grounds, make a most unreasonable prayer to the said Mayors Court, two years time to file a Rejoinder or to Amend his Answer or payment of Costs as to the said William Petrie might be most adviseable and in the latter case the said Petition did pray that Archibald Montgomary Campbell Ross Mill Ross and John James all of London Esqrs or any two of them might be Appointed Commissioners to Swear the said William Petrie to such Amended Answer as he might be advised to make in the above Cause - a Copy of which said Petition is very unnecessarily annexed - And these Respondents shew that they admit that the said Benjamin Roebuck did at the same time file an Affidavit - And these Respondents Shew that the said Petition and Affidavit came on to be heard before the said Honble Mayors Court on the Eighteenth day of September last past - when the said Court taking the same into consideration were pleased to Order and did Accordingly Order that the same should be dismissed with Costs and that Issue should Join - as the same appears by Copy of the said Order of Court, annexed unto the said Petition and Appeal but these Respondents shew that the said Court did not ground their said Order upon the said Petition and Affidavit, but upon their Records of the Number of Peremptory Rules that had already been granted and particularly upon their Orders of the Eighteenth day of

of August and the first of the said Month of September last past Copies whereof these Respondents pray to annex unto this their Answer — And these Respondents say that the said William Petrie cannot be injured by the said Order of the said Court of the Eighteenth of September last past for Issue to Join and the Reasons given for ground of Appeal therefrom are Vague and futile and merely calculated to give colour to delay —

And to the First these Respondents say that the said Extract of an Examination before the House of Commons is not a departure from the said Bill, but in pursuance and support of it — as it goes to support by that Replication and by the Act of the said William Petrie, what he was charged with in the said Bill — and which he had in a particular manner denied in his Answer — And these Respondents say that the Authority the Petitioner hath looked back for into Cokes Commentary upon Little ton and that of Chancery practice are neither connected in themselves nor in point with the present matter before the Court —

To the Second — These Respondents say that the letters Copies of which are annexed altho not before the Set forth in the Bill — are matters in point and are pointedly applied to such Matters — and are made necessary by the denial of the Facts charged in the Bill — And the said Exhibits do tend to combine and strengthen the facts contained in the said Bill — and of course are not foreign in themselves — altho they may be foreign to the said William Petries Answer — which these Respondents are allowed to do away and disprove by every lawfull ways and means —

To the Third These Respondents do deny that the said Exhibits charged as the facts of the said William Petrie or such as were occasioned by and as his interference and Active management in the Estate of the Deceased, did give rise to, were not brought forward with a view of taking the advantage of the said William Petries Situation — or that he is unable defend himself by furnishing Instructions as might confute the intentions of these Respondents — For no one can Justly complain of being injured by his own Act and Deed — These Respondents did give the said William Petrie every Opportunity by the Interrogatories they annexed to their Bill to Answer the charges of his having acted as an Executor in General or particular instances in the Affirmative or the negative — His having Answered to them in the Negative — Occasioned the necessity of producing the said several Exhibits to maintain their Bill and disp-

the

the Answer – and the said William Petrie is at liberty to allow of the truth of the said Exhibits or to deny them by his Rejoinder And these Respondents say that they have dealt with great Candor towards the said William Petrie by Shewing him the said Exhibits in their Replication, because he derives therefrom a knowledge of the grounds on which they in great Measure mean to support their Evidence and it is the practice of the Mayors Court to produce Exhibits that are meant to be brought forward as Evidence of themselves or of any Collateral matter – as part of the proceedings – In order that the parties may come to a fair Issue – as it is not the practice of this Court to agree to the matters in Issue – whereto Witnesses are to be &c produced at the hearing of a Cause before or after Issue Joining or to give Notice of the matters to which each party means to produce Evidence – but the matters in Issue are set forth in the proceedings and the several parties Examine Witnesses to such parts as they may be advised will tend to secure them the Object of their Contention – And these Respondents say that if they had not produced the said Exhibits in their proceedings in the manner they have done – It would have been a Just Cause of Objection According to the practice of the Mayors Court to the producing the same as Evidence at the hearing of the Cause – because the said William Petrie would at that &c time say – That he did not know of the said Exhibits, that if they had been made part of the proceedings he would have had an Opportunity of doing them away by his pleading or &c contraverting them by Evidence – These Respondents therefore say that every Advantage has been given to the said William Petrie by producing the matters contained in the said Exhibits Because he may admit or deny them or otherwise construe them to his own benefit and purpose if he is able so to do – And these Respondents say therefore that the Petitioners &c prayer for the said William Petrie to have two years to put in an Answer can be for no purpose but to contradict what he hath before confessed therein, which these Respondents say the Court will not certainly allow for obvious Reasons And these Respondents therefore pray that this Honble Court &c will be pleased to confirm the Order of the Mayors Court for Issue to Join and dismiss the Petitioners Petition with Costs not to be paid from the Assetts of the Estate but out of his own pocketts

Signed Hy Duffy
Attorney Respondts

Extrax

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 18th. day of August Anno Dominis 1789

Present

William Webb Esqr. Mayor

Andrew Ross & John Mitford

Aldermen

Henry Readhead Georgr. Readhead by his Attorney Henry Readhead & Thomas Readhead by his Attorney Josias DuPre Porcher Surviving Legaties under the Last Will and Testament of John Readhead Deceased

Vrs

William Petrie Alexr. Brodie & Jas. H. Calsamajor

The Attorney for the Complainants informs the Court that many Peremptory Rules have Issued for the Defendants William Petrie to Rejoin which he has neglected doing he therefore prays that Issue may Join in this Cause and a Rule pass for the Examination of Witnesses to which the Opposite Attorneys object by reason that there are many Copies of Letters annexed to the Replication and as the Defendant has left no Instructions with his Attornies Respecting the same it will require some time to search the Defendants Papers before they can complete the Rejoinder they therefore pray a further time of fourteen days may be allowed them - Ordered Accordingly - further Day is given for William Petrie till the 1st. September next to Rejoin &c. indefault of which Issue will be Joined in this Cause & a Day pass for the Examination of Witness —

A true Extract

Signed G. Taylor Dpt. Regr.

True Copy

Signed H. DuPuy

Attorney Respondt.

Extract

Extrat from the Minutes of a Court Held at the Town Hall on Tuesday the 1st. day of September Anno Dominis 1789

Present

William Webb Esqr. Mayor

James Call, Andrew Ross &

James Landon.

Aldermen

Henry Readhead George Readhead by his Attorney Henry Readhead & Thomas Readhead by his Attorney Josias DuPre Porcher Surviving Residuary Legaties under the last Will and Testament of John Readhead Deceased —

Vers

William Petrie, Alexander Brodie, and James H. Casamajor —

Mr. Henry Dupuy the Attorney for the Complainants prays that Issue may Join in this Cause as to the Complainants and the Defendants William Petrie and James Henry Casamajor who have appeared and Answered: and a Rule pass for the Examination of Witnesses — Mr. Popham Attorney for Mr. James Henry Casamajor consents to the Joining of Issue between the Complainants and him, but Mr.

Mr. Stephen Popham and James Stuart Hall Attornies for the Defendant William Petrie Object to Issue being Joined between the Complainants and the Defendants William Petrie, and in support thereof pray leave to file a Petition and Affidavit of Mr. Benjamin Roebuck the Acting Agent or Attorney of the said William Petrie Petition filed, Affidavit of Benjamin Roebuck Sworn to in Court and filed this day, Petition and Affidavit Read — The Attorney for the Complainants objects to any further time being allowed to the Defendant William Petrie to file a Rejoinder as many peremptory Rules have already passed the last on the 18th of last Month at the suggestion of the Attorneys for the Defendant on whose behalf fourteen days only were then Prayed to put in a Rejoinder, the said Attorney therefore pray that the Petition and Affidavit of Benjamin Roebuck may be over Ruled and that Issue may Join in this Cause between the Complainants and the Defendant William Petrie for want of a Rejoinder — Ordered that Issue do Join between the Complainants and the Defendant James Henry Casamajor and it is further Ordered that the Consideration of the motion for Joining Issue between the Complainants and

and the Defendant William Petrie do stand over till next Court day and that the Bill, answer of William Petrie Repliation and the Petition and Affidavit of Benjamin Roebuck with the Extracts from the Minutes of the 18th. ultimo & this day be sent round for the perusal of the Members—

Issue is Joined between the Complainants and the Defendant James Henry Casamajor

Day is given the Complainants and James Henry Casamajor till the 8th. Instant to Examine Witnesses—

A true Extract

/Signed/ G. Taylor
Dep.ty Regr.

True Copy
/Signed/ Hy. Dupuy
Attorney Respondent

Court

Court of Appeals

at

Madraspatnam

Saturday the 26th day of April Anno Domini 1794.

Between William Petrie of Fort Saint George Esquire Appellant and Henry Readhead, George Readhead by his Attorney Henry Read-head and Thomas Readhead by his Attorney Josias DuPre Porcher Surviving Residuary Legatees under the last Will and Testament of John Read-head Deceased Respondents

The Attorney for the Appellant having moved for leave to withdraw his Appeal, and the

Attorneys

Attorney for the Respondent having consented thereto —

Ordered Accordingly

Hur

/Signed/ Chas N. White
Clk

Saturday