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General No. 12085

Capt Lawrence VI.

Schools & Land Mayors Land Agencies

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Saturday the 24th. day of May 1794.

Present,

Sir charles Oakeley Baronet,

Ernst William Falbofiela & George Westcott Esqrs.

To the Honble Sir Charles Oakeley Baronet,

President in Council &c.

For St George.

In the Court of Appeals
at Madraspatnam

Between Codumpauheer Ponnapen
Moodelliar of Madras Inhabitant
Complainant and Ponnapan of the same
place Inhabitant Defendant,—

The Humble Petition and Appeal of the
abovenamed Defendant,

Sheweth.

That on the thirteenth day of March in the
present year of Christ one thousand Seven hundred and
Ninety three the above named Complainant did Exhibit
and file a Bill of Emplaint in the Mayor's Court
of Madraspatnam against your Petitioner for the recove
of the Sum of fifty five Pagodas Twenty Two fa
and forty Cash charged to be due and owing to the
Complainant
ioner,

Filed in my Office
the 27th. May 1793.
Chas. H. White
Clk.

Read

Complainant by your Petitioner upon an Account Current
arising due upon a pretended Bond, and which
Bond was said to be granted and Executed by
your Petitioner unto the said Complainant a Copy of
which said Account Current was annexed to the
Complainants said Bill of Complaint — your Petr
Sheweth that the Complainant having at the time
of filing his said Bill of Complaint sworn to the
Justness of his Pretended demand against your
Petitioner and likewise that he had heard and did
verily believe the truth so to be that your Petitioner
was about to depart from the Jurisdiction of the said
Mayors Court of Madraspatnam a Summons
and Warrant did in consequence immediately Issue
from the said Mayors Court directed to the
Sheriff of Fort St George Town of Madras-
patnam and the districts thereof to Seize upon
and take the Body of your Petitioner into his
Custody and to bring him before the said Mayors
Court to answer the Complainants said Bill of
Complaint your Petitioner sheweth that having
been afterwards informed of the unjustifiable proceedings
of the said Complainant your Petitioner did
accordingly tender and put in good and Sufficient

Bail

Bail on the Second day of April last past and thereby
being at liberty did appear in the said Court by his Attorney
at Law on the Ninth day of the said Month of April
to answer the Complainants said Bill of Complaint for which
purpose your Petitioner did put himself to the Expence
of procuring the usual attested Copies of the Complainants
said Bill and affidavit filed against your Petitioner
And your Petitioner sheweth that the usual Rules
did thereupon Issue and that previous to the time
allowed for answering the same could Expire your
Petitioner did by his said Attorney at Law on the
Seventh day of this Instant may agreeable to the
practice of the said Court pray that the Complainant
should be ordered to produce and lodge into the
Registery thereof the pretended Bond on which he the
Complainant had pretended to found his right of action
against your Petitioner for his inspection as it was
necessary for your Petitioner to peruse and inspect
the same before he could prepare his Answer to the said
Bill and your Petitioner Sheweth that on the
next following Court day being the fourteenth day of this
Instant May the said Complainant did by his Attorney
at Law produce in Court the said Bond as prayed
for by your Petitioners Attorney but before your Petitioner

Coud

Could have a perusal of the same and thereupon prepare
his answer to the Suit to wit on the instant of
producing the said Document the Attorney for the
Complainant did thereupon produce a Certificate from
the Register of the said Court Setting forth that the usual
Rules had issued for your Petitioner to answer
the Complainants said Bill and that no Answer
was filed the said Attorney for the Complainant
did therefore pray that a Decree should pass against
your Petitioner to which prayer of the Attorney for
said Complainant your Petitioners Attorney did
object and prayed the said Court to extend to your
Petitioner the usual further time of one Week to prepare
his answer to the said Bill but which usual
indulgence was refused and a Decree did accordingly
pass against your Petitioner to his great Injury to wit
on the Said fourteenth day of this present Month of May
Ordering and Decreeing that your Petitioner should pay
unto the said Complainant the full and just Sum of
fifty five Pagodas Twenty two fanams and forty Cash
together with the Interest due or which might grow
due thereon also all Costs of the Suit as will more fully
and at Large appear by the Copy of the said Order or
Decree of the said Mayors Court hereunto annexed

for

for the Inspection of this Honble Court to which your
Petitioner craves to refer and prays the Same may be
taken as part of this his Petition of Appeal. —

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 according to the circumstances of the Case
for a Defendant to put in his Answer therefore your
Petitioner humbly Submitteth that no Prejudice could
have happened to the Complainant by granting a
further time for your Petitioner to file his Answer

Your Petitioner therefore and for the
Reasons aforesaid 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 of the Complainants and that the
Complainant may pay all Costs of this Appeal. —

/Signed/ Wilkinson
Solicitor for Appellant

Extract

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 14th. Day of May Anno Domini 1793. —

Present,
John Mitford Esqr. Mayor,
Andrew Ross and Fly Chz. Michel
Aldermen, —

Columbaukum Ponnapah Moodelliar,
vers
Ponnapen,

The Attorney for the Complainant delivers ent. Court the Original Bond with translate thereof marked No. A as prayed for by the opposite Attorney,

The Attorney for the Complainant produces to the Court a Certificate from the Register Setting forth that the Usual Rules have issued for the Defendt. 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 a further time of One Week to Answer — 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 Complainant the full and Just Sum of Fifty five Dogs, Twenty two fanams and forty Cash / Pagodas 55. 22. 40. / 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
Regt.

A True Copy
/ Signed / Wilkinson
Solicitor for Appellant —

To

To the Honble Sir Charles Oakeley Bart
President in Council &c.
Fort St George.

In the Court of appeals
at Madraspatnam

Between Codumbaukum Ponnapa
Moodelliar of Madras Inhabitant
Complainant and Ponnapan of the
Same place Inhabitant Defendant

The Answer of Codumbaukum Ponnapan
Moodelliar the above Named Complainant to the
Petition and Appeal of Ponnapan the abovenamed
Defendant.

This Respondent Admits that
Some time on or about the Thirteenth day of March
in the present year of Our Lord One thousand Seven
hundred and Ninety three he did Exhibited and file
his Bill of Complaint with an Account Current in
the Honble the Mayors Court against the appellant
for the recovery of the Sum of Fifty five Pagodas
Twenty two Fanams and forty Cash justly due and
Owing to him from the appellant and as a proof
thereof and to Substantiate the Same did Refer
to a

Filed in my Office
the 22d June 1793
Chas. H. White
Clk

to a Bond Executed by the appellant to this Respondt
and to an Account Current arising thereon a Copy of
which said Account Current was Annexed to the
Complainants said Bill of Complaint and this Respondt
Admits that at the time of filing his Said Bill of
Complaint he swore to the Justness of his demand
against the Appellant and that he had heard
and did Verily believe the truth so to be that the
Appellant was about to depart from the Jurisdiction of
the Said Mayors Court of Madraspatnam and that
a Summons and Warrant did in Consequence immediately
Issue from the Said Mayors Court directed to the
Sheriff of Fort St George Town of Madraspatnam
and the District thereof to Seize upon and take the
Body of the appellant into his Custody and to bring
him before the said Mayors Court to answer the
Said Bill of Complaint — and that the appellant
did put in Bail on or about the Second day of
April last past the said Appellant then did by his
Attorney in Court appear but this Respondent does not
admit as the Appellant has asserted the fact to be
that he the appellant would have put in an answer
to this Respondents said Bill of Complaint on the
contrary this Respondent Verily believes that althoug

the

appellant might have taken out an attested
Copy of the said Bill and affidavit filed against
the said appellant that he the appellant did mean
only to keep alive the litigation and harrass and
Vex this Respondent with delays to the utmost of
his power — And this Respondent further Answering
Says he admits that the usual Rules for Answering
the said Bill of Complaint did issue but denies
that previous to the time allowed for Answering
the same could have Expired that the appellant
did by his attorney at Law pray that this Respondent
then Complainant should be ordered to produce
and Lodge into the Registery of the said Mayors
Court the said Bond on which this Respondent
had found his right of action against the
said appellant for his the said appellants
Inspection or that it was necessary for the —
appellant to peruse and inspect the same before
he could prepare his Answer to the said Bill
— And this Respondent further Answering
Says he admits that on the next following Court
day being the fourteenth day of May last past
he this Respondent did by his attorney in Court
produce the said Bond as prayed for by the said

Appellt

appellants attorney and no answer being on that day
filed to this Respondents said Bill of Complaint
the attorney for this Respondent did thereupon produce
not only a Certificate from the Register of the said
Court Setting forth that the usual Rules had issued
but also that a further time of one Week had been
granted over and above the said usual Rules
and that at the Expiration thereof /to Wit/ the said
fourteenth day of May last past 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 full and just
Sum of Fifty Seven Pounds Twenty two Shillings
and forty Cash together with the Interest due or
which might grow due thereon and also all Costs of
Suit as does more fully and at large appear
by a Copy of the said Decree Annexed to the
Petition of the appellant for the Inspection of
this Honble Court and to which this Respondent
begs leave to refer but this Respondent denies
that by Such Order and Decree of the said
Mayors Court the appellant was or can be —
aggrieved or that he has any good Cause of
Appeal therefrom Because in like Cases it is

not

not the usual Practice of the said Mayors Court to grant a further time for a Defendant to put in his answer for this Respondent begs leave to Shew to this Honble Court that although the said Mayors Court do sometimes upon good cause Shewn grant an indulgence over and above the usual Rules in matters of Accounts Current unsettled yet they are much more rigid and Seldom grant any indulgence whereas in the present Case the Suit is brought upon a Bond but the appellant notwithstanding the Premises did receive from the said Mayors Court the indulgence of One Week beyond the said usual Rules as hereinabove Set forth — And this Respondent denies that no Prejudice could have happened to him by granting further time to file his Answer and for this very plain an evident Reason that this Respondent would then for a Considerable length of time have been debared from obtaining the Decree abovementioned and Consequently the Sum thereby Decreed from the said appellant to this Respondent. And that the said appellant hath no one foundation whatsoever for an appeal to this Honble Court. — Because the Bill of Complaint of this

(5)

this Respondent was filed on or about the thirteenth day of March last past and the Decree of the said Mayors Court did not pass thereupon till on or about the fourteenth day of May following a period fully Sufficient to enable the appellant to furnish his Attorney at Law with Instructions to defend a Suit brought upon his Bond, —

For all which Reasons and for as much as the Petition and Appeal of the appellant, Manifests a very unbecoming Spirit of litigiousness and an unwarrantable Wish and desire to put off the Payment of a Just and lawfull Debt to the prejudice of this Respondent this Respondent therefore humbly prays that the said Decree of the said Mayors Court so made and passed as aforesaid may be affirmed with exemplary Costs as well to punish the appellant for such his litigiousness as to prevent and deter others from filing such Appeals which only tend to delay if not to prevent Justice & to take up the time of this Honble Court with unnecessary Matters and further that this Honble Court will be pleased to grant such further and other Relief in the Premises as to them shall Seem meet. —

/Signed/ Gilbt Recher
Sol[r] for Respondt

Court

Court of Appeals
at
Madraspatnam } Fort Saturday the 21st. day of May
Anno Domini 1796

Between Connapan of Madras Inhabitant
Appellant and Coumbaukum Connapah
Moodelliar of the Same place Inhabitant
Respondent. ——

This Cause coming on this day to be heard and debated
before this Court by the Attornies on both Sides upon hearing
the Petition of Appeal and Answer and the Several
Exhibits of the Honble the Mayors Court together with the
Decree of the said Court given in this Cause on Tuesday the
14th. day of May Anno Domini 1793 upon due Considera-
tion had of the Matters therein Severally Contained and of the
Pleadings and Arguments used by the Attornies on both Sides
This Court doth think fit to Order and Decree and doth
accordingly Order and Decree that the said Decree of the
Honble the Mayors Court dated the 14th. day of May
Anno Domini 1793. be Reversed and that the further
time of fourteen days from this 21st. day of May Anno
Domini 1796 be given the Appellant to Answer the
Respondents Bill of Complaint in the Honble the
Mayors Court and each party paying his own Costs in
this Court. ——

D Hurr
Signed / Robert Clerk
Clk.

5

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

Between John Whitehill by his attorney Michel Topping Complainant and Elias Minas Surviving Executor of John Galdar deceased by his attorney Arathell Dionisius Defendant.

The Petition and appeal of the above named Defendant,

Sheweth, That on or about the Ninth day of December which was in the year of Our Lord One thousand Seven hundred and ninety one the Complainant above named did Exhibit and file his Bill of Complaint in the Mayors Court of Madraspatnam against your Petitioner for the Recovery of the Sum of four thousand Eight hundred and Seventeen Pagodas four fanams and Six Cash Current money of Madras Thereon and thereby setting forth that on the Sixteenth day of October which was in the year of Our Lord One thousand Seven hundred and Eighty your Petitioners said Testator did give unto the Complainant a Sett of Bills of Exchange consisting of four in Number with a Letter of Advice annexed to each of the Same tenor & date

Filed in my Office the 25th. June 1793
Chas N. White Clk

Date drawn on Johannes De Jacob Galdar and Jacob Galdar Johnson of Amsterdam Merchants payable at Ninety days after sight to the order of the Complainant for the Sum of Eight hundred Pounds Sterling or two thousand Star Pagodas as by the Copy of one of the said Bills of Exchange and of the Endorsements thereon with the Letter of Advice annexed to the Complainants said Bill of Complaint the Complainant did say would fully appear that he the Complainant did not then pay any Money for the said Bills of Exchange but did pass a Bond of defeasance to your Petitioners Said Testator payable in Eighteen Months from the date thereof on condition that in case the said Bills should not be duly honored but returned protested then and in that Case the said Bond of the Complainant granted to your Petitioners said Testator and the said Bills of Exchange granted by your Petitioners said Testator as aforesaid Should be cancelled. That he the Complainant remitted the Said Bills to Europe and on the presentment of one of the Said Bills to wit the Second Bill of Exchange to the said Johannes de Jacob Galdar and Jacob Galdar Johnson the persons on whom they were drawn for acceptance they Refused to accept the Same under pretence that they had not received proper advice although the Complainant did Charge that a Letter of Advice was annexed to the said Bill as aforesaid. That the Complainant in Consequence

of

of such refusal to accept the said Bill did on the Twenty first day of August which was in the year of Our Lord One thousand Seven hundred and Eighty one protest the same at Amsterdam for non acceptance and non payment as by Copy of the Translation of the said protest to the Complainants said Bill of Complaint Annexed the Complainant did say would appear.—

And your Petitioner Sheweth unto this Honble Court that the Complainant did further State that about the begining of the said Year of Our Lord One thousand Seven hundred and Eighty one he Embarked for England and that his the Complainants Attornies in Europe did Neglect to return the said Bills and the protest made thereon to Madras for the purpose of cancelling the said Bond of the Complainant to your Petitioners said Testator the Consequence of which had been that your Petitioners Testator after a lapse of two years and before any advice had been received whether the said Bills were paid or not did call upon Alexander Brodie the then Attorney of the Complainant and who was also one of the Collateral Securities Jointly with Robert Andrews on behalf of the Complainant for payment of the said Bond unto your Petitioners said Testator

and

and demand the payment thereof asserting as the Complainant did pretend that the said Bills had been duly honored the said Alexander Brodie did thereupon from a Confidence that the Assertion of your Petrs said Testator was well founded Especially as no notice had been received of their being protested did on the fifth day of November which was in the year of Our Lord One thousand Seven hundred and Eighty two discharge the said Bond with Interest after the rate of eight per Cent per Annum Amounting to the Sum of two thousand three hundred and Twenty nine Pagodas out of the funds of the Complainant then in the hands of the said Alexander Brodie and took up the Complainants said Bond with a receipt or discharge from your Petitioners said Testator on the back thereof and which the Complainant did say would morefully appear by Copies of the Complainants said Bond and the Engagements Entered into by the said Alexander Brodie and Robert Andrews as Securities for Payment of the said Bond and also by the Receipt or discharge from your Petitioners said Testator to the Complainants said Bill Annexed. That after his the Complainants arrival in England the said Bills had been for Some time mislaid but being afterwards found John Stewart of London Merchant the Complainants

then

then agent in London during the Absence of the Complainants did Some time in the year of Our Lord One thousand Seven hundred and Eighty Eight address a Letter as the Complainant understood and believed altho he was not in the possession of any Copy thereof unto the House of Messrs Guita & Company at Amsterdam requesting them to present a Second time the said Bill to the said Johannes de Jacob Galdar and Jacob Galdar Johnson for payment thereof which was done accordingly and the said Bill was returned protested a Second time with a Letter from the House of the said Guita and Company as by Copies of the said Second protest under date the Twelfth day of December One thousand Seven hundred and Eight and of the Letter to his Bill of Complaint annexed the Complainant did say would appear. — That by the Letter of the said Guita and Company the Complainant did say it was evident that the said John Galdar did not appear to be a Creditor of the said Johnnes de Jacob Galdar and Jacob Galdar Johnson and therefore the Complainant did charge that your Petitioners said Testator at the time he drew the Said Bills in favor of the Complainant would have known that he had not any funds in the hands of the said Johnnes de Jacob Galdar and Jacob Galdar Johnson

and of Course he would have Expected the said Bills to be dishonored and protested and therefore the acts of your Petitioners said Testator in drawing the said Bills at a time when he knew he had not any funds with the persons on whom he drew the same and afterwards on having demand and received the amount of the Complainants said Bond of defeasance before any notice was received whether the said Bills were honored or not were the Complainant did say very illegal and dishonorable and manifested an Intent in the first instance to defraud the Complainants That the said John Galdar departed this life some time in the Year of Our Lord One thousand Seven hundred and Eighty Six but that before his death he made his last will and Testament in Writing and did thereby Nominate Constitute and appoint Seth aviet Philipus Jacob and your Petitioner his Executors. That the said Jacob Pettum having renounced his right of Executorship and your Petitioner being at Bengal the said Seth= =aviet the Complainant did say proved the will of your Petitioners said Testator in the said Mayors Court and obtained probate thereof and took the sole manage= =ment and direction of the Estate and Effects of your Petitioners said Testator that as soon as the Complainants attornies were informed that the said Bills were protested

Protested they made repeated applications to the said Seth=
=aviet as the acting Executor as the Complainant did pretend
of your Petitioners said Testator to refund the Money's
so received by your Petitioners said Testator on account
of the said Bond the said Bills of Exchange having
been protested as aforesaid but that the said Sethaviet did
avoid coming to any Settlement whatever making many
pretences and frevolus excuses and in the meantime the
said Seth aviet did depart this life that thereupon Anna
Seth aviet Widow of the said Sethaviet did pray for and
obtain from the said Mayors Court Letters of administra=
=tion to the Estate of the said Sethaviet by which means
the Estate and Effects of your Petitioners said Testator
also fell into her hands that your Petitioner on being
informed of the death of the said Seth aviet did apply
to the said Mayors Court for probate of the Will of your
Petitioners said Testator and duly obtained the same
on or about the third day of February One thousand Seven
hundred and Eighty Nine as by reference to the Records
of the said Court the Complainant did say would appear
That the said Anna Sethaviet did on or about the
Twenty fifth day of October last — file in the said
Mayors Court an Inventory account Sales and account
Current of the Estate and Effects of your Petitioners said
Testator

Testator and did in the said account Current Confess
that a Balance of three thousand Six hundred and
fifteen Pagodas and four fanams was in her hands
belonging to the Estate of your Petitioners said Testator
That Arakel Dionisies of Madras Merchant as the
attorney of your Petitioner did on or about the Twenty
Ninth day of November last past obtain a Decree
from the said Mayors Court against the said Anna
=Seth aviet to receive all the Estate and Effects from
the hands of the said Anna Sethaviet that the Estate
of your Petitioners said Testator was indebted unto
the Complainant in the Sum of four thousand Eight hundred
and Seventeen Pagodas four fanams and Six Cash
as by the account annexed to the Complainants said
Bill of Complaint would appear which the Complainant
did in and by his said Bill of Complaint pray the
said Mayors Court would Decree to be paid into him
from your Petitioners said Testator Estate and
Effects together with all interest due or to grow due thereon
also all Costs of the said Suit or if the Estate of your Petrs
Said Testator did not Exceed more than the said Sum of
three thousand Six hundred and fifteen Pagodas and four
fanams according to the balance of the account Current
delivered by the said Anna Seth aviet that your Petitioners

might

might be decreed to pay the same in part of the Complainants Claim and to pay the Balance thereof whenever he should have received further Assets on account of the Estate of your Petitioners said Testator.—

And your Petitioner Sheweth unto this Honible Court that to the Complainants said Bill of Complaint he did Exhibit and file his Plea and Answer in the said Mayors Court and therein and thereby not Confessing or Acknowledging all or any of the Matters and things in the Complainants said Bill of Complaint contained to be true in such manner and form as the Same were therein and thereby Charged and Alledged for plea in the said Bill did Say that the Scope and end of the Complainants Bill was to compel your Petitioner to pay unto the Complainants the Sum of Four thousand Eight hundred and Seventeen Pagodas four fanams and Sixty Cash by him pretended to have grown due in consequence and by reason of certain Bills of Exchange said to have been drawn by your Petitioners said Testator in his life time on Johnnes de Jacob Galdar and Jacob Galdar Johnson Merchants of Amsterdam and payable at Ninety days Sight and your Petitioner did say that although the Complainant had alledged in and by his said Bill of

Complaint

Complaint that one of the said Bills that is to Say the Second Bill of Exchange was presented to the said Johnnes de Jacob Galdar and Jacob Galdar Johnson the persons on whom they were drawn did refuse to accept the Same and that in consequence the same was protested for non acceptance yet your Petitioner did Say that such protest did not appear nor did it appear further than by the naked Allegation of the Complainant as aforesaid that the said Bill ever was presented to the said Johnnes de Jacob Galdar and Jacob Galdar Johnson for acceptance either by the Complainant or any one for him and for as much as by the Custom of Merchants a Bill does not become due unless presented for acceptance your Petitioner did plead the Same in Bar to the Complainants said Bill and to the relief thereby ought to be obtained & did demand the Judgment of the said Mayors Court thereon whether he ought to make any further or other Answer to the Complainants said Bill of Complaint and your Petitioner for further Plea did say that it appeared by the Complainants said Bill of Complaint that the said Bill of Exchange was protested for non payment and that it was so protested on the Twenty first day of August which was in the year of our

Lord

Lord One thousand Seven hundred and Eighty One
and that instead of returning the same with the protest
thereon immediately to your Petitioners said Testator
the Complainants agent in England did mislay the Same
and that after a lapse of Seven years and upwards that
is to say on the Twelfth day of December One thousand
Seven hundred and Eighty Eight the Complainants said
agent did again protest the said Bill for payment
to the Assignees of the Estates of the said Johannes de Jacob
Galdar and Jacob Galdar Johnson who did refuse payment
thereof and that thereupon the Same was a Second time
protested and it further appears by the Complainants
own Shewing that during the interval aforesaid that is
to say between the said Twenty first day of August
which was in the year of Our Lord One thousand Seven
hundred and Eighty one the day on which the first
protest was made for non payment as aforesaid and the
said twelfth day of December which was in the years
of Our Lord One thousand Seven hundred and Eighty Eight
the day on which the said Second protest was made the
said Johannes de Jacob Galdar and Jacob Galdar Johnson
had become Bankrupts and for as much as According to
the Custom of Merchants the Holder of a Bill in order
to make the drawer liable should or non payment

thereof

thereof Enter a formal protest and transmit the same to the
drawer of the said Bill for the Equitable purpose by the
said Custom of Merchants meant and intended that is
to say that the Drawer might have an Opportunity of
Securing his property in the hands of the Drawers by
Such means as should be in his power and for as much
as the Complainant did not return the said Bill
protested to your Petitioners said Testator but did
hold over and detain the same in his hands for a
Considerable Number of years after the same had been
protested as aforesaid and thereby if the said protest for
non payment had been regular according to the Custom of
Merchants so as to bind your Petitioners said Testator
as the Drawer thereof did deprive your Petitioners said
Testator of the fair and honest advantage of Securing
his property against the said Johannes de Jacob Galdar and
Jacob Galdar Johnson And for as much as every man is to
Suffer for his own Wrongs arising from his own Laches
your Petitioner doth plead such the Laches of the
Complainant as aforesaid in Bar of the Complainants said
Bill and the Relief thereby sought And did demand the
Judgment of this Honble Court whether he made ought to
make any further or other Answer thereto And your Petr
for further plea did Say that if the Complainant ever had any
right of action against your Petitioner as Executor as

aforesaid

aforesaid or against his said Testator in his lifetime
for or concerning the Said Bills of Exchange or for or to
concerning any other matters transactions or dealings in the
Complainants said Bill of Complaint mentioned whether your
Petitioner did in no Sort admit the Same did accrue
or arise above Six years before filing the Said Bill
and above Six years before Serving your Petitioner
with any other process to appear to and answer the Same
and your Petitioner for further plea did say and aver the
truth so to be that he did not at any time within Six
years before filing the Complainants said Bill of
Complaint nor within Six years before your Petr
was Served with process to appear and answer thereto
ever promise and Agree to come to any Account for
or to pay or any way Satisfy the said Complainant
any money for or concerning the said Bill of
Exchange or for or concerning any other matters &
transactions or dealings in the Complainants said Bill
of Complaint Charged or alledged and therefore your
Petitioner did plead the Act of Parliament or State of Limitations
passed in the twenty first year of the Reign of King
James the first and prays the benefit of the said Act of
Parliament for limitation of actions and against demanded
the Judgment of the said Mayors Court whether he
Should be compelled to make any further or other Answer
to

to the Complainants said Bill of Complaint and humbly
prayed to be thence dismissed with his reasonable Costs
and Charges in that behalf wrongfully Sustained and
your Petitioner not waiving his said Pleas or either
of them but wholly relying thereon for Answer to Such
part of the Complainants said Bill of Complaint as had
not been pleaded unto by your Petitioner did Answer
and Say that he had heard and verely believed the fact so to be
that at the time his Testator had drawn the Bills of Exchange
upon which he the Complainant had commenced his then action
that he had funds in the hands of the said Johannes de Jacob
Galdar and Jacob Galdar Johnson Sufficient to answer the
amount thereof and for as much as your Petitioners said
Testator had not received the amount of the said Bond
said to have been executed by the Complainant untill many
Months after the time limited for payment thereof had expired
thereby Evincing the most upright intentions and fair and
honorable Conduct towards the Complainant for your Petitioner
did say that it appeared by the Complainants own Shewing
first that the said Bond was executed on the Sixteenth
day of October which was in the year of our Lord One thousand
Seven hundred and Eighty and payable in Eighteen months
and Secondly that the amount in and by the said Bond
conditioned to be paid was not paid to your Petitioners said

Testator

Testator until the Month of November which was
in the year of Our Lord One thousand Seven hundred and
Eighty two and thereupon your Petitioner did deny the
Allegations in the Complainants said Bill of Complaint
contained that the Acts of your Petitioners said Testator
were either illegal or dishonorable or that they manifested
an Intent in the first or any instance to defraud the
Complainant and your Petitioner further Answering did say
he admitted that his said Testator might have
departed this Life some time in the year of Our Lord
One thousand Seven hundred and Eighty Six and that
before his death he did make his last will and Testament
in writing and that he did thereby Constitute and appoint
Sethaviet Philipus Jacob and your Petitioner his
Executors and your Petitioner did admit that the Said
Philipus Jacob Sethaviet did renounce his right of
Executorship but your Petitioner did say that the said
Sethaviet never did take out probate thereof and so the
fact would appear on reference and which your
Petitioner did humbly pray might be had to the
Records of the said Mayors Court in its Ecclesiastical
Capacity although your Petitioner did say that the said
Sethaviet did pass himself of the whole of the property of the
said Estate and did act and do therein as your Petitioner
doubted not

doubted not of proving to the Satisfaction of this Honble
Court as if he had taken out probate of the said will
And your Petitioner further answering did say that he
never heard nor had he ever been informed further
than as the same appeared in and by the Complainants
Said Bill of Complaint that the Attornies of the
Complainant did ever make any application to the
said Sethaviet in any wise Regarding or relating to
the Said Bill of Exchange in question and your
Petitioner did admit that the said Sethaviet departed
this life and that Anna Sethaviet his Widow did
obtain Letters of Administration to his Estate and that
She did obtain possession of the Estate and Effects of
your Petitioners said Testator and your Petitioner
did admit that Subsequent to the death of the said
Sethaviet he your Petitioner did duly obtain from
this Honble Court in its ecclesiastical Capacity probate
of the said will on or about the time in the
Complainants said Bill for that purpose Set forth
and your Petitioner did admit that the said Anna
Sethaviet did take upon himself to Exhibit and
file in the Said mayors Court a paper Writing
purporting to be an Inventory Account Sales and
Account Current of the Estate and Effects of your
Petitioners said Testator and that she the said

Anna

Anna Sethavet did therein and thereby confess that a Balance of Three thousand Six hundred and fifteen Pagodas and four fanams was in her hands belonging to the Estate of the said John Paldar and your Petitioner Admits that he died by his attorney Arahell Dionisius obtain a Decree of the said Mayors Court against the said Anna Sethavet to receive all the Effects from the hands of the said Anna Sethavet belonging to his said Testator and further your Petitioner did say that he did upon the said Decree obtain Execution but that Shortly before the same was Executed the said Anna Sethavet did as your Petitioner has been informed and Verily believes the fact to be the said Sum of three thousand Six hundred and fifteen Pagodas and four fanams to the Sheriff or otherwise put it into his the said Sheriffs power in order that he the said Sheriff might Sequester the Same and the said Sheriff accordingly did Sequester the Same under a Writ of Sequestration issuing out of the said Mayors Court in the present Suit and the Same was then with held from your Petitioner as Executor as aforesaid under an Order of the said Mayors Court although your Petitioner humbly Submitted that the Same ought to have been delivered up to him upon Entering his appearance to the Complainants said Bill because your Petitioner did

did say he was advised that a Sequestration upon meane process was merely to Compel the appearance of a Defendant and that upon the appearance the Sequestration became Superceded as a matter of course and because upon your Petitioners appearing to the Complainants said Bill of Complaint the only objection made on the part of the Complainant was that your Petitioner should not be allowed to Enter an appearance until he had previously given Bail which objection the said Mayors Court was afterwards pleased to Over rule but at the same time did order that the said Sum seized under the Sequestration should remain deposited in the Company's Treasury until a Decree should be given and your Petitioner did humbly Submit to the said Mayors Court the Severity of the Case because thereby he was prevented from discharging the trust imposed on him by his Testator and enjoined by his Oath as executor inasmuch as he is prevented from paying off debts as the Law directs as far as the Estate Extends and further that your Petitioner was deprived of the benefit of the Law in his favor which permitted an Executor to pay himself in preference to other Creditors of the Same degree and your Petitioner did say he was advised that a Bill of Exchange was considered as a simple Contract debt and thereupon your Petitioner did say that he was by

Law

Law Entitled to pay off and discharge to himself a debt due
to him from the Estate of his testator even if the said Debt
had been legally and fair and bona fide due to the Complainant
for your Petitioner did say that the Estate of his said Testator
was justly and truly indebted unto him if your Petitioner in
the Sum of four thousand four hundred and forty Sha
Pagodas thirty one fanams and Seventy Cash arising
out of and made up from a Settled account between your
Petitioner and his said Testator as by the Exhibits marked
A and B to his said Answer annexed for the inspection
of the said Mayors Court to which your Petitioner did by-
leave to refer and pray the Same might be taken as
part of this his Answer would Appear. —

And your Petitioner Sheweth unto
this Honble Court that to your Petitioners said Plea
And Answer the Complainant did file his Replication
and did therein amongst other things say that altho he
could not then bring Substantial proof that the Second
Bill of Exchange drawn by your Petitioners Said
Testator was presented to Johannes de Jacob Galdar and
Jacob Galdar Johnson on whom it was drawn And that they
refused to accept the same and in consequence it was
protested on the Twenty first day of August which
was in the year of Our Lord One thousand Seven hundred

And

and Eighty one yet that the fact was so but that however
was a matter of little consequence for that the said Bills of
the said Bills of Exchange was drawn on the Sixteenth
day of October which was in the year of Our Lord one
Thousand Seven hundred and Eighty and the first
protest was dated the Twenty first day of August
One thousand Seven hundred and Eighty One by which
it evidently appeared that he the Complainant did not
neglect to remit the said Bills to Europe as Soon as
opportunity offered nor did his Attorney Neglect to send
the said Bill to Amsterdam for acceptance and payment
all which the Complainant did Say were done without any
Neglect omission or Laches on the part of the Complainant
or his attorney but that afterwards the Said Bill
and protest having been Mislaid their return to this
Country was delayed for Some time that he the
Complainant did not expect that your Petitioners
Testator would have been so dishonest as to Call
on this Repliants attorney at Madras for the
Payment of this Repliants Bond of defeasance
when instead of having reason to believe his said
Bills were honored he must have been conscious
that they would not have been accepted as it appeared
he had not any funds in the house on which he drew

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And the Complainant did further say that it was unimportant to the matter in agitation before the said Mayors Court at what period of time the Said Johannes de Jacob Galdar and Jacob Galdar Johnson became Bankrupts while it appeared that the said John Galdar was never a Creditor of the said Joannes de Jacob Galdar and Jacob Galdar Johnson and even if your Petitioners Testator had any funds in the hands of the said Johannes de Jacob Galdar and Jacob Galdar Johnson at the time he drew the said Bill he should not have received the Amount of his the Complainants Bond of defeasance whereon he knew that Such Bill Existed at the time undischarged and Even unaccepted but the Complainant did Say contrary to the truth that your Petitioners said Testator from the first had an intention to defraud him the Complainant and had the Conduct of your Petitioners said Testator been fair and honorable he would not have acted in the manner he had done and the Complainant did further say that even supposing your Petitioners testator had funds in the hands of the said Johannes de Jacob Galdar and Jacob Galdar Johnson and that he did not receive any notice at the time he received the money from him the Complainants attorney at Madras whether the said Bills were paid or not yet that your Petitioners Testator

Testator did not depart this life until the year of Our Lord One thousand Seven hundred and Eighty Six which was four years after he received the said Money from the Complainants attorney and during the said period of four years he certainly must have been acquainted as the Complainant did pretend by the Said Johannes de Jacob Galdar and Jacob Galdar Johnson that the Said Bills were protested and in that case if your Petitioners said Testator had been a Man of upright conduct he certainly would have refunded the Money — and the Complainant in reply to that part of the plea where your Petitioners did plead the Law of Merchants respecting the necessary protests to be made without delay in Cases of non acceptance and default of payment did Say that the said Law was for the protection of Indorsers against absolute Claims by Indorsers whereby the Remedy against the Drawer or acceptor might be prejudiced but that the Drawer was always liable and in reply to the plea of the Statute of Limitations the Complainant did Say that the Statute did not apply to the Cause in Question as one of the parties was beyond Sea at the time besides it happened that by the death of the Said Joannes Galdar in the year of Our Lord One thousand Seven hundred

and Eighty Six there was not a lapse of time of Six years while the demand remained in any one Situation and it also appeared that his the Complainants Attornies in Madras did use their deligence with the Said Seth aviet the Executor as the Complainant did pretend of the said Johannes Galdar for recovery of the said Bill as soon as they were instructed so to do, and as to the argument about Sequestration being only to enforce an appearance tho the Same was generally true yet it did not apply to that Case for that the said Mayors Court had determined that the Money of your Petitioners Said Testator Seized under a Sequestration in the Cause should remain till the further order of the Said Court. — And the Complainant did further say that from the peculiar circumstances of the Case your Petitioner could not altho he was an Executor pretend to have a preference to the Complainant especially as the debt which your Petitioner pretended to be due to him by his Testator was disputed by the Said Seth aviet in his life time which he did say he hoped to prove to the Satisfaction of the said mayors Court and that had the Estate of the said John Galdar been actually indebted to your Petitioner he would not have suffered a Balance of about four thousand

Pags

Pagodas which the said Seth aviet then had in his hands to remain so far Near Six years but the fact was as the Complainant did pretend that the Said Seth aviet disputed the debt of your Petitioner and acquainted him at the Same time that there was a Claim made on the Estate of the Said John Galdar by the attorney of the Complainant of a higher Nature than that of your Petitioner and that he the Said Seth aviet could not part with the said Balance from his hands until his the Complainants Claim was first discharged. —

And your Petitioner Sheweth unto this Honble Court that he did file a Rejoinder to the Complainants said Replication and did therein and thereby insist upon the Several Pleas Set forth (mallowed Pleas on his side) and did Shew that as the Complainant had replied thereunto and had not denied the facts therein insisted on that the Said Several Pleas were fully established and that they did operate in Bar to the Complainants said Bill of Complaint and your Petitioner did further say that his said Testator did not call upon the Complainants attornies for payment of the Bond by the Complainant granted on account of the said Bill of Exchange for many months after it had become due and although the said Bond was payable in Eighteen months yet

that

the same was not discharged unto your Petitioners said Testator until upwards of two years had Expired which your Petitioner did humbly Submit to the said Mayors Court Sufficiently did away the insinuation in the Complainants Said Replication contained against the principles of your Petitioners said Testator And your Petitioner did deny that it any where appeared that his said Testator had not any funds in the house upon which he had drawn the Said Bills of Exchange and although the Repliant had asserted that it did appear that he had not any funds in the said house yet he had not shewn how or in what manner & where the Same did so Appear that the Said Bill was made payable in Eighteen Months and therefore, your Petitioners said Testator was Intitled to demand payment thereof at the Expiration of that period, but instead of so doing he Suffered upwards of Twenty four months to elapse before he required the Attornies of the Complainants to take up the said Bond and discharge the Amount thereon due and that as the Said Space of two years was more than Sufficient for Advice from Europe relative to the said Bills of Exchange and as it appeared that no Account thereof during that time was transmitted either to your Petrs

said

Said Testator or to his the Complainants Attornies so far from knowing that the said Bills had not been accepted your Petitioners said Testator had every reason to believe they had been paid and so must the Complainants Attornies have believed or they would not have discharged the Complainants said Bond and which your Petitioner did say was the more evident from the Words of the Engagement at the foot of the said Bond granted by those very Attornies who so paid the Amount thereof to Wit. We do engage to become Security for the within Bond and to pay the Same to Mr. John Galdar or his Order upon proof being produced that the Validity for which the said Bond has been granted being Bills of Exchange has been paid Signed J. A. Brodie Robert Andrews and thereupon and upon the Several matters and things in your Petrs Said Rejoinder and in his said Answer contained as well as from the Complainants own Shewing in and by his said Bill of Complaint and the Exhibits thereunto Annexed your Petitioner did say that the Assertion in the Complainants said Replication contained that your Petrs Said Testator from the first had an intention to defraud him the Complainant was totally Void of any foundation in truth that your Petitioners said Testator having drawn Bills of Exchange on the said Johannes de Jacob

Galdar

Galdar and Jacob Galdar Johnson And therewith granted the
Usual Letter of Advice he had nothing further to say thereon
to them the said Drawers but according to the usage & Custom
of Merchants in the like Cases looked to the Complainant
for any information and intelligence relative thereto And
further that if the Complainant did not Write to his the
Complainants attornies at Madras any Letter on the Subject
of the said Bill for the Space of two years your Pet.
did Submit to the said Court that he had no Reason to
imagine nor any ground whatever whereon to found the
Assertion that his said Testator Must have received a Letter
from the Said Johannes de Jacob Galdar and Jacob Galdar
Johnson as above Recited and your Petitioner did Say
that the Same reasoning Applied to the further insinua-
=tion of the Complainants in his said Replication &
Contained to the Estate of your Petitioners said Testator
made him an Executor in his own wrong and his own Estate liable
to the injuries sustained by the estate of your Petitioners said
Testator in consequence thereof.—

And your Petitioner Sheweth unto
this Honble Court that he did in and by his said Rejoinder
further and otherwise Support his said Answer in &
Opposition to and in Refutation of the Several Charges in
the Complainants said Bill of Complaint contained and

by

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by his said Replication insinuated urged and insisted on and
your Petitioner Sheweth unto this Honble Court that upon
the Pleadings had issue did join and Rules did pass for the
Examination of Witnesses and Witnesses were Examined &
Accordingly and publication did pass and your Petitioner
Sheweth that the only Witness Examined on the part of the
Complainant was one Philipus Jacob Was to the Second
Interrogatory proves the hand Writing of Seth Arviet in the
Pleadings Named to two Letters addressed to William Sydenham
in the Pleadings named as the Complainants Attorney &
to the third Interrogatory he deposes that your Petitioners
to the death of the Said Seth Arviet had Claimed from him
the Said Seth Arviet a Certain balance of an Account
Current with the Estate of the said John Galdar your
Petitioners said Testator that the Said Seth Arviet
did dispute the said Claim because the Account thereof
was not right and that there were other demands against
the Estate of the said John Galdar Acquainting your
Petitioner at the same time that there was a demand
by the said William Sydenham on the Estate of the Said
John Galdar of a higher Nature than that of your
Petitioner and your Petitioner Sheweth unto this
Honble Court that he did also Examine Witnesses in order
to prove and which your Petitioner did prove by the

best

Best possible witness that at the time of drawing the said Bills of Exchange your Petitioners said Testator had Sufficient funds in the hands of the Drawees to answer the amount thereof for your Petitioners Sheweth unto this Honble Court that he did Extract from the Books of his said Testator by which it appeared that in the year one thousand Seven hundred and Eighty your Petitioners said Testator had funds in the hands of the said drawees amounting to the Sum of Four thousand Seven hundred and Ninety nine Pagodas and your Petitioner Sheweth unto this Honble Court that Cachalar Lucas and Sarad Coja maul Armenian Merchants to the Second Interrogatory depose that the Account N1 produced them at the time of their Examination purporting to be an Account of the transactions and dealings which Subsisted between John Galdar deceased in his life time and Johannes de Jacob Galdar and Jacob Galdar Johnson and say that the same was taken from the Books of the said John Galdar: that the Accounts in the said Books were written in the hand writing of the said John Galdar that they the Deponents did compare and Examine the said Account with the said Books of the said John Galdar and that the same is a true Copy from the said Books and dinnis Philipus

Calender

Calender to the fourth Interrogatory proves the translation of the said Second Account Number 1. and the said Sarad Gjamaul to the third Interrogatory Says that he was well acquainted with John Galdar in his life time and with his Circumstances dealings and transactions and that he did know of Several Mercantile transactions which did Subsist from the Year One thousand Seven hundred and Seventy Six to the year One thousand Seven hundred and Eighty two between the said John Galdar in his life time and Johannes de Jacob Galdar Johnson and Jacob Galdar Johnson and particularly in the year One thousand Seven hundred and Eighty in which year he made considerable Consignments to them of piece Goods and your Petitioner Sheweth unto this Honble Court that the said Cause was Set down to be heard and did accordingly come on to be heard before the said Mayors Court on the Eleventh day of the present month of June and Year of Our Lord One thousand Seven hundred and Ninety three when the said Mayors Court was pleased to order and Decree and did Accordingly Order and Decree Specially the Mayor dissenting therefrom that your Petitioner do pay unto the Complainant out of the Estate and Effects of Johannes Galdar deceased your

Pet^{r}

Petitioners said Testator the full and just Sum of Two thousand three hundred and Twenty Nine Pagodas being the Amount principal without Interest and that each party do pay his own Costs as by the said Decree and dispositions whereof are hereunto Annexed for the inspection of this Honble Court to which your Petitioner begs leave to refer and pray the Same may be taken as part of this his Petition and appeal the Originals being Ready to be produced at the hearing may more fully and at Large appear.

By which said Decree of the Said Mayors Court your Petitioner doth conceive himself much aggrieved And doth therefore appeal thereof to this Honble Court for the following amongst other Reasons

1st. Because the said Decree of the said Mayors Court is Contrary to Law for as much as it is Evident that the Said Mayors Court did totally disregarded the Several pleas set up by your Petitioner and which your Petitioner humbly Submits to this Honble Court Jointly and Severally operate fully in Bar to any right the Complainant might have possessed if he ever did possess any right of Action Against your Petitioners testator and consequently against any right of Action he could have possessed against your Petitioner for your Petitioner begs leave to State that the first

Plea

Plea is upon the Custom of Merchants And Setsforth that the Complainant had not Shewn nor did it any where appear that the Bill of Exchange in question was Ever presented for Acceptance and as by the Custom of Merchants it is ruled that Bill never becomes payable that is not presented for Acceptance your Petitioner did plead the Same in Bar to the Complainants right of Action to which plea the Complainant did reply and did thereby admits that he could not produce Substantial proofs that the Bill was presented for Acceptance or that it was refused or that it was protested and your Petitioner is advised and humbly insists of your Petitioner did admit the same to be good in Law and by not producing the Protest for non Acceptance which he was bound to do or shew good and Sufficient Cause to the Contrary he did also admit the fact and your Petitioner is advised that even if the Bill had been presented for Acceptance and noted for non Acceptance that there would then have been a fatal defect for your Petitioner says that the Bill in question is a foreign Bill and he is advised and humbly insists thereon that in foreign Bills other formalities are required that in inland Bills and that noting for non Acceptance alone is not sufficient inasmuch as there must absolutely be a

protest

Protest to hold the parties liable and that when the Bill becomes due whether it is or is not accepted it must be again presented for payment and if payment be refused it must be protested for non payment — And your Petitioner begs leave to Shew to this Honble Court that his Second plea is also upon the Custom of Merchants and humbly insists that the Same does operate in Bar to any right the Complainant might at any time have possessed against your Petitioners said Testator for that the said Plea sets forth that the Complainant instead of Sending the protest upon the said Bill of Exchange as he ought to have done by the earliest opportunity did hold over the Same for the space of Seven years and upwards and then did present it a Second time for payment and the Drawees in the interim became Bankrupts your Petitioner did therefore plead such the Laches of the Complainant in Bar to the Complainants Right of action to which plea the Complainant did reply and did thereby admit the Same to be good in Law and your Petitioner Sheweth unto this Honble Court that this fact appears by his the Complainants own Shewing in and by his said Bill of Complaint for the therein shews that after the Bill was protested in the month of August and year of Our Lord One thousand Seven hundred and Eighty One his attorneys did neglect to Return

Return the said Bill and protest thereon to your Petrs said Testator and that after the Complainants arrival in England the said Bill had been for some time mislaid but being afterwards found his agent did sometime in the year One thousand Seven hundred and Eighty write to his Correspondents in amsterdam to present it a Second time and the protest in consequence bears date in the year One thousand Seven hundred and Eighty Eight and therefore your Petitioner humbly insists that his said Plea is good and Sufficient in Bar to the Complainants right of action & your Petitioner begs leave to Shew to this Honble Court that his said Plea was pleaded on the Statute of Limitations and that the same sets forth that if the Complainants had ever any cause of action against your Petitioner the same arose above Six years before the filing of the Complainants said Bill and asserts that as no demand had been made or promise given of payment thereof during that period by your Petitioner to which the Complainant did reply and did thereby admit the Same to be good in Law but did say that the Statute did not apply as one of the parties was beyond Sea And further that by the death of your Petitioners said Testator there was not a lapse of time of Six years which your Petitioner says is in the first place a total perversion of the Statute pleaded and in opposition to the meaning

and

And intent thereof and in the Second Instance the Complainant has Endeivoured to take an advantage of his own Wrong is Contrary to a Maxim in Law and Equity Contrary to the Statute pleaded and further your Petitioner Sheweth unto this Honble Court that his said plea is supported in fact by the Shewing of the Complainant to his said Bill of Complaint contained for he therein shews that the Bill was first protested on the first day of August One thousand Seven hundred and Eighty one and the Second protest is dated on the twelfth day of December which was in the year of our Lord One thousand Seven hundred and Eighty Eight upwards of Seven years during which time the Complainant held over the said Bills without giving any manner of notice to your Petitioners said Testator or to your Petitioner and therefore your Petitioner humbly insists that his said third plea is good and Sufficient in bar to the Complainants right of action and thereupon your Petitioner further humbly Submits to this Honble Court that the said Decree of the said mayors Court is contrary to Law and that your Petr. Very good and Sufficient Cause of appeal therefrom to this Honble Court for a reversal thereof.—

Secondly ——— Because the said Mayors Court had no foundation whereon to ground their Said Decree for your Petitioner humbly Sheweth unto this Honble Court that the

the Charges in the Complainants said Bill of Complaint contained or the most material part thereof forming the Gest of the action are altogether unfounded for the Complainant Charges that the Bill of Exchange in question was presented for acceptance and refused by the Drawees upon the Plea of their not having received proper advice whereupon your Petitioner says is that it appears by the Exhibits to the Complainants said Bill of Complaint annexed that the regular and usual and Customary Letter of advice did accompany each of the four Setts of the said Bill of Exchange and that it no where appears that the said Bills was ever refused acceptance upon the plea of the want of proper advice nor could such have been the Case as it does not appear that it ever was presented for acceptance and it appears by the Complainants own Shewing in the protest contained Copy whereof is to the said Bill annexed that so far from assigning any Reasons for not duly honoring the said Bill when offered for payment that the Drawees were not at home when the notary called at their house to present the said Bill for that purpose but that the Servant said he would deliver the Message and thereupon the said Bill was protested for non payment nor has the Complainant adduced a Single Witness in Support of his said Charge and the Second Charge

of

of the Complainant in his said Bill of Complaint contained that the Bill was protested for non acceptance and non payment on the Second day of August One thousand Seven hundred and Eighty one is also without foundation for upon reference to the Exhibits annexed to the Complainants said Bill of Complaint and therein and thereby referred to it appears that the only protest made on the said Bill on the Second day of August was for non non payment and that in fact according to the Complainants own Shewing there never was a protest for non Acceptance - And the third Charge of the Complainant in his said Bill of Complaint contained is equally unfounded for the Complainant therein Charges that the Bond granted by him to your Petitioners said Testator was paid off by his the Complainants attorneys upon the assertion of your Petitioners Testator that the said Bills had been duly honored whereas it no where appears that such Assertion was ever made by your Petitioners said Testator nor has the Complainant examined a Single Witness to Support the Charge And your Petitioner begs leave to Submit to this Honble Court that as the Bond was payable in Eighteen Months upon the Condition that in the interim the Bills were not returned dishonored and as it appears by the Complainants own Shewing that the said Bond was not paid off and discharged for upwards of Six months after it had become due

due it is fair to conclude from the premises that the amount of the said Bond was paid by the Complainants said attornies upon the full conviction that the Bills had been duly honored and this they had every right to Suppose as the Complainant had one year and three months from the protesting of the said Bill for non payment unto the day on which the said Bond was discharged and your Petitioner Sheweth unto this Honble Court that the fourth charge of the Complainant in his said Bill of Complaint contained is also without foundation for the Complainant thereby attempts to charge your Petitioners said Testator with fraud in that at the time your Petitioners said Testator did draw the Bills in question he had not any funds in the hands of the drawees and he the Complainant grounds Such his assertion upon a Copy of a Letter to his said Bill annexed pretended to have been written by and received from his attorneys Correspondent in Amsterdam which not having been proved your Petitioner is advised cannot be received in evidence but even admitting it might be. received in Evidence yet your Petitioner humbly Submits that it does not amount to any thing certain nor in the least supports the Complainants said Charge for the letter writer says "We are told that the drawer of the said John Baldan must have nothing from the mentioned

mass

Mass at least that he does not appear in the books that he is a Creditor for something" which your Petitioners Submits is merely hearsay and hearsay evidence Even upon Oath is of no manner of force or Validity and further your Petitioner says he has proved by the best possible evidence that about the time in the Bills in question were drawn your Petitioners said Testator had made large Consignments of piece Goods to the Drawees and by his Books that they had in their hands a balance due to your Petitioners said Testator of upwards of four thousand Seven hundred and Ninety nine Pagodas — and therefore your Petitioner humbly Submits to this Honble Court that the said Decree of the said Mayors Court is not grounded or Warranted by the facts before the said Mayors Court at the hearing and therefore your Petr. Submits to this Honble Court that he is thereby aggreeved and has good Cause of appeal therefrom to this Honble Court for the reversal thereof —

Thirdly ——— Because the most material Charges in the Complainants said Bill of Complaint contained were denied by the answer of your Petitioner and although the Complainant in and by his said Replication did insist upon their being well founded yet he did afterwards abandon them inasmuch as he did not examine any Witnesses in Support thereof

And

and it is the course of Courts of Equity that where a Defendants answer upon Oath denies the Charges contained in the Complainants Bill it will require two witnesses to Support those Charges to Entitle him to a Decree and that unless such support be had no Decree can be given and further although the Complainant did abandon his Cause as aforesaid and although by reason thereof your Petitioner was not under the absolute necessity of Adducing any Evidence in Support of his said answer yet in order to evince the Rectitude of his Testators conduct he did Examine Witnesses to Shew that the imputations endeavoured to be thrown on his Charactor as a Merchant by the Complainant in and by his said Bill of Complaint and in and by his said Replication were Totally groundless — and your Petitioner did thereby fully prove by the best possible evidence that at the time his said Testator did draw the Bills of Exchange in question that he had made considerable Consignments to and had funds in the hands of the Drawees much more than sufficient to answer the amount thereof —

Fourthly, ——— Because your Petitioner was a Creditor of the Estate of your Petitioners said Testator to a Very large amount that is to Say in the Sum of four thousand four hundred and forty Six Pagodas thirty one fanams and Seventy Cash arising out of a stated account Current

between

Between your Petitioner and his said Testator in his
lefe time a Copy whereof was to your Petitioners said answer
Annexed and prayed to be taken as part thereof and which
was not in any wise denied by the Complainant and for
asmuch as an Executor by Law is Entitled to Retain his
own debt in preference to a creditor of an equal degree and
for asmuch as it appeared by the Complainants own shewing
that the Balance of the Estate of your Petitioners said
Testator upon the account Current delivered into the Said
Mayors Court in its Ecclesiastical Capacity by Anna Leth-
-aviet in the pleadings named was not nearly Sufficient
to pay off and discharge the Amount so due to your Petitioner
as aforesaid and as the said Decree of the said Mayors Court
does not take any Notice of your Petitioners right as
Recognized and Sanctioned by the Law by decreeing that your
Petitioner should be allowed to Retain his own debt which
your Petitioner Submits to this Honble Court the said Mayors
Court ought to have done but your Petitioner Sheweth
unto this Honble Court that the said Mayors Court so far
from rendering unto your Petitioner that Justice were
pleased to Decree only that your Petitioner do pay unto the
Complainants the Sum of Two thousand three hundred and
twenty Nine Pagodas and that each party do pay his
own Coste, and the Said Mayors Court have locked up

from

from your Petitioner the Said Sum of Three thousand Six
hundred and Eleven Pagodas and four fanams the amount
Balance of the Estate of your Petitioners said Testator as
appeared in the Account Current delivered into the said
Mayors Court in its Ecclesiastical Capacity by the said Anna
Leth aviet and which was Sequestered in the present Cause
upon the return of a non est inventus upon the first Summons
which had issued directing your Petitioner to appear to &
Answer the Complainants said Bill of Complaint and although
your Petitioner did afterwards and as soon as it lay in his
power so to do, appear to the Complainants Bill yet the said
Mayors Court would not allow the said Sequestered Money
to be delivered up to your Petitioner which your Petitioner
Sheweth is contrary to the practice of his Majestys High
Court of Chancery and to the Course of the said Mayors Court
in like Cases for your Petitioner begs leave to Submit to this
Honble Court that a Sequestration on meane process to
enforce the appearance of a Defendant to Answer the
Complainants Bill becomes superceded upon the appearance
of the Defendant who by such appearance cures the
contempt he was supposed to be in and for your Petitioner
further Submits to this Honble Court that your Petitioner
could not have been in contempt for that the Complainants
said Bill of Complaint was filed on the Ninth day of

Decr

December that the Summons thereon issued on the day
following and the writ of Sequestration was granted by
the said Mayors Court on the thirteenth of December the
Same Instant so that the Complainant at the time he
Obtained the said Sequestration was not entitled to an
appearance from your Petitioner and therefore the said
Writ of Sequestration was illegally obtained in as much
as by the Course of the said Mayors Court a Complainant
must give four Clear days between the filing of the Bill
and Return of the Summons thereon for an Appearance and
without which the Defendant is not held in Contempt nor
can a Warrant of contempt for non Appearance be awarded
against him and your Petitioner further Submits to
this Honble Court that your Petitioner has already
Sustained considerable loss and injury in the said Sum of
Three thousand Six hundred and fifteen Pagodas and
four fanams having been so locked up by the said
Mayors Court in as much as he has lost the Interest
thereof from December one thousand Seven hundred and
Ninety one unto the present time and your Petitioner
doth thereupon Submit to this Honble Court that the
said Decree of the said Mayors Court is contrary to Law
and that your Petitioner is greatly aggrieved thereby
and therefore has good Cause of Appeal therefrom to this
Honble

Honble Court for a Reversal thereof.—

For all which Reasons and such others
as may be offered at the Hearing your
Petitioner Most humbly prays that this
Honble Court will be pleased to Reverse
the Decree of the said Mayors Court
and Grant unto your Petitioner such
further and other Relief in the premises
as to this Honble Court Shall Seem
Meet.—

/Signed/ James Stuart Hall
Appellt S.C.

Mayors,

Mayors Court
at
Madraspatnam

Tuesday the 11th day of June
Anno Domini 1793,

(L2)

Present,
John Mitford Esqre Mayor,
James Call and Henry Chg. Mitchell,
Aldermen

Mayors Court

Between John Whitehill formerly of Fort St George but now of Europe Esqr. by his acting Attorney Michell Topping of Fort St George Merchant Complainant and Elias Meinal Heretofore of Madras Armenian Merchant Surviving Executor of John Galdas late of Madras Armenian Merchant Deceased Defendant,

This Cause coming on to be heard and Debated this day in the Presence of the Attorneys on both Sides on Reading the Complainants Bill with Copies of Six Exhibits Annexed Marked ABCDE & F Annexed the affidavit of Michael Topping the Defendants Plea and Answer with Copies of two Exhibits Marked A & B. Annexed the amended Replication the Rejoinder. The Interrogatories and Depositions on the part of the Complainant.

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Complainant with Six Original Exhibits Marked A A.B.B.D.& E. Annexed the Interrogatories and depositions on the part of the Defendant with Two Exhibits N.1 and 2 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 Three Hundred and Twenty Nine Pagodas / Pags. 2329. . / being the amount Principal without Interest and it is further Ordered and Decree that each Party do pay their own Cost,

Hour,

/Signed/ G. E. Atkin
Dy Regr.

A true Copy

/Signed/ J. S. Hall,
Appl.te Sol.r

Extract

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

Present,

John Metford Esqr. Mayor,
James Call, and Henry Sky. Michell,
Aldermen,

John Whitehill by his acting Attorney Michael Topping
Vers.
Elias Minas Surviving Executor of John Galdar Deceased,

The Mayor Dissents from the Resolution of the Court being of Opinion that the Bill ought to be dismissed.—

A True Extract

/Signed/ J. E. Aykin
Dy Regr.

Attrue Copy

/Signed/ J. S. Hall,
Appt. Sol.—

To

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

In the Honble the Court
of Appeals ——

Between John Whitehill by his attorney Michael Topping Complainant
and Elias Minas Surviving Executor
of John Galdar Deceased by his attorney
Arrakell Dionisius Defendant,

The Answer of the above Named John Whitehill by his attorney Michael Topping to the Petn. and Appeal of the above Named Defendant.—

This Respondent by way of Answer to the said Petition and Appeal or unto so much thereof as concerns this Respondent to make Answer unto saith that he admits to be true that this Respondent by his said attorney did at the time mentioned in the Petition and Appeal file a Bill of Complaint in the Mayor's Court at Madraspatnam against the appellant for the Recovery of the Sum of Four thousand Eight hundred and Seventeen Star Pagodas four Fanams and Six Cash And this Respondent further admits that he did in and by the said Bill of Complaint set forth the Several Matters & things

Filed in my Office
the 15th. August 1793
Chs. L. H. White
Dpty.

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things as are particularly stated and Setforth in the Appellants Petition and Appeal — To which said Bill of Complaint this Respondent admits that the Appellant by his said attorney Arnaldi Dionisius filed a Plea and Answer in the said Mayors Court and did therein and thereby Plead the Several matters and things as are setforth in the Appellants Petition and Appeal And this Respondent further Admits that the Appellant for Answer to Such part of this Respondents said Bill of Complaint as had not been pleaded unto by the Appellant did Answer in the Manner as is also Stated in the Petition and Appeal — This Respondent further Admits that he filed his Replication and the Appellant filed his Rejoinder in manner and form as are stated in the Petition and Appeal and that upon the Above mentioned Proceedings Issue was Joined and Witnesses examined after — Which Publication passed And this Respondent also Admits that the Witness produced on the part of the — Appellant did depose the Several matters and things as are stated in the said Petition and Appeal — And this Respondent also Admits that the Said Cause was set down for hearing and the Same came on to be heard on the Eleventh day of June last past by and before the said Mayors Court who were pleased to Order and Decree and did Accordingly Order and Decree

Decree that the Appellant do pay unto this Respondent out of the Estate and Effects of the said John Gildar the full and Just Sum of Two thousand three hundred and Twenty Nine Pagodas being the Amount principal without Interest and that each party do pay their his own Cost, —

By which Decree of the said Mayors Court this Respondent humbly contends that the said Appellant hath not in any respect whatever been injured nor had he any good or Substantial Cause or Reason to appeal therefrom for the following among other Reasons, —

In Answer to the Appellants four Reasons in Support of his Appeal this Respondent saith that he hath already in his Replication stated those Arguments which refute the grounds whereon the Appellant hath Advanced his Several Pleas in Bar to this Respondents Right of Action which Arguments are to the following purport and effect to wit. —

That the said Bills of Exchange were drawn on the Sixteenth day of October which was in the year of Our Lord one thousand Seven hundred and Eighty and the first protest is dated the Twenty first day of August one thousand Seven hundred and Eighty one by which it evidently appears that this Respondent did not neglect to Remit the said Bills to Europe as soon as Opportunity

offered

offered nor did this Respondents attorney neglect to send the said Bill to amsterdam for acceptance and Payment all which this Respondent saith were done without any neglect omission or Laches on the part of this Respondent or his attorney but afterwards the said Bill and Protest having been mislaid by this Respondents attorney in England their return to this Country was delayed for some time but this Respondent saith that he did not expect that the appellants Testator would have been so dishonest as to call on this Respondents attorney at Madras for the Payment of this Respondents Bond of defeasance when instead of having reason to believe his said Bills were honored he must have been conscious that they would not have been accepted as it appears he had not any funds in the house on which he drew, —

This Respondent saith that it is unimportant to the matter now in agetation before this Honble Court at what period of time the said Joannes de Jacob Galdar and Jacob Galdar Johnson become Bankrupts while it appears that the said John Galdar was never a Creditor of the said Joannes de Jacob Galdar and Jacob Galdar Johnson and even if the appellants Testator had any funds in the hands of the said Joannes de Jacob Galdar and Jacob Galdar Johnson at the time he drew

drew the said Bills he should not have received the amount of of this Respondents Bond of Defeasance when he knew that such Bills existed at the time undischarged and even unaccepted but the fact is that the appellants Testator from the first had an Intention to defraud this Respondent and had the Conduct of the appellants Testator been fair and honorable as the appellant had taken upon himself to vindicate / he would not have acted in the Manner he had done for this Respondent Saith that from the time he granted the said Bills to the time he received Money from Alexander Brodie then this Respondents attorney at Madras which is above Two years the appellants Testator must have received Letters from the said Joannes de Jacob Galdar and Jacob Galdar Johnson if they really had any funds in their hands belonging to the appellants testator / by which the appellants Testator must have been acquainted whether the said Bills were presented to the said Joannes de Jacob Galdar and Jacob Galdar Johnson or protested or whether they had still in their hands the funds of the appellants Testator in either of which Cases he should not have demanded and received from this Respondents attorney the amount of this Respondents Bond of defeasance this Respondent further Saith that even Supposing that the appellants

Testator

had funds in the hands of the said Joannes de Jacob Galdar and Jacob Galdar Johnson which this Respondent doth not admit and that he did not receive any Notice at the time he received the Money from this Respondents Attorney at Madras whether the said Bills were paid or not yet this Respondent Saith that the Appellants Testator died not depart this life until the year of our Lord One Thousand Seven hundred and Eighty Six which is four years after he received the said Money from this Respondents their Attorney at Madras and during the said Period of four years he certainly must have been acquainted by the said Joannes de Jacob Galdar and Jacob Galdar Johnson that the said Bills were protested and in that case the Appellants Testator had been a man of Upright Conduct he certainly would have Refunded the Money which he received from this Respondents Attornies — This Respondent in Reply to that part of the Petition and Appeal where he pleads the Laws of Merchants Saith respecting the necessary Protests to be made without delay in Cases of non Acceptance and default of Payment this Respondent Saith that the said Law is for the protection of Indorsers against absolute Claims by Indorsees whereby the Remedy against the Drawer or Acceptor may be prejudiced but he said that the Drawer is always liable and in Reply to

to the Plea of the Statute of Limitation this Respondent Saith the Statute doth not apply to this Case as one of the Parties was beyond Sea at the time besides it appears that by the death of the said Johannes Galdar in the year of our Lord One thousand Seven hundred and Eighty Six it appears that there was not a lapse of time of Six years while the Demand remained in any one situation & it also appears that this Respondents Attornies in Madras did use their deligence with the Said Seth= =aviet the Executor of the said Johannes de Jacob Galdar for Recovery of the said Bill as soon as they were instructed so to do — And in further Answer this Respondent Saith that the best proof which can be given Respecting all matters of Bills of Exchange is the Protest of the Merchant or Agent acting in behalf of the proprietor of a Bill of Exchange which protest is among the Exhibits in this Cause — And this Respondent further Saith that he admits his attornies did pay the Bond to the Appellants Testator but it was so paid under the conviction that the Bills of Exchange in question had been duly honored and as to the consignments which the Appellants Testator may have made to the Drawees at Amsterdam the first if proved can have no other Tendency as to the Merits of this Cause than to shew that the said

Johannes

Johannes Galdar did not draw the Bills without good
reason to expect they would be honored but as they were
not honored this Respondent is at present the Creditor of the
deceased to the Amount Charged in his Bill of Complaint
and this Respondent further Saith that he did examine
a Witness in this Cause to Support such Points which
were necessary to wit the demands frequently made by
this Respondents Attornies on Seth Avcet one of the
Executors Jointly with the Appellant to the Estate of
Johannes Galdar and the Answers of the said Seth Avcet
thereto also that on Answer to the Demands of the Appellant,
during the life time of the said Seth Avcet respecting the
Appellants Claim on the Estate of Johannes Galdar that
the Accounts whereon such Claims was founded were
not right and further that this Respondent had a
Claim of a Superior nature all which appears by the
Evidence of Philippus Jacob in this Cause. — And as
to the Argument about Sequestration being only to
enforce an Appearance tho the same be generally
true yet it doth not apply to this Case for this Honble
Court determined that the Money of the Appellants Testator
Seized under a Sequestration in this Cause should remain
till the further Order of this Honble Court therein in —
Consequence of the peculiar Merits of the Case which —

merits

Merits this Respondent stated in a Petition in Order
to obtain that Relief whereto and unto the Proceedings
and order of the Mayors Court therein this Respondent
prays reference and that he may have as full and ample
benefit therefrom as if the same were made part of
this Answer. —

To all which Reasons and Such others
as may be offered at the hearing this Respondents prays
that the said Decree of the Honble the Mayors Court
of the Eleventh day of June last be confirmed and that
the Petitioners said Petition and Appeal be dismissed
with Costs to be paid by the Appellant. —

/Signed/ Robert Williams for
Stephen Lapham & Self
Solicitors for the Respondent

Court

Court of Appeals
at
Madraspatnam

Saturday the 25th. day of May
Anno Domini 1794.

Between Elias Nevas of Madras
Armenian Merchant Surveying Executor
of John Galdar late of the Same place
Armenian Merchant deceased Appellant
and John Whitehill formerly of Fort St. George
but now of Europe Coast. by his Acting attorney
Michell Tapping of Fort St. George
Merchant 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 Cahebits of the Honble the Mayors Court together with the Decree of the said Court given in this Cause on Tuesday the 11th. day of June Anno Domini 1793. 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 but that each party do pay their own Costs.—

J Hurr / Signed / Robert Clerke Clk.

To

To the Kings Most Excellent
Majesty in Council,

Between John Whitehill by his attorney
Michael Topping Complainant and Elias
Minas Surviving Executor of John Galdar
deceased by his attorney Arathell Dionisius
Defendant,—

The Petition and Appeal of the above Named
Defendant,—
Most humbly Sheweth,

That on or About the Ninth day of December
which was in the year of Our Lord one thousand Seven
hundred and Ninety one the Complainant Above named
did Exhibit and file his Bill of Complaint in the Mayors
Court at Madraspatnam against your Petitioner for the
Recovery of the Sum of Four thousand Eight hundred &
Seventeen Pagodas four fanams and Six Cash Current
Money of Madras therein and thereby Setting forth
that on the Sixteenth day of October which was in the
year of Our Lord One thousand Seven hundred and
Eighty your Petitioners said Testator did give unto the
Complainant a Sett of Bills of Exchange consisting
of

Recd in my Office
the 6th June 1794
Robert Clerk
Clk

of four in number with a Letter of Advice Annexed to each
and of the Same tenor and date drawn on Johannes de Jacob
Galdar and Jacob Galdar Johnson of Amsterdam Merchants
payable at Ninety days after sight to the Order of the
Complainant for the Sum of Eight hundred Pounds Sterling or two thousand
Star Pagodas as by the Copy of one of the said Bills of Exchange and of
the Endorsements thereon with the letter of Advice annexed to the
Complainants said Bill of Complaint the Complainant did say would
more fully appear that he the Complainant did not then pay any
Money for the said Bills of Exchange but did pass a Bond
of defeasance to your Petitioners said Testator payable in Eighteen
Months from the date thereof on condition that in case the said
Bill should not be duly honored but returned protested then
and in that case the said Bond of the said Complainant
granted to your Petitioners said testator and the said Bills
of Exchange granted by your Petitioners said Testator,
as aforesaid should be cancelled that he the Complainant
remitted the said Bills to Europe and on the presentment
of one of the said Bills to wit the second Bill of Exchange
to the said Johannes de Jacob Galdar and Jacob Galdar Johnson
the Persons on whom they were drawn for acceptance they
refused to accept the same under pretence that they had
not received proper advice although the Complainant did
charge that a Letter of advice was Annexed to the said Bill
aforesaid that the Complainant in consequence of such

Refusal

refusal to accept the said Bill did on the twenty first day of August which was in the year of Our Lord One thousand Seven hundred and Eighty one protest the same at Amsterdam for not acceptance and non payment as by Copy of the translation of the said protest to the Complainants said Bill of Complaint annexed the Complainant did say would — appear and your Petitioner Sheweth the Complainant did further state that about the beginning of the said Year of Our Lord One thousand Seven hundred and Eighty one he Embarked for England And that the Complainants Attornies in Europe did Neglect to return the said Bills and the protest made thereon to Madras for the purpose of cancelling the said Bond granted by the Testator to your Petitioners said — in consequence of which had been that your Petitioners Testator after a lapse of two years and before any advice had been received whether the said Bills were paid or not did call upon Alexander Brodie the then Attorney of the Complainant and who was also one of the — Collateral Securitees Jointly with Robert Andrews on behalf of the Complainant for payment of the said Bond unto your Petr. said Testator and demanded the Payment thereof Asserting as the Complainant did pretend that the said Bill had been duly honored the said Alexander Brodie did thereupon from a Confidence that the Assertion of your Petitioners said testator was well founded especially as no notice had been

been received of their being protested did on the fifth day of November which was in the year of Our Lord One thousand Seven hundred and Eighty two discharge the said Bond with Interest after the rate of Eight per Cent per Annum Amounting to the Sum of two thousand three hundred and twenty Nine Pagodas out of the funds of the Complainants then in the hands of the said Alexander Brodie and took up the Complainants said Bond with a receipt or discharge from your Petitioners said Testator on the back thereof and which the Complainant did say would morefully appear by Copies of the Complainants said Bond and the Engagements Entered into by the said Alexander Brodie and Robert Andrews as Securitees for payment of the said Bond And also by the Receipts or discharge from your Petitioners said Testator to the Complainants said Bill annexed that after his the Complainants arrival in England the said Bills had been for some time mislaid but being afterwards found John Stuart the London Merchant the Complainants then agent in London during the absence of the Complainant did some — time in the year of Our Lord One thousand Seven hundred and Eighty Eight address a Letter as the Complainants understood and believed altho he was not in possession of any — Copy thereof unto the house of Messrs. Deutz and Company — at Amsterdam Requesting them to present a Second time the said Bill to the said Johannes de Jacob Galdar

And Jacob Galdar Johnson for payment thereof which was done accordingly and the said Bill was returned protested a Second time with a Letter from the House of the said Gupta and Company as by Copies of the said Second protest under date the twelfth day of December One thousand Seven hundred and Eighty Eight and of the Letter of the said Gupta and Company to his Bill of Complaint Annexed the Complainant did say would Appear that by the letter of the said Gupta and Company the Complainant did Say it was Evident that the said John Galdar did not Appear to be a Creditor of the said Johannes de Jacob Galdar and Jacob Galdar Johnson and therefore the Complainant did Charge that your Petitioners said Testator at the time he drew the said Bills in favor of the Complainant would have known that he had not any funds in the hands of the said Johannes de Jacob Galdar and Jacob Galdar Johnson and of Course he would have expected the said Bills to be dishonored and protested and therefore the acts of your Pet^{rs} said Testator in drawing the said Bills at a time when he knew he had not any funds with the persons on whom he drew the same and afterwards in having demanded and received the Amount of the Complainants said Bond of defeasance before any Notice was received whether the said Bills were honored or not the Complainant did say were very illegal and dishonorable and manifested an Intent in the first

Instance

Instance to defraud the Complainants that the said John Galdar departed this life some time in the year of Our Lord One thousand Seven hundred and Eighty Six but that your before his death he Made and published his last Will and Testament in writing and did thereby Nominate constitute and appoint Seth Aviet Philipus Jacob Pettum of Madras Armenian Merchants and your Petitioner his Executors, that the said Jacob Pettum having renounced his right of Executorship and your Petitioner being at Bengal the said Seth Aviet the Complainant did prove the Will of your Petitioners said Testator in the said mayors Court and obtain probate thereof and took the Sole management And Execution of the Estate and Effects of your Petitioners said Testator that as Soon as the Complainants Attornies were informed that the said Bills were protested they made Repeated applications to the said Seth Aviet as the acting Executor as the Complainant did pretend of your Petitioners said Testator to refund the money so received by your Pet^{rs} said Testator on account of the said Bills of Exchange having been protested as aforesaid but that the said Seth Aviet did avoid coming to any Settlement whatever making many pretences and frivolous Excuses and in the meantime, the Said Seth Aviet did depart this life that thereupon Anna Seth Aviet the Widow of the said Seth Aviet did pray for and obtain from this Honble Court Letters of Administration

to

to the Estate of the said Seth Aviet by which means the Estate & effects of your Petitioners said Testator also fell into the hands of the said Anna Seth Aviet, that your Petitioner on being informed of the death of the said Seth Aviet did apply to the said Mayors Court for probate of the Will of your Petitioners said Testator and duly obtained the Same on or about the third day of February One Thousand Seven hundred and Eighty Nine as by reference to the Records of the said Court the Complainant did say would appear that the said Anna Seth Aviet did on or about the Twenty fifth day of October last past file in the said Mayors Court an Inventory Account Sales and account Current, of the Estate and effects of your Petitioners said Testator and did in the said Account Current confess that a balance of three thousand Six hundred and fifteen Pagodas and four fanams was in hand belonging to the Estate of your Petitioners said Testator that Arathell Dionisius of madras Merchant as the attorney of your Petitioner did on or about the Twenty Ninth day of November last past obtain a Decree from the said Mayors Court against the said Anna Seth Aviet to receive all the Estate and Effects from the hands of the said Anna Seth Aviet that the estate of your Petitioners said Testator was indebted unto the Complainant in the Sum of Four thousand Eight hundred and Seventeen Pagodas four fanams and Six Cash as by the

Account

Account annexed to the Complainants said Bill of Complaint would appear which the Complainant did in and by his said Bill of Complaint pray the said Mayors Court would decree to be paid unto him from your Petitioners said Testators Estate and Effects together with all interest due or to grow due thereon, also all Costs of the said Suit, or if the said Estate of your Petitioners said Testator did not Exceed more than the said Sum of Three thousand Six hundred and fifteen Pagodas and four fanams according to the balance of the Account Current delivered by the said Anna Seth Aviet that your Petitioner might be decreed to pay the same in part of the Complainants Claim and to pay the balance thereof whenever he should have received the Assets on account of the Estate of your Petitioners said Testator — And your Petitioner Sheweth unto this Honble Court that he did to the Complainants Bill of Complaint exhibit and file his Plea and Answer and therein and thereby not Confessing or Acknowledging all or any of the matters and things in the Complainants said Bill of Complaint contained to be true in such manner and form as the same were therein and thereby charged and alledged for Plea unto the said Bill did say that the scope and end of the Complainants Bill was to Compell your Petitioner to pay unto the Complainant the Sum of Four thousand Eight hundred and Seventeen Pagodas four fanams and Sixty Cash by him pretended to have

Grown

grown due in consequence and by reason of certain Bill
of Exchange said to have been drawn by your Petitioners
Testator in his life time on Joannes de Jacob Galdar
and Jacob Galdar Johnson Merchants of Amsterdam and
payable at Ninety days after sight And your Petitioner
did say that although the Complainant has alledged in and
by his said Bill of Complaint that one of the said
Bills that is to say the said second Bill of Exchange
was presented to the said Joannes de Jacob Galdar
and Jacob Galdar Johnson the persons on whom they
were drawn did refuse to accept the same and that in
consequence the same was protested for non acceptance yet
your Petitioner did say that such protest did not appear
nor did it appear further than by the Naked allegation
of the Complainant as aforesaid that the said Bill ever
was presented to the said Johannes de Jacob Galdar and
Jacob Galdar Johnson for Acceptance either by the
Complainant or any one for him and for as much as by
the Custom of Merchants a Bill does not become
due unless presented for acceptance your Petitioner
did plead the same in Bar to the Complainants said
Bill and to the Relief thereby sought to be obtained
And did demand the Judgment of the said Mayors Court
thereon whether he ought to make any further or other answer
to the Complainants said Bill of Complaint and your

Pet[r]

Petitioner for further Plea did say that it appeared by the
Complainants said Bill of Complaint that the said Bill of
Exchange was protested for non payment and that it was
so protested on the Twenty first day of August which was
in the year of our Lord One thousand Seven hundred
and Eighty one and that instead of returning the same
with the protest thereon immediately to the your Pet[r]s
said Testator the Complainants agent in England did
Mislay the same and that after a lapse of Seven years and
upwards that is to say on the twelfth day of December One
thousand Seven hundred and Eighty Eight the Complainants
said agent did again represent the said Bill for payment
to the Assignees of the Estate of the said Johannes de Jacob
Galdar and Jacob Galdar Johnson who did refuse payment
thereof and that thereupon the same was a Second time
protested and it further appears by the Complainants own
Shewing that during the interval aforesaid that is to
Say between the said Twenty first day of August which
was in the year of Our Lord One thousand Seven hundred
and Eighty one the day on which the first protest was
made for non payment as aforesaid and the said
twelfth day of December which was in the year of our
Lord one thousand Seven hundred and Eighty Eight
the day on which the said Second protest was made
the said Johannes de Jacob Galdar and Jacob Galdar
Johnson

Johnson had become bankrupts and for as much as according to the Custom of Merchants the Holder of a Bill in order to make the Drawer liable should on non payment thereof enter a formal protest and transmit the Same to the drawer of the said Bill for the equitable purpose by the said Custom of Merchants meant and intended that is to say that the drawer might have an Opportunity of Securing his property in the hands of the Drawees by such means as should be in his power — and for as much as the Complainant did not return the said Bill protested to your Petitioners said Testator but did hold over and detain the Same in his hands, for a Considerable Number of years after the same had been protested as aforesaid and thereby if the said protest for non payment had been regular according to the Custom of Merchants, so as to bind your Petitioners said Testator as the drawer thereof did deprive your Petr. said Testator of the fair and honest advantage of Securing his property against the said Joannes de Jacob Galdar and Jacob Galdar Johnson: and for as much as every man is to Suffer for his own wrong: arising from his own laches your Petitioner doth plead such the laches of the Complainant, as aforesaid in Bar of the Complainants said Bill and the Relief thereby sought and did demand the Judgment of this Honble Court whether he ought to make any further, or other Answer thereto, and your Petitioner for further Plea

did say that if the Complainant ever had any right of Action against your Petitioner as Administrator as aforesaid or against his said Testator in his life time for or concerning the said Bills of Exchange or for or concerning any other matters transactions or dealings in the Complainants said Bill of Complaint mentioned which your Petitioner did in no sort admit the same did accrue or arose above Six years before filing the said Bill and above Six years before Serving your Petitioner with any other process to appear to and Answer the same and your Petitioner for further Plea did say and aver the truth to be — that he did not at any time within Six years before filing the said Complainants said Bill of Complaint nor within Six years before 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 any ways Satisfy the said Complainant any money for or concerning the said Bills of Exchange or for or concerning any other matter, transactions or dealings in the Complainants said Bill of Complaint charged or alledged and therefore your Petitioner did plead the act of Parliament or Statute of Limitations made in the Twenty first year of the Reign of our Sovereign Lord King James the first and prayed the benefit of the said act of Parliament for limitation of actions and again demanded the Judgment of the said Mayors Court whether he should be compelled to

make

make any further or other Answer to the Complainants said Bill of Complaint and humbly prayed to be thence dismissed with his reasonable Costs and Charges in that behalf wrongfully Sustained. — And your Petitioner not waiving his said Pleas or either of them but wholly relying thereon for Answer to Such part of the Complainants Bill of Complaint as not pleaded unto by your Petitioner did answer and say that he had heard and verily believed the fact so to be that at the time his Testator did draw the Bills of Exchange upon which he the Complainant had commenced his Suit that he had funds in the hands of the said Jannes de Jacob Galdar and Jacob Galdar Johnson Sufficient to answer the Amount thereof and forasmuch as your Petr Said Testator did not receive the Amount of the Bond said to have been Executed by the Complainant until many months after the time limited for payment thereof had expired thereby evincing the most upright intentions and fair and honorable conduct towards the Complainant for your Petitioner did say that it appeared by the Complainants own shewing first that the said Bond was Executed on the Sixteenth day of October which was in the year of Our Lord One thousand Seven hundred and Eighty and payable in Eighteen Months & Secondly that the Amount in and by the said Bond conditioned to be paid was not paid to your Petitioners said Testator until the Month of November which was in the

Year

year of Our Lord one thousand Seven hundred and Eighty two and thereupon your Petitioner did say that he denied the allegations in the Complainants said Bill of Complaint contained that the Acts of your Petitioners said Testator were either illegal or dishonorable or that they manifested an intent in the first or any instance to defraud the Complainants and your Petitioner further Answering did say he admitted that his said Testator might have departed this life some time in the year of our Lord one thousand Seven hundred and Eighty Six and your Petitioner did admit that before his death he did make his last will and Testament in writing and that he did thereby Constitute and appoint Sethaviel Phelipus Jacob Pettum of Madras Merchants together with your Petitioner his Executors and your Petitioner did admit that the said Phelipus Jacob Pettum did renounce his right of Executorship but your Petr did say that the said Seth aviel never did take out probate thereof, and so the fact would appear on reference and which your Petitioner did humbly pray might be paid to the Records of the said Mayors Court in its Ecclesiastical Capacity although your Petitioner did say that the said Sethaviel did possess himself of the whole of the property of the said Estate, and did act and do therein as your Petitioners doubted not of proving to the Satisfaction of the said Mayors Court as if he had taken out probate of the said Will and your Petitioner further answering did say that he

never

Never heard nor had he ever been informed further than as the same appeared in and by the Complainants said Bill of Complaint that the attornies of the Complainant did ever make any Application to the said Seth Aviet in any wise regarding or relating to the said Bill of Exchange in question and your Petitioner did admit that the said Seth Aviet departed this life and that Anna Seth Aviet his Widow did obtain Letters of Administration to his Estate and that she did obtain possession of the Estate and Effects of your Petitioners said Testator And your Petitioner did admit that Subsequent to the death of the said Seth Aviet he your Petitioner did duly obtain from the said Mayors Court in its Ecclesiastical Capacity probate of the said Will or not about the time in the Complainants said Bill for that purpose set forth and your Petitioner did admit that the said Anna Seth Aviet did take upon himself to Exhibit and file in the said Mayors Court a paper writeing purporting to be an Inventory and Account Sales and Account Current of the Estate and Effects of your Petitioners said Testator and that she the said Anna Seth Aviet did thereon and thereby confess that a Balance of three thousand Six hundred and fifteen Pagodas and four fanams was in her hands belonging to the Estate of the said John Galdar — and your Petitioner admits that he did by his Attorney aforesaid — dismisses obtain a Decree of this Honble Court against the

Said

8

Said Anna Seth Aviet to receive all the Effects from the hands of the said Anna Seth Aviet belonging to his said Testator and further your Petitioner did Say that he did upon the said Decree obtain Execution but that Shortly before the same was Executed the said Anna Seth Aviet died as your Pet. has been informed and Verily believes the fact to be and the the said Sum of three thousand Six hundred and fifteen Pagodas and four fanams to the Sheriff or otherwise put it in to his hands or power in order that he the said Sheriff might Sequester the Same and the said Sheriff did accordingly Sequester the same under a Writ of Sequestration issuing out of the said Mayors Court in the present Suit and the Same was then withheld from your Petitioner as Executor as aforesaid under an Order of the said Mayors Court although your Petitioner humbly submitted that the Same ought to have been delivered up to him upon Entering his Appearance to the Complainants said Bill — because your Petitioner did say he was advised that a — Sequestration upon Meane process was merely to compel the Appearance of a Defendant and that upon the Appearance the Sequestration became superceded as a matter of Course and because upon your Petitioners Appearing to the — Complainants said Bill of Complaint the only Objection made on the part of the Complainant was that your Petitioner should not be allowed to enter an Appearance until he

had

had previously given Bail which Objection the Said Mayors Court was afterwards pleased to overrule but at the Same time did order that the Sum Seized under the Sequestration should remain deposited in the Company's Treasury until a Decree should be given and your Petitioner did humbly Submit to the said Mayors Court the Severity of the case because thereby he was prevented from discharging the trust imposed on him by his Testator and enjoined by his Oath as Executor insomuch as he is prevented from paying of debts as the Law direct as far as the Estate extends and further that your Petitioner was deprived of the benefit of the Law in his favor which permitted an Executor to pay himself in preference to other Creditors of the same degree and your Petitioner did say he was advised that a Bill of Exchange was considered as a Simple contract debt and thereupon your Petitioner did say that he was by law Entitled to pay off and discharge to himself a debt due to him from the Estate of his Testator even if the said debt had been legally and fair and bona fide due to the Complainant for your Petitioner did say that the Estate of his said Testator was justly and truly indebted unto him your Petitioner in the Sum of four thousand four hundred and forty Six Pagodas thirty one fanams and Seventy Cash arising out of and made up from a Settled Account between your Petitioner and his said Testator

as

as by the Exhibits Marked A and B to his said Answer Annexed for the inspection of the said Mayors Court to which your Petitioner did beg leave to refer and pray the same might be taken as part of this his Answer may more fully and at large appear, —

And your Petitioner humbly Sheweth unto this your most Excellent Majesty in Council that to your Petitioners said Plea and Answer the Complainant did file his Replication and did therein Amongst other things say that although he could not then bring Substantial proof that the Second Bill of Exchange drawn by your Petitioners said Testator was presented to Johannes de Jacob Graauw and Jacob Graauw Johnson on whom they were drawn and that they Refused to Accept the Same and in consequence it was protested on the Twenty first day of August which was in the year of our Lord one thousand Seven hundred and Eighty one yet that the fact was so, but that however was a matter of little consequence for that the said Sett of the said Bills of Exchange was drawn on the Fifteenth day of October which was in the year of our Lord One thousand Seven hundred and Eighty and the first protest was dated the Twenty first day of August One thousand Seven hundred and Eighty one by which it evidently

Appeared

appeared that he the Complainant did not neglect to remit the said Bills to Europe as soon as opportunity offered nor did the Complainants attorney neglect to send the said Bills to Amsterdam for acceptance and payment all which the Complainant did say were done without any neglect omission or Laches on the part of the Complainant or his attorney but that afterwards the said Bills and Protest having been mislaid their return to this Country was delayed for some time that he the Complainant did not expect that your Petitioners Testator would have been so dishonest as to call on this Repliants attorney at Madras for the payment of this Repliants Bond of defeasance when instead of having reason to believe his said Bills were honored he must have been conscious that they would not have been accepted as it appeared he had not any funds in the house on which he drew and the Complainant did further say that it was unimportant to the matter in agitation before the said Mayors Court at what period of time the said Joannes de Jacob Galdar and Jacob Galdar Johnson became Bankrupts while it appeared that the said John Galdar was never a Debtor of the said Joannes de Jacob Galdar and Jacob Galdar Johnson and even if your Petitioners Testator had any funds in the hands of the said Joannes de Jacob Galdar and Jacob Galdar Johnson at the time he drew the said Bills he should not have received the amount of his the

Complainants

Complainants Bond of defeasance when he knew that such Bills existed at the time undischarged and even unaccepted but the Complainant did say contrary to the truth that your Petitioners said Testator from the first had an intention to defraud him the Complainant and had the conduct of your Petitioners said Testator been fair and honorable he would not have acted in the manner he had done and the Complainant did further say that even supposing your Petitioners Testator had funds in the hands of the said Joannes de Jacob Galdar and Jacob Galdar Johnson and that he did not receive any notice at the time he received the Money from his the Complainants attorney at Madras whether the said Bills were paid or not yet that your Petitioners Testator did not depart this life until the year of our Lord One thousand Seven hundred and Eighty Six which was four years after he received the said Money from the Complainants attorney, and during the said period of four years he certainly must have been acquainted as the Complainant did pretend by the said Joannes de Jacob Galdar and Jacob Galdar Johnson that the said Bills were protested and in that case if your Petitioners said Testator had been a man of upright conduct he certainly would have refunded the money and the Complainant in reply to that part of the Plea where your Petitioner did plead

the

the Law of Merchants respecting the Necessary protests to be made without delay in case of non Acceptance and default of payment did say that the said Law was for the protection of Indorsees against absolute Claims by Indorsees whereby the remedy against the drawer or acceptor might be prejudiced but that the Drawer was always liable & in reply to the Plea of the Statute of limitations the Complainant did say that the statute did not apply to the Cause in question as one of the parties was beyond Sea at the time besides it appened that by the death of the said Joannes Galdar in the years of Our Lord one thousand Seven hundred and Eighty Six there was not a lapse of time of Six years while the demand remained in any one Situation and it also appeared that he the Complainants Attornies in madras did use their deligence with the said Seth aviet the Executor as the Complainant did pretend of the said Johanned Galdar for recovery of the said Bill as soon as they were instructed so to do and as to the argument to about Sequestration being only to enforce an appearance tho the same was generally true yet it did not apply — that the said Mayors Court had determined that the Money of your Petitioners said Testator seized under a Sequestration in the Cause should remain till the further Order of the said Mayors Court and the Complainant did further say that from the peculiar Circumstances of the Case your Pets

Could

could not at tho he was an Executor pretend to have a preference to him the Complainants especially as the debt which your Petitioner pretended to be due by his testator was disputed by the said Seth Aviet in his life time which he did say he hoped to prove to the Satisfaction of the said Mayors Court and that had the Estate of the said John Galdar been actually indebted to your Petitioners he would not have Suffered a Balance of about four thousand Pagodas which the said Seth Aviet then had in his hands to remain so for near Six years, but the fact was the Complainant did pretend that the said Seth Aviet disputed the debt of your Petitioners and acquainted him at the same time that there was a claim made on the Estate of the said John Galdar by the Attorney of Complainant of a higher nature than that of your Pets and that he the said Seth Aviet could not part with the said Balance from his hands until his the Complainants Claim was first discharged and your Petitioner Sheweth unto this Honble Court that he did file a Rejoinder to the Complainants said Replication and did therein and thereby insist upon the Several Matters and things in his said Several pleas Set forth and did shew that as the Complainant had replied thereunto and had not denied the facts therein insisted on that the said Several Pleas were fully established and that they did operate in Bar to the

Complainants

Complainants said Bill of Complaint and your Petitioner did further say that his Testator did not call upon the Complainants Attornies for payment of the Bond by the Complainants granted on account of the said Bill of Exchange for many Months after it had become due and although the said Bond was payable in Eighteen Months yet that the same was not discharged unto your Petitioners said Testator until upwards of two years had Expired which your Petitioner did humbly Submit to the said Mayors Court Sufficiently did away the insinuation in the Complainants said Replication contained against the principles of your Petitioners said Testator and your Petitioner did say that he denied it any where appeared that his said Testator had not any funds in the house upon which he had drawn the said Bill of Exchange and although the Repleant had asserted that it did appear that he had not any funds in the said house of yet he had not Shewn did so appear that the said Bond was made payable in eighteen Months and therefore your Petrs said Testator was entitled to demand payment thereof at the Expiration of that period but instead of so doing he suffered upwards of Twenty four months to elapse before he required the Attornies of the Complainant to take up the said Bond and discharge the Amount thereon

thereon due and that as the said space of two years was more than Sufficient for advice from Europe relative to the said Bills of Exchange and as it appeared that no account thereof during that time was transmitted either to your Petitioners said Testator or to his the Complainants Attornies so far from knowing that the said Bills had not been Accepted your Petitioners said Testator had every reason to believe they had been paid And so must the Complainants Attornies have believed or they would not have discharged the Complainants said Bond And which your Petitioner did say was the more evident from the words of the Engagement at the foot of the said Bond granted by those very Attornies who so paid the Amount thereof to wit We do engage to become Security for the within „ Bond and to pay the same to Mr. John Galdar or his Order upon proof being produced that the Value for which „ the said Bond has been granted being Bills of „ Exchange had been paid Signed - A. Brodie Robert „ Andrews - And thereupon and upon the Several matters and things in your Petitioners said Rejoinder and in his said Answer Set forth as well as from the Complainants own Shewing in and by his said Bill of Complaint and the exhibits thereunto Annexed your Petitioner did say that the Assertion in the Complainants said Replication contained that your Petitioners said Testator from

from the first had an intention to defraud him the Complainant was totally Void of any foundation in truth that your Petitioners said Testator having drawn Bills of Exchange on the said Johannes de Jacob Galdar and Jacob Galdar Johnson and therewith granted the usual Letter of Advice he had Nothing further to say thereon to them the said Drawees but according to the usage and Custom of Merchants in the like cases looked to the Complainant for any information and intelligence relative thereto and further that if the Complainant did not write to his the Complainants said attornies at Madras any Letter on the Subject of the said Bills for the Space of two years your Pett. did Submit to the said Court that he had no reason to imagine nor any ground whatever whereon to found the Assertion that his said Testator must have received a Letter from the said Johannes de Jacob Galdar and Jacob Galdar Johnson as above recited, that it appeared by the Complainants own Shewing that he himself did not make any mention to his said attornies relative to the said Bills for upwards of Seven Years and as he the party most interested did not take any Notice to his own attornies he could not have any reason to Suppose that other less concerned would give themselves the trouble to write on the subject of the said Bills to your Petitioners said Testator and if any thing is to be

Surmised

Surmised it is that the Complainant had actually Received the Amount of the said Bills of Exchange as it is upon the Second Set of Bills that the protest is made for non payment and by that protest it appeared that the said Second Bill was not produced to the said Drawees and no Notice taken of the first third or fourth Set and your Petitioner for further Rejoinder did say that Seth Avict of Madras deceased was not legally the Executor of your Petitioners said Testator for although he was named as Such in his said Will yet that he never did take out probate thereof and your Petitioner for further Rejoinder did say that the Law regarding Sequestration as your Petitioner had stated it to be in and by his said Answer and which the Complainants had admitted it so to be in and by his said Replication did apply notwithstanding any thing to the contrary in the Complainants said Replication contained in the present case and that although the said Mayors Court were pleased to Order that the Money under Sequestration should remain until the further Order of the said Mayors Court your Petitioner did Say that such order was not made thereon in consequence of any peculiar Merits of the case pretended by the Complainant to have been stated in the Petition in order to obtain that relief for the Complainants did

Say

Say it would appear by the records of the said Mayors Court to which your Petitioner did pray reference that at the time such Petition was not in contemplation and the said Order was made as to that part of the Complainants said Replication wherein he stated that as soon as the said Bills were returned to Madras his then acting Attorney William Sydenham Applied several times to the said Sethavicl as the acting Executor as he pretended of your Petitioners said Testator to refund the said Money was altogether irrelevant or if relevant it could only tend to Shew that the return of the said Bills to Madras was at least four years after the discharge of the said Bond inasmuch as the Complainant did shew that he your Petitioners said Testator did not depart this life until the year One thousand Seven hundred and Eighty Six and further did say that the said Seth Avict could not have been the acting Executor of his your Petitioners said Testator for that as he the said Seth Avict never did take out probate of the said Will and your Petitioner for further Rejoinder did say that notwithstanding any thing to the Contrary in the Complainants said Replication contained he your Petitioner had as Executor as aforesaid a right to pay to himself the debt due to him from the Estate of his said Testator in preference to any others of a like degree and further that the debt due to him did appear from the balance of a Settled account Current between your

Pett.

Petitioner and his said Testator who at the foot of the said Account Current had set and Subscribed his name in Testimony of the Justness thereof and therefore your Petitioner did say that the said Seth Avict if he ever did dispute the same had no right so to do and as to the Agreement held by the Complainant whereby he would insinuate that no balance was due from the Estate of his your Petitioners said Testator for asmuch as he the Complainant had said that had your Petitioners said Testator actually been indebted to your Petitioner he your Petitioner would not have suffered a Balance of about four thousand Pagodas which the said Seth Avict had in his hands to Remain so for near Six years your Petitioner did say that the same was without any kind of foundation in truth and that however the matter might appear to the Complainant the fact was that the Estate of your Petitioners said Testator stood Justly and truly indebted unto him in the Balance set forth in the Account Current to your Petitioners said Answer Annexed and further your Petitioner did say that the reason why he did not settle the matter earlier was partly owing to his Remote situation and the Multiplicity of his other affairs and because he did not give himself much concern for the balance due to him from the Estate of his said Testator from a through persuasion in his own mind that it was

Very

very safe and secure and your Petitioner did say he did not admit but on the contrary did deny that the said Seth Averet ever did acquaint him that there was a claim made on the estate of your Petitioners said Testator by the Complainant of a higher nature than that of your Petitioner or of any nature and that he the said Seth Averet could not part with the said Balance from his hands until the — Complainants Claim was first discharged and your Pet.r did further say that the Complainants Claim was not of a higher degree than that of your Petitioner even if the Complainants had any Claim which your Petitioner did not admit on the Estate of his your Petitioners said Testator for that the same appeared by his the Complainants own shewing to be a simple contract debt and the debt of your Petitioner was of the same description and as the Law allowed to Executors the preference of paying themselves any debt due from the Estate of their Testator of an equal — degree with other debts that might be brought against it your Petitioner did say and insisted thereon that he had a right to pay himself in preference to the debt set up by the Complainant even if his the Complainants debt was just which your Petitioner did say he did in no sort — admit but on the contrary did deny and further your Petitioner did say that the said Seth Averet could not have had any right to dispute the debt of your Petitioner

does.

due from the Estate of his your Petitioners said Testator or return any money in his hands belonging thereto, for that the said Seth Averet, although an Executor named in the Will never did take out probate thereof, and that therefore any interference of the said Seth Averet in the Estate of your Petitioners said Testator made him an Executor in his own Wrong and his own Estate liable to the injuries sustained by the Estate of your Petitioners said Testator in consequence thereof — And your Petitioner Sheweth unto your Most Excellent Majesty in Council that he did in and by his said Rejoinder further and otherwise support his said answer in opposition to and in refutation of the Several Charges in the Complainants said Bill of Complaint contained and by his said Replication urged and insisted on — And your Petitioner Sheweth unto this Honble Court that upon the pleadings had issue did join and rules dias pass for the Examination of Witnesses and Witnesses were Examined accordingly and publication did pass — And your Pet.r Sheweth that the only witness Examined on the part of the — Complainant was one Philipus Jacob who to the Second — Interrogatory proved the hand writing of Seth Averet in the pleadings Named to two Letters addressed to William Lydenham in the pleadings Named and by him received as the Complainants Attorney and to the third Interrogatory he deposed that your Petitioner previous to the death of the said

Seth

Seth avict had claimed from him the said Seth Avict a certain balance of an Account Current with the Estate of the said Johannes Galdar your Petitioners said Testator that the said Seth avict did dispute the same because the Account thereof was not right and that there were other demands against the Estate of the said John Galdar Acquainting your Petitioner at the same time that there was a demand made by the said William Sydenham on the Estate of the said John Galdar of a higher nature than that of your Petitioner — And your Petitioner Sheweth unto this Honble Court that he did also Examine Witnesses in order to prove And which your Petitioner did prove by the best possible evidence that at the time of drawing the said Bills of Exchange your Petitioners said Testator had Sufficient Funds in the hands of the Drawers to Answer the Amount thereof for your Petitioner Sheweth unto your Most Excellent Majesty in Council that he did make Extracts from the Books of his said Testator by which it Appeared that in the year One thousand Seven hundred & Eighty your Petitioners said Testator had funds in the hands of the said drawers Amounting to the Sum of four thousand Seven hundred and Ninety Nine and your Petr. Sheweth unto your Most Excellent Majesty in Council that Ezekaloor Lucas and Sarad Goja Maul Armenian Merchants to the Second Interrogatory deposed that the Account N° 1 produced to them at the time of their Examination — purporting

Purporting to be an Account of the transactions And dealings which Subsisted between John Galdar deceased in his life time and Johannes de Jacob Galdar and Jacob Galdar Johnson was the same that was taken from the said Books of the said John Galdar that the Accounts in the said Books were written in the hand writing of the said John Galdar that they the Deponents did compare and examine the said Account with the said Books of the said John Galdar and that the same was a true Copy from the said Books And denies Philipus Calendar to the fourth Interrogatory proved the transaction of the said Accounts hereinbefore and hereby referred to And the said Sarad Goja Maul to the third Interrogatory said that he was well Acquainted with John Galdar in his life time and with his Circumstances dealings and transactions which did Subsist from the year One thousand Seven hundred And Seventy Six to the year One thousand Seven hundred and ~~Seventy~~ Eighty two between the said Jacob Galdar in his life time and Johannes de Jacob Galdar and Jacob Galdar Johnson and particularly in the year One thousand Seven hundred and Eighty in which year he made considerable Consignments to them of piece goods — And your Petitioner Sheweth unto your Most Excellent Majesty in Council that the said Cause was set down to be heard and did accordingly come on to be heard before the said Mayors Court on the Eleventh day

day of the Month of June and year of Our Lord One thousand Seven hundred and Ninety three when the said Mayors Court was pleased to Order and Decree and did accordingly Order and Decree Specially the Mayor Dissenting therefrom that your Petitioner do pay unto the Complainant out of the Estate and Effects of Johannes Galdar deceased your Petitioners said Testator the full and just Sum of two thousand three hundred and Twenty Nine Pagodas being the amount principal without interest and that each party do pay their own Costs as by the said Decree annexed to your Petitioners Petition of Appeal to the Court of Appeals at Madraspatnam reference being thereunto had may appear. — By which said Decree of the said Mayors Court your Petitioner did conceive himself much aggrieved and did therefore Appeal therefrom to the Court of Appeals at Madraspatnam for the following amongst other Reasons — First Because the said Decree of the said Mayors Court was contrary to law forasmuch as it was evident that the said Mayors Court did totally disregard the Several pleas set up by your Petitioner and which your Petr. did humbly Submit the said Court of Appeals did Jointly and Severally operate in full Bar to any right the Complainant might have possessed if he ever did possess any right of action against your Petitioners Testator and consequently against any Right of action he could have possessed against your Petitioner for your Petitioner did beg leave to state that the first plea was upon the Custom of Merchants and did set forth that the Complainant had not

not Shewn nor did it any where appear that the Bill of Exchange in question was ever presented for Acceptance and as by the Custom of Merchants it was ruled that a Bill never become payable that was not presented for acceptance your Petitioner had pleaded the same in Bar to the Complainants right of action to which plea the Complainant had replied and had thereby admitted that he could not produce Substantial proofs that the Bill was presented for acceptance or that it was refused or that it was protested and your Petitioner was advised and humbly insisted thereon that the Complainant by Replying to the said Plea of your Petitioner had admitted the same to be good in Law and by not producing the Protest for non acceptance which he was bound to do or shew good and Sufficient cause to the — was advised that even if the Bill had been presented for acceptance and noted for non acceptance that there would then have been a fatal defect for your Petitioner did say that the Bill in question was a foreign Bill and that in foreign Bills other formalities were required than in inland Bills and that noting for non acceptance alone was not Sufficient in so much as that there must absolutely be a protest to hold the parties liable and that when the Bill became due whether it was or was not accepted it should be again presented for payment and if payment should be refused it should be protested for non payment and your Petitioner did beg leave to shew to the said Court of Appeals that his Second Plea was also upon the

Custom

Custom of Merchants and humbly insisted that the same did operate in Bar to any right the Complainant might at any time have possessed against your Petitioners said Testator for that the said plea did set forth that the Complainant instead of sending the protest upon the said Bill of Exchange as he ought to have done by the earliest opportunity he had held over the Same for the Space of Seven years and upwards and then presented it a Second time for payment and that the Drawers in the interim became bankrupts & your Petitioner had therefore pleaded such the laches of the Complainant in Bar to the Complainants right of Action to which plea the Complainant had replied and thereby admitted the Same to be good in Law and your Petitioner did Shew unto the Said Court of Appeals that the fact appeared by his the Complainants own Shewing in and by his said Bill of Complaint for that he therein had shewn that after the Bill was protested in the month of August and year of Our Lord One thousand Seven hundred and Eighty one his attornies had neglected to return the said Bill and protest thereon to your Petitioners Testator and that after his the Complainants Arrival in England the said Bill had been for some time mislaid but being afterwards found his agent had some time ~~mislaid~~ but being afterwards found in the year One thousand Seven hundred and Eighty written

to

his Correspondents in Amsterdam to present it a Second time and the protest in consequence did bear date in one thousand Seven hundred and Eighty Eight and therefore your Petr. did humbly insist that his said Plea was good and Sufficient in Bar to the Complainants Right of Action and your Petr. did beg leave to Shew that his third Plea was grounded on the Statute of limitations and that the same did set forth that the Complainant had ever any Cause of action against your Petr. the same arose above Six years before the filing of the Complainants said Bill and asserted that no demand could or had been made or promise given of payment during that period by your Petr. to which Plea the Complainant did Reply thereto and did thereby Admit the same to be good in Law but did say that the Statute did not apply as one of the parties was beyond Sea, and further that by the death of your Petitioners said Testator there was not a lapse of time as pretended by the Complainant of Six years which your Petitioner did say was in the first place a total Misconstruction of the Statute pleaded by your Petitioner as aforesaid and in opposition to the intent and meaning thereof and in the Second Instance the Complainant had endeavoured to take an advantage of his own wrong contrary to a Maxim in Law and equally contrary to the Statute pleaded and further your Petitioner did shew that his said plea was supported in fact by the Shewing of the Complainant in his said Bill of Complaint contained for he did therein shew that the Bill

was

was first protested on the first day of August One thousand Seven hundred and Eighty one and that the Second protest was dated on the Twelfth day of December which was in the year of Our Lord One thousand Seven hundred and Eighty Eight upwards of Seven years during which time the Complainant held over the said Bill without giving any manner of Notice to your Petitioners said Testator or to your Petitioner and therefore your Petitioner did humbly insist that his said third Plea was good and Sufficient in Bar to the Complainants right of action and thereupon your Petitioner did further humbly Submit that the said Decree of the said Mayors Court was contrary to the Law and that your Petitioner had very Good and Sufficient Cause of Appeal therefrom for a reversal thereof Secondly Because the said Mayors Court had no foundation whereon to ground their said Decree for your Petitioner did humbly Shew unto the said Court of Appeals that the Charges in the Complainants said Bill of Complaint contained or the most material part thereof forming the gist of the action were altogether unfounded for that the Complainant had Charged that the Bill of Exchange in question was presented for acceptance and Refused by the Drawees upon the plea of their not having received proper advice whereupon your Petitioner did say that it appeared by the Exhibits to the

Complainants

Complainants said Bill of Complaint annexed that the Regular and Usual and Customary letter of advice did accompany each of the four Setts of the said Bills of Exchange and that it no where appeared that the said Bill was Ever refused Acceptance upon the plea of the Want of proper advice nor could such have been the Case as it did not appear that it ever had been presented for acceptance and it appeared by the Complainants own shewing in the protest contained that so far from Assigning any reasons for not duly honoring the said Bill when offered for payment the drawers were not at home when the Notary called at their house to present the said Bill for that purpose but that the Servant said he would deliver the Message and thereupon the said Bill without further ceremony was protested for non payment nor had the Complainant adduced a Single Witness in support of his said Charge — and the second Charge of the Complainant in his said Bill of Complaint contained that the Bill had been protested for non Acceptance and non payment on the Second August One thousand Seven hundred and Eighty one was also without foundation for upon reference to the Exhibits Annexed to the Complainants said Bill of Complaint and therein and thereby referred to it Appeared that the only protest made on the said Bill on the said Second

day

day of August was for non payment and that in fact — according to the Complainants own shewing there never had been a protest for non acceptance, — and the third Charges of the Complainant in his said Bill of Complaint contained was equally unfounded for the Complainant did therein charge that the Bond granted by him to your Petitioners said Testator had been paid off by his the Complainants Attornies upon the assertion of your Petitioners Testator that the said Bills had been duly honored whereas it no where appeared that such assertions had ever been made by your Pet.rs said Testator nor had the Complainant Examined a Single Witness in order to Support the Charge and your Pet.r did beg leave to Submit to the said Court of Appeals that as the Bond was payable in Eighteen Months upon the condition that in case the Bills were not returned — dishonored and as it appeared by the Complainants own Shewing that the said Bond was not paid off and — discharged for upwards of Six Months after it had become due it was fair to conclude from the premises that the Amount of the said Bond had been paid by the — Complainants said Attornies upon the full conviction that the Bills had been duly honored and tho they had every right to Suppose as the Complainant had one year and three months from the protesting of the said Bill for non

Non payment unto the day on which the said Bond was discharged and your Petitioner did further shew that the fourth charge of the Complainant in his said Bill of Complaint contained was also without foundation for that Complainant did thereby attempt to Charge your Petitioners said Testator with fraud asserting that at the time your Petitioners said Testator had drawn the Bill in question he had not any funds in the hands of the Drawers and he the Complainant did ground such his assertion upon Copy of a Letter to his said Bill annexed pretended to have been written by and received from his attorney's Correspondent in Amsterdam which not having been proved your Petitioner was advised could not be received in evidence but even admitting it might be received in evidence yet your Petitioner did humbly submit that it did not amount to any thing certain nor in the least — Supported the Complainants said Charge for that the Letter Writer did say "We are told that the drawer of the said John Galdan must have nothing from the — mentioned Mass at least that he does not Appear on the books that he is a Creditor for some thing" which your Petitioner did Submit was merely hearsay and hearsay evidence even upon Oath was of no manner of force or Validity And further your Petitioner did say he had proved

proved by the best possible evidence that about the time the Bills in question were drawn your Petitioners said Intestate had made a Large Consignments of piece goods to the — Drawees and that by his Books they had in their hands a balance due to your Petitioners said Testator of upwards of Four thousand Seven hundred and Ninety nine Pags. and therefore your Petitioner did humbly Submit that the said Decree of the said Mayors Court was not grounded on the principles of Equity nor warranted by the facts before the said Mayors Court at the hearing and therefore your Petitioner did Submit that he was thereby aggrieved and had good Cause of appeal therefrom for the Reversal thereof Thirdly Because the most material Charges in the Complainants said Bill of Complaint contained were denied by the Answer of your Petitioner and although the Complainant in and by his said Replication did — insist upon their being well founded yet that he had afterwards abandoned them in so much as that he did not Examine any witnesses in Support thereof and it was the Course of Courts of Equity that where a Defendants — Answer upon Oath denies the Charges contained in the Complainants Bill it would require two Witnesses to support those Charges to Entitle him to a Decree and that unless such Support be had no Decree can be

be given, and further that although the Complainant had abandoned his Cause as aforesaid and although by reason thereof your Petitioner was not under the absolute necessity of adducing any evidence in Support of his said Answer yet in order to Shew the Rectitude of his Intestates conduct he did Examine Witnesses to Shew that the imputations Endeavoured to be thrown on his Character as a merchant by the Complainant in and by his said Bill of Complaint and in and by his said Replication were groundless and your Petitioner had thereby fully proved by the best possible evidence that at the time his said Testator did draw the Bill of Exchange in question he had made considerable Consignments to and had funds in the hands of the Drawees much more than Sufficient to answer the amount thereof Fourthly Because your Petitioner was a Creditor of the Estate of your Petitioners said Testator in the Sum of four thousand four hundred and forty Six Pagodas thirty one fs. and Seventy Cash arising out of a Settled Account Current between your Petitioner and his said Testator in his life time a Copy whereof was to your Petitioners said Answer annexed and prayed to be taken as part thereof and which was not in any wise denied by the Complainant and for as much as that an Executor was by law Entitled to retain his own debt in preference to a Creditor

Creditor of an equal degree and for so much as it appeared
by the Complainants own Shewing that the balance of the
said Estate of your Petitioners said Testator upon the
Account Current delivered into the said Mayors Court
in its Ecclesiastical Capacity by anna Seth aveit in the
Pleadings named was not nearly sufficient to pay off and
discharge the amount so due to your Petitioner as aforesaid
and as the said Decree of the said Mayors Court did not
take any Notice of your Petitioners right as recognized and
Sanctioned by the law as aforementioned by decreeing that your
Petitioner should be allowed to retain his own debt which
your Petitioner did Submit the said Mayors Court ought
to have done but your Petitioner did on the contrary shew
that the said Mayors Court so far from rendering unto your
Petitioner that Justice was pleased to decree that your Petr
do pay unto the Complainant the Sum of two thousand three
hundred and Twenty Nine Pagodas and that each party do pay
his own Costs that the said Mayors Court had locked up from
your Petitioner the Said Sum of three thousand Six hundred
and fifteen Pagodas and four fanams the amount balance
of the Estate of your Petitioners testator as appeared in the
Account Current delivered into the said Mayors Court in its
Ecclesiastical Capacity by the said Anna Seth Aveit and
which was sequestered in the present Cause upon the Return

of

of a non est inventus upon the first Summons which had
issued directing your Petitioner to appear to and answer
the Complainants said Bill of Complaint and that although
your Petitioner had afterwards and as soon as it lay in his
power so to do, appeared to the Complainants said Bill
yet that the said Mayors Court would not allow the
said Sequestered Money to be delivered up to your Petr
which your Petitioner did shew was contrary to the Practice
of his Majesty's Right Court of Chancery and to the
practice of the said Mayors Court in like Cases for your
Petitioner did begleave to Submit that a Sequestration
Mesne process to enforce the appearance of a Defendant
to Answer the Complainants Bill became Superseded
upon the appearance of a Defendant who by such
appearance did cure the contempt he was supposed
to be in, and your Petitioner did further Submit that he
could not have been in contempt for that the Complainants said
Bill of Complaint was filed on the Ninth day of December
that the Summons thereon issued on the day following and
that the Writ of Sequestration was granted by the said
Mayors Court on the thirteenth of December so that the
Complainant at the time he obtained the said Sequestration
was not entitled to an appearance from your Petitioner
and therefore that the said writ of Sequestration was

illegally

illegally obtained inasmuch as that by the course of the said Mayors Court a Complainant should give four clear days between the filing of the Bill and return of the Summons thereon for an appearance and without which the Defendant was not held in contempt nor could a Warrant of Contempt for an Appearance be awarded against him and your Petitioner did further submit that he had therefore sustained great loss and injury in the said Sum of three thousand Six hundred and fifteen Pagodas four fanams having been so locked up by the said Mayors Court inasmuch as that he had lost the Interest thereof from December One thousand Seven hundred and Ninety one until the time of filing the said Appeal and your Petitioner did thereupon submit that the said Decree of the said Mayors Court was contrary to Law And that your Petitioner was greatly aggrieved thereby and had good Cause of Appeal therefrom for a Reversal thereof and your Petitioner did thereupon humbly pray that the said Court of Appeals would Reverse the said Decree of the said Mayors Court and grant unto your Petitioner such further and other Relief as to the said Court might seem meet. —

And your Petitioner humbly Sheweth unto your Most Excellent Majesty in Council that to your Petitioners said Petition of appeal the Complainant did

Exhibit

Exhibit and file his answer in the said Court of Appeals and did therein admit the premises and did amongst other things pretend that your Petitioner had not in any respect been injured by nor had he any good Cause of appeal from the said Decree of the said Mayors Court that in answer to your Petitioners four Reasons in support of his appeal he the Complainant said he had already in his Replication stated those arguments which did refute the grounds whereon your Petitioner had advanced his several pleas in Bar to his the Complainants right of action which the Complainant did say were arguments to the following purport and effect that the said Bills of Exchange were drawn on the Sixteenth day of October which was in the year of our Lord One thousand Seven hundred and Eighty and the first protest was dated the Twenty first day of August One thousand Seven hundred and Eighty one by which it evidently appeared that the Complainant had not neglected to remit the said Bills to Europe as soon as opportunity offered nor had his attorney neglected to send the said Bill to Amsterdam for acceptance and payment all which the Complainant did say were done without any Neglect omission or laches on his part or on the part of the attorney but afterwards the said Bill and protest having been mislaid by his attorney in England their return to this

Country

Country was delayed for some time but that he had not expected that your Petitioners Testator would have been so dishonest as to call on his the Complainants attorney at Madras for the payment of his the Complainants said Bond of defeasance when instead of having reason to believe his said Bills where honored he must have been conscious that they would not have been accepted as it appeared he had not any funds in the house on which he drew — That it was unimportant to the matter in agitation at what period of time the said Joannes de Jacob Galdar and Jacob Galdar Johnson became Bankrupts whilst it appeared that the said Jacob de Galdar was never a Creditor of the said Joannes de Jacob Galdar and Jacob Galdar Johnson and that even if the Complainants Testator had any funds in the hands of the said Joannes de Jacob Galdar and Jacob Galdar Johnson at the time he drew the said Bills he should not have received the amount of the said Bond of Defeasance when he knew that such Bills — existed at the time undischarged and even unaccepted but the fact was as he pretended that your Petitioners Testator from the first had an intention to defraud the Complainant and that had the Conduct of your Pets Testator had been fair and honorable he would not have acted in the manner he had done for that from the time he granted the said Bills to the time he received Money from Alexander Brodie then the Complainants attorney at Madras which was above two years your Petitioners Testator must have received Letters from the said Joannes de Jacob Galdar and Jacob Galdar Johnson if they really had any funds in their hands belonging to him by which he must have been acquainted whether the said Bills were presented to the said Joannes de Jacob Galdar and Jacob Galdar Johnson or protested or whether they had still in their hands the funds of your Petitioners Testator in either of which cases he should not have demanded and received the Amount of the said Bond of defeasance —

That even supposing that your Petitioners Testator had funds in the hands of the said Joannes de Jacob Galdar and Jacob Galdar Johnson and that he did not receive any Notice at the time he received the money from the Complainants attorney at Madras whether the said Bills were paid or not yet that your Petitioners Testator did not depart this life until the Year of Our Lord One thousand Seven hundred and Eighty Six which was four years after he received the said Money from his the Complainants then attorney at Madras and during the said period of four years he certainly must have been acquainted by the said Joannes de Jacob Galdar and Jacob Galdar Johnson that the said Bills were protested

and

and in that Case if your Petitioners Testator had been a man of upright conduct he certainly would have refunded the money which he received from his the Complainants Attornies— that in reply to that part of the Petition and Appeal where he did plead the Law of Merchants the Complainant did say— " Respecting the Necessary Protests to be made without delay in case of Non Acceptance and default of payment that the said Law was for the protection of Indorsers against— " Absolute claims by Indorsees whereby the remedy against the Drawer or Acceptor might be prejudiced but that the Drawer was always liable and in Reply to the Plea of the Statute of Limitation the Complainant did say the statute did not apply to the present Case as one of the parties was beyond Sea at the time besides it appeared that by the death of the said Johannes Galdar in the years of Our Lord One thousand Seven hundred and Eighty Six there was not a lapse of time of Six years while the demand remained in any one Situation and it also appeared that his the Complainants Attornies in Madras did use their— diligence with the said Seth Averit the Executor of the said Joannes Galdar for recovery of the said Bill as soon as they were instructed so to do that the best proof which could be given respecting all matters of Bills of Exchange was the protest of the Merchant or agent acting in behalf of the Proprietor

of

of a Bill of Exchange which Protest was among the Exhibits in the Cause and the Complainant did further say that he did not admit his Attornies did pay the Bond to your Petitioners Testator but it was so paid under the conviction that the Bills of Exchange in question had been duly honored and as to the Consignments which your Petitioners said Testator might have made to the drawees at Amsterdam the first if proved could have no other tendency as to the merits of this Cause that to Shew that the said Johannes Galdar did not draw the Bills without good reason to expect they would be honored but as they were not honored the Complainant did say he was the Creditor of the deceased to the Amount charged in his Bill of Compt and did further say that he did Examine a witness to Support such points which were necessary to rest the demands frequently made by his Attornies on Seth Averit one of the Executors Jointly with your Petitioner to the Estate of Johannes Galdar and the answer to the demand of your Petitioners during the life time of the said Seth Averit respecting your Petitioners Claim on the Estate of Johannes Galdar that the Accounts whereon such Claims was founded were not right and further that he the Complainant had a claim of a Superior Nature all which the Complainant did say appeared by the evidence of Philipus Jacob and as to the Argument about Sequestration being only to enforce an Appearance tho the

Same

Was generally true yet it did not apply to the present Case it was determined that the Money of your Petitioners Testator Seized under a Sequestration should remain till the further order of Court therein in consequence of the peculiar Merits of the case which Merits the Complainant did say were stated in a Petition in order to obtain that Relief whereto and unto the Proceedings and order of the said Mayors Court therein the Complainant did pray reference and that he might have as full and Ample benefit therefrom as if the same were made part of his answer. —

And your Petitioner Sheweth unto your Most Excellent Majesty in Council that your Petitioners said Petition of appeal and the Complainants Answers thereto did come on to be heard before the said Court of appeals on the Twenty fourth day of May now last past when the said Court of appeals was pleased to Order and Decree and did Accordingly Order and Decree that the said Decree of the said Mayors Court should stand affirmed and that each party should pay his own Costs as may more fully and at large appear by the Copy of the said Order and Decree hereunto Annexed for the inspection of your Most Excellent Majesty in Council 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 being ready to be produced if required. ——

By

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

First ..... Because the said Decree of the said Court of appeals in affirming the said Decree of the said Mayors Court is contrary to Law for your Petitioner did plead three Several Pleas to the Complainants said Bill and which your Petitioner doth humbly Submit to your Most Excellent Majesty in Council do severally operate as a full Bar thereto for your Petitioner did first plead the Custom of Merchants and thereupon did Shew that a Bill of Exchange did never become due unless presented for acceptance and that the Complainant in reply thereto so far from denying the truth thereof did in effect admit the Same in so much as he did say that he could not produce substantial proofs that the said Bill drawn by your Petitioners testator was presented to the persons on whom they were drawn and that they refused to accept the same and your Petitioner did state other Matters and things to the said Court of appeals in support of his said first plea And to shew that the Same was a Sufficient bar to the Complainants pretended Right of Action against your Pet.r and in and by your Pet.rs Second Plea which was also upon the

the Custom of Merchants did shew that the Complainant ought without loss of time to have forwarded to your Petitioners Testator the protest for non acceptance and non payment in order that your Petitioners Testator might have had the benefit and advantage thereby meant and intended to be Secured to the Drawer of a Bill but that instead of so doing the Complainant had by his own shewing held over the said Bill for the space of Seven years and upwards and that in the interim the Drawees had became Bankrupts and your Petrs Testator had departed this Life for the Complainant in and by his said Replication did admit that the said Bill was protested for non payment in one thousand Seven hundred and Eighty one, and that his Agents did neglect to return the said Bill with the said protest that after the Complainants arrival in England the said Bill was mislaid and that in one thousand Seven hundred and Eighty Eight as appeared by the protest to the Complainants said Bill of Complaint annexed it was again presented for payment and protested for non payment and your Petitioner did urge other matters and things to the said Court of appeals to shew that his said Second plea was well founded and that the same did operate in Bar to the Complainants right of Action if any such right had ever — existed against your Petitioner and your Petitioner in and by his Third Plea did plead the statute of Limitations and did

did shew that the same was well founded Even by the shewing of the Complainant who did in and by his said Bill of Complaint and the Copy of the Protest demonstrate the fact and in his Reply to your Petitioners said Plea the Complainant did merely attempt to Shew that the statute did not apply in the present instance for that one of the parties was beyond the Seas and your Petitioner did Submit to the said Court of Appeals that the same is a misconstruction of the said statute inasmuch as that the party beyond the Seas was the Complainant and not your Petitioners said Testator and your Petitioner did set forth other matter and things to the said Court of appeals in support of his said Third Plea sufficiently as he was advised to bar any right of action the Complainant might have had against him and your Petitioner at the hearing of his said Petition before the said Court of appeals did chiefly rely and insist on his said Pleas and did submit to the said Court of appeals that thereupon the said Decree of the said Mayors Court ought to be reversed But your Petitioner humbly sheweth unto your most — Excellent Majesty in Council that the said Court of appeals — Regardless of and totally inattentive to the said Pleas by your Petitioner so pleaded and as to the Law regarding the same did notwithstanding affirm the said Decree of the said Mayors Court. —

Secondly ——— Because your Petitioner did Shew

To

to the said Court of appeals that the Several Charges in the Complainants said Bill of Complaint contained were altogether unfounded for that the Complainant in and by his said Bill of Complaint did Charge that the Bill of Exchange had been refused acceptance for want of proper Advice whereas — amongst the Exhibits to the Complainants said Bill — annexed was Exhibited a Copy of the Tujular Letter of Advice that accompanied the said Bill of Exchange and it further appeared by the Shewing of the Complainants that so far from the Drawees assigning such Reason as presented they were not present when the said Bill was brought to their House, that the said Bill was presented to their Servant who — observed only that the Gentlemen were not at home and that thereupon it was protested — and that as to the Charge that the Bill was protested for non Acceptance and non payment on the second of August One thousand Seven hundred and Eighty one the same did by the Complainants own shewing appear to be untrue for by the Exhibits to his said Bill annexed it appeared that the only protest made was for non payment and by the Complainants own Admission of the fact there never had been a protest for non Acceptance and as to the Charge that the Bond of defeasance had been discharged by the Complainants Attornies upon the Assertion of Your Petitioners Testator that the Bills had been duly honored the,

the same was unsupported and unfounded that it no where appeared that your Petitioners Testator had ever made such an Assertion nor was the Charge supported by a Single Witness nor were the said Attornies themselves Examined thereto and that the said Bond was not discharged for upwards of Six Months after it had become due and two years after the drawing of the said Bills of Exchange that as to the fraud charged by the Complainant inasmuch as that at the time of drawing the said Bills of Exchange he had not any funds in the hands of the said Drawees and which was grounded upon a Letter said to have been written by his Attorney's Correspondent at Amsterdam your Petitioner did shew to the said Court of appeals was unsupported and unfounded for that the said Letter was not proved and therefore was not Evidence and that even had it been proved and received as evidence it did not Support the said Charge as it contained mere matter of hearsay and without ascertaining the Channel from whence it had been received and your Petitioner did further shew that to the said Court of appeals that he had shewn by the best possible evidence that about the time the Bills in question were drawn your Petitioners said Testator had made a large consignment of piece goods to the said Drawees and that it appeared also by the Books of your Petitioners Testator that the said Drawees did hold in their hands and had so held

in

in their hands from the time of drawing the said Bills a Balance due to your Petitioners Testator amounting to the Sum of four thousand Seven hundred and Ninety Nine Pag.ds and upwards and your Petitioner did thereupon Submit to the said Court of appeals that the said Decree of the said Mayors Court was contrary to Law and Equity and to the evidence adduced and your Petitioner most humbly Sheweth unto your most Excellent Majesty in Council that the said Court of appeals did not pay any manner of attention to nor take into their Consideration the premises but did as your Petitioner is advised contrary to Law affirm the said Decree of the said Mayors Court. Because your Petitioner did Shew to the said Court of Appeals that your Petitioner was a Creditor of the said Estate of your Petitioners said Testator in the Sum of four thousand four hundred and forty Six Pagodas one fanam and Seventy Cash arising out of a Settled account Current between your Petr. and his said Testator in his life time Sworn to by your Petitioner in his answer to the Complainants said Bill of Complaint and whereof a Copy was to his said answer annexed and that the same was not in any wise denied by the Complainant And your Petitioner did further Sheweth to the said Mayors Court that for as much as that an Executor was by Law entitled to retain his own debt in preference to a Creditor of an Equal degree and for as much as it appeared by the Complainants own Shewing that the balance of the Estate of your Petitioners said Testator was not merly sufficient to pay off and discharge the amount so due to your Petitioner as aforesaid and as the said Decree of the said Mayors Court did not take Notice of your Petitioners said right to retain the amount of his said debt as proved and recognized and Sanctioned by the Law as aforementioned but did decree that your Petr. should pay unto the Complainant the Sum of two thousand three hundred and twenty nine Pagodas and that each party should pay his own Costs and your Petitioner well hoped that the said Court of appeals would have ordered that Justice to your Petitioner which had been denied him by the said Decree of the said Mayors Court but your Petr. Most humbly Sheweth to your most Excellent Majesty in Council that instead of so doing the said Court of appeals did affirm the said Decree of the said Mayors Court and your Petitioner did also submit to the said Court of appeals that the said Mayors Court had locked up from your Petitioner the said Balance of three thousand Six hundred and fifteen Pagodas and four fanams the property of the said Estate of your Petitioners said Testator and which had been Sequestered in the present Suit upon the return of a Summons

Thirdly

Summons non est inventus that had issued Against your Petitioner
for an Appearance to the Complainants said Bill of Complaint
that although your Petitioner did Afterwards and as soon as
it did lie in his power so to do appeal to the Complainants
said Bill of Complaint yet that the said Mayors Court
would not allow the said Sequestered Money to be delivered
up to your Petitioner which your Petitioner did Shew to the
said Court of Appeals was a great grievance and did —
Submit to the said Court of Appeals that a Sequestration,
upon meane process was only to enforce an Appearance of a
Defendant and putting in an Answer to the Complainants,
Bill he did cure the Contempt he was supposed to be
in — And your Petitioner did further
Court of appeals that he could not have ever been in Contempt
for that the Complainants said Bill of Complaint was filed
on the Ninth day of December that the Summons thereon
issued on the Tenth day of the said Month of Dect
and that the said Writ of Sequestration was granted on
the thirteenth following so that the Complainant at the
time he obtained the said Sequestration was not entitled
to an appearance from your Petitioner as by the course
of the said Mayors Court four whole days are allowed
between the service and return of the Summons for an
appearance and therefore that the said Writ of Sequestration

Was

was obtained illegally and your Petitioner did state the loss he had
sustained by the said Money being with held from him by the said
Mayors Court But your Petitioner humbly sheweth unto your —
Most Excellent Majesty in Council that the said Court of Appeals
instead of giving your Petitioner any relief in the premises
did affirm the said Decree of the said Mayors Court —

Lastly — — — — — your Petitioner humbly Submits to your most
Excellent Majesty in Council that the Complainants has —
brought his action for the recovery of a Sum of Money which
had been paid to your Petitioners Testator on Account of a
Bond Executed to him by the Complainants and it no —
where appears Except by a Writing at the foot thereof and said
to have been written by the Complainants Attornies that the said
Bond was Executed on Account of the said Bills of Exchange
as there is nothing in the said Bond contained that has the
least attention thereto nor has the Complainants Examined his
said Attornies or either of them to the facts or to shew when the
said Memorandum at the foot of the said Bond was written
whether at the time the said Bond was Executed or after
the same had been cancelled or whether it was ever written
by them and thereupon your Petitioner humbly Submits to your
most Excellent majesty in Council that the said Bills of Exchange
do not appear to have been given in consideration of nor to have
any connection with the said Bond but that the said Bond

was

was Executed for the Consideration therein expressed to have been received from your Petitioners Testator and that the condition therein contained was performed by the Complainants Attornies in his absence and thereupon your Petitioner further Submits to your most Excellent Majesty in Council that the Complainant had no right whatever nor has he proved any right to call upon your Petitioner as Executor as aforesaid on account of the said Bond or otherwise and it appears by the Complainants own Shewing in and by his said Answer to your Petitioners Petition in the said Court of appeals that your Petitioners Testator did not depart this life until nearly Six years after the granting of the said Bills of Exchange, and it is admitted by the Complainant that during the whole of that period he never did apply to your Petitioners said Testator either on account of the said Bond or of the said Bills of Exchange and that your Petitioner as Executor as aforesaid was not Enabled to produce such testimony in the premises as his testator might have done had the present Suit been instituted in his life time but humbly trusts the defence he has set up and the evidence be adduced in support thereof may be received by your most Excellent majesty in Council as sufficient to dismiss the Complainants said Bill of Complaint which your Petitioner humbly submits to your most Excellent Majesty in Council has every appearance of injustice and oppression.

For

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

/Signed/ James Stuart Hall,
Sol.r for Appellant

Court of appeals

Court of Appeals
at
Madraspatnam

Saturday the 24th. day of May
Anno Domini 1794.—

Between Elias Menas of Madras Armenian Merchant Surviving Executor of John Galdar late of the same place Armenian Merchant deceased appellant and John Whitehill formerly of Fort St George but now of Europe Esqr. by his acting attorney michael Topping 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 Honble the Mayors Court together with the Decree of the said Court given in this Cause on Tuesday the 11th day of June Anno Domini 1793 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 but that each party do pay their own Costs.—

Witness /Signed/ Robert Clerk Clk

A true Copy
/Signed/ J. S. Hall
Sol for appt

To

(13)

To the Kings Most Excellent Majesty in Council

Between John Whitehill by his attorney Michael Topping Complainant and Elias Menas Surviving Exctor of John Galdar deceased by his attorney Arrakel Dionisius Defendant.—

The Answer of the above named John Whitehill by his attorney Michael Topping to the Petition and appeal of the above named Defendant.—

This Respondent by way of Answer to the said Petition and appeal or unto so much thereof as concerns this Respondent to make answer unto saith that he Admits to be true that this Respondent by his said attorney did at the time mentioned in the Petition and appeal file a Bill of Complaint in the Mayors Court at Madraspatnam against the appellant for the Recovery of the Sum of Four thousand eight hundred and Seventeen Pagodas four fanams and Six Cash — and this Respondent further Admits that he did in and by the said Bill of Complaint Set forth the Several matters and things as are particularly stated and Set forth in the Appellts Petition and Appeal — To which said Bill of Complaint this Respondent Admits that the Appellant by his said Attorney Arrakel Dionisius filed a Plea and Answer in the said Mayors Court and did therein and thereby Plead the Several Matters and things as are set forth in the Appellants Petition and Appeal

Filed in my Office
the 12th July 1794
Robt Clerk
Clk

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And the Respondent further Admits that the Appellant for Answer to such part of this Respondents said Bill of Complaint as has not been pleaded unto by the Appellant did Answer in the Manner as is also Stated in the Petition and Appeal this Respondent further Admits that he filed his Replication and the Appellant filed his Rejoinder in manner and form as are Stated in the Petition and Appeal and that upon the above mentioned Proceedings Issue was Joined and Witnesses examined after which Publication passed and this Respondent also Admits that the Witnesses produced on the part of this Respondent as well as those produced on the part of the Appellant did depose the Several Matters and things as are Stated in the said Petition and Appeal and this Respondent also Admits that the said Cause was set down for hearing and the same came on to be heard on the Eleventh day of June which was in the year of Our Lord One thousand Seven hundred and Ninety three by and before the said Mayors Court who were pleased to Order and Decree and did accordingly Order and Decree that the Appellant do pay unto this Respondent out of the Estate and Effects of the said Johannes Galdaw the full and just Sum of Two thousand three hundred and Twenty nine Pagodas being the Amount Principal without Interest and that each party do pay his own Costs.

From

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From which said Decree of the said Mayors Court this Respondent Admits that the Appellant did appeal to the Court of Appeals at Madraspatnam under pretence that he conceived himself much aggrieved by the said Decree and this Respondent also Admits that he did put in his Answer thereto and did therein Set forth the several matters and things as are fully stated in the Appellants Petition and Appeal — This Respondent Admits that the said Petition and Answer came on to be heard and determined on the Twenty fourth day of May last before the said Court of Appeals at Madraspatnam who were pleased to confirm the Decree of the said Mayors Court and that each party do pay their own Costs.

From which said Order and Decree of the said Mayors Court and Court of Appeals the Appellant hath thought proper to Appeal to your most Excellent Majesty in Council pretending that he conceives himself much aggrieved thereby for Certain Reasons set forth by the Appellant in his said Petition and Appeal to your most Excellent Majesty in Council To which Reasons this Respondent answereth as follows —

First Reason. — This Respondent in Answer saith that the three Several Pleas of the Appellant in Bar to this Respondents Right of action are not founded on the Law of Merchants as his pretended by the Appellant in as much as this Respondent did use due deligence in the first

Instance

enstance in remitting the said Bills of Exchange to Europe
for the same were dated on the Sixteenth day of October &
which was in the year of Our Lord One thousand Seven hundred
and Eighty and the first Protest was dated on the Twenty first
day of August One thousand Seven hundred and Eighty one when
it appears that the Appellants first Plea is ill founded
And as to the Second Plea by which he states that this &
Respondent ought without Loss of time to have forwarded
to the Appellants Testator the Protest for non-Acceptance
And non Payment in order as the Appellant pretends that
he might have the benefit and advantage thereby meant
And intended to be Secured to the Drawer of the Bill
this Respondent saith that the
having been mislaid by this Respondents Attorney in England then
return to this Country was delayed for some time but this Respondent
saith that notwithstanding such delay the Appellants Testator
is equally liable because the Law of Merchants to which the appe
refers is for the protection of Indorsers against absolute Claims
from Indorsees whereby the remedy against the Drawer or
Acceptor may be prejudiced but he saith that the Drawer is
always liable — this Respondent for further Answer doth say
that by the second Protest made the Twelfth day of December
One thousand Seven hundred and Eighty Eight and the Letter
from the mercantile house or Firm of Pineta and Company of
Amsterdam to John Stuart this Respondents Agent in
London

London which accompanied the said Protest and bore even
date therewith it appeared that the said John Galdar the Appellants
Testator was not a Debtor of the House of Johannes de Jacob
Galdar and Jacob Galdar Johnson at the time he drew the said
Bills of Exchange whence it is evident that he meditated
a fraud — Obenitur — This Respondent saith that the said
Letter and Protest are Exhibits in the Cause and admitted
at the Hearing thereof without any exception by the Appellant
Wherefore the same are good Evidence to the Points to which
they go. and the Information contained in the Letter being
derived from the Books of the Persons on whom the Bills
was drawn which Books are in themselves the best testimoney
of the relative Accounts between the Parties it is evident that the
said John Galdar the Appellants Testator had not any Funds
in the House of Johannes de Jacob Galdar and Jacob Galdar
Johnson at the time he drew the said Bills And this &
Respondent further saith that as the said John Galdar received
from this Respondent a Bond for the Amount of the said Bills
to be paid in Case the said Bills were honored And this &
Respondent afterwards went to England without any previous
information having been received of the fate of the said Bills
and as the said John Galdar after this Respondent departure
from Madras and at a distance altogether of two years from
drawing the said Bills applied to and received from this

Respondents

Respondents then Attorney at Madras Alexr Brodie the
Amount of this Respondents Bond the said John Galdar
Must have done so when he was conscious that the Bills
he had drawn were not honored and that therefore he was
imposing upon the easy credulity of this Respondents said
Attorney Alexr Brodie — This Respondent in Answer
to the Third Plea of the Appellant in Bar to this Respondts
right of Action to wit the statute of Limitation saith
that the said Statute doth not apply in as much as one
of the Parties was beyond Sea at the time in question, and
further because the Drawer John Galdar died in the year
of Our Lord One thousand Seven hundred and Eighty Six
when it happens that there never was a Period of Six
Years while the Demand remained in the same situation
And it further appears that this Respondents Attornies
at Madras did use their deligence with the said Seth
Aviet one of the Executors of the said John Galdar for the
Recovery of the said Bill as soon as they were instructed
so to do to the Appellants second Reason this Respondent
in answer saith that he admits he hath stated as a Charge
in his Bill of Complaint that the said Johannes de Jacob
Galdar and Jacob Galdar Johnson had refused Acceptance
of the said Bills of Exchange under pretence that they had not
received proper Advice and he did so because he was so informed
at that time by Letters from his Correspondent at Amsterdam

Nevertheless

Nevertheless this Respondent in his said Bill of Complaint,
And in the very part immediately following the said pretence
for non acceptance set forth the futility thereof by advancing
the very facts set forth by the Appellant to wit that a
Letter of Advice was Annexed to each Bill of Exchange
This Respondent also admits that the tenor of the Protest
as set forth by the Appellant is correctly stated as far forth
as the same relates to the Bill of Exchange having been presented
to the Servant who observed only that the Gentlemen were not
at home — And as to the further Assertion of the Appellant
that this Respondent's statement of the Case about a Protest
for non-acceptance and Payment not being true this
Respondent prays to refer to the Exhibit Annexed to his
Bill of Complaint being the Copy of the Bill of Exchange
And protest in question wherefrom it will appear that the
proper form observed in all Cases of Protests of Bills of
Exchange hath been observed in the Case in question namely
noting for non Acceptance and Protesting for non Payment
which said noting and Protesting form in themselves generally
but one Instrument as in the case in question where the
Bill of Exchange is marked as noted on the Nineteenth
day of May which was in the year of Our Lord One thousand
Seven hundred and Eighty one and it is Protested on the
Twenty first day of August then next following being a
period of Ninety four days to wit Ninety days for the period of

Sight of

Persons and that it appears from those Books as stated in the said Letter of Guita and Company to the said John Stuart this Respondents Attorney in London that it did not appear that John Galdar was a Creditor of the said Persons but this Respondent saith that the Establishment of the fact of the said John Galdar being a Creditor of and therefore having a right to draw on the said Mercantile Firm at Amsterdam may do away the imputation of fraud in giving a Draft which was not honored, but doth in no wise affect this Respondents Claim which is founded on the Bill of Exchange in question not having been paid —

To the Appellants third Reason this Respondent for answer saith that the Appellants Testator being Debtor to the Appellant doth not in any wise alter this Respondents Right of Action Against the Appellant as Executor to John Galdar and as to the matter stated by the Appellant respecting Sequestrations this Respondent Admits that a Sequestration is intended, in general to inforce an appearance and in the present case it had that effect the Appellant hoping that if he appeared he should remove the Sequestration and possess himself of the Effects of the Estate of the said John Galdar seized under the Warrant of Sequestration in this Cause, whereas the Mayors Court on this Respondents Petition stating the special merits of the case altho' it admitted the appearance of the Appellant to defend the Suit and thereby

thereby in form superseded the Warrant of Sequestration nevertheless suffered its effect to operate for the Money seized was ordered to remain in the hands of the Accountant General of the Court till the further Order in the Cause, whence this Respondent inferred that if he was able to substantiate his Claim to the satisfaction of the Court so as to obtain a Decree to be paid out of the Estate and Effects of the said John Galdar the Mayors Court would have ordered that the Money seized as Effects of his Estate be paid over to this Respondent in satisfaction of his Debt whereas the fact happened otherwise and the Money was ordered to be handed over to the said Appellant as Executor of John Galdar, so that the Mayors Court upon a Principle peculiar in itself and beyond the comprehension of common understandings protected this Respondents Cause while it remained to be proved whether he had a any right of Action and after the Court had determined the Right in his favour abandoned that protection by ordering the Money to be handed over to the Opponent as Executor of John Galdar This Respondent saith that altho the Appellant had a right to state in his Appeal to the Court of Appeals at Fort Saint George that the Money of the Testators Estate was locked up by the Mayors Court till the further Order in the Cause and that he was injured thereby and to pray Relief &c &c yet as the Mayors Court had upon the Motion of the Appellant in the Cause at a period between the Appellants lodging his Appeal from the

the Decree of the Mayors' Court to the Hearing of the Cause in the Court of Appeals at Madras obtained the Money so seized under the Warrant of Sequestration it was unnecessary to dilate the Pleadings in his Appeal to your Majesty in Council by a recital thereof and therefore this Respondent humbly hopes that your Majesty will be pleased to tax the Appellant with exemplary Costs for his diffusive and irrelevant style of Pleading —

To the Appellants' last Reason this Respondent for answer saith that his Action is brought for the Recovery of the Money due unto this Respondent by Reason of the Bill of Exchange of the Appellants Testator and the Bond of Defeazance to which the Appellant as Executor was stated in the Proceedings in the Cause with no other view than to explain the Conduct of the said John Galdar in the Premises the proving therefore of the said Bond or of the payment of the Money therein mentioned was not necessary to establish this Respondents Right of Action under the said Bill of Exchange of the said John Galdar and as to the observation of the Appellant that this Respondent by his pleadings in this Cause in the Court of Appeals at Madras acknowledges that certain delays happened respecting the Application for payment of the Money in question this Respondents Admits that many Delays did happen and he saith that the Mayor's Court in giving their Judgment took into their consideration the whole merits of the Case and

and as on the one hand it was thought too severe that this Respondent should have incurred the loss of his entire Claim by Reason of the Laches of his Agent in his absence nevertheless it was considered on the other hand that the Appellant should not be loaded with Interest or full Costs of Suit which might have been avoided had this Respondents Agent been more active in the Premises, the Mayors' Court therefore determined that the Appellant should pay unto this Respondent the Amount principal of the Sum for which this Respondent Sued and that each party should pay his own Costs, —

Which Decree being in itself, as this Respondent humbly conceives just and equitable he humbly prays that your Most Excellent Majesty in Council will be pleased to confirm the Same for the Reasons above stated as well as for such others as may be offered at the Hearing of this Cause, and that your Most Excellent Majesty in Council will be further pleased to Order that the Appellant pay all Costs of Appeal in the Court of Appeals at Madras as well as those incurred by his Appeal to your Most Excellent Majesty in Council

/ Signed / Stephen Popham for self & Solicitors
Robert Williams } for Respondent —

To

To the Honble Sir Charles Oakley Bart.

President in Council

In the Court of Appeals

Fort Saint George

Between Tyallemmah Widow and Executrix named in the last Will and Testament of Veeranen deceased, Petitioner

and

Myla Eyah Moodelly Respondent

in the Cause of

Myla Eyah Moodelly Complainant

and

Goorroonada Button Defendant

Filed in my Office
the 15th July 1793
Chas N. White Clk

The humble Petition and Appeal of the above named Myla Eyah Moodelly—

That your Petitioner did on the eighth day of December which was in the year of Christ One Thousand seven hundred and eighty seven exhibit and file a Bill of Complaint in the Mayor's Court of Madraspatnam against the abovenamed Defendant for the recovery of the Sum of Two hundred and Sixty nine Pagodas seven fanams and forty Cash Current Money of Madras due and owing by the said Defendant unto your Petitioner and secured by one Certain Bond or Obligation Executed by the said Defendant unto your Petitioner under date the fifteenth day of April which was in the said year of Christ one Thousand seven hundred and eighty seven; your Petitioner Sheweth that the Defendant on receipt of the Summons appeared and Confessed the Debt whereupon the said Mayor's Court were pleased to order and Decree that the Defendant should pay unto your Petitioner the said Sum of Two hundred and sixty nine Pagodas seven fanams and forty Cash together with Interest and all Cost of Suit that the time limited by the Charter for an Appeal having expired without the said Defendant satisfying the said Decree of the said Mayor's Court, or Appealing therefrom the said Mayor's 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 a Certain House and Ground the Property of the said Defendant situated in Sttapollam—

Your Petitioner Sheweth that after the seizure of the said Premises was made the said Tyallemmah did file a Petition in the said Mayor's Court therein reciting the Cause herein before by your Petitioner already recited and pretending that the said Premises so seized under the Execution aforesaid were the Property of the said Tyallemmah's Deceased Husband the said Veeranen and did further among other things setforth that about thirteen or fourteen years previous thereto, the said Veeranen (the Brother of the abovenamed Defendant Goorroonada Button) had married her the said Tyallemmah and that

that according to the Custom of their Cast the said Tyallemmah and Her Husband the said Veranen lived in the same House with the said Defendant Goorroonada Puttun as an Undivided Family the said Tyallemmah then further States that about one year or one and half year Previous to her filing her said Petition in the said Mayor's Court Her Husband the said Veranen finding much inconvenience from the confined Size of the House was induced to build the House "now in question with his private money and not any ways belonging "to the family Estate or to his Brother neither Owed any assistance "from him in the Building of the said House"

The said Tyallemmah then further States that some time after the Building the said House as aforesaid, the said Veranen being taken dangerously ill, did previous to his death summons the Heads of his Cast and Relations and Caused a Will or Testament in Writing (now upon the Records of the said Mayor's Court to be drawn and therein bequeathed unto the said Tyallemmah one full moity of his Estate, to Wit," that Provided by him as well as the Estate "belonging to him from his Father's Estate which is now in the hands "of the said Defendant"—

And lastly the said Tyallemmah did pray the said Mayor's Court would order the said Warrant of Execution to be

Superseded

Superseded as far as related to the Seizure of the said Premises and that the Sheriffs Seals might be taken off the said Premises and that the said Tyallemmah might be restored to the Quiet and Peaceable Possession of the Same and that the said Complainant might pay all Costs—

To which said Petition of the said Tyallemmah your Petitioner filed his Answer therein admitting such parts of the said Petition as recited the Original Cause, but your Petitioner absolutely denied that the Premises so seized by the Sheriff as aforesaid were the Property of the said Tyallemmahs husband Veranen or of any Person or Persons whatever than the Defendant beforenamed —

Your Petitioner admit in his said Answer that the said Tyallemmah might have married the said Veranen the said Defendants said Brother about fourteen years ago and that herself and her said Husband might have lived in the same House with their said Brother as an Undevided Family—

But your Petitioner did deny that the said Veranen did ever build the House so seized as aforesaid and did state in his said Answer that the said House was built by the said Defendant and that he had borrowed part of the Money on Account of the Expences thereof from your Petitioner - your Petitioner did further State that the said Defendant did superintend the building thereof and

and that the Workmen and Artificers employed thereon were paid by the said Defendant and that the said Veeranen had nothing to do therewith but Superintending the workmen at Interwals when the said Defendant was absent —

Your Petitioner did further setforth in his said Answer that the Ground on which the said House was built was purchased from four different Persons, and that the Bills of Sale thereof were in the name of the said Defendant —

Your Petitioner did also state that some time after the Defendant had purchased the said Ground he Offered the Bills of Sale thereof in Mortgage to your Petitioner for a Sum of Two hundred and fifty Pagodas which the said Defendant was then in want of to assist in Carrying on the said building but which your Petitioner at first refused on Account of their Number and advised the said Defendant to get one Choultry Court Bill of Sale for the whole your Petitioner then stated that the Defendant being in great distress for the Money your Petitioner did Consent that the said Bills of Sale should be lodged in the hands of one Arnachellum Mastry, and did lend to the Defendant the said Sum of Two hundred and fifty Pagodas, it then States that the Defendant desirous of Obtaining the said Choultry Bill of Sale but being at that time in such bad Health, as not to be able to go about on any business required of his Brother the said Veeranen, to get the said Cadjan Bills of Sale from the said Arnachellum Mastry and Carry them to Mr. Shaw the then Choultry Court Register, but that the said Arnachellum Mastry did not think himself sufficiently Authorized so to do, Whereupon the said Defendant sent one Ragoonadah Chary along with the Defendants Brother Veeranen to the said Arnachellum Mastry with a requisition to deliver up the said Bills of Sale to the Defendants Brother with which the said Arnachellum Mastry accordingly complied, and the said Veeranen took the said Bills of Sale to the said Mr. Shaw, but your Petitioner stated that before the said Choultry Court Bill of Sale could be made out the said Veeranen was taken Sick and died without having returned the said Bills of Sale to the Defendant, by which means they fell into the hands and possession of the said Veeranens Wife the said Tyallemmah, who, as your Petitioner set forth had taken away and cancelled the same before the Defendant had time to take Charge of the Estate and Effects of his said deceased Brother and for the production of which said Bills of Sale your Petitioner in his said Answer did pray —

Your Petitioner did further state that if it were admitted the said House had been the Property of the said Veeranen that the said Tyallemmah could not have been thereby in any manner

Manner benefited for that the Laws and Customs of her Cast did not admit of Widows inheriting the Estates of their deceased Husbands, nor was it allowable, or Consistent with the said Laws and Customs that one Brother could make a Will while the other Brother was living, and your Petitioners said Answer did further setfourth that there had been no division of the Estate, and that, the more particularly, on that Account, as well as that there was no Issue of the said deceased Veeranen, the said Defendant as his Brother was the only Heir and Successor to the said Deceased Veeranens Estate, and that Widows were intitled only to their food and raiment, or if they wished to return to their own Family they might then Claim their Dowery

And your Petitioner did luitly state that If the said Tyallemmah had a right to half the Estate of her deceased Husband as she had pretended in her said Petition yet as the said Bills of Sale were in the Name of the said Defendant your Petitioner did not Consider that he had any thing to do with the disputes and differences subsisting between the said Tyallemmah and the said Defendant—

Your Petitioner therefore and in Consideration of the Litigious and unjust proceeding of the said Tyallemmah did

did pray that the said Mayors Court would dismiss her said Petition with Exemplary Costs.—

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 Mayors Court on Tuesday the second day of the present month, July, One Thousand seven hundred and ninety three when the said Mayors Court did think Proper to Order and did Accordingly order that the Prayer of the Petition of the said Tyallemmah be granted and that the Sheriffs Seal be taken Off the Premises and that your Petitioner do pray the whole 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 which said Order of the said Mayors Court your Petitioner doth appeal to this Honble Court of Appeals as he conceives the same erroneous and that your Petitioner is much aggrieved and injured thereby for the following among other reasons

First ..... Because your Petitioners Claim upon the said Defendant is clearly Established—

Secondly ..... Because it is evidently proved that the premises seized as aforesaid are the Property of the said Defendant and that the Bills of

Sale

Sale thereof were in his Name —

Thirdly - - - - - - - - Because The said Tyallemmah hath not proved her right to the Property under Execution as aforesaid, in the which she having failed, Her Petition ought to have been dismissed with Costs —

Fourthly - - - - - Because The said Tyallemmahs said Husband Viraanen had no right under pretence of a will or any how otherwise to alienate the said Property —

Fifthly - - - - - - - Because The said Tyallemmah hath not proved that any formal division of the Estate ever took place —

Sixthly - - - - - - Because From the inconsistencies and contradictions in the Depositions behalf of the said Tyallemmah it is fair to infer that no such Evidence is fabricated, whereas such an inference cannot be drawn to impeach the Evidence adduced on the part of your Petitioner —

For all which Reasons and such others as may be offered at the hearing your Petitioner prays that the order of the said Mayor's Court may be reversed with Costs to be paid by the said Tyallemmah and that the Sheriff be directed to sell the aforesaid Premises towards satisfying the Decree of the Mayor's Court of the Eleventh day of December in the year One thousand seven hundred and eighty seven in favor of your Petitioner —

[Signed] Robert Williams for Stephen Popham Vesey } Solrs for Appellant.

Cato

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Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 2nd Day of July Anno Domine 1793

Present

John Mitford Esqr. Mayor

James Call & Andrew Ross

Aldermen —

Myla Eya Moodaliar,
vers
Gooroonada Button

Affidavit of Joshua Crampton of Service of Notice of Hearing Read. —

Petition of Tylammah Read. —

Answer Read. —

Interrogatories on the part of the Pltf. Read. —

Three Depositions taken thereto Read. —

Additional Interrogatories on the part of the Pltf. with an Exhibit Annexed Read. —

Four Depositions taken thereto Read. The Witnesses N. 1 2 3 4 & 5 did Not appear for Examination Interrogatories on the part of the Respondent with one Exhibit annexed Read. —

Six Depositions taken thereto Read —

The Matter in dispute between the Petitioner Tyalemmaul and the Respondent Myla Eyah Moodaliar Coming on to be Argued and Determined this Day in the Presence of the

Attornies for the Respondent (the Attorney for the Petitioner having declined Acting) and on due Consideration had thereon This Court doth think fit to order and doth Accordingly Order that the Prayer of the Petitioners Petition be granted and that the Sheriffs Seals be taken off the Premises and that the Respondent do pay the whole Costs

A true Extract
Signed J. E. Aitken
Dy Regt

To

To the Honble Sir Charles Oakely Baronet

President in Council

Fort St. George

In the Honble the Court of Appeals

Between Tylamnah Widow and Executrix named in the Last Will and Testament of Veranen Deceased, Petitioner, and Myla Eyah Moodelly Respondent

In the Cause of

Myla Eyah Moodelly Complainant and Gopannah Puttun Defendant.

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

This Respondent Admits, that the said Appellant did on the Eighth Day of December which was in the year of Christ One Thousand seven hundred and Eighty seven, Exhibit and File a Bill of Complaint in the Honble the Mayors Court of Madras stating against the Above named Defendant for the Recovery of the Sum of Two hundred and Sixty nine Pagodas, Seven Fanams, and Forty Cash Current Money of Madras, pretended to be Due and Owing by the said Defendant unto him the said Appellant and Secured by one

Filed in my Office the 24th August 1793
Chas K White Clk

certain

certain Bond or Obligation said to be Executed by the said Defendant under Date the fifteenth Day of April which was in the said Year of Christ, One thousand, seven hundred and Eighty seven, And this Respondent Doth further Admit, that the said Defendant on Receipt of the Summons Appeared, and Confessed the Debt Whereupon the said Honble Mayors Court were pleased to order and Decree and did accordingly Order and Decree that the Defendant should Pay unto the said Appellant the said Sum of Two hundred and Sixty nine Pagodas, seven Fanams, and Forty Cash together with Interest and all Costs of Suit, And this Respondent Admits, That the time limitted by the Charter for an Appeal having expired, without the said Defendant satisfying the said Decree of the said Honble Mayors Court or Appealing therefrom, The said Honble Mayors Court were pleased to grant a Warrant of Execution against the Effects of the said Defendant Directed to the Sheriff of Fort St. George Town of Madraspatnam and the Districts thereof By virtue of which Writ of Execution the said Sheriff did Seize and Sequister a certain House and Ground Situated in Attapollam But not the Property of the Defendant as has been Wrongfully and unjustly Charged —

And this Respondent further Admits, that after

after the Premises were Seized she did file and Exhibit such Petition as is Setforth and Recited in the Appellants Petition of Appeal to which said Petition, This Respondent Craves leave to refer and prays the same may be taken as part and parcel of this her Answer. —

To which said Petition of this Respondent so filed in the Honble Mayors Court, This Respondent Admits that the said Appellant did put in an Answer, which Answer being Setforth and Recited in the Petition of Appeal, This Respondent prays leave to refer thereunto and that he may have the full and Entire benefit thereof. And this Respondent further Admits, that issue was thereupon joined and Witnesses Examined both on the part of the Appellant and this Respondent. —

This Respondent prays leave to State to this Honble Court, that in support of the Petition by her filed in the said Honble Mayors Court and Consequently to prove her Right in the House seized in Execution as Bequeathed to her by the Will of her late Husband she caused various Witnesses to be produced and Examined And first Punchatcherry Button of Madras Gold Smith being Examined Deposed That he was sent for by this Respondents Husband Veeranen to his House About Four o'Clock one Evening, and that it was for the purpose of Witnessing his Last Will and Testament, That the said

Veeranen

Veeranen did make his Mark to the said Will in the Presence of several People And the said Witness further Deposed, that the said Testator Veeranen in his Last Will did Leave and Bequeath One Moiety of the House in question to this Respondent after Appropriating One Fifth thereof for Charitable purposes and the said Deponent further said that he knew and believed that the said House so Seized was the said Testators Property and that @ the time of Making such Will he was of Sound Mind, Memory and Understanding And this Respondent further — Saith that Shellapah Chitty being also Examined on the part of this Respondent Deposed, That he was sent for by this Respondents Husband the said Veeranen to his House about Four in the Evening and that he was sent for the purpose of Witnessing his Last Will and Testament that he did Subscribe his Name to the same, in his own Hand Writing in the Presence of Sawmy Button Punchachorry, Canny Button and others And he further Deposed that the said Testator Veeranen in his Last Will and Testament did leave and Bequeath to this Respondent one Half of the House now in question out of which one fifth part or Portion was to be Appropriated to Charitable purposes and the said Deponent further said that

that the said House was the Testators Sole Property and that at the time of making such Will he was of Sound Mind, Memory and — Understanding And this Respondent further Saith that Appoo Button being produced and Examined also Deposed that Veeranen the Husband of this Respondent did Live with his Brother the said Goorooada — Button after the Demise of their Father until a Dispute arose between them in Consequence of the Defendant having Committed a Crime heinous in the Eyes of their Cast, which produced their Seperation, and that they solived Seperate Eleven Years, after which Period they were reconciled to Each other And he further Deposed and said that the said Veeranen During the Period of their Seperation was in Possession of certain Togs and Cady Cash to the Amount of Four or Five hundred Pagodas which Money soon after the Reconciliation took place he Appropriated to the Building of the House now in Question, That the said Veeranen Did Employ the Defendant the said Goorooada Button to Buy and Purchase for him a certain Piece of Ground at Attapollam And that the said Goorooada Button did Purchase the said Ground for and on Account of the said Veeranen who paid the Money for it and that the said Veeranen did in his the Deponents Presence — Employ the said Goorooada Button to Oversee and Inspect into the

the Building of the said House And he further Deposed that the said Veeranen did Employ the said Goorroonada Button to procure and get for him a Certificate from the Disposer of the said Ground Certifying the Sale thereof But that the said Goorroonada Button did Procure a Artificate in his own Name instead of this Respon=dents Husband the said Veeranen, which occasioned the said Veeranen to Make Objections thereto And, did Ask from the said Goorroonada Button his reason formaking it out in his own Name, to which he replied that it had been done through Mistake but that it might be easily remedied by a Choultry Bill of Sale being made out in the Name of the said Veeranen which he then undertook to procure, And the said Deponent further Deposed that the said Veeranen having had an Altercation with the said Defendant did insist on the Defendant quitting the House in Consequence of which Order the Defendant did instantly depart And the said Deponent further Deposed that this Respondents Husband the said Veeranen did Ask and Demand of the said Defendant Goorroonada Button if he had taken from a certain Chest the said Certificate of the said Ground now in question, That the said Defendant Goorroonada Button did thereupon a=cknowledge that he had done so And the said Deponent further

(69)

further Deposed that he did in the Presence of him the Defendant and Sawmy Button own and Confess that he had Delivered the said Certificate into the Hands of Arnachella Mastry, And further that he did hear the said Goorroonada Button desire this Respondents Husband, the said Veeranen to get the same back again and that the said Veeranen did get Possession of the said Certificate And that he believed that the said Goorroonada Button would have Objected to the D=elivery of the same had he conceived that he had any Right or Title thereto And this Respondent further Saith that various other Witnesses were produced and Examined on the part of this Respon=dent The purport of whose Testimony went clearly to Establish the Will of her Deceased Husband and to prove the Right which this Respondent derived therefrom to the House in Question. That in opposion to such Clear and unequivocal Testimony several Witnesses were Examined on the part of the Appellant and although the said Witnesses could not Deny that the said Will was duly Executed, yet they pretended to say that it was not made in Conformity to the Usages and Customs of the Cast and this Respondent further Saith that the Testimoney given by the Witnesses of the Appellant was to the following Purport. That it was not Lawful according to the C=ustom of the Cast for a Younger Brother to make a Will and

Dispose

Dispose of his Estate without the Consent of his Elder Brother and of the Heads of his Cast and that such Will could not be taken and looked upon as Lawful, neither could the Parties named therein as Executors take upon themselves the Burden and Execution of the said Will, That in the present Instance Veeranen the Husband of this Respondent was not Intitled to make a Will while his Brother the Defendant was living That such Act of the said Veeranen in the Eye of the Laws of their Cast were not just and could not be Countenanced, That a Widow cannot Inherit the Estate of her late Husband by their Laws while the Brother of the Husband is alive, And that the Rules and Customs of the Cast in regard to the Rights of Widows are That they are Intitled from Six to Thirty Pagodas from the Estate by way of Dowry provided they have no Children And this Respondent further Saith that Publication having Passed, The said Petition and Answer was set down for Hearing and afterwards came on to be heard By and Before the said Hble Mayors Court on Tuesday the Second Day of July last past when the said Hble Mayors Court did think fit to Order and Decree and did accordingly Order and Decree That the Prayer of this Respondents Petition should be Granted and that the Sheriffs

Seals

Seals should be taken off the Premises and further that the said Appellant should Pay all Costs of Suit as by the said Order and Decree Copy whereof is to the said Petition and Appeal annexed relation being thereunto had doth and will more fully and at large Appear. And this Respondent Denies that the said Decretal Order of the Hble Mayors Court is Erroneous, or that the Appellant has any just or reasonable Cause to Appeal therefrom To the first reason given by the Appellant this Respondent for Answer Saith that although the Appellant hath Established his Claim upon the Defendant by a Judicial Decision Yet as the Decree was obtained upon a Voluntary Appearance and Confession of the Debt such Circumstance doth strongly Manifest a Collusion between the said Defendant and the Appellant to Eject and turn this Respondent from the House which she so Inhabited. —

To the second reason given by the Appellant this Respondent for answer Denies that the Appellant has proved that the Premises Seized in Execution is the Property of the Defendant For although a Certificate of the Sale of part of the Ground is in the Name of the Defendant Yet it has been Clearly Shewn by the Testimony of various Witnesses that the same was Surreptitiously obtained That the said Defendant when questioned by this Respondents Husband upon the Subject Confessed that it had been done by Mistake and

which

which Mistake he offered to Rectify by procuring a Choultry Bill of Sale in the Name of this Respondents Husband. —

To the third Reason of the Appellant This Respondent for Answer Saith That she has by the most Clear and unequivocal Testimoney proved her Right in the Premises Seized in Execution First by Shewing that the said House was Built by her Husband from Money which he had Earned by his own Industry during the Period when him and the Defendant lived Seperate And that the same was totally unconnected with the Family Estate And again by giving proof of the Will of her Husband the said Veeramen which shews the Devise that had been made in favour of this Respondent and the Consequent Interest which she Derived therefrom to the House in question. —

To the Fourth reason or Cause of Appeal This Respondent for Answer Saith that her Husband the said Veeramen being under no Legal Disqualification, had as much Right to Will and Devise his Property as any other Person And this Respondent doth thereupon Answer the Arguments Contained in the Third and Fourth reasons Altogether futile and unworthy of any further Answer. —

To the Fifth reason charging the Testimony of This

this Respondents Witnesses with inconsistency and Contradiction This Respondent for Answer thereunto Denies the Fact and says that if it were true The Appellant would ought have pointed out the particular Instances were such Inconsistency and Contradiction Appeared (if any such Inconsistencies there were) But having failed to do so It is fair to presume that the Assertion is false and made with no other view than to Impress this Hon^ble Court with a wrong Opinion of this Respondents Cause. —

Lastly This Respondent Saith that the Defendant from Motives of Revenge has by means of the Appellant caused the present Suit to be Instituted in order to turn this Respondent (his Brothers Wife and his Children) from the House which they Inhabited to all the Miseries of Want and Distress To effect which Inhuman Purpose several Witnesses have been Examined who boldly call themselves the Heads of the Cast and who have Sworn that according to such Custom a Person cannot leave any part of his Property to his Wife while his Elder Brother is living Whereas this Respondent Charges the Fact to be otherwise and says that a Person possessed of Property has a Right to Devise it in such manner as he may judge most Proper For all which reasons and

such

such others as may be offered at the Hearing This Respondent Humbly Prays that the Order of the said Mayors Court may be Affirmed That the Sheriffs Seals may be taken off the Premises Seized in Execution and that the Appellant may be Directed to pay Exemplary Costs for his Litigious and Persecuting Conduct. —

Signed / G. Chalmer

Solicitor for Respondent

Court of Appeals

Court of Appeals
at
Madraspatnam

Saturday the 24th. day of May
Anno Domini 1794

Between Mylla Ezah Modelly of Madras Inhabitant Appellant and Tyallummah Widow and Executrix named in the Last Will and Testament of Veeranan 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 Honorable the Mayors Court together with the Order of the said Court given in this Cause on Tuesday the 2. day of July Anno Domini 1793 Upon due Consideration had of the matters therein severally

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—

Errr /Signed/ Robert Clerk
Clk

To

To the Honorable Sir Charles Oakeley Bart.
President in Council of
Fort Saint George

In the Court of appeals
at Madraspatnam ——

Between James Barlee Assistant
Surgeon of the Ninth Battalion of
Native Infantry Complainant and Cottaw
Ramasawmy and Paupoo Naick Alias
Paupoo Gruer of Madras Inhabitants
Defendants

The Humble Petition and Appeal of
the abovenamed Defendants —

Shweth

Filed in my office
the 26th August 1793.
Chas. N. White
Clk

That on the third day of July in the present year of
Christ One thousand Seven hundred and Ninety three the —
abovenamed Complainant did file a Bill of Complaint in the
Honorable the Mayors Court at Madraspatnam against your
Petitioners for the recovery of the Sum of One hundred and Twenty
Six Pagodas Seventeen fanams and Seventy Eight Cash Charged
to be due and Owing to him by your Petitioners upon a Bond

or

or obligation Executed by your Petitioners and an account Current Copies whereof were Annexed to the Complainants said Bill of Complaint and your Petitioners further Shew that a Summons did Issue from the said Mayors Court Directing your Petitioners to Appear to, and Answer the said Bill of Complaint. and accordingly your Petitioners did appear by their Attorney at Law and the usual Rules having Passed for your Petitioners to Answer- your Petitioners further Shew that before such a Answer could be prepared in time to be filed, the said Mayors Court on the thirteenth Day of this present month of august at the Instance of the Complaints Attorney Passed a Decree that your Petitioners a should pay unto the Complaint the full and just Sum of One hun= =dred and Twenty Six Pagodas Seventeen fanams and Seventy Eight Cash together with the Interest due or which might grow due thereon as also all Costs of Suit as will more fully appear by Copy of the said Decree or Extract from the Minutes of the said Mayors Court hereunto Annexed for the Inspection of this Honorable Court and which your Petitioners pray may be Admitted as part of this their Petition —

From which said Extract Order and Decree of the said Mayors Court your Petitioners do Appeal to this Honorable Court as they Conceive themselves Aggrieved and injured 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 Petitioners humbly Submit that no Prejudice could happen to the Complainant by granting a further time for your Petitioners to file their Answer.—

Your Petitioners therefore Pray that this Honorable Court will be pleased to Set a side the Decree of the said Mayors Court and that a Rule may Pass for a further time for your Petitioners to file their Answer to the said Bill of a Complaint of the Complainant

/Signed/ E. Samuel
Solicitor for the appellt.

Extract

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 13th. Day of August Anno Domine 1793

Present

John Mitford Esqr. Mayor
Josias DuPre Porcher and
Benjamin Roebuck
Aldermen.

James Barter
vers
Cothau Ramasawmy and Paupoo naick alias Paupoo Gruar

The attorney for the Complainant produces to the Court a Certificate from the Register setting forth that the usual Rules have issued for the Defendants to Answer the Complainants Bill which they have Neglected doing - He therefore Prays that a Decree may now pass - Bill Read

It appearing by the Records of this Court that the usual Rules have issued for the Defendants to Answer the Complaints Bill which they have Neglected doing This Court doth therefore think fit to Order and Decree and doth accordingly

accordingly Order and Decree that the Defendants do pay unto the Complainant the full and Just Sum of One Hundred and Twenty Six Pagodas Seventeen fanams and Seventy Eight Cash / Pagodas 126. 17 78 / 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 / Gn. Taylor Regr.

A true Copy / Signed / Emanuel Samuel
Solicitor for the Appellant

In the Honble the Court of Appeals at Madraspatnam

Between Cotha Ramasawmy and
Paupoo Naick alias Paupoo Grier of
Madras Inhabitants Appellants and
James Barter Assistant Surgeon of the
Ninth Battalion of Native Infantry
Respondent.

The Answer of the above Named James
Barter to the Petition and Appeal of the
Above Named Appellants.

This Respondent admits that he did on or about
the Third Day of July in the present year of Our Lord One thousand
Seven hundred and Ninety Three file a Bill of Complaint in the
Honble the Mayors Court at Madraspatnam against the said Appellants
for the recovery of the Sum of One hundred and Twenty Six Pagodas
Seventeen fanams and Seventy Eight Cash Justly and truly due to him
this Respondent by the said Appellants upon a Bond or Obligation
Executed by them to this Respondent and an Account Made up
thereon Copy whereof is Annexed to this Respondents said Bill of
Complaint as therein and thereby particularly setforth to which this
Respondent prays to refer and that the same may be taken as

part

Filed in my Office
the 16. Sept. 1793
Chas N. White Clk

part of this his answer to the Appellants said Petition and Appeal will more
fully and at Large appear And this Respondent admits that upon such
Bill being filed by this Respondent against the said Appellants that a
Summons did accordingly Issue from the said Mayors Court directing
the said Appellants to appear and to Answer this Respondents said
Bill of Complaint And this Respondent admits that the said
Appellants did appear to such Summons by their Attorney at Law and
that the usual Rules having thereupon Issued for the said Appellants
to Answer this Respondents said Bill of Complaint and no Answer
having been prepared nor Offered to be put in, this Respondent after
the usual time allowed for Answering the same, having expired did by
his Attorney at Law pray for and obtained a Decree on the thirtieth
day of August last in favor of this Respondent against the said Appel-
lants for the full Amount of his demand against the said Appellants
together with all Costs of suit as will Appear by the Extract order of the
said Honble the Mayors Court Annexed to the Appellants said
Petition and Appeal to which this Respondent begs leave to refer and
prays the same May be taken as part of this his Answer to the
Appellants said Petition and Appeal will Morefully and at Large
Appear This Respondent Denys that the Appellants could have any
grounds of defence against this Respondents Demand the same being

founded

founded upon a Bond duly Executed by the said Appellants for a Sum of One Hundred and Nine Pagodas Twenty two fanams and forty Cash which they stood indebted to this Respondent on the Eighteenth day of February in the Year One Thousand Seven hundred and Ninety two on which Day they Executed their Bond for the same for the recovery whereof this Respondent was driven to the Necessity of bringing his said Suit in the said the Honble the Mayor's Court

This Respondent therefore prays that the said Appellants Petition and appeal May be dismissed with Examplary Costs for their Litigiousness and that the Decree of the Honble the said Mayor's Court in favor of this Respondent may be Affirmed.

/Signed/ John Wilkinson
Solicitor for Respondent

Court

1763

Court of Appeals
at
Madraspatnam

Saturday the 24th day of May
Anno Domini 1794

Between Cathir Ramasawmy and Paupoo Naick Alias Paupoo Grawer of Madras Inhabitants Appellants and James Barter Assistant Surgeon of the Ninth Battalion of Native Infantry 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 13 day of August Anno Domini 1793 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

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—

/ Signed / Robert Clerk
Clk.

To

To the Honble Sir Charles Oakely Baronet
President in Council &c
Fort Saint George

In the Honble
Court of appeals

Between Myore Shellatiah Bramany
Complainant and Josias Dupre Porcher
Executor of Theodore Ivy Taner Deceased

The humble Petition and Appeal of the above
Named Defendant—

Sheweth

Filed in my Office the 7th October 1793
Chas N. White Clk

That some time on or about the twenty second Day of November and year of our Lord one thousand seven hundred and Ninety two the abovenamed Complainant did Exhibit and file his Bill of Complaint in the Mayors Court of Madraspatnam against your Petitioner as Executor as aforesaid for the recovery of the Sum of two hundred and Twenty Pagodas ten fanams and Eight Cash pretending the same to be due and Owing unto him the said Complainant for and upon Account of a Promissary Note of hand said to be Executed by your Petitioners said Testator and for and upon Account of the Interest which had Arisen and grown Due thereon and your Petitioner

Sheweth

Sheweth unto this Honorable Court that to the Complainants said Bill of Complaint he did exhibit and file his Answer and did therein neither admit nor Deny the Execution of the Said Note of hand upon which he had commenced his action, but your Petitioner did say it might as the Complainant had charged the same in and by his said Bill of Complainant your Petitioners said Testator did in his life time for ought your Petitioner knew to the Contrary grant unto the Complainant the said Note of hand for the said Sum of One hundred and twenty Nine Pagodas and forty one fanams but your Petitioner Sheweth that he did submit to the said Mayors Court that should the said Note appear to have been granted as aforesaid and that the said Sum of one hundred and Twenty Nine Pagodas and forty one fanams should be due and owing to the Complainant that the said Mayors Court would be pleased to consider the Charge of Interest thereon Amounting to the Sum of Ninety four Pagodas fourteen fanams and Eight Cash as an improper Charge against your Petitioner, who your Petitioner did shew was acting in trust for the Estate of a Deceased person — And your Petitioner Sheweth unto this Honble Court that to your Petitioners said Answer the Complainant did file a Replication thereto your Petitioner did Rejoin generally — that issue did join thereon and rules did pass for the Examination of Witnesses and that two Witnesses were accordingly Examined on the part of the Complainant merely to prove the hand Writing of your Petitioners said Testator —

And your Petitioner Sheweth unto this Honble Court that upon the pleadings had the Cause was set down for hearing and the same accordingly came on to be heared on Tuesday the twenty fifth Instant 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 out of the Estate and Effects of your Petitioners said Testator the full and just Sum of one hundred and Twenty Nine Pagodas and forty one fanams to gether with Interest thereon at the rate of ten per Cent per Annum until payment be made and that your Petitioner should pay all Costs of Suit out of his own packet —

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 as your Petitioner in and by his said answer did not admit the Consideration for which the said pretended Note was said to have been Executed it was incumbent on the Complainant

to

to have proved the same by a course of Evidence to Entitle himself to a Decree for your Petitioner Sheweth unto this Honble Court that proving the hand writeing only did by no means establish the authenticity of the Claim set up by the Complainant and which became the more dubious as it did not appear that the said Note had Ever been presented for payment to your Petitioners said Testator in his life time although Many years had elapsed between the date of the said Note and the Decease of your Petitioners said Testator, and therefore the said Mayors Court ought not to have given a Decree for the Complainant and your Petitioner humbly submit to this Honble Court that if the said Mayors Court had before them sufficient proof to establish the Validity of the Consideration for which the said Note is said to have been granted yet that in Decreeing thereon they ought not to have given interest upon the Amount Principal setforth in the said Note of hand. —

Secondly ..... Because the Note of hand itself does not Express Interest, nor does it shew nor has the Complainant by Oral Testimony shewn that it was Ever presented for payment in the life time of your Petitioners said Testator and your Petitioner Sheweth to this Honble Court that the said Mayors Court in giving the Complainant a — Decree with Costs did Depart from the known rules of practices of his Majestys Court of record Because where a Complainant conceives Matters sufficiently admitted by the Answer of the Defendant to Entitle him to a Decree he ought to set the Cause Down to be heard upon Bill and Answer and not proceed further and it is clear that the complainant held the fact so to be inas much as by Joining issue and Examining Witnesses he has done no more than proved the hand Writing of your Petitioners said Testator and which he might have Done viva Voce at the hearing of the Cause had the same been set Down upon Bill and Answer and therefore the Complainant in proceeding further in the litigation than by his own shewing according to the Rules of practice in like cases was in any wise — necessary ought to have been taxed with Costs instead of your — Petitioner being Decreed to pay the same out of his own packet — and which your petitioner submits is contrary to the practice of the said Mayors Court, and of any other of his Majestys Court in like cases —

Lastly ..... Because your Petitioner no where appears to have committed a devastavit or done or committed any one Act or thing to injure the Estate of his said Testator but on the contrary it is apparent that he has Exerted himself in protecting and supporting the same, for your Petitioner humbly submits to this Honble Court that as an Executor Entrusted with the Estate of a Deceased person he was

was not authorized, nor was it safe in your petitioner to Discharge a simple contract Debt the Existence of which he was totally ignorant of otherwise than under a Decree of Court and further your Petitioner Sheweth that the interest charged by the Complainant appeared to your Petitioner to be Oppressive and unjust; and that it was therefore his Duty as Executor as aforesaid to resist the Claim of the Com=plainant until he should have duly proved the same and obtained a Decree thereon and your Petitioner prays leave to Observe to this Honble Court that the Decree of the said Mayors Court does approve of and sanction the conduct of your Petitioner in the premises, altho' it affixes a punishment thereon, for upon the suggestion of your Petitioner in and by his said answer regarding the Interest charged by the Complainant the said Mayors Court in and by their said Decree have reduced the same from twelve to ten per Cent and which at once shews that the Claim of the Com=plainant was unjust in its full Extent and that your petitioner was Justified in contesting the same —

For all which Reasons and such others as may be offered at the Hearing your Petitioner Most humbly prays that the said Decree of the said Mayors Court may

may be reversed, and that this Honble Court will be pleased to grant such other and further Relief as in their Wisdom may seem meet

/ Signed / James Stuart Hall
Solicitor for Appellant

Mayors

Mayor's Court at Madraspatnam — Tuesday the 24th. day of Sept.r Anno Domine 1793.

Present

L.S. John Milford Esq.r Mayor

Henry Chichelly Michell & Alexander Cockburn

Aldermen

Between Myore Shittatiah Braming at present of Madras Inhabitant Complainant and Josias DuPre Porcher Esq.r Executor named in the Last Will and Testament of Theodore Ivey Tanner late of Fort St. George Deceased Defendant —

Mayor's Court

This Cause Coming on to be Heard and Debated this day in the Presence of the Attornies on both Sides on Reading the Complainants Bill with Copy of an Account Current Annexed The Defendants Answer The Replication The General Rejoinder the Interrogatories and Depositions on the part of the Complainant with one Exhibit Annexed on Hearing the Pleadings Made Use of by the Attornies and on due Consideration had thereon This Court doth think fit to Order and Decree and doth Accordingly Order and Decree that the Defendant do pay unto the Complainant out of the Estate and Effects of Theodore Ivey Tanner Deceased the full and Just Sum of One Hundred and Twenty Nine Pagodas and Forty One fanams (Pag.s 129. 41. -) together with Interest thereon at the rate of Ten per Cent per Annum untill 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 Packet —

(Sign'd) George Taylor Regr.

A true Copy

(Sign'd) James Stuart Hall

Solicitor for Pltf.

To

To the Honble Sir Charles Oakley Baronet

President in Council &c.

Fort Saint George

In the Honorable
the Court of appeals...

Between Myore Shellatyah Braming Complainant and Josias DuPre Porcher Executor of the last Will and Testament of Theodore Ivy Tanner Deceased Defendant

The answer of the said Myore Shellatiah Braming to the Petition and Appeal of the said Josias DuPre Porcher Executor aforesaid.

This Respondent for answer unto the said Petition and Appeal, or unto so much thereof, as this Respondent is advised is material or Necessary for him to make answer unto, answereth and saith that it is true, that this Respondent, on or about the Twenty Second Day of November and in the year of our Lord One thousand Seven hundred and Ninety Two, did Exhibit and file his Bill of Complaint in the Honorable the Mayors Court at Madraspatnam, against the Said Josias DuPre Porcher Executor aforesaid, and for the recovery of the Sum

Filed in my office
the 25th October 1793
Chas N. White
Clk

Sum of Two Hundred and Twenty Pagodas Ten fanams and Eight Cash, Charging the same to be due and owing unto the said Complainant for and upon Account of a Promissary Note Executed by the Defendants Testator, and for and an Account of the Interest which had arisen and became due thereon, and this Respondent did further state, in his said Bill of Complaint, that he had frequently and in an Amicable Manner Requested Payment from the said Josias DuPre Porcher, as Executor aforesaid, of the said Sum of Two Hundred and Twenty Pagodas Ten fanams and Eight Cash, and the said Josias DuPre Porcher refused to Discharge the same, or to give any manner of Satisfaction touching the Premisses, and to which Bill of Complaint the Petitioner Josias DuPre Porcher Executor as aforesaid, Appeared by his Attorney, and did file and Exhibit his answer to the same on or about the fifth Day of February One Thousand Seven hundred and Ninety three and this Respondent Sheweth to this Honorable Court that the Petitioner did admit in his said Answer that he was Executor of the Will of the said Theodore Ivy Tanner Deceased, as Stated in this Respondents said Bill of Complaint and the said Petitioner did partly admit in his said Answer that the Petitioners said Testator might have granted unto the Complainant his Note of hand for the Sum of One

Hundred

Hundred and Twenty Nine Pagodas and forty One fanams as Setforth in this Respondents said Bill of Complaint, in so much as the Petitioner knew not any thing to the Contrary, and the Petitioner did also urge that if the said Note should appear to have been granted to the Complainant as aforesaid that the said Mayors Court would Consider the matter of Interest Amounting to the Sum of Ninety Pagodas fourteen fanams and Eight Cash as an improper Charge against the Petitioner as Executor aforesaid and this Respondent further Sheweth that to the said Answer he did file his Replication and did therein insist and abide by the matters and things Setforth and Charged in and by his said Bill of Complaint, and to which Replication a Rejoinder was filed on the part and behalf of the Petitioner whereupon Issue did Join and Rules passed for the Examination of Witnesses; and that two Witnesses were accordingly Examined on the part and behalf of the Complainant, as stated by the Petitioner, to prove the hand Writing of the Petitioners said Testator, and which the said Witnesses have clearly and unequivocally Deposed to and proved. —

And this Respondent doth Admit, that a Publication having passed in the said Cause, the same was set down for hearing, and Accordingly came on to be heard, not on Tuesday the Twenty

fifth Instant as Setforth and Stated in the Petitioners said Petition but on Tuesday the Twenty fourth of September now last past, on which Day the said Mayors Court was pleased to make such Order and Decree as in the said Petitioners Petition of appeal is particularly setforth and mentioned and as will morefully and at large appear by the said Order and Decree of the Honorable the Mayors Court, to which, as well as all other Proceedings had in this Cause, this Respondent begs leave to refer, and to have such full and ample benefit thereof, as if the same were herein at large Setforth.

By which Decree of the said mayors Court this Respondent humbly Contends that he hath received not any advantage further than what he was legally and Substantially intitled to, and that the Petitioner hath incurred no wrong or Damage thereby which could have warranted him or given him any Cause or Colour to Appeal therefrom for the following among other reasons.—

The said Respondent in answer to the first Cause or reasons assigned by the said Petitioner saith That the Claim of this Respondent, arising out of the Promissary Note, proven to have been Executed by the Petitioners said Testator, was of so clear and Evident a Nature as to require little of foreign Testimony to support it, and every Extrinsic Evidence requisite for the Corroboration of this

this Respondents Rights, this Respondent doth humbly insist to have been Exhibited in the Depositions of those Witnesses Examined on his behalf The Execution of the Note of Hand, which hath been fully Deposed to and proved, was all that it was incumbent on the Respondent to prove. For by having proved the Execution of the said Note of hand, the Consideration becomes Manifest for it is included in the Body of the Note, being for so much Orn received of the Respondent, and Expressed by the same, and which Consideration must be taken by allowable implication to be Confessed by the Petitioners Testator; and what is Confessed by the Party's self, is so Much in Proof and the Petitioner stands Exactly in the same relation with respect to this Note, as the Testator would have done. Besides it is well and duly Established by Law and usage, that the mere insertion of, Value received, without Mentioning on what Account, is a Sufficient acknowledgment of Consideration and that the Note itself can be given and is all that is Necessary to be given in Evidence, and it was unnecessary to go into any further evidence as to the Consideration of the said Note of hand, as the said Petitioner did not by his said Answer deny the consideration thereof.

The said Respondent, in Answer to the second Cause or reason assigned by the said Petitioner, Saith, that all Bills

of

of Exchange and Promissary Notes whether they Express Interest or not, do always imply such, in the Event of Default of Payment on the part of the maker or Drawer, who Covenants for the Discharge of the same at a Stated time and such Interest is affixed at the Discretion of the Court and apportioned by way of Damage, according to the Apparent Loss of the appointed Payee by the Nonpayment. And as the Petitioner, in his Original Answer, or in any Subsequent Paper or Pleading, did not call into Question or in any way seem to Doubt the Presentment of the Note to the maker at the Season it became due, and which is but a reasonable Event and Consequence, looking towards the Nature of the Contract; The Respondent did Naturally Presume, and was warranted in such Presumption, that the Presentment was granted and Conceded by the Petitioners' Silence - and when a certain thing is to be performed at a Specific time, the Person to be benefitted by the Performance of the Same, will ever be understood to have done what was Requisite for him to do, unless another having a Contrary Interest, shall call such Transaction into Question and Demand an Evidence of the same For no Man can possibly be Conceived to do himself a wrong, and that which ought to be done, both Law and Equity will Conclude to have been done unless it be Shewn otherwise and the Respondent doth affirm,

Notwithstanding

Notwithstanding the assertion of the Petitioner to the Contrary, that the said Mayors Court in the Decree passed in favor and behalf of the Respondent were guided and Directed by Principles of Equity and by the Practice of His Majesty's Courts of Record, instead of Acting in Opposition to them. For every Suitor is at Liberty to prosecute his Cause in such manner as he Judge will be most Convenient to establish his Case, so that he doth not offend, in the method of Carrying on the same against the Established Rules and Orders of the Court and as the Petitioner did not wholly Admit in his Answer the Execution of the Note, on which the Action Arose, it was incumbent on the Respondent to prove the hand Writing of the Petitioners Testator to Establish the Grounds of action, and which could not Safely done but in the usual mode of Procedure and by Passing through the Ordinary Stages to the Examination of Witnesses. For the Respondent had been inclined to have pursued the mode, which the Petitioner hath Declared that it was Proper for the Respondent to have pursued, Namely by joining Issue immediately on the Answer, the Respondent Might have been Deprived of the Testimony Necessary to the Support of his Cause, either by the Death of the Witnesses he meant to call or what would be equally fatal, by their Departure from the Jurisdiction of the Court before the same might have come on to be heard and the Respondent Humbly Sheweth to this Honorable Court that much time doth frequently elapse between Period when the final Papers are Exhibited and the time of the adjudication on the same and that it is not Customary to Examine Witnesses Viva voce - and that it could not Possibly be done in the Present instance without the Consent of the Court and of all Parties Interested in the Suit - and the Respondent doth humbly insist, that he hath not been led into any Unnecessary Litigation but hath only followed those Steps, Marked out by the Books of Practice, and approved by the Court in which his Cause was Adjudged, and therefore he ought not to have been Charged with the Costs which the Petitioner wees to be Chargeable to him, but Considers the same to be Placed, where in Equity they ought, to the Private Account of the Executor, as having been instrumental to a needless Expence. -

And the said Respondent to the last Cause or reason assigned by the said Petitioner Saith that the Respondent doth presume that the Petitioner hath Committed a Devastavit on the Estate of his said Testator, in so much as he hath entered into a Litigation respecting a matter, extremly plain and evident in itself, and acknowledged under the Signature and allowance of his said Testator and the Respondent humbly Contendith that it is by no means consistent and reasonable, that

that an Executor should not Admit a Claim of the Nature of a Simple Contract, and of the same Discription with that of the Respondent, except under a Decree of Court; for the Maintenance of such an Opinion would tend to the Encouragement of an Oposition, which could not Terminate otherwise than in the Waste and Distruction of the Testators' Property and that which goes to injure the Estate of a Deceased Person, when it might be avoided by the pursuit of a Contrary Conduct, Direct and legal, cannot but be Deemed ipso facto, and to all Intents and purposes to be a Dowastavite and, as such, imputable to the Executor and under this Impression this Respondent humbly insists that the Mayors Court in their said Decree Order the Costs of Suit to be borne and Discharged out of the Executors' Pocket and the Respondent further Sheweth that the Petitioner cannot take Advantage by reason of the Interest Charged by the Respondent for the Petitioner, by his own Shewing, doth Declare that he conceived himself bound to litigate the Principle of the Debt as arising out of a Simple Contract; and Interest is but a remote Consideration from the Debt, and could have no Weight or Influence on the Petitioner in his refusal to Discharge the same and the Respondent doth affirm that the Conduct of the Petitioner is not in any manner Sanctioned, but on the Contrary

Contrary, is utterly discountenanced in the Decree of the said Mayors Court For it is not an approval of the Executors' Conduct that he is charged with Interest at the rate of Ten per Cent on the said Note, when he persisted that he was not Liable to Pay any Nor does the reduction of Interest from Twelve to Ten per Cent in any wise disparage or weaken the Claims of the Respondent, for, as it hath been before Shewn, that the rate of Interest on Debts of such a kind is affixed by way of Damage, and it is within the Province and Discretion of the Court to settle its Amount; and which is generally done according to the rate and Tenor of Interest on money, at the time when the Decree is passed, joined with the Circumstances of the Case. —

For which reasons and such others as may be offered at the hearing, this Respondent Prays, that the said Decree of the Honorable the Mayors Court, of the Twenty fourth Day of September last passed, may be Confirmed, and that the Petitioners said Petition and appeal be Dismissed with Costs to be paid by the appellant.

/Signed/ Emanuel Samuel
Solicitor for the Respondt

Court

Court of Appeals
at
Madraspatnam } To

Saturday the 24th day of May
Anno Domini 1794

Between James DuPre Porcher of Fort St. George Esqr. Executor named in the last Will and Testament of Theodore Ivey Tanner late of Fort St George Esqr. Deceased Appellant and Myora Shellatiah Brawmin at Present 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 Court given in this Cause on Tuesday the 2d. day of September Anno Domini 1793 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 except to the Charge of Interest of 10 ₹ Cent ₹ annum upon the Original Sum of Pags. 129. 44. — which the Court doth think to Order and Decree shall be at and after the rate of 8 ₹ Cent ₹ annum to be paid out of the Assets together with all Costs in this Suit of the Estate of Theodore Ivey Tanner Deceased and that the Appellants Petition be hence dismissed

Whereupon
/Signed/ Robert Clerke
Clk

Saturday

Saturday the 31st. May 1794.
Present
Sir Charles Oakeley Baronet,
E. W.m Tallopield and George Westcott,

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

In the Honble the Court of Appeals at Madraspatnam }

Between Margapah of Madras Inhabitant Complainant and Paul Secula of the same place Inhabitant Defendant. —

The humble Petition and Appeal of the above Named Complainant,

Sheweth,

That your Petitioner did some time on or About the Sixth day of December And in the year of Christ One thousand Seven hundred And Ninety Two Exhibit and file his Bill of Complaint in the Honble the Mayors Court at Madraspatnam against the above Named Defendant Paul Secluna thereby setting fourth that on or about the month of January in the year of Christ One thousand Seven hundred and Ninety Two the said Paul Secluna being then with the Grand Army and in the Service of Thomas Kingscot Esqr. did apply unto your Petitioner to Procure him the said Paul Secluna Two hundred Dozen

Filed in my Office
the 16th Sept. 1793
Chas N. White
Clk

Dozen of Brandy. And that your Petitioner being then enhabito of Friendship with the said Paul Secluna did undertake to purchase for the said Paul Secluna and on his Account the said Two hundred Dozen of Brandy he the said Paul Secluna assuring your Petitioner that he would pay the Sum that should become due for the said quantity of Brandy when the payment of the same should be demanded of your Petitioner by the Person from whom your Petitioner should purchase the same on Account of him the said Paul Secluna And that your Petitioner in consequence thereof did apply to One Sawmy Naick who dealt in Brandy to Supply him with the said Two hundred Dozen of Brandy on Account of the said Paul Secluna to which he the said Sawmy Naick did agree if your Petitioner would be Responsible for the payment thereof at and after the Rate of Seven Pagodas Twenty Two fanams and forty Reh per Dozen to which your Petitioner consented And accordingly gave unto the said Sawmy Naick a Written Receipt or acknowledgment for the same and did mention therein that the said Two hundred Dozen of Brandy had been received by your Pet.r for and on Account of him the said Paul Secluna and that he your Petitioner did therein and thereby become Responsible unto the said Sawmy Naick for the payment of the Sum of One thousand and five hundred Pagodas for the said Two hundred Dozen of Brandy which was the Whole Amount to be paid for the said Brandy at and after the Rate aforesaid. And that on the Eleventh day of January in the said year One thousand Seven hundred And Ninety two the said Two hundred Dozen of Brandy was delivered over to the said Paul Secluna. — And that your Petitioner having so Complied with the Request of the said Paul Secluna and having delivered the said Two hundred Dozen of Brandy to the said Paul Secluna he become indebted unto your Petitioner therefore in the Sum of One thousand and five hundred Star Pagodas which Sum the said Paul Secluna did promise to pay unto your Orator at the expiration of One Month from the day of the delivery of the said Brandy - And ~~your~~ that after the expiration of the time limitted for the payment of the said Sum of One thousand and five hundred Pagodas your Petitioner did Apply to him the said Paul Secluna for payment of the said debt so due And owing from the said Paul Secluna to your Petitioner in manner aforesaid and that thereupon the said Paul Secluna did Request of your Petitioner to take in part payment of the said debt Twenty Seven Dozen of Brandy at the same price at which he the said Paul Secluna had purchased it which your Petitioner accordingly did and Credited him the said Paul Secluna for the same as will appear by the Account Current to your Petitioners Bill of Complaint annexed that the remaining Balance the said Paul Secluna did promise And engage to pay unto your Petitioner in a few days, but that the

the said Paul Secluna Regardless of his said promise so made unto your Petitioner in that behalf did not pay the said Ballance or any part thereof to your Petitioner and that your Petitioner in consequence of the said undertaking so by him made on Account of the said Paul Secluna did pay unto the said Sawmy Naick the said Sum of One Thousand and five hundred Star Pagodas And did receive from the said Sawmy Naick a Receipt for the same and that the said Paul Secluna in consequence thereof was and stood indebted unto your Petitioner for the Amount of the balance of the said Brandy so sold and delivered to him the said Paul Secluna with Interest due thereon in the Sum of One Thousand four hundred and Thirty Six Star Pagodas Twenty fanams and Twenty Cash Current Money of Madras making in Sterling Money of Great Britain at the rate of Eight Shillings for every Pagoda the Sum of Five hundred and Seventy four Pounds and Eleven Shillings or thereabouts as will more fully and at large appear by the Account Current to your Petitioners Bill of Complaint Annexed And that your Petitioner had frequently applied to him the said Paul Secluna to pay off and discharge the said Sum of One thousand four hundred and thirty Six Star Pagodas Twenty fanams and Twenty Cash and your Petitioner will hoped that the said Paul Secluna would have Complied with such his Reasonable Request as in justice and Equity he ought to have done — But that so it was that the said Paul Secluna to injure and defraud your

your Petitioner in that behalf had not paid unto your Petitioner the said Sum of One thousand four hundred and Thirty Six Star Pagodas Twenty fanams and Twenty Cash or any part thereof although often Requested by your Petitioner so to do — But that he had altogether refused to pay the same or to make your Petitioner any manner of Satisfaction touching the Premises — your Petitioner did by his said Bill of Complaint therefore pray that the said Paul Secluna might be Decreed to pay unto your Petitioner the said Sum of One thousand four hundred and thirty Six Star Pagodas Twenty fanams and Twenty Cash together with all such Interest as should become due thereon also all Costs of the said suit —

And your Petitioner further sheweth unto this Honble Court that the said Paul Secluna having been duly Summoned to appear to and answer your Petitioners said Bill of Complaint he the said Paul Secluna did Accordingly on the fifth day of February in the year of Christ One thousand Seven hundred and Ninety three appear thereto by his attorney at Law and usual Rules having issued for the said Paul Secluna to answer your Petitioners said Bill of Complaint he on the fifth day of February in the said year filed his Answer thereto and therein and thereby denied having ever purchased from your Petitioner or otherwise employed him to procure Five hundred Dozen of Brandy or any other Quantity and that he the said Paul Secluna was ignorant of any Transaction which might have existed between your Petitioner And Sawmy Naick in your Petitioners Bill of Complaint mentioned with whom the

the said Paul Seclunas declared he was utterly unacquainted but that it might be true for what the Defendant knew to the Contrary that your Petitioner might have received from the said Sawmy Naick Two hundred Dozen of Brandy and that he might have granted a receipt to the effect and purport of that which in the said Bill of Complaint was set forth and described But that such receipt or acknowledgment could in no Wise implicate the said Paul Seclunas or shew that it was purchased for him or by his Order for that on the contrary such receipt evidently on the face of it as the said Defendant alledged denoted a Collusion between your Petitioner and the said Sawmy Naick to impose a Claim or demand upon the said Paul Seclunas which in itself had no foundation and the said Paul Seclunas denying all and every other matters set forth stated and Alledged in your Pets said Bill of Complaint and the Account Current thereunto annexed said that he was employed as an Assistant to Mr Thomas Kingsbell Commissary of Provisions to the Army And in that Capacity attended in the field during the whole of the last War that your Petitioner was also Employed as head Conicoply in the Victualling department and was partly under the Controul of the said Paul Seclunas that some time in the Month of January in the year of our Lord One thousand Seven hundred and Ninety Two your Petitioner came to the said Paul Seclunas tent with a Bottle of Brandy which he requested the said Paul Seclunas

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to Taste and give his Opinion of and that your Petitioner represented to the said Paul Seclunas as the said Paul Seclunas alleged that it was your Petitioners intention to purchase a large Quantity thereof that your Petitioner on the following day to the best of the said Paul Seclunas recollection again came And mentioned to the said Paul Seclunas that your Petitioner had Completed the purchase And had received the Brandy but that he was much at a Loss for Carts to convey it to Seringapatnam and thereupon your Petitioner entreated the said Paul Seclunas to furnish him with some few Spare Carts which the said Paul Seclunas agreed to and gave directions Accordingly that on the following day your Petitioner again came and begged of the said Paul Seclunas to Supply him with some more Carts those which Already had been granted being insufficient for the purpose as your Petitioner informed the said Paul Seclunas and that your Petitioner at the same time requested some Empty Casks to stow the Brandy into having purchased the same in Bottles and that your Petitioner seeing no impropriety at that time in Complying with the said Request told your Petitioner that the empty Casks were at his Service but that having no other spare Carts the said Paul Seclunas said if he could find any at the Moodeys or Tents from whence the Provisions were served out that he your Petitioner had liberty to take them and that on the following day a Report was made to him the said Paul Seclunas by the Conicoply who had the Charge of the said Brandies of Seven Casks of Brandy loaded on the like number of

Brandies

Brandies being brought in and that soon afterwards your Petr. came himself to return thanks for the Assistance which had been — rendered to him at the same time saying that if the said Paul Seeluna (as the said Paul Seeluna in his said answer setforth) would permit them to be conveyed in safely along with the liquor of the Army to Seringapatam that he would make a present to the said Paul Seeluna of half the profits as compensation which the said Paul Seeluna neither asked for or intended to take and your Petitioner Sheweth that the said Paul Seeluna by his said answer did further setforth that the Brandy all arrived in safely at Seringapatnam and that on or about the Eleventh day of February last past your Petitioner came to the said Paul Seeluna and requested permission to take away One of the Casks which this Defendant immediately Ordered but had the mortification soon afterwards to hear as the said Paul Seeluna by his said Answer alledged that your Petitioner had been selling it privately to the — Soldiers which being Contrary to the General Order the said Paul Seeluna determined to allow no more of your Petitioners liquor to be issued unless the Commissary of Provisions the said Mr. Thomas Kingscot was made acquainted with the Circumstance and his permissions obtained and the said Paul Seeluna in and by his said Answer did further setforth that sometime in or about the month of March following your Petitioner came to the said Paul Seelunas Tents and requested that the remaining Six Casks of Brandy might be delivered to him as same — Bombay

Bombay Merchants had agreed to purchase the same with which Requisition he your Petitioner positively refused to comply unless the said Mr. Thomas Kingscot gave directions for the delivery thereof and gave as a Reason for such his refusal that he your Petitioner or his People had already been detected in selling liquor to the Soldiers which was against the General Orders and if such conduct was observed in the disposal of the said Six Casks of Brandy and the Circumstances discovered it would be supposed that the said Paul Seeluna was acting in concern with your Petitioner and prove highly prejudicial to the said Paul Seelunas — Character — And the said Paul Seeluna further alledges that your Petitioner Continued to urge and solicit him to deliver the Brandy and to induce him the said Paul Seeluna thereto he made Several pecuniary offers to the said Paul Seeluna both from himself and through the means of other People which the said Paul Seeluna always spurned at and refused to allow the Brandy to be delivered out unless the said Mr. Thomas Kingscots Permission was obtained And the said Paul Seeluna further says that on or about the Twenty first day of April following an Order issued for fifty Carts from the Commissary department to proceed to Ambore for a Supply of Liquor and the said Paul Seeluna being directed to dispatch them he went to Tyah Moodelly who was Head Dubash to the said Mr. Thomas Kingscot and under whose direction your Petitioner particularly was to inform him of the Circumstance and to request to know what

Should

should be done with the Brandy belonging to your Petitioner as the Casks on which they were placed were wanted for immediate Service to which the said Cyah Moodelly Replied that they must be sent out to Ambore and left there the said Paul Secluna said that by some mistake two of the Casks belonging to your Petitioner had been Served out to the Troops but the Remaining four were sent on with the Carts which were Accordingly dispatched — That on the following day an Order issued to the said Mr Thomas Kings Coy Requiring him to purchase as much liquor up as would serve untill the Supply Returned on which Occasion the said Cyah Moodelly came to the said Paul Secluna and Requested him to send People to Stop the Brandy belonging to your Petitioner that he might have an opportunity of disposing of it to the Commissary of Provisions — But that the said Paul Secluna Refused to enterfere on the Occasion and told Cyah Moodelly that if he Wished to stop the said Brandy he must dispatch some persons himself for that purpose and that afterwards the said Paul Secluna heard no more on the Subject and that the said Paul Secluna Arrived at the Presidency on or about the first day of June last past and that although the Nature of your Petitioners business as well as the said Paul Secluna led them to meet almost every day at the Office of the said Mr Thomas Kingscot yet that your Petitioner never pretended to Speak to or Address the said Paul Secluna on the Subject of the said Brandy untill sometime in the

month

Month of October last past when your Petitioner came to the said Paul Secluna and Mentioned that he Wished to know what became of the Six Casks of Brandy which he had in Camp and in what manner the loss which he had Sustained was to be made up and that the said Paul Secluna being Surprized at the Question Replied that your Petitioner must have known what their fate had been that Two Casks had been Served out by Mistake to the Troops and that the other four had been Sent into Ambore for the former of which the said Paul Secluna said that he Supposed the said Cyah Moodelly the Head Dubash of the said Thomas Kings Coy would Account to him and the said Paul Secluna further Setforth that a Short time after he Received information from two of the Conceptlies who had Served in the department of the Commissary of Provisions that your Petr had been Transpiring with them and using undue Methods to procure them to give a false Testimony and to Sign Cadjan Writings in Order to Support his pretended Claim which Several Circumstances the said Paul Secluna Communicated to the said Mr Thomas Kingscot who at the Request of the said Paul Secluna investigated the Matter when he found the facts to be so and the Claim itself Altogether unfounded after which the said Paul Secluna in his Answer says that he expected to have heard no more on the Subject but to his Utter Surprise and Astonishment he was Suddenly Arrested, at the instance of your Petitioner

without

without any previous Specific demand having been made of the pretended debt either by your Petitioner himself or his Attorney at Law on a Suggestion that the said Defendant would abscond upon hearing a Bill of Complaint was filed against him —

Your Petitioner further Sheweth unto this Hon^ble Court that on the fifth day of March in the present year One thousand Seven hundred and Ninety three he your Petitioner filed his Replication to the Defendants said Answer and for Replication thereunto said that tho' the said Paul Secluna denied your Petitioner having purchased any Brandy on his Account yet that he your Petitioner purchased the said Brandy by the Order of the said Paul Secluna and gave his Security for the Payment thereof as in your Petitioners Bill of Complaint is particularly Mentioned and as herein after will fully Appear — And that notwithstanding the said Paul Secluna discount having any knowledge of any dealings between your Petitioner and Sawmy Naick relative to the buying of the said Brandy for his use, yet it was the said Paul Seclunas Servant not the Servants of your Petitioner that received the said Two hundred dozen of Brandy. And your Pet^r in and by the said Replication denied that he did in the Month

of

of January One thousand Seven hundred and Ninety Two go to the Tent of the said Paul Secluna with a Sample of Brandy or that he did at any time observe that it was his intention to purchase a large or any quantity of Brandy: and did therein Setforth that on the Eight of January One thousand Seven hundred and Ninety Two your Pet^r waited on the said Paul Secluna in his Tent and was desired by him to procure him a Certain quantity of Brandy and that in Consequence of this Order your Petitioner went to Sawmy Naicks People Understanding they had some of that liquor to dispose of and on inquiry of Casava Pellay One of the said Sawmy Naicks Servant he was informed by him that he had Two hundred Dozen of Brandy for Sale for which he would take Nine Pagodas p^r Dozen which your Petitioner Communicated to the Said Paul Secluna who proposed buying the whole thereof at eight Pagodas per Dozen if it proved good, but that upon trial it was not found to be equal to what was expected and that the price was therefore Settled at Seven Pagodas and an half per Dozen to be paid in ready Money which Circumstance your Petitioner reported to the said Paul Secluna whereupon the said Paul Secluna desired to know if one Months Credit would be given for the payment thereof, which was Agreed to, upon Condition that your

Petitioner

Petitioner would become Security positively declaring that they the
said Sawmy Naichs People would have no dealings with the said
Paul Secluna whereupon, and at the very earnest request of the
said Paul Secluna your Petr. did become his Security as required
and from a Reliance on the integrity of the said Defendant
Paul Secluna he your Petitioner did Write to the said Sawmy
Naich by which letter he did bind himself on Account of him the
said Paul Secluna for the Payment of One thousand & five hundred
Pagodas the Price of the said Brandy And your Petr. did further
State that he did not (as Alledged by the said Paul Secluna)
request of him the said Paul Secluna to furnish your Petitioner
with Seven Spare Carts nor with a few or any empty Casks to
Stave the Brandy into and that therefore the said Paul Secluna
could not as Alledged by his said Answer have Complied with such
pretended request no such request having been made And your
Petitioner the more particularly to shew, the fallacy of such the
Assertions of the said Paul Secluna in that request did thereupon
observe that the said Seven Carts so by the said Paul Secluna
pretended to have been lent to your Petitioner Must have had
thirty five Bullocks at five Bullocks to each Cart that it required
fourteen Men to drive them two Men to each Cart and that the

monthly

Monthly expence of the Bullocks and drivers Must have Amounted
to One hundred and four Pagodas and Ten fanams That the Origi-
nal Costs of the Bullocks could not have been less than three
hundred or three hundred and fifty Pagodas that these Seven Carts
Accompanied the Army for five Months Successively in the Course of
which time Many Bullocks might have died and have been
Replaced and that it was not to be Presumed that so great an expence
should have been incurred by the said Paul Secluna who positively
declares he had no interest whatever in the transaction but Acted
Merely to Serve your Petitioner whom the said Paul Secluna asserts
he Scarcely knew and your Petitioner did further State that when
the said Paul Secluna understood that your Petitioner had given
Security for the said Brandy he the said Paul Secluna Ordered his
own Men to receive it which they Accordingly did and lodged it in
the said Paul Seclunas Tent and your Petitioner did further
Setforth that in the Month of February the time being expired
in which the purchase Money of the Brandy was to be paid
and your Petitioner being Pressed for Payment of the Money for
which he had become the Said Paul Seclunas Security as aforesaid
he your Petitioner Applied to the said Paul Secluna for the
Money who promised to pay it in Ten days at the same time

requesting

questing of your Petitioner to took out for a Purchaser for what remain-
-ed unsold of the Brandy and that your Petitioner understanding
that the Marratta Poligars wanted One Cask of Braindy he accord-
-ingly disposed of One to them the Price of which was immediately
paid on Account of the said Debt and the said Paul Seluna was
Credited for the same — And that your Petitioner being very
Much pressed for the Money due for the Brandy he Applied to
the said Paul Seluna for the Remaining part of the Debt which
he promised to pay from day to day till Sawmy Naick becoming
Still more importunate, your Petr. was Obliged to borrow Money to
Make up the Debt for which he was so ingaged for the said Paul
Seluna and which Money he Accordingly paid and that about
the same time some Bombay Merchants Wanting to purchase
Brandy they Offered Six Pagodas per Dozen of which Circumstance
your Petitioner informed the said Paul Seluna who refused to Sell
it at that Price and your Petitioner denied that the Two Casks of
the said Brandy in the said Paul Seluna's Answer Mentioned
were Served out to the Troops by any Mistake but that they were
Served out to the Troops by the said Paul Selunas express direc-
-tions and that the said Paul Seluna exerted his utmost endea-
-vours to dispose of the other four Casks in the same manner but

could

could not Succeed your Petitioner further Setforth that the day
after the said Paul Seluna's Brandy was dispatched to Ambore,
the Head Dubash Eyah Moodelly informed your Petitioner
that he had an Order from his Master Mr. Kingsett to pur-
-chase some Brandy and that if your Petitioner would send
Men to bring back the said Paul Seluna's Brandy that
he would purchase the of our Casks adding that this would
put an end to the frequent quarrels which had Subsisted on
Account of the Money but that your Petitioner declared he
would have no Concern whatever with the Brandy, that all
he wanted was the Money the said Paul Seluna Owed him
for the said Brandy. And your Petitioner did further Setforth
that Since his Return to the Presidency he Repeatedly demanded
Payment of the said debt from the said Paul Seluna who
frequently Offered to Settle for the Two Casks which were
Served out and to send to Ambore for the other four Casks and
Return them to your Petitioner in Satisfaction of the Remainder
of the said Debt.

And your Petitioner further Sheweth
that on the Twelfth of March in the present year One
thousand Seven hundred and Ninety three the said Paul

Seluna

Secluna did exhibit and file his Rejoinder to your Petitioners said Replication and for Rejoinder thereunto denied having ever purchased from your Petitioner or employed him to purchase from any other Person, Two hundred Dozen or any other Quantity of Brandy And that the Carts and Bullocks in your Petitioners said Replication mentioned were some of those in the Department of the Commissary of Provisions and the Property of the Company and that consequently the said Paul Secluna could have Sustained Neither loss nor personal inconvenience from Allowing your Petitioner as the said Paul Secluna Alledged the use of them nor could the Publick Service be any way impeded thereby for that the Consumption of Provisions and liquor being so great there was always some Spare Carts & Bullocks And that the said Paul Secluna from a Consideration of the importance of the Station which your Petitioner held as head Commisply to the Victually Department thought your Petitioner in some measure intitled to an indulgence where the Public Service could not be injured by it and that therefore partly on these principles and partly under the Idea that such indulgence would tend to Secure your Petitioners fidelity and Strengthen his exertions in the performance of the Several duties intrusted to him he the said Paul Secluna

Secluna as he pretended Allowed your Petitioner to have the use of the Carts as aforementioned — And the said Paul Secluna further setforth that although your Petitioner pretended to have sold the Cask which the said Defendant Caused to be delivered to a Maratta Poligar such Circumstance was Merely Setforth by your Petitioner to Conceal the Transaction of his Selling it to the Soldiers — And that your Petitioners People were detected in the fact and that a Court of enquiry sat to investigate the Circumstance And the said Paul Secluna did further Setforth that the Two Casks of Brandy in his said Answer mentioned were as had been Stated by the said Paul Secluna in his Answer — Served out by Mistake and denied that he had used ineffectual or any exertions to dispose of the other four Casks in like Manner as your Petitioner would insinuate he the said Paul Secluna had done with the former on the Contrary the said Defendant Alledged that from the Situation in which he was placed as Chief Assistant in the department of the Commissary of Provisions he had always an Opportunity of Disposing of Liquor Whenever the Publick exegencies Demanded private Supply and in Proof thereof said that when Orders issued he did Actually purchase Several Casks from the — Merchants who followed the Camp and Sold them to the Commissary of Provisions and that it could not be Supposed that if he

he the said Paul Seduna had any Interest in the four Casks sent
to Ambore that he would have Waved that advantage which his
Situation gave him — And your Petitioner further Sheweth unto
Honble Court that upon such Proceedings had issue, was Joined
on or about the Nineteenth day of March which was in the
present year One thousand Seven hundred and Ninety three and
Rules did pass for the Examination of Witnesses that Witnesses
were Accordingly Examined as well on the part of your Petitioner
as of the said Defendant and that Publication did pass there

And your Petitioner sheweth unto this Hon
Court that Nanuppah Modelly a Witness examined to the Second
Interrogatory on the part of your Petitioner deposed and Said
that he was in the service of Sawmy Naich, that he was in his
employ some time in the Month of January one thousand seven
hundred and Ninety two at a place Called Roodra Doorgum where
the Army was encamped at that time, that your Petitioner did make
Application to him the Deponent respecting some Brandy and
that the Quantity was two hundred Dozen, that the Complainant
did Mention that the said Brandy was for the use of the said
Paul Seduna, that he told your Petitioner, thereupon that he would
sell the said Brandy at the rate of Nine Pagodas per Dozen

that

that a Sample of the Brandy was required by your Petitioner for
the said Paul Seduna that the said Sample was sent to the said
Paul Seduna that the sample so sent consisted of two Bottles,
and that the Person who received the same said on trial thereof
that it was good that the Person to whom the Brandy was sent made
objections to the price thereof — that the price per Dozen he said
he would give for the same, was seven Pagodas and an half — that
a Quantity of Brandy Containing Two hundred Dozen was at
length purchased by your Petitioner on Account of the said Paul
Seduna that the sum total for which the same was sold, was about
one thousand & five hundred Pagodas — that the time limitted for
the payment thereof was one Month, that the Complainant
became Security for the payment of the Brandy, that such Secu-
rity was so given on Account of the said Paul Seduna — that your
Petitioner did Write a Letter to Sawmy Naich after the Brandy
was purchased, that the purport thereof was an engagement on the
part of your Petitioner to pay the Money for the Brandy purchased
on or before the thirty first day of January one thousand Seven
hundred and Ninety two, on Account of the said Paul Seduna, that
Paul Seduna sent for the Brandy when the same was purchased,
that the quantity sent by the Deponent was Two hundred Dozen
that he delivered the same to the Conicoply, Syrang and Lascars

belonging

belonging to the said Paul Seeluna, And that the Name of the Conicoply was Nineapah Moodelly, and the Name of the Syrang was Mootoo, that the Deponent did not know the Names of the Lascars; that the said Brandy was put into Casks and Conveyed upon Carts, that at the expiration of the limitted time for payment of the Brandy, one Casavah pella in the service of the said Sawmy Naick did receive payment thereof from your Petitioner on account of the said Paul Seeluna - That he had looked at the Exhibit produced and Marked A purporting to be a Written Declaration - and said that the Name therein Set and Subscribed was his the Deponents proper hand Writing, that he had also looked at the Exhibit Marked B purporting to be a Receipt granted by Casavah Pellah and not by him the Deponent that the Names thereto Subscribed was of the proper hand Writing of the said Casavah Pellah —

And your Petitioner further sheweth that Venkatchellapilla a Witness examined to the third Interrogatory on the part of your Petitioner did depose and Say that he was not present at a Negociation between your Petitioner and Sawmy Naicks People respecting some Brandy - that your Petitioner did send by the Deponent two Bottles of Brandy as Musters to Paul Seeluna with a Message to the said Paul Seeluna, that the

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the price of the said Brandy was eight Pagodas per Dozen, that he did accordingly carry the said Musters of Brandy to the said Paul Seeluna and that the said Paul Seeluna did taste the same and say that it was Mixed with Water that the said Paul Seeluna did then take a Bottle of Brandy in his Possession and Taste the same, and did say that it was the best Brandy and that the Brandy sent by your Petitioner he would purchase at Seven Pagodas and an half per dozen - that the said Paul Seeluna did not say that if such price were Accepted he would send for the same, that the said Paul Seeluna did send his People with Carts and Casks for the Brandy that the same was Conveyed to the Bazar and delivered to the Lascars and People belonging to the said Paul Seeluna —

Your Petitioner further Sheweth that Nineapah a Witness Examined to the fifth Interrogatory on the part of your Petitioner did depose and say that he did on the Eleventh day of January one thousand seven hundred and Ninety two in Conjunction with Mootoo Syrang and Some Lascars fill up seven Casks with two hundred Dozen of Brandy at Roodry Doorgum by order of the Defendant Paul Seeluna on his Account that some Conicoplies were present at that time, but he did not recollect what Passed thereupon that they did convey the said Brandy

to

to the said Paul Seduna by Order of your Petitioner and the same was received by the said Paul Seduna and that it was placed in the Stores belonging to the Army – that the said Paul Seduna did whilst the Army was at Seringapatnam deliver to your Petitioner one Cask of Brandy in part discharge of the debt due to your Petitioner – that he had looked at the Exhibit Marked **D** produced and Shewn to him purporting to be written declaration given by the said Deponent Nineapah and that the Name therein set and Subscribed was of his the said Deponents own proper hand Writing – and that the Contents thereof was true your Petitioner further sheweth that Arasoor Govindapah a Witness examined to the Sixth Interrogatory on the part of your Petitioner did depose and say that he did know of the Petitioners having procured from the people of Sawmy Naick Dubash to Mr. Moubray in the Month of January one thousand seven hundred and Ninety two for the said Paul Seduna a quantity of Brandy in Seven Casks – but that he did not recollect how many Dozens of Brandy were Contained in the said Casks that the said Paul Seduna did put into the Charge of him the Deponent Arasoor Govindapah one of these Casks of Brandy at Shahurgunjan Pitta Near Seringapatnam – that he did dispose of the said one Cask of Brandy to the Merchants in the

the Mahratta Army and that he paid the sale Money thereof to your Petitioner by direction of the said Paul Seduna –

And your Petitioner further sheweth that Arasoor Govindapah was also Examined to the Ninth Interrogatory on the part of your Petitioner did depose and say that he did serve out a Cask of Brandy to the Soldiers and that one Goorooapah was employed in him the Deponent at that time – that the said Cask of Brandy was served out to the Soldiers in the Month of February one thousand seven hundred and Ninety two at a place Called Coonical by Order of the said Paul Seduna to whom it did belong – that he did Not know of another Cask of Brandy having been served in like Manner –

And your Petitioner further sheweth that Arasoor Govindapah was also Examined to the Sixteenth Interrogatory on the part of your Petitioner did depose and say that he did Know of a Court of enquiry having been held in Camp respecting some Liquors having been privately Sold to the Soldiers in the Month of April one thousand seven hundred and Ninety two at Bengalore and that a Person Named Dawnajem and two other Persons (whose Names the Deponent did not recollect) were Confined by Captain Manson on that Occasion that the Persons so Confined did not belong to your Petitioner but that they were Camp followers – that the Transactions took place about three Months after the Brandy

was

was Sold to the Merchants of the Mahratta Army —

And your Petitioner sheweth that Choonachellum a Witness Examined to the Sixteenth Interrogatory deposed to the same effect as the above Deponent did depose —

And your Petitioner further sheweth that Srasoor Govindapah was also produced as a Witness on the part of your Petitioner to the Twentieth Interrogatory did Depose and say that he did Know that the said Paul Secluna Make application to your Petitioners some time in the Month of January one thousand seven hundred and Ninety two to procure him a Certain Quantity of Brandy and that the quantity the said Paul Secluna so Iequired was as Much as your Petitioner could Procure, that your Petitioner did in Consequence procure for the said Paul Secluna Seven Casks of Brandy from the beforementioned Savamy Naicks People that he did Recollect that Ragunada pella and Nunapah, Conicoply to the said Paul Secluna one Sarang and one Tondal were present in that occasion —

And your Petitioner further sheweth that Ragunada pella a Witness on the part of your Petitioner to the Twentieth Interrogatory deposed to the same effect as the above Deponent did depose —

And your Petitioner further sheweth that Srasoor Govindapah was also produced as a Witness on the part of your Petitioner to the last Interrogatory — did depose and say that the Devinaigoms before mentioned was not Confined and flogged on account of the Brandy in question but on Account of some other Brandy Sold by his the said Davinaigoms friends —

And your Petitioner further sheweth that Choonachellum a Witness Produced to the Eighth Interrogatory on the part of your Petitioner did depose and say that he did know that the Defendant Paul Secluna did some time in the Month of February one thousand seven hundred and Ninety two trust one Cask of his the said Paul Secluna's Brandy to the Charge of one Govindapah and send him to dispose of the same to the Merchants in the Marattas Army with order to pay the sale Money to your Petitioner from Whom the said Paul Secluna had bought the said Casks of Brandy — that the said Govindapah did Accordingly dispose of the said one Cask of Brandy and pay the produce thereof to your Petitioner that he did know the Name of the Conicoply that was in the habit of Serving out liquor to the Troops in Camp and that his Name was Ramalingom — that he did know of the said Conicoply's having been Absent at the time of serving out the liquor; that he did not Recollect the Exact day of the Month on which the said Conicoply was so absent that he did know of a Person having sent a quantity of Brandy to be Served out to the Troops that the said Paul Secluna was the Person who sent the said Brandy and that the quantity was one Cask and

that

that the same was served out by the particular Order of the said Paul &
Seduna that on Receiving such order he this Deponent told to the said
Paul Seduna that the said Casks contained Brandy Supposing the said
Paul Seduna was Unacquainted therewith; in Answer to Which the said
Paul Seduna said that he had five Casks more of the same liquor &
which he intended to serve out to the Troops in the like Manner. ——

And your Petitioner further Sheweth that Cho-
-nachellum a Witness Examined on the part of your Petitioner to the
Twelfth Interrogatory did Depose and say that your Petitioner did &
send the Deponent to apply to the said Paul Seduna regarding some
debt for which he was much pressed by Sawmy Naicks People and
that he this Deponent was so sent by your Petitioner some time in the
Month of February one thousand seven hundred and Ninety two
when the Army was Near Seringapatnam that the said Paul Seduna
did thereupon say to the Deponent that he was much obliged to your
Petitioner for the Liquor which he had purchased from Sawmy Naicks
People on Account of the said Paul Seduna and that he expected a
good Sale in four or five days for the said Articles and therefore
requested your Petitioner would grant him an indulgence for that
time. that he was four or five days afterwards again sent by your &
Petitioner to the said Paul Seduna to demand from him the payment

of

of the Money for the said Brandy in Consequence of your Petitioners &
Creditors being troublesome — that the said Paul Seduna did declare
to the Deponent that the Brandy had grown very Cheap Contrary
to his expectation and that he was afraid that the price would still
be lower and that he Should sustain a loss altho' he bought the said
Brandy at seven Pagodas and an half per Dozen — that the said &
Paul Seduna did then tell him to explain the matter to your
Petitioner and to Require his indulgence for ten days longer. —

And your Petitioner further sheweth that &
Govinda Chitty a Witness Examined to the Twelfth Interrogato
-ry deposed to the same effect as the above Deponent hath deposed.

And your Petitioner further sheweth that
Hoospu Cannicoo Mattoo a Witness Examined to the Twelfth &
Interrogatory also deposed to the same effect as the above Deponent
hath deposed. —

And your Petitioner further sheweth that
that Eyah Moodelly a Witness produced to the Eighteenth
Interrogatory on the part of your Petitioner did Depose and say
that he did not know Whether the said Paul Seduna did or did
not sell two Casks or any other quantities of Brandy to the Troops. —

And

And your Petitioner sheweth that Eyah a Moodelly also Examined to the last Interrogatory deposed that after your Petitioner and Paul Secluna Arrived at Madras your Petitioner did Request the Deponent to Settle the Matter in a dispute between your Petitioner and Paul Secluna in Consequence of which he the Deponent had a Conversation with the said Paul Secluna on the Subject who told the Deponent that he was ready and willing to permit your Petitioner to take back four Casks of Brandy which were at that time at Ambore and with respect to the two Casks of Brandy which had been served to the Troops by Accident he the said Paul Secluna would pay to your Petitioner the Value thereof as it Might be determined by the Deponent.

And your Petitioner further sheweth unto this Honorable Court that Thomas Kingscot Esqr. a Witness examined De benesse on the part and behalf of the Defendant Paul Secluna deposed and said that he was employed as Commissary of Provisions to the Grand Army during the late War - that your Petitioner and the said Paul Secluna were employed under him in the said Department - your Petitioner as head Comicaply and the said Paul Secluna as head Assistant in the Victualling Department - that

that he know of a Claim which your Petitioner had made on the said Paul Secluna, For Two hundred Dozens of Brandy which he pretended to have sold to the said Paul Secluna in Camp while the Army was proceeding to Seringapatnam - that he came to the Knowledge thereof thro' the said Paul Secluna who mentioned to the Deponent that your Petitioner was attempting to impose such a Claim upon him - and that he was indeavouring to support it by procuring People to give false Testimony - that he did investigate the Circumstance attending such Claim at the desire of the said Paul Secluna, that he was convinced in the Course of such Investigation that the Claim was without foundation and that your Petitioner had been using undue Methods to establish the same - that the particular Circumstances which passed during the investigation and the Cause and Reason which induced him the Deponent to think that the Claim was without foundation, were that your Petitioner could not produce any Vouchers to shew that the said Paul Secluna had made such Purchase from your Petitioner in the Next place when your Petitioner was questioned by the Deponent he first said he had sold two hundred Dozens of Brandy to the said Paul Secluna and upon further interrogation your Petitioner said that he

he had an opportunity of disposing of the Brandy to some Bombay Merchants, but that the said Paul Seeluna would not deliver it to him. which Occasioned the Deponent to ask your Petitioner if the Brandy had been once sold to the said Paul Seeluna what right had he — your Petitioner to sell it again, to which question your Petitioner — made no Reply — the Deponent further said that during the investe-gation he had unquestionable proof that your Petitioner had — procured or was indeavouring to procure some of the Conicaplies who were employed under the Deponent to sign Cadjans or other Writings in order to establish his Claim, and that the tal fact as far as the Deponent could learn was that the said Paul Seeluna from Motives of good Nature had permitted your Petitioner to carry to — Seringapatnam with the Liquor belonging to the Troops six Casks of Brandy, that upon the Armyes Arrival there one Cask had been delivered to your Petitioner that in defiance of the general orders as the said Paul Seeluna had been informed, your Petitioner had been found Selling to the Soldiers, from which Circumstances the said Paul Seeluna had refused to deliver him any more, that the said Brandy belonging to your Petitioner had been Afterwards sent out of Camp Which deprived your Petitioner of the opportunity of —

Selling

Selling it who in order to Make up the loss brought the present Claim Against the said Paul Seeluna — your Petitioner further sheweth that the said Thomas Hengsco ff further said — That the general tenor of the said Paul Seelunas' Onduct which always gave Satisfaction — he is convinced the said Paul Seeluna could not have purchased the said Brandy with a View of selling it privately because such Circumstance Must have been known and would have deprived him the said Paul Seeluna of his Employ — that if the said Paul Seeluna had any Brandy which he had carried on to Seringapatnam he would have availed himself of the opportunity of disposing of it to the Deponent as Commissary when an order was issued from the Commander in Chief to purchase aquantity of Brandy for the public Services —

And your Petitioner further sheweth unto this Honorable Court that Frances Pearse was also examined as a Witness on the part of the said Paul Seeluna who to the Second Interrogatory deposed and sayd that he did accompany the Grand army during the greatest part of the late War, and followed the occupation of a Merchant — that he was on habits of intimacy with the Defendant Paul Seeluna and that they the Deponent and and the said Paul Seeluna Mixed together, that your Petitioner did to the knowledge

of

of the Deponent apply to, and obtain from the said Paul Secluna some spare Carts to carry on to Seringapatnam a Quantity of Brandy which he had purchased, - that to the best of his remembrance the Army was at that time Situated betwixt Sundroog and Catradroog - that he was present at Seringapatnam when your Petitioner came to demand from the said Paul Secluna the delivery of six Casks of the said Brandy and that the said Paul Secluna said he would not comply with the request of your Petitioner till he got an Order from Mr. Kingsot - that your Petitioner did Make an offer of the half the Profit that Might arise from the Sale of the said Brandy - to induce the said Defendant to deliver up the said Casks of Brandy - but that the said Defendant Paul Secluna did not comply therewith. ——

Your Petitioner further sheweth that the said Frances Pearce was also examined as a Witness on the part of the said Paul Secluna who to the third Interrogatory deposed and sayd that an order was issued to the Commissary of Provisions to Purchase of a quantity of Liquor for the use of the Army - that in pursuance of such Order as Deputy Agent Victualler did Purchase from the Deponent two Casks of Brandy and from a Person Main two Casks of Brandy and also a quantity of Brandy belonging to Mr. Griffith of Pondicherry for the public Service. ——

Your Petitioner further Sheweth that James Munro was also Examined as a Witness on the part of the said Paul Secluna who to the Fourteenth Interrogatory deposed and said that he did Attend in the Army when they were last at Seringapatnam in the Capacity of a Merchant - that he did in Conjunction with Mr. Patch Make application to the said Paul Secluna about the purchase of some Brandy and that their reason for doing so was that they were at that time in want of Brandy - that the said Paul Secluna informed the Deponent and the said Mr. Thomas Patch, that he had no Brandy of his own, but that there was some belonging to one of the Conicaplies in the same department with the said Paul Secluna - and that he would Speak to the said Conicaply respecting the said Brandy and Acquainted the Deponent and the said Thomas Patch with his the said Conicaply's Answer - that the Peace was soon after Concluded and that he the Deponent in Consequence not being in want of the said Brandy made no further enquiry respecting it. ——

And

And your Petitioner further sheweth that Angus MacThie was also Examined as a Witness on the part of the said Paul Secluna who to the Seaventh Interrogatory deposed and said that he was with the Army during the greatest part of the late War - and particularly while they were last at Seringapatnam - that the said Defendant Paul Secluna did purchase from the Deponent two Casks of Brandy (on the return of the Army from Seringapatnam after the Peace was concluded) for the Use of the Army, and by Order of Mr. Kingscot the Commissary of Provisions and at the same time, that the said Paul Secluna purchased the Brandy from the Deponent, he desired the Deponent to make out his Bill for the said Two Casks of Brandy against Mr. Kingscot - which the Deponent did accordingly - that he knows the said Paul Secluna did likewise purchase a Quantity of Brandy from Mr. James Dobbin about the same time - and for the same purpose as he purchased the said two Casks of Brandy from the Deponent —

And your Petitioner further sheweth that Eyah Moodelly Dubash was also Examined as a Witness on the part of the said Paul Secluna who to the Tenth Interrogatory deposed and said that he was head Dubash Mr. Thomas Kingscot late Commissary of Provisions to the Army, and that he did attend upon him with the Army during the whole of the late War - that your Petitioner and the said Paul Secluna did serve in the Department of the said Commissary of Provisions - that your Petitioner was head Conicoply to the right Wing of the Army, and the said Paul Secluna Assistant Victualler, that on the Arrival of the Army at Seringapatnam your Petitioner told the Deponent that he had Carried a Quantity of Brandy in the said Department. That he did not know whether your Petitioner did or did not receive any Assistance from the Defendant to enable him to carry on the said Brandy - that your Petitioner did Mention to him the Deponent - that the said Paul Secluna had refused to deliver the Brandy to him which had been Carried on in the Department of the Commissary of Provisions - that he did not know what reason was assigned by the said Paul Secluna for refusing to deliver the said Brandy —

And your Petitioner further sheweth to this Honorable Court that the said Cause was set down to be heard, and that the said Cause came on to be heard Accordingly in the said Honble the Mayors Court of Madraspatnam on Tuesday the third day of September one thousand seven hundred and Ninety three when

when the said Mayors Court was pleased to Order and Decree and did Accordingly order and Decree that your Petitioners Bill of Com-plaint Should stand dismissed with Double Costs of Suit as by the said Decree Copy whereof is hereunto annexed Which your Petitioner prays may be Admitted and Received as part of this his Petition of Appeal Citation being thereunto had will more fully appear.

From Which said Decree of the said Mayors Court your Petitioner Appeals to this Honble Court of Appeals as your Petitioner is Advised and believes that the said Decree of the said Mayors Court is erroneous and that your Petitioner is much Aggrieved thereby, for the following Amongst other Reasons

First ..... Because that the Defendant Paul Seduna in and by his said Answer has Admitted the Recit and delivery of the Brandy in your Petitioners Bill of Complaint mentioned and that he continued in the possession and acted as owner thereof by having Refused upon Application being made to him by your Petitioner for that purpose to deliver six Casks, part of the said Brandy to your Petitioner in Order that the said Brandy might be sold and disposed of to some Bombay Merchants in the

the said answer mentioned and for that the Reason of your Petitioners having so applied to the Defendant to deliver the said Brandy was that the Defen-dant had failed in the payment of the Prime Cost thereof and that the said Sawmy Naick from whom the same was purchased had pressed your Petitioner for the discharge of the engagement entered into by your Petitioner for and on Account of the said Defendant. —

Secondly ..... Because that the said Defendant in his said Answer doth also Admit that he caused two Casks part of the said Brandy to be served out to the Troops and that altho' the said Defendant doth alledge that the said Brandy was so served out by Mistake yet the said Defendant did not by his said Answer either directly or indirectly deny having Received from or charged the Honorable Company with the Amount Value of the said two Casks of Brandy which the said Defendant ought to have denied of the fact had been that he had Not Made or did not intend to make such Charge and which Charge being immediately consequent to the sale of the said Brandy the said Mayors Court should as your Petitioner humbly Submits to this Honble Court have Concluded from thence That the said Defendant had dis-posed of the said two Casks of Brandy on his the said Defendants own Account and Received the Amount sale thereof. —

Thirdly

Thirdly ..... Because that the said Defendant did continu
all along as appears of his own Shewing by his said Answer to act as t
Owner of the said Brandy and as such finally sent the remaining fou
Casks thereof to ambore and that although the said Defendant do
in the first part of his said Answer deny having Purchased from o
employed your Petitioner to procure for him the said Defendant the
two hundred Dozen or any quantity of Brandy your Petitioner ne
-theless Submits to this Hon^ble Court that the said Several overt
of Ownership exercised by the said Defendant and apparent of his
Shewing in his said Answer are Repugnant to, and doth absolute
Distroy the defence so by him attempted to be Set up against your
Petitioners said demand. —

Fourthly ..... Because that in Addition to such the Admission of
the said Defendant in and by his said Answer it is fully in evidence
on the Part of your Petitioner that the said Defendant did apply to
your Petitioner to procure and Purchase for him two hundred Dozens
of Brandy that the Brandy so Purchased for the said Defendant
was by him received, that the price agreed to be paid for the said
Brandy per Dozen by the Defendant was seven and an half Pagodas
as your Petitioner has Stated in his said Bill of Complaint That

your

your Petitioner applied to the said Defendant for payment of the Prime
Cost of the said Brandy, when the time limitted for payment thereof had
expired and that the said Defendant did in Consequence Promise to
pay the same and did in part Satisfaction thereof Return Twenty seven —
dozens of the said Brandy — That your Petitioner did pray Sawmy Naick
for the Brandy — That your Petitioner did apply for payment of the debt
so due from the said Defendant to your Petitioner previous to the filing
of his your Petitioners said Bill of Complaint. —

Fifthly ..... Because that the evidence produced by your Petitioner
fully supports the Several Matters and things set forth in your Petitioners
said Bill of Complaint — and maintains his Case therein stated, and
that the Evidences produced on the part and behalf of the said Paul
Seduna do not Materially contradict the same or prove that the Claim
of your Petitioner is without foundation — as the said Defendant would
insinuate. —

For Which Reasons and such others as may be
offered at the hearing your Petitioner prays that the said Decree of
the said Mayors Court of the Third Instant may be Reversed and that
the said Paul Seduna may be Decreed to pay unto your Petitioner
the aforesaid Sum of one thousand four hundred and thirty six Star
Pagodas

Pagodas twenty fanams and twenty cash together with all such Interest as shall become due thereon also all Costs of this Suit.—

/ Signed / G. Pasley
John White
Solicitors for Appellant

Mayors Court

Mayors Court at Madraspatnam — Tuesday the 3d. Day of Septr. Anno Domine 1793.

Present

John Mitford Esqr. Mayor
James Call & William Abbott
Aldermen.

Between Moorgapah of Madras Inhabitant Complainant and Paul Seduna at present of the same place Inhabitant Defendant. —

This Cause coming on to be heard and Debated this Day in the Presence of the Attornies on both sides on reading the Affidavit Complainants Bill with Copy of an Account Current annexed, The Defendants Answer, The Amended Replication, The Amended Rejoinder, The Interrogatories and Depositions on the part of the Complainant with Exhibits marked A B C & D annexed, the Interrogatories and Depositions on the part of the Defendant with Exhibit 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

Mayors Court

that the Complainants Bill do stand Dismissed with Double Costs of Suit

Thur / signed / George Taylor Regt

a true Copy
/ signed / G. Pasley
John White
Sols for Appellant

To the Honble Sir Charles Oakely Bart
President in Council
Fort Saint George

In the Honble the Court of Appeals at Madraspatnam

Between Moorgapah of Madras Inhabitant Complainant and Paul Seduna of the same place Inhabitant Defendant

The Answer of the above named Defendant to the Petition and Appeal of Moorgapah.

This Respondent admits that the above named Appellant died on or about the Sixth day of December which was in the year of our Lord One thousand seven hundred and Ninety two exhibit and file a Bill of Complaint in the Honorable the Mayor Court at Madraspatnam against this Respondent for the recovery of the Sum of One thousand five hundred Pagodas Current Money of Madras charged to be due and owing unto him the Appellant on account of a certain quantity of Brandy pretended by the said Appellant to be sold to this Respondent which said Bill of Complaint or

Filed in my Office the 26th October 1793
Chas. N. White Clk

the

the purport thereof having been recited in the said Appellants Petition and Appeal this Respondent Craves Leave to refer thereunto and prays he may have the benefit thereof as fully as if it had been here again-a particularly recited And this Respondent admits that not only a-a Summons did issue requireing this Respondent to appear to, and Answer the said Bill of Complaint but also a Warrant of Arrest did issue upon the Solemn Oath of the Appellant that this Respon-dent was about to abscond in consequence of which this Respondent was suddenly Arrested without any previous demand having been made of the debt that having found Bail, he did appear to the said Suit by means of his Attorney at Law and the usual Rules hav-ing expired to Answer the said Bill of Complaint he did on the fifth day of the said Month of February file his Answer and-a thereon and thereby denied having ever purchased from the-a Appellant or otherwise employed him to procure Two hundred dozen of Brandy or any other quantety of liquors which said Answer being also recited in the Appellants Petition of Appeal this Respondent craves leave to refer thereunto and prays it may be taken as part of this his answer And this Respondent admits that on the fifth day of March in the present Year One thousand seven hundred and ninety three the said Appellant did file a Replication to the said Answer and that on the Twelfth day of the same Month. this Respondent Rejoined, which said Replication and Rejoinder being recited in the Appellants said Petition of appeal this Respondent craves leave to refer thereunto and prays that he may have the full and entire benefit thereof And this Respondent further admits that afterwards to wit on the nineteenth day of the said Month of March issue joined in the said Cause and rules passed for the Examination of Witnesses and that Witnesses were examined as well on the part of this Respondent as on that of the Appellant after which Publication passed and this-a Respondent Admits that Nanupah Moodelly and Vencatachella Pilla were produced and Examined on the part of the Appellant and that the purport of their Testimony has been setforth and recited in and by the said Petition and appeal save and except part of the Deposition of the latter who in the recitation of his deposition is made to say "That the Brandy sent by the Appellant he would purchase at seven and a-a half Pagodas per Dozen" Whereas from the Deposition itself it appears that he only said it might be purchased at Seven and a half. Which inconsistency and unfairness of procedure on the part of the Appellant this Respondent has judged necessary to point out in order to demonstrate the

the objet which he has in view by misrepresenting facts and which is to establish that this Respondent made the purchase of Two hundred dozen of Brandy and this Respondent for further Answer prays leave to state Sawmy Nauck a Witness whom the said Appellant in his Petition and appeal has passed over and from whom the said Brandy is pretended to have been purchased was also produced and Examined on the part of the Appellant but that instead of supporting Appellants Case his deposition went barely to prove a certain exhibit or Letter most irregularly introduced and which according to the rule and Law of Evidence cannot be received as Legal Testimony this Respondent prays leave to observe that the said Sawmy Nauck seems to have been totally ignorant of the transaction of the Brandy for if it were true as has been represented that the Appellant had purchased it from him he certainly would have been Examined upon and would have supported all or some of the allegations and assertions of the said Appellant And this Respondent admits that Nineapah and Avasoo Govindapah were also produced and Examined as Witness on the part of the Appellant and that their several depositions are setforth and recited in the said Appeal this Respondent saith that the evidence of these two people are evidently intended to support that part of the

the Bill of Complaint wherein the Appellant states "that after the expiration "of the time limitted for the payment of the said sum of One thousand "five hundred Pagodas being the price of the Brandy the Appellant "applied to this Respondent for the payment of the said Debt so due and "owing when this Respondent did request the said Appellant to take "as part of the said Debt twenty seven dozen of Brandy at the same "price which the Respondent had purchased it and which the Appellant "accepted of and accordingly gave credit for the same" In support of this circumstance the said Nineapah when Interrogated deposes that whilst the Army was Seringapatnam he did deliver to the Appellant one cask of Brandy in discharge of the Debt due to the Appellant Moorgapah and in support of the same circumstance the said Avasoo Govindapah Swears that this Respondent put in to his charge one of the Casks of Brandy near to Seringapatnam that he sold the same to the Merchants in the Maratta Army and paid the proceeds of the Sale to the Appellants by the direction of this Respondent on account of the said debt this Respondent prays leave to observe that the evidence of both these People materially Contradict each other, while none of them support the charge in the Bill of Complaint It is therein said that Twenty seven dozen of Brandy was returned by this Respondent and

taken

taken by the Appellant as part of the debt while one of the said Witnesses swears that he returned a Cask and the other that he sold the Cask to the Marhatta Merchants and paid the proceeds to the Appellant Hence by the Testimony of these Witnesses two Casks of the Brandy was returned to the Appellant Whereas by his own Account twenty seven dozen only was taken back Such palpable contradiction this Respondent humbly conceives is too notorious to pass unnoticed by this Honorable Court to whom the said Witnesses must appear as perjured and the said Appellant Moorgapah guilty of Suborning them. And this Respondent admits that several other Witnesses were produced and examined on the part of the Appellant some of whom were of notorious bad Characters particularly Chonachellum and Rugoonadapillay who appear to have been publickly flogged for Malpractices and expelled from the department of the Commissary of Provisions. And this Respondent admits that Thomas Ringsett late Commissary of Provisions to the Grand Army was produced and Examined on the part of this Respondent and that the Testimony which he gave is recited and fully setforth in the Appellants Petition of Appeal This Respondent saith that in the Deposition of the said Thomas Ringsetts it is amongst other matter

deposed

deposed to, that he had unquestionable proof of the Appellants having used undue methods to establish his Claim, by procuring some of the Conicopolies who had served in his Department, to Sign Cadjan and other Writings This Respondent sheweth that in support of this fact as well as to prove the other parts of the Defence set up by this Respondent to the Bill of Complaint that Ninapah Moodelly was produced and Examined on the part of this Respondent and to the Sixth Interrogatory deposed that he knew that the Appellant Moorgapah did some time in the Month of January in the year of Christ One thousand seven hundred and Ninety two purchase two hundred dozen of Brandy for the purpose of disposing of the same at Seringapatnam That the said Moorgapah, did come to the Deponent and request him to apply to this Respondent to lend him the Appellant from the Department of the Commissary of Provisions some spare Carts and Casks for carrying the said Brandy to Seringapatnam That this Respondent did Comply with such Requisition and that the Appellant, was supplied with Carts and Casks. —

To the seventh Interrogatory the said Ninapah Moodelly deposed and said That he know that one of the Casks of Brandy before mentioned was delivered to the Appellant soon after

the

the arrival of the Army at Seringapatnam by order of this Respondent and that the said Cask of Brandy was Sold by the Appellant to the Soldiers ——

Being examined to the eighth Interrogatory the said deponent said that the Appellant Moorgapah did some time in the Month of March in the Year of Christ One thousand seven hundred and ninety two while the Army was at Seringapatnam mention to him the Deponent that an Advantageous offer had been made to him the said Appellant for the remaining six Casks of Brandy And that this Respondent had refused to deliver them That the said Appellant told this Deponent that such offer was made by some Bombay Merchants and the said Deponent further said that he did by desire of the said Moorgapah make certain offers or proposals to this Respondent to enduce him to deliver the said Brandy That he did comply with the requisition of the Appellant and that the nature of the Appellants offer or proposal was a Promise from the Appellant to give the sum of one hundred Pagodas to this Respondent out of Two hundred Pagodas the Amount of the Profit which the Appellant said he would gain by disposing of the said Brandy and the said deponent further deposed that this Respondent did not comply with the said request as the Appellant had sold the Brandy to the Soldiers contrary to the orders of the Commander in Chief To the ninth Interrogatory the said Nineapah Moodilly deposed and said That he did on his arrival at Madras from the Army go to the House of the Appellant Moorgapah as Head Amicoply in the department of the Commissary of Provisions relative to the Settlement of his the Deponents wages that he was asked by the Appellant to reside at his House and that he did comply with such requisian And the said Deponent further said that the Appellant did about four or five days after he the deponent went to reside at his House produce a certain Cudjan Writing and offered him the deponent Sixty Pagodas to induce him the deponent to sign the same and that the said Cudjan did relate to the six Casks of Brandy in the aforegoing Interrogatory mentioned ——

And this Respondent further sheweth that Sheenapah Amicoply in the Department of the Commissary of Provisions and a material Witness on the part of this Respondent and of whose Testimony the said Appellant has taken no notice of in his Petition of Appeal being also Examined deposed as follows That the Appellant Moorgapah did in his the deponents presence request this Respondent to give him the Appellant the use of some spare Carts to carry on a quantity of Brandy which he had purchased to Seringapatnam That

That this Respondent did consent thereto and that he the Appellant was supplied with Carts and Casks The said Deponent further said that the Appellant did soon afterwards send to the Tents or Stores where the liquor of the Army was kept seven Casks of Brandy. ——

The said deponent further said that the Appellant did soon after the arrival of the Army at Seringapatnam apply to and request of his Respondent, to have one of the said Casks delivered to him That the Appellants requisition was complied with and that he the Deponent did by order of this Respondent deliver the said Cask of Brandy to the Appellant And the said deponent further said that the Appellant did some time in the Month of March in the year of Christ One thousand seven hundred and Ninety two, mention to the said Deponent that an offer had been made to him the Appellant by some of the Bombay Merchants to purchase the remaining six Casks That the Appellant did desire the deponent to speak to this Respondent relative to the delivery of the said Casks and to make an offer of One hundred Pagodas to this Respondent That he the deponent did in Compliance with such requisition speak to this Respondent on the Subject of delivering up the said Casks and made the offer desired by the Appellant but that the same was not accepted by this Respondent who said that he could not deliver the Brandy to the Appellant without an order from Mr. Kingscotte the Commissary of Provisions as the Appellant had sold the Brandy to the Soldiers Contrary to the orders of the Commander in Chief. ——

Being examined to the fourth Interrogatory the said Shanapah deposed that two of the Casks of Brandy belonging to the Appellant was served out to the Troops owing to a mistake, as the said Brandy and Arrack belonging to the Army were laid promiscuously together and that such circumstance became known after the same was served out to the Soldiers And to the fifth Interrogatory the deponent said that a person of the name of Soobarayah Brother to the Appellant did call upon the Deponent in the Month of November last past, and requested the Deponent to go with him to the House of the Appellant and that he this Deponent did comply with such requisition The said Deponent further said that the Appellant did during the time they were together propose that the Deponent should sign or execute a Receipt or acknowledgement respecting the said Casks of Brandy that the nature and purport of the said Receipt required by the Appellant from the Deponent was for the Deponent to acknowledge that he did on account of this Respondent take Charge of the Brandy before mentioned And the said Deponent further deposed that the purport for which it was

was to be given was to Enable the Appellant to sue this Respondent for the same The deponent further said that he did not grant such Receipt but that the Appellant did about a fortnight afterwards make a further attempt to procure him the Deponent to sign the said Receipt or acknowledgment and that a pecuniary offer was made to induce him thereto. That the Amount so offered him was forty Pagodas.

And this Respondent admits that Francis Pearce, James Munro and Angus Macphie were also produced and Examined on his part and that they gave their several Testimonies to the Effect and purport of those which are recited in and by the Appellants Petition and Appeal. This Respondent further saith that Jerkey Moodelly another material Witness on the part of this Respondent but of whose Evidence the said Appellant has not taken any Notice was also examined and deposed That he was in the Service of Mr. Thomas Kinguette late Commissary of Provisions during part of the late War in the Capacity of Conicaply That the Appellant Moorgapah died while the Army was near Seringapatnam spoke to him the Deponent relative to some Brandy which he had in the department of the Commissary of Provisions and requested him to make application to this Respondent to have the same delivered to him. That he did Comply with the request but the said Appellant Moorgapah did not during the Conversation which he had with him on the subject of the said Brandy ever mention that he had sold the same to this Respondent.

This Respondent further saith, that Eyah Moodelly Head Dubash to the Commissary of Provisions being also Examined on the part and behalf of this Respondent Deposed that on the Arrival of the Army at Seringapatnam the Appellant told him, that he had received a quantity of Brandy in the said department and that the Appellant did mention to him the deponent that this Respondent had refused to deliver the Brandy which had been carried on in the department of the Commissary of Provisions To the twelfth Interrogatory he further said that the Commissary of Provisions the said Mr. Thomas Kinguette, did on or about the Twenty first day of April One thousand seven hundred and ninety two direct about fifty Carts to be dispatched to Ambore for a supply of Liquor That this Respondent did on that occasion speak to the said deponent relative to the Brandy of the Appellant and about the Carts on which it was placed, and told the deponent that four Carts were employed in carrying four Casks of Brandy belonging to the Appellant, when he the Deponent observed, that the Appellant had told him that there were six Casks of Brandy

belonging

belonging to the Appellant in reply to which this Respondent said that two Casks had been served to the Troops by accident The deponent afterwards told this Respondent that four Carts might be employed in carrying the Brandy belonging to the Appellant to Amboor as the Commissary of Provisions had ordered a number of Carts to that place. And this Respondent for further Answer saith, that additional Interrogatories being exhibited to the said Eyah Moodelly respecting the Character and Reputation of Chonachellum and Ragoonadapillay two of the Witnesses produced as aforesaid on the part and behalf of the Appellant he deposed as follows That he the deponent knew of two persons of the Names of Chonachellum and Ragoonadapillay late Coniahs in the Department of the said Commissary of Provisions, that they were both publickly flogged, and that Ragoonadapillay was expelled from the Department of the Commissary of Provisions by the order of the said Mr. Thomas Ringsotte, that the said Chonachellum was so flogged in the Month of may One thousand seven hundred and Ninety one for not having properly served either Arrack or provisions to the Troops, And that the said Ragoonadapillay was flogged and expelled from the aforesaid Department in the Month of February or March One thousand seven hundred and ninety two, but that he the deponent did not recollect for what particular offence. The Deponent further said that the said Chonachellum and Ragoonadapillay were afterwards employed in the department of the Commissary which said Testimony is further Corroborated by the Deposition of Veniatachellum pillah. —

And this Respondent further admits, that the said Cause was set down for hearing and afterwards. to wit, on Tuesday the third day of September one Thousand seven hundred and ninety three, came on to be heard by and before the said Honble Mayors Court when they were pleased to order and decree that the said Appellants Bill of Complaint should stand dismissed with Double Costs of Suit, as by the said Decree, a Copy whereof is to the said Petition and Appeal annexed relation being thereunto had will more fully appear. And this Respondent denies, that the said decree is erroneous or that the Appellant is aggrieved thereby, as has been unjustly stated in the said Petition and Appeal ——

To the first reason given by the Appellant, as the cause and ground of his appeal from the Decree of the Honble the Mayors Court, And wherein it has been urged that this Respondent in his Answer to the Bill of Complaint has admitted the receipt and delivery of the Brandy and that he acted as the Decree thereof by refusing to return six of the casks upon application having been made

made by the appellant to that effect. This Respondent for answer thereunto admits that he refused to deliver the brandy which applyed for, a duty which became incumbent on him from the Conduct of the appellant but denies that an ownership in the said Brandy rested in him by such refusal. For this Respondent saith that in the pleadings of the suit it hath been shewn, And the fact from Evidences appears, That this Respondent being head Assistant to the Commissary of Provisions and having in consequence the internal Management of the department was applyed to by the Appellant who was then in a very confidential situation being head Coopply in the said Department to have the use of a few spare Carts and Casks. That knowing such an indulgence would tend to increase his fedelity and strong them his exertions for the Public Service. This Respondent yielded to the requisition and permitted him to carry away said Brandy with the liquor of the Army to Seringapatnam at which place one Cask was delivered to the Appellant and the whole would have been delivered if in defiance of the orders of the Commander in Chief, the Appellant had not sold it to the soldiers. That then it became the duty of this Respondent to put a stop to a practice so pregnant with injury to himself and he therefore refused to allow the remaining Casks to be delivered, unless the Commissary of Provisions Mr. Thompson was informed of the circumstance and his permission obtained. Such are the facts appearing in Evidence in the cause of the Suit and from them this Respondent submits nothing doth arise wherewith to charge him in manner which the Appellant has done. The Appellant had permission to carry on the brandy with the Liquor of the Army - and in having that permission an implied condition was followed, that he was to conform to the orders and regulations of the Commander in Chief of the Army, and in presuming to deviate from these orders the Appellant became the cause of his own misfortune. This Respondent saith that he hath setforth the aforegoing facts in Answer to the first reason given by the Appellant by way of Justification for not permitting the Brandy to be delivered, at the same time this Respondent has to observe on the irregularity of the Appellant for introducing such reasons in support of the Appeal; it being a wide departure from the Original cause of action as stated in the Bill of Complaint and which is brought for the recovery of a Sum of money for Goods said to have been sold and delivered. Whereas by the reasons now addduced, it would appear that this was an Action of Trover and Conversion, which mode of pleading cannot as this Respondent is advised be admitted in the subsequent stage of any Suit, much less upon an appeal; For it is incumbent on a Plaintiff in the first instance, to state his Complaint or cause of grievance, and to stand, or fall by that. For otherwise a Defendant would

would labour under the disadvantage of defending the action against one charge and one species of loss, and then be obliged to resist the demand upon quite a different grounds. ——

To the Second reason given by the Appellant. This Respondent for Answer thereunto denies that it has been admitted in the Answer that this Respondent caused two casks of the said Brandy to be served out to the Troops. Indeed the appellant in the subsequent part of the said reason doth himself refute and contradict the Assertion by saying that this Respondent had alledged it to have been done by Mistake. And this Respondent further saith that it was not necessary for this Respondent to have introduced so irrelevant a circumstance as that of denying to have received from, or charged the Honble Company with the Amount value of the said two Casks of Brandy such an Allegation being unconnected with the Cause of Action. This Respondent saith the fact is as appears by the Evidence on the part of this Respondent that the Appellants Brandy was served out by accident without the knowledge of this Respondent &c being mixed with the Liquor of the Army. And therefore the said Mayors Court could not with any degree of Justice have concluded that this Respondent had disposed of the same on his own account as the said Appellant has inferred they ought to have done. ——

To

To the third reason this Respondent admits that he gave directions to send the four remaining Casks to Amboor, a measure which this Respondent deemed expedient from the Appellants refusing to apply to the Commissary of Provisions to have them delivered up to him. And this Respondent denies that any acts done or exercised by him in the premisses are repugnant to, or do by any means destroy the defence set up in the Appellant in his said Petition and appeal &c doth alledge on the contrary it is consistent throughout; The Answer and Rejoinder of this Respondent, as well as the Evidence, which has been adduced, supporting the following simple case, namely that this Respondent never did, directly, or indirectly, purchase two hundred Dozen or any other quantity of brandy from the Appellant; But from motives of good nature &c had permitted the Appellant to carry on seven Casks of Brandy with the Liquor of the Army, one of which said Casks being delivered to the Appellants he sold it to the troops in direct opposition to the orders of the Commander in Chief which occasioned this Respondent to refuse the delivery of any more. That two Casks of the said Brandy being served out by accident to the troops the remaining four were returned to Amboor. And being thus disappointed the Appellant had by the most nefarious means endeavoured to establish it as a Claim upon this Respondent &c and had accordingly brought his Action as for goods actually sold and

delivered

delivered. —

To the fourth reason given by the Appellant this Respondent saith that although Witnesses have been procured in support of some of the circumstance therein stated yet their several Testimonies are so contradictory, and inconsistent that no credit can be given to them And which inconsistency is particularly marked in the Testimony given by Nimapah and Arasoor Govindapah herein before recited. —

To the fifth reason this Respondent saith that so far from the Evidence on the part of the Appellant being of that conclusive nature which he would infer it to be, that the greatest part of it as inadmissable in law & particularly the Depositions of those witnesses who have been brought forward to have certain written exhibits or Declarations, most irregularly introduced by the Appellant, while the Credibility of other parts of the Evidence is destroyed by the Characters of the persons who granted them Testimonies, And of that description appear Chonachellum and Ragoonadah Pillai men rendered unworthy of Credit by the Crimes which it is proved they committed Again the Evidence on the part of the Appellant is further vitiated by the means which it is proved he had recourse to in order to suborn and procure it. —

Lastly this Respondent saith, that if any such Agreement had been entered into as the Appellant has pretended, that he would not have been so forgetful of his own interest, as to have neglected taking some memorandum in writing from this Respondent to prove the transaction instead of the written Declarations of others; nor would he have allowed a well founded claim to have lain so long Dormant as he did after the arrival of this Respondent and himself from the Camp — that all these circumstances operating forcibly on the said Mayors Court, they not only dismissed the Appellants Bill But as some compensation for the hardship which this Respondent sustained, in being suddenly arrested and committed to Prison through the means of the Appellant who swore that this Respondent would abscond upon hearing a Bill of Complaint was filed against him. They taxed him with exemplary Costs. —

For all which reasons and such others as may be adduced at the hearing this Respondent prays this Hon^ble will be pleased to Affirm the Decree of the said Hon^ble Mayors Court and that the Appellants Petition and Appeal may be dismissed with Exemplary Costs to be paid by the Appellant —

/Signed/ George Chalmer
Solicitor for Respondent

Court

Court of Appeals
at
Madraspatnam } Saturday the 31st day of May
Anno Domini 1794—

Between Moorgapah of Madras Inhabitant Appellant
and Paul Seluna at present of the same place
Inhabitant Respondent.—

This Cause coming on this day to be heard and debated before this Court by the attornies on both sides Upon hearing the Petition of Appeal and Answer And the Several Exhibits of the Honble the Mayors Court together with the Decree of the said Court given in this Cause on Tuesday the 3d day of September Anno Domini 1793 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.—

Exr.
/Signed/ Robert Clerk
Clks

To

AB

To the Honorable Sir Charles Oakley Barrt.
President in Council &c.
Fort Saint George

In the Honorable the
Court of appeals— }

Between Andrew Mouat by his
attorney Alexander Melvin Complainant
and Shiphard Perhurst Defendant.—

The Humble Petition of the above
named Complainant.—

Sheweth

That some time on or about the Day of May in the year of our Lord One thousand seven hundred and Ninety three, your Petitioner on behalf of himself and Company, by his Constitu=ted Attorney Alexander Melvin, of Madras Inhabitant, to whom a Letter of Attorney had been duly Executed for that purpose, and a Copey of which was annexed to the said Bill of Complaint, did Exhibit and file his Bill of Complaint in the Mayors Court of Madraspatnam, against the abovenamed Defendant, thin also of Madras Inhabitant, for the recovery of the Sum of Sicca Rupees Seven hundred and fifty four, Twelve annas and Six Pice / Sicca Rupees 754- 12 annas 6 Pice / making in Star Pagodas

Filed in my Office
the 23d December 1793
Chas. N. White Clk

Pagodas at the rate and Exchange of Three hundred and Twenty six
sicca Rupees for every one hundred Pagodas, The Sum of Two hundred and
thirty one Star Pagodas Twenty three fanams and Sixty Cash Cur-
=rent Money of Madras or sterling money of Great Britain at the Exchange
of Eight Shillings for every Pagoda the Sum of Ninety two Pounds
Twelve Shillings and three Pence or thereabouts; the same being due
and owing to your Petitioner and Company as your Petitioner stated
would appear by reference to the Copy of an Account Current annexed
to your Petitioners said Bill of Complaint and the Copy of an
Affidavit Sworn before Sir William Dunkin one of his Majesty's Justi-
=ces of the Supreme Court of Judicature established at Calcutta, and to
which said Copies of Account Current and Affidavit your Petitioner craved
leave to refer and Prayed the same might be taken as part of his said
Bill of Complaint, the Originals of which Account Current and
Affidavit being in the hands of his then Attorney Mr. John Wilkinson,
and ready to be produced at the Instance or request of the Defendant
or of any other Party interested in the same. And your Petitioner Sheweth
unto this Honorable Court that to your Petitioners said Bill of
Complaint, the Defendant did on the fifteenth Day of October in the
said year of our Lord one thousand Seven hundred and Ninety three

file

file a Demurrer and in which Demurrer he did insist that he was not liable
to Pay the Sum of Seven hundred and fifty four Sicca Rupees Twelve An-
=nas and Six Pice being the amount due to your Petitioner on the Balance
of his Account Current, and Charged to be Owing to your Petitioner and
Company in his said Bill of Complaint: in as much as others appeared
to be interested, together with your Petitioner, in the said Action, whose
Names were not introduced into the said Bill of Complaint, nor were
otherwise made Parties thereto: and the Defendant did on that Account
Pray of the said Mayors Court, that he might not be Compelled to
put in Answer to the said Bill of Complaint, but that he might thence
be Dismissed with an allowance of such Costs as had been incurred by
him in the Defence of the said Cause. and your Petitioner further
Sheweth that on the fifth Day of November in the said year of our Lord
One thousand Seven hundred and Ninety three he did file a Joinder to
the Demurrer of the said Defendant, wherein, amongst other things,
your Petitioner did Pray a reference to the Copy of an Affidavit and an
Account Current annexed to his said Bill of Complaint and which your
Petitioner had Prayed to be taken in aid and as part of the same, and
Contended that it would Satisfactorily appear therefrom, who were the
Parties interested in the said suit or Action, to wit, Joas D'Abreu and

Joas

Joas Faria de Lobo under the firm of Andrew Mouat and Company of Calcutta Auctioneers. and your Petitioner observed in the said Sounder that if any defect should appear on the face of the said Bill, which however he denied that there were that such defect was Cured by the Vouchers that were annexed, to wit, the affidavit and the account Current. and your Petitioner insisted that it was not necessary or incumbent on him to Set forth, in his said Bill, the Company or Association in Trade, more Specifically than he had done; as any Set off that the Defendant could establish, would, Necessarily affect the Interest of your Petitioners Associates if it were established, were they Named or not therein and therefore your Petitioner argued that there was no Defect therein, but otherwise, that it had been duly and rightly charged in your Petitioners said Bill of Complaint —

And your Petitioner sheweth unto this Honorable Court that upon the Pleadings had, and enumerated, the said Demurrer and Sounder were set down for hearing and the same came on to be heard accordingly on the Tenth Instant, when the said Mayors Court was pleased to Order and Decree that your Petitioners said Bill of Complaint should stand Dismissed and further that your Petitioner should Pay all Costs of Suit, as will more fully appear by reference

being

being had to the Extract of the Minutes which is hereunto annexed of the said Mayors Court holden at the Town Hall of Madras on Tuesday the Tenth Instant, and which your Petitioner Prays may be taken in aid of this his Petition, so well as, also, a Second Extract, taken from the Minutes of the said Court, on the same Day, Namely the tenth Day of December containing the Dissent of Mr. Alderman Ross, one of the Aldermen then sitting in Rotation, to the Decree and Order at that time passed for the Dismissal of your said Petitioners said Bill —

By which said Order your Petitioner doth conceive himself much aggrieved, and doth therefore appeal therefrom to this Honorable Court for the following amongst other reasons —

First ——— Because it is Covenant to that acknowledged Axiom in Equity and Law, that every one liable to be sued, may bring his Suit: and According to this Maxim, as under the Statute, Merchant Andrew Mouat and Company under the General Discription of Andrew Mouat and Company might and could be holden to Action; so they the said Company under such Title and Discription are legally intitled to bring their Action and by a Party of reasoning — and it is the Practice of the said Mayors Court and Occurs

Courts indies, as well as in the Court of Chancery and by the Practice of which the said Mayors' Court is principally regulated, to allow of actions or Suits which are exhibited in behalf of Parties Indefinite, the Name and Title of one Party being Declared and made known, so that it may give a certainty to the Complainant and Discribe the Complainant so far as the Defendant may be enabled to learn therefrom whom he hath to Answer. — And in the Case of a Bill brought by a Creditor Named in such Bill, for Power to Dispose of the Estate of a Testate or Intestate person Deceased, as well in behalf of himself as other Creditors, who may come in and Contribute to the Expence of the Suit without any Definition or Discription of the Parties to gether interested with the said Creditor than under the term of "other Creditors" is sufficient to Oblige a Party to Answer, and to Defend Suit, as also in such Case where there are several Defendants, it is the Rule of Courts of Equity, one Defendant being known and discribed, to entertain a Bill against such Several Defendants, the said Bill being instituted against the Person so known and described and others, who may after the time of filing the Bill, be Discovered, and whom on such Discovery it is Prayed may be made Parties thereto. The Courts of Equity and Law are not Governed by Narrow Principles but by the General Maxims of the

the Case, that Comes before them, not by form, but matter — and when a Party is sufficiently Declared, so as to identify him, and where a Complaint is so set forth, so that it may be answered with Certainty, it is clear that an Answer may be Compelled. — And as by the Custom of Merchants and by the Practice of the Courts of Equity, Andrew Mouat and Company would be accepted and Acknowledged, to do any Mercantile Act or Prosecute any Suit under such Discription of Andrew Mouat and Company, it is Contended that they are in your Petitioners said Bill of Complaint so Discribed and Declared as to be Sufficient to entitle them to maintain Suit.

Secondly ..... Because the Sum charged to be due and owing to Andrew Mouat and Company, as the firm of Andrew Mouat and Company in the said Bill of Complaint, is set forth and Declared as a Joint Debt to the said Company so Described; and a Discharge therefrom or any part thereof to the said Andrew Mouat by the said Shepherd Terhorst would Operate against the whole Firm or Company; or any set off could be tendered and offered by the said Shepherd Terhorst against the Sum charged in your Petitioners said Bill of Complaint, as well under its present Title, as if the Company of Andrew Mouat had been more Specifically set forth — and such is the Equity of the Case, and as therefore

the

the Ground of action is not altered by the form in which your Petitioners said Bill of Complaint is filed, and as the said Shepherd Terhorst would not be Debarred of any Advantage that he might have enjoyed had the Declaration of the Partnership of Andrew Mouat and Company been under the several and respective Names of the Persons Participating in the said Company and jointly forming the same; no legal Exception can possibly be taken as to Parties. Nor in any Case can, it is conceived, an equitable Exception be taken or allowed so as to exclude the right of Action to any one of the Parties in a Company or Association in Trade, in behalf of himself and others, but where the Right should be divisible thereby, and the Defendant become responsible to two or more Actions for a Single Debt and your Petitioners is a joint and indivisible Debt on behalf of himself and Copartners, Conjointly.——

Lastly..... Because, if it had been necessary to set forth, who were the Persons Comprised in the firm of Andrew Mouat and Company, the same are apparent Declared and Shewn by the affidavit of Andrew Mouat Sworn before Sir William Dunkin, to be Joas D'Abreu and Joas De Lobo, as well also their Occupation and Employment; being that of Auctioneers: and a Copy of which affidavit was attached to, and made a Material and Essential part of your Petitioners said Bill of Complaint

Complaint, But your Petitioner is advised and believes that it was wholly unnecessary that others should have been named in the said Bill as Parties thereunto, under the Circumstances of your Petitioners Case, save in the general way in which they have been named in the said Bill — For in Accounts Copartnerships and Actions arising out of the same, it is not only lawfull for any one in such Copartnership or Firm to bring his Action in behalf of the whole, as a Company, with or even without the Consent of the other Parties therein; but also on his Sole Affidavit, he may hold the Party Indebted to the Joint Concern to Bail or Security an Exercise of one of the most Solemn Acts, which can be done in the Course of any Suit——

For all which reasons and such others as may be offered at the hearing, your Petitioner most humbly Prays that the said Decree of the said Mayors Court may be reversed, and that this Honorable Court will be pleased to order the said Shepherd Terhorst to put in Answer to your Pet.rs said Bill of Complaint and such other and further relief as to their Wisdom may Seem Meet.——

[Signed] Emanuel Samuel
Solicitor for Appellant

Extract

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 10th. day of December Anno Domine 1793

Present

John Mitford Esqr. Mayor

Andrew Ross and William Abbott

Aldermen

Andrew Mouat by his attorney Alexander Milven

Shiphird vers Terhorst

Bill with Copies of a Letter of attorney and an Account thereon 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 On Hearing the Arguments made use of by the attornies and on due Consideration had thereon The Court are of Opinion that the Plea made use of by the Defendant in his Demurrer are good and sufficient It is therefore Ordered that the Complainants Bill do stand Dismissed with Costs

A True Extract

/Signed/ George Taylor Regr.

A true Copy

/signed/ Emanuel Samuel

Solicitor for the appellant

Extract,

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 10th. Day of Dcember Anno Domine 1793

Present

John Mitford Esqr. Mayor

Andrew Ross and William Abbott

Aldermen

Andrew Mouat by his attorney Alexander Melvin

Shiphird vers Terhorst

Mr. Alderman Ross Dissents to the resolution of the Court, and will send in his reasons at a future Day.

A true Extract

/Signed/ George Taylor Regr.

A True Copy

/signed/ Emanuel Samuel

Solicitor for Appellant

To

To the Honble Sir Charles Oakeley Baronet

Governor &c in Council

Fort Saint George

In the Honble the Court of appeals — Between Andrew Monat by his Attorney Alexander Melvin Appellant and Shepherd Forhorst Respondent. —

The answer of the above Named Respondent. —

This Respondent admits that the appellant did on or about the time in his Petition of appeal for that purpose setforth Exhibit and file a Bill of Complaint in the Honble the Mayors Court in Manner and form as in his said Petition of appeal the same is setforth that is to say on behalf of himself and Company by his constituted attorney Alexander Melvin, but this Respondent denies that a Letter of attorney had been duly Executed for that purpose, for this Respondent says that Contrary to the assertion of the appellant in his said Petition of appeal contained the said power of attorney was Executed by the Appellant himself without any reference to any partnership Concern or to any other person And this Respondent admits that the said Bill so filed in the said Mayors Court against the Respondent was for the Amount in the Appellants said

Petition

Filed in my Office the 24th February 1794
Chas N. White Clk

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Petition of appeal setforth and this Respondent admits that to the Appellants said Bill of Complaint he did Exhibit and file his Demurrer and for Cause of Demurrer did shew a want of Parties and did thereon and for other good Causes of Demurrer pray that the Appellants said Bill of Complaint might be Dismissed and this Respondent admits that to his said Demurrer the Appellant did file a Joinder and that the same might have been in manner and form as setforth in the Appellants said Petition of Appeal and this Respondent admits that thereupon the Matter was set down for hearing and that the same did come on to be heard before the said Mayors Court about the time in the Appellants Petition of Appeal for that purpose setforth and that the said Mayors Court was thereupon pleased to order and did accordingly Order that the Appellants said Bill of Complaint should stand dismissed with Costs but this Respondent doth deny that the Appellant was or is in any wise aggrieved by the said Order of the said Mayors Court, or that he has any Cause of Appeal therefrom to this Honble Court

And in answer to the first Reason for Appeal offered by the Appellant this Respondent says that he is advised and thereon humbly insists that it is only Bodies incorporated by an Act of Parliament that can be sued in the manner suggested by the Appellant that is under the discription

of

of one particular person and Company and that andrew Mowat and &c
Company is not sufficiently descriptive of the parties who by the appel-
-lants own shewing are interested in the present litigation either to sue
or be sued And this Respondent is further advised that the practice
of His Majestys High Court of Chancery Expressly requires that all
parties interested in a Suit whether Complainant or Defendant shall
be made parties and the practice of the said Mayors Court is
sufficiently Demonstrated in the present case the Demurrer of the
Respondent to the Appellants said Bill of Complaint for want of
parties having been held good and the said Bill dismissed with
Costs And this Respondent further says that he is advised that
ought be harrassed with continual Suits and further says notwithsta
-ing the assertion of the Appellant to the Contrary that it is not suffi
-cient that a Defendant knows the party in whose name a Bill of
Complaint be brought but that all the parties who are shewn to &c
have an Interest therein as Complainants Must necessarily be named
in order to be bound by the Decree of the Court thereon and this
Respondent says he is advised that the case stated by the appellant
as to a Bill filed by a Creditor in behalf of himself and other &c
Creditors

Creditors who may come in and contribute to the Expence of a Suit is not at
all applicable to the Matter in question because the party who brings the &c
Bill cannot have a Decree for more than the debt due to him individually &c
and the other Creditors cannot have any benefit of a Decree on the said &c
Bill unless they come in, and be made parties thereto and therefore any
discription or definition of such Creditors is not necessary as their Names are
not Mentioned and as it is left to their option to Join with the Party or par-
-ties bringing such Bill, or not as they may think proper, a Bill of that
Discription being so brought for the benefit of the ostensible party or parties
Complainant to relieve him or them in the burthen of the Expences of the
Suit And although a Bill so brought be sufficient to oblige a Defendant
to appear thereto and Defend the same yet the Defendant to such Bill
Answers only the specific charges of the Complainant, or Complainants &c
Whose Names and description are therein Specifically setforth, and so far as
they regard the particular Interest of such Complainant or Complainants
And this Respondent says that the reference by the Appellant made to a
Bill of discovery is Equally inapplicable because such a Bill is brought
against a particular person Defendant and suggests that there are other
persons who ought to be made Defendants but whose Names the Complainant
is unable to setforth and therefore prays that the Defendant may be &c
Compelled

to do so, but if the discovery so prayed for be not obtained a Dewre goes against the Defendant named who by his own shewing appears to be the only party Defendant to such Bill; but if no suggestion and prayer had been made, and it afterwards had appeared that other parties ought to have been made Defendants to the said Bill the party made a Defendant would have a right to plead or Demur thereto, as all who are interested ought to be made parties and a Dewre is binding upon that Defendant only against whom process is prayed-and although Courts of Equity be not as the appellant has asserted governed by Narrow principles yet they guard and protect the rights of the parties before them whether Plantiff or Defendant and will not allow any benefit to be derived by a party who having in himself no separate right to the thing sued for neglects or refuse to set forth the names of those who are Jointly interested with him but will give to a Defendant the advantage of the Law thereon and upon Demurrer will dismiss the Complainants Bill and the reason is clear and obvious for unless every one who is interested be made a party Complainant to a Bill, the Bill must be Deficient for that which belongs to many Jointly cannot attach to one separately unless where three persons are Jointly Concerned two of them should assign it to the third person-ed and even in that case the names of the Assignees Must appear as parties to any Bill

of

of Complaint brought for the recovery of the thing so assigned And this Respondent doth thereupon deny that the Bill brought by the appellant under the name of andrew Mouat and Company would ever be accepted or Acknowledged by a Court of Equity as sufficiently descriptive of the parties necessary to be set forth & this Respondent says that it appears by the appellants Petition of appeal that he doth not Consider any person interested in the Suit in question other than himself for the Caption of the appeal is Andrew Mouat by his attorney Alexander Melvin Appellant and the Appeal goes on and is pursued in the first Person singular and this Respondent says that it is not only requisite that a Defendant be enabled to identify the Complainant who institutes a Suit against him as any Man may institute a Suit and be identified by the Defendant in the Bill named, and yet have no right to call such defendant in question, in the present instance the Appellant is known to this Respondent but by his own shewing he has no right to institute a Suit against this Respondent for the Appellant has shewn that he has no separate right in himself, and that he has not made parties those whom he shews are Jointly interested with him, And to whom Jointly he pretends this Respondent stands indebted for the sum sued for under the description of andrew Mouat and Company by his attorney Alexander Melvin

To

To the appellant Seond Reason of Appeal this Respondent says that a Decree upon the Bill in question even admitting that he should be indebted unto the appellant and other persons but which he by no means admits the fact to be would not operate as a discharge against those other persons inasmuch as that persons who are not named parties in a Suit cannot be bound by a Decree therein, and the appellant by insisting that he is interested with others in the Amount for which he had filed a Bill against this Defendant in the said Mayors Court shews that he has no right to file such Bill as it cannot appear, or be known who those other parties are, until they be setforth ——

To the last Reason of the Appellant this Respondent says that an affidavit has not any the least connexion with the merits of a Suit, and is never read in Evidence at the hearing thereof, and the only use to which the affidavit said to be annexed to the Appellants said Bill of complaint can be applied is to shew that there are other persons who ought to have been made parties to, and to have been particularly described in the Suit instituted by the Appellant against this Respondent and this Respondent Submits to this Honble Court that the reference made to the said affidavit and Every matter and thing relative thereto ought to be Expunged from the appellants said Petition of appeal as impertinent and irrelevant

irrelevant And this Respondent further says that the power of attorney Executed to the above named Alexander Melvin is not Executed by the Appellant on the part of himself and others but in his own right solely and therefore the said Alexander Melvin was not authorized as attorney as aforesaid to Exhibit the said Bill of Complaint in the said Mayors Court in manner and form as hereinabove setforth insomuch as by the said Power of attorney he the said Alexander Melvin was authorized to sue in the Name of the said Andrew Mowat and no other person or persons whatever And this Respondent says that the Account Current upon which the said Bill appears to be founded differs from the power of attorney granted by the Appellant to the said Alexander Melvin and the Caption of the Bill differs essentially from both the Letter of attorney and the Account Current and the Caption of the Appellants said Petition of appeal is at Variance with the whole, and altogether form a chain of inconsistency & incompatibility Demonstrative of the fraudulent means pursued by the Appellant to injure and oppress this Respondent And this Respondent submits to this Honble Court Notwithstanding the assertion of the Appellant to the Contrary that an individual person belonging to a firm or Connected with others in a Joint Concern has not any right of himself to Prosecute any Suit whatever unless

unless duly authorized by such other persons, for as this Respondent has hereinbefore shewn that a Joint Interest cannot be separately sued for, and further this Respondent submits to this Honorable Court that the Appellant has departed from the question upon which he has appealed to this Hon^ble Court, because in his said Bill of Complaint he has shewn that he is not the only party Complainant interested therein; but that there are others interested Equally with himself and whose Names he has not setforth and for which Reason this Respondent did demur for want of Parties. —

For all which Reasons and such others as may be offered at the hearing of the above Matter this Respondent Most humbly prays that the Appellants said Petition of appeal may be dismissed with Costs that the said order of the said Mayors Court may be affirmed and that this Respondent may have such further and other Relief in the premises, as to this Hon^ble Court shall seem Meet. —

/Signed/ James Stuart Hall
Sol^r for Respondent.

Court of Appeals

Court of Appeals
at
Madraspatnam

Saturday the 31st day of May
Anno Domini 1794.

Between Andrew Mouat by his attorney Alexander Milvin of Fort St George Merchant Appellant and Shiphersd Ferhorst of the same place Respondent.

This Cause coming on this day to be heard and debated before this Court by the attorneys on both sides upon hearing the Petition of appeal and answer and the Several Exhibits of the Honble the Mayors Court together with the Order of the said Court given in this Cause on Tuesday the 10th day of December Anno Domini 1793 upon due Consideration had of the Matters thereon Severally Contained and of the Pleadings and Arguments used by the attorneys on both sides This Court doth think fit to Order and Decree and doth Accordingly Order and Decree that the said Order of the Honble the Mayors Court do stand affirmed and that the Appellants Petition be hence dismissed with Costs. —

By Cur
/Signed/ Robert Clerk
Cl^k Cur^ae

To the Honble Sir Charles Oakeley Bart.

President in Council

Fort Saint George

In the Honorable the Court of Appeals at Madraspatnam

Between Aratoon Jacob and John Shamier Executors of Anna Johannes Te Jacob Deceased Complainants and Philipus Jacob Patum Defendant.

The Humble Petition and Appeal of the above named Philipus Jacob Patum.

Shweth

That the above named Complainants did on or about the Twenty third day of October which was in the year of Our Lord One Thousand Seven hundred and Ninety Two file a Bill of Complaint in the Mayors Court against your Petitioner for the recovery of the Sum of One Thousand Two hundred and Nineteen Star Pagodas and Twenty five fanams charged to be due by your Petitioner by reason of his having heretofore signed an undertaking on behalf of one Catchick Alexander - To which said Bill of Complaint your

Filed in my Office the 17th March 1796
Chs N White Clk

your Petitioner filed his plea and Answer and did for Plea thereunto say that the said Catchick Alexander was the person who executed the Bond on which the Complainants had brought their Action and that at the foot thereof Gregorie Abram late of Madras Armenian Merchant Deceased did by a certain obligation bind himself that in case the said Catchick Alexander should fail in the payment of his said Bond the said Gregorie Abram would discharge the same and your Petitioner did further Setforth that when the said Gregorie Abram was going to Manilla he appointed your Petitioner his attorney and requested him to sign an Undertaking at the foot of the same Obligation to the following purport, to wit, That in case the said Bond of Catchick Alexander was not paid by the said Catchick Alexander or Gregorie Abram your Petitioner would discharge the same which your Petitioner did sign Accordingly your Petitioner did further setforth that the said Gregorie Abram was since dead and that your Petitioner had obtained Letters of Administration with the Will annexed of his Estate, your Petitioner did therefore Plead the said Matters and things in Abatement to the Complainants Right of action against your Petitioner by reason of the informal manner in which the Complainants have brought their action for your Petitioner said that he was advised that on the face of the said Bond and the

two

two several undertakings thereunder written the said Gregorio Abram and your Petitioner as well as the said Catchick Alexander appear bound for the payment of the Money mentioned therein wherefore the Complainants ought to have brought their Action against the said three Persons especially as the said Catchick Alexander was on the Spot at the time when the Complainants filed their Bill against your Petitioner Wherefore your Petitioner did plead to the informal manner on which the Complainants have brought their Action and prayed the Judgment thereon — your Petitioner for further plea said that it appeared by the said several undertakings that the said Gregorio Abram and your Petitioner signed the same conditionally, to wit, if the said Catchick Alexander did not pay, and as the said Catchick Alexander was alive and at Madras it should have been made appear that a legal demand had been made on him and a protest in due time for non payment thereof which not being made your Petitioner said that he was discharged from his said Undertaking so signed under the said Bond and therefore your Petitioner did plead the same in Bar to the Complainants, Right of Action gainst your Petitioner and prayed the Judgment of the said Court whether he should be obliged to make

make any further or other Answer to the Complainants' Bill — and for Answer to the residue of the Complainants' Bill your Petitioner among other things Answered and said that at the time when the signed the said Undertaking, the said Catchick Alexander was in a fair and prosperous situation and as the said Bond was made payable on Demand the Complainants ought not to have suffered the same to have remained for so long a period as Six Years without demanding the payment thereof from the said Catchick Alexander or from your Petitioner and that the said Catchick Alexander was professed of sufficient property to discharge his said Obligation had the Complainants inforced the payment thereof in due time as in Justice and Equity as well as in Law they were bound to do — and your Petitioner shweth that he did setforth many other Matters in his said Answer as by reference thereunto may appear — To which said plea and Answer the Complainants filed their Replication and your Petitioner filed his Rejoinder — that upon the above Proceedings issue was joined and Witnesses Examined and afterwards publication passed and the said Cause was set down for hearing and accordingly it came on to be heard by and before the said Mayors Court on Tuesday the fourth day of this instant March when the said Mayors Court thought

Proper

proper to order and Decree and did accordingly Order and Decree that your Petitioner should pay unto the Complainants the Sum of One Thousand Two hundred and Nineteen Pagodas and Twenty five fanams together with all such Interest as then was or should thereafter become due thereon until full payment was made and it was further Ordered and Decreed that each party should pay their own Costs – which Decree your Petitioner conceives to be erroneous and contrary to the principles of Substantial Justice. —

Wherefore your Petitioner most humbly prays that the said Decree for the reasons stated in your Petitioners Plea and Answer and Rejoinder and for such other Reasons as may be offered at the hearing of the Cause may be reversed with Costs to be paid by the Complainants. —

/Signed/ Stephen Popham
for Self &
Robert Williams
Ats for Appellt

Mayors.

Mayor's Court at Madraspatnam — Tuesday the 4th day of March Anno Domine 1794

Present

The Hy Chy Mitell Esqr. Mayor

Jos: DuPre Porcher Andrew Ross and James Daly Aldermen. —

Between Aratoon Jacob and John Shamier of Madras Merchants Executors of the Last Will and Testament of Anne Johannes Ter Jacob late of Madras aforesaid Widow Deceased Complainants and Philips Jacob Paturn also of Madras Merchant Defendant

This Cause coming on to be Heard and debated this Day in the presence of the Attornies on both sides on reading the Complainants Bill with Copy of an Account Current annexed, The Defendants Plea and Answer with one Exhibit annexed, The Amended Replication, The Rejoinder, The Interrogatories and Depositions on the part of the Compla

Complainant

Mayors Court

Complainant with Exhibits marked A and B annexed. The Interrogatories 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 One thousand two hundred and Nineteen Pagodas and twenty five fanams / Pags. 1219. 25. / together with all such Interest as now is or shall hereafter become due thereon untill full Payment is made, and it is further Ordered and Decreed that each Party do pay their own Costs.

Thus /signed/ George Taylor Regt.

To

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To the Honourable Sir Charles Oakely Baronet

President and Governor &c. in Council

Fort Saint George

In the Honourable the Court of Appeals —

Between Philipus Jacob Patum of Madras Merchant Appellant and Avatum Jacob and John Shamier of the same place Merchant Executors of the Last Will and Testament of anna Johannes Ter Jacob Deceased Respondents. —

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

The said Respondents admit that they did as Executors aforesaid exhibit their Bill of Complaint against the said Appellant in the Mayors Court at Madraspatnam at the time in the said Appellants Petition and appeal particularly mentioned for recovery of the sum of One Thousand two hundred and Nineteen Pagodas and Twenty five fanams owing by the said Appellant to these Respondents as Executors aforesaid by virtue of a certain under-taking or Writing Obligatory entered into by the said Appellant

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

to

to these Respondents said Testatrix, and in the said Bill of Com-
-plaint particularly setforth and mentioned to which these Respon-
-dents humbly refer These Respondents also admit that the said
Appellant did afterwards to wit on or about the eleventh day of
December in the year of our Lord One thousand Seven hundred
and Ninety two file his Plea and Answer to the said Bill of Complaint
setting forth the several Matters and things in the said Appellants
Petition and appeal particularly mentioned and these Respondents
say they did on the Twenty sixth day of February One Thousand
seven hundred and Ninety three file their Amended Replication
to the said Appellants Plea and Answer but which Replication
the said Appellant hath omitted to state in his said Petition and
Appeal with a view thereby to obscure the Merits of these Respondents
case and these Respondents did by their said Replication setforth
amongst other things, that the undertaking of the Appellants being to
perform that which the said Catchick Alexander hath not performed
he the said Appellant became individually bound upon the failure
of the said Catchick Alexander to pay the Amount of the said
Bond, as much as the said Catchick Alexander was previous to the
said Appellants having become bound for him and these
Respondents

Respondents did Admit that the said undertaking or indemnity on the
part of the said Catchick Alexander, was Conditional But these
Respondents did at the same time insist that the said Appellant in order
to have discharged himself therefrom should have shewn that the
Condition of the said undertaking had been performed by the said
Catchick Alexander; and these Respondents did further Alledge
that the Appellant had in himself a right of Action Against the said
Catchick Alexander for not having performed the Condition of the
said Obligation in order that the said Appellant might
be enabled to fulfile the Obligation so by him entered
into with this Respondents on behalf of the said Catchick
Alexander and that it was the appellants duty to have
paid of the said Catchick alexanders Bond when he
found that the said Catchick Alexander hath not
done it himself and that it was therefore misapplying
the use of a protest to urge its necessity in case a
Bond should not be paid under the circumstances
of the present case, and further that it was futile for
the said Appellant to urge against the performance
of his said undertaking that Catchick Alexander was

in

in afair and prosperous situation at the time that the appellant entered into the same which was upwards of one year after the said Bond was executed, and which shewed that after the said Bond had become due these Respondents did think it necessary to obtain some further security than they at that time held, and that therefore the Security which the Appellant upon that occasion and for that purpose tendered being the Security of the said appellant was accepted by these Respondents and which Security as it was Satisfactory to the Appellant to give upon Considerations equivalent to the risk and responsibelity he incurred thereby so it was such as these Respondents were content to accept as the Consideration of their forbearance towards their debtor and further that the letter of the appellant addressed to these Respondents and which bears date the Sixth day of may one thousand Seven hundred and Eighty Eight copy whereof is to the said appellants Answer Annexed, was a direct and clear recital and admission of his the said Appellants Obligation to pay the said Bond and that the said appellant in the event of his paying the same declared by his said letter his intention of reimbursing himself from the Estate of Gregoris Abraham at whose request the said Appellant alledges he incurred that responsibility and of which

estate

estate it appears the said appellant hath obtained Letters of administration, and further that it was not incumbent upon these Respondents to prevent the said Catchick Alexanders departure from Madras for that the said Appellant had as aforesaid taken upon himself the payment of the debt in default of the payment thereof by the Original Obligor but that the Appellant not having made any tender of payment and these Respondents not having done any act to acquit the said Appellant nor he done any act to exonerate himself from the Responsibility he had undertaken, the same must of Consequence remain in full force against him and further that although the said Appellant did alledge that the forbearance of these Respondents towards him by not commencing their action earlier did operate as a forbearance towards the said Catchick Alexander and therefrom the said appellant inferd an actual injury done to him the said appellant yet these Respondents did nevertheless insist that it was a forbearance towards the appellant and that instead of being injured he was benefited thereby upon the same principle that all debtors are conceived to be benefited by the lenity of their Creditors in postponing a rigorous claim of their Demands and that the said appellant could be in no respect injured thereby as he had a right of action against his principal either by paying off

the

the Money he owed to these Respondents or before, for that the Law gives that Right of Action to a person who becomes Security for the payment of a Debt on behalf of another for that upon the securitying his principal he is compelled thereby to pay the money to the Security to enable him to pay it in discharge of the original debt and these Respon=dents admit that the said Appellant did file a Special Rejoinder to the said Replication and that he did thereby insist upon the validity of his Pleas and that he was discharged from his said undertaking and ingagement by him in manner aforesaid entered into by reason that his the said Appellants principal the said Catchick Alexander had as he the said Appellant alledged become insolvent And these Respondents admit that issue was Joined upon the aforesaid proceedings and that Witnesses having been thereupon examined publication passed in the said cause whereupon it appeared by the testimony of Stephen Joannes Goolamier armenion Merchant that the said Catchick Alexander went to to Masulipatam in the year One thousand Seven hundred and Eighty Eight to trade but that he did not know whether the said Catchick Alexander was or was not in a fair and prosperous situation, and that he the appellant had heard the said Catchick Alexander declare after his returun from Masulipatam that he had not paid all his debts but that he had paid

about

about one hundred Rupees in part thereof and Corapet Mooratean being also examined as a Witness on the part of the said Appellants deposed to the like effect and these Respondents admit that the said cause having been set down for hearing the same was accordingly heard before the said Mayors Court at the time in the said appellants Petition and Appeal particularly mentioned and that the said Mayors Court did thereupon make their Decree in the said cause of which Decree a copy is Annexed to the said Petition and appeal But these Respondents say and humbly insist that it is these Respondents who are in fact injured by the said Decree, in as much as they are not thereby Decreed the Costs which they have Sustained by reason of the said Appellant having obliged these Respondents to institute their said suit against the said Appellant to enforce the performance of his said undertaking Whereas these Respondents are advised that Costs should have followed the said Decree as a matter of course and these Respondents thereupon submit to this Honourable Court that the said Appellant instead of appealing from the said Decree which towards him is extremely lenient, should have submitted thereto, without forcing these Respondents into further expence, and these Respondents do humbly submit that such the conduct of the appellant in the premises does manifest

and

and invincible Spirit of litigation And as the said Appellant has unnecessarily brought these Respondents before this Honourable Court they do humbly trust that this Honourable Court will affirm the said Decree of the said Mayors Court, and not only mark the conduct of the said appellant in this respect with examplary Costs but also be pleased to order these Respondents their Costs in the Court below to be paid by the said appellant—

/Signed/ John White
Gilb. Ricketts
Sol.rs for Respondent

Court

Court of Appeals at Madraspatnam } ss Saturday the 31st. day of May Anno Domini 1794

Between Philipus Jacob Patum of Madras Merchant Appellant and Aratoon Jacob and John Shamire of Madras Merchants Executors of the last will and Testament of Anna Johnnes Ter Jacob late of Madras Widow Deceased Respondents—

This Cause coming on this day to be heard and debated before this Court by the Attornies on both sides upon hearing the Petition of Appeal and Answer and the several Exhibits of the Honble the Mayors Court together with the Decree of the said Court given in this Cause on Tuesday the 4 day of March Anno Domini 1794 upon due Consideration had of the Matters therein Severally Confained 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

be hence dismissed with Costs—

Hurr

/Signed/ Robert Clerk
clk.

Saturday

Saturday the 7th June 1794

Present

Sir Charles Oakeley Baronet,

E. W. Fallofield & George West coth,

To the Honble Sir Charles Oakeley Baronet

President and Governor &c. in Council

Fort St George

In the Honble
the Court of Appeals

Between Thomas Disley of Madras
Inhabitant Complainant and Francisco Joze
and John Joze also of the same place Inhabitants
Defendants—

Sheweth

The humble Petition and Appeal of Francisco
Joze one of the abovenamed Defendant

That on or about the Eighth day of June and year of our Lord
One thousand seven hundred and ninety two the Complainant above
named did Exhibit and file his Bill of Complaint in the Mayors
Court of Madraspatnam against your Petitioner and the said
other Defendant therein and thereby setting forth that Peter
Disley the father of the Complainant being possessed of a consi-
derable Estate did duly make and publish his Last Will and
Testament in writing bearing date the Eighth Day of July one
thousand seven hundred and Eighty three and did thereby give
and

Filed in my office
the 18th November 1793
Chas N. White
Clk

and bequeth unto the Complainant the sum of five hundred Pagodas that the Interest Thereof were to be appropriated to the maintenance and support of the Complainant during his Minority and the Principal to remain in trust in the profession of James Leslie since Deceased who the Complainant did state his said father did Appoint as Trustee of his said Estate and after his Decease in Trust To your Petitioner or his Eldest son the said John Joze who he did Appoint as Executors to his said Will Copy whereof the Complainant did say was to his said Bill of Complaint annexed would appear and the said Complainant did further say that his said father did Depart this Life on or about the Month of august which was in the year of our Lord one thousand seven hundred and Eighty four without altering or revoking the said Bill upon which the said James Leslie did by virtue of the trust so reposed in him profess himself of all the Estate and Effects of the Complainants said father and what he held in trust until the time of his death which happened some time in the year of our Lord one thousand Seven hundred and Eighty five and the Complainant did further shew that after his Decease your Petitioner did take upon himself the burthen and Execution of the said will but without proving the same that the said deceased did Constitute and appoint William Gordon then living and residing at Palamcottah to be his attorney by virtue of which power he the said William Gordon did apply to and receive from abram Jarvis administrator of all and singular the Goods Chattels Rights and Credits of the said

James

James Leslie the money due and owing from his Estate to the Estate of the Complainants father amounting to the sum of five hundred and fifteen Pagodas that by virtue of the said power he the said William Gordon did also obtain from the Paymaster of Palamcottah a Certificate of the arrears of Pay and Batta due to the Estate of your Petitioners said Testator amounting to the sum of Two hundred and thirty one Pagodas which Certificate being Transmitted to your Petitioner he did obtain from the Honourable Company a Bond for the same that your Petitioner did Dispose of such Bond at the rate of Twenty per Cent discount and the Complainant did pretend that having attained the age of Twenty one years on the Twenty fifth day of april last past did Expect that your Petitioner being as he pretended in possession of sufficient Assets to Discharge the Legacy bequeathed to the Complainant by his said father as aforesaid would redily have paid it and that accordingly the Complainant did make application for the same but that your Petitioner did refuse to pay the said Legacy or to give to the Complainant any satisfactory answer That the Complainant did thereupon by prayer to the said Mayors Court in its Ecclesiastical Capacity procure a Citation to issue directed to your Petitioner requiring him to deliver in the said Will and to accept or refuse the Execution thereof that your Petitioner did thereon prove the said Will in common forom and obtain probate thereof and the Complainant did say that it fully and Clearly appeared in and by the said Will that your Petitioner and his Eldest Son John Joze as Executors did stand Justly and truly indebted unto the Complainant in the full and Just sum of Five hundred Pagodas Current

Current Money of Madras and did in and by his said Bill pray that your Petitioner and the said John Jose might be decreed to pay unto the Complainant the said Sum of Five hundred Pagodas with Interest thereon from the time of the Complainant Coming of age also Costs of the said Suit —

And your Petitioner sheweth that to the Complainants said Bill of Complaint your Petitioner did Exhibit and file his Plea and answer and for Plea did shew that the Complainant in and by his said Bill of Complaint call your Petitioner by the name of Francisco whereas your Petitioner did state that his name was Francisco and that your Petitioner was always known by the name of Francisco and that your Petitioner did always sign his name Francisco to the best of his Knowledge Remembrance and belief and therefore your Petitioner did plead the said Misnomer in Bar of any Discovery and Relief prayed by the Complainants said Bill and humbly Claim the benefit thereof and your Petitioner sheweth that by way of answer to the residue of the Complainants said Bill he did say that he did admit Peter Disby did duely make and publish his last Will and Testament in Writing and did therein and thereby bequeath unto the Complainant the sum of five hundred Pagodas and did also bequeath unto Samuel Disby the Complainants Brother the Sum of Three hundred Pagodas but your Petitioner did deny that thereby or by reason thereof your Petitioner stood indebted unto the Complainant in the sum of five hundred Pagodas as the same was Erroneously Charged in and by his said Bill of

Complaint

Complaint for that in the first instance your Petitioner did say the whole of the said Estate of your Petitioners said Testator as far as the same had come to his your Petitioners knowledge was not Equal to pay off and Discharge the said two several Legacies Even if the same had been realized and that he had not been enabled to realize more than the sum of three hundred and Ninety five Pagodas as would thereafter more fully Appear that your Petitioner did say that he had for some years past been Obliged to administer to the want and supply the necessities of the Complainant who was the Brother of your Petitioners late Wife and who being otherways friendless your Petitioner thought it his Duty to provide for and protect him to the utmost of his abilities and which your petitioner Accordingly did that when the Complainant was put out an Apprentice in which situation he then was he your Petitioner was obliged to became security and was the Security for him to a very Considerable amount that in administering to the wants and supplying the necessities of the Complainant he your Petitioner had advanced several sums of Money for him the Complainant and which your Petitioner did say would more fully and at large appear by the Copy of an account Current to his said Answer annexed and that the Complainant had received almost as great a Proportion of the assets of the said Estate as came to his share, or as he ought to have received for the reasons hereinbefore mentioned but your Petitioner did say that such Consideration never operated with him as his wishes were to bring up the Children of his deceased Testater as his own that in that light he considered the Complainant and his Brother the said Samuel

Disby

Disly who was then at School and under the care of your Petitioner and your Petitioner did state that William Gordon in the Complainants Bill named never had to your Petitioners knowledge and belief Collected in more than the sum of five hundred and fifteen Pagodas thirty two fanams and forty Cash and which with the Certificate mentioned in the Complainants Bill amounted to no more than the sum of Seven hundred and forty Six pagodas thirty two fanams whereby According to the Complainants own shewing your Petitioner did state he would not be Entitled to the sum sued for Even if the whole had been realized as he could only share in proportion with his Brother but your Petitioner did say that the said Certificate was discounted at the rate of twenty five per Cent and therefore produced no more than the sum of one hundred and Seventy five Pagodas twenty two fanams and forty Cash that the whole amount of the said Estate did not Exceed the sum of Six hundred and ninety Pagodas and ten fanams – and your Petitioner did state that of the said sum of Six hundred and ninety Pagodas and ten fanams he had received by the said Certificate and from the said William Gordon the sum of three hundred and ninety one pagodas and that the balance of five hundred and ninety four Pagodas was still due and owing from the said William Gordon and your Petitioner did in and by his said Answer state that having particularly stated all matter within his knowledge relative to the Affairs of his said Testator and having as aforesaid acted as a father to the Complainant and whom he averred he had done and treated with all tenderness and affection, did submit to the said Mayors Court how ungrateful the return on the part of the Complainant to force him your Petitioner into the said Court and the more particularly as your Petitioner did solemnly declare he had always been ready and willing to give and had Accordingly given unto the Complainant Every Information and Satisfaction in his power relative to the Situation of the affairs of the said Estate of his said Testator and your Petitioner did further submit that although he had not proved the Will immediately on obtaining possession thereof yet that as Executor therein named he could legally Act in the Affairs of his said Testator and lastly your Petitioner did deny all or any manner of Confederacy with the said other Defendant John Joze and with all or any other persons as charged in and by the Complainants said Bill of Complaint for all which Reasons your Petitioner did humbly trust the said Mayors Court would Exonerate your Petitioner from that Culpability with which the Complainant had wantonly and unjustifiably Charged him and your Petitioner sheweth that the said other Defendant John Joze did Exhibit and file his Answer and Disclaimer

And your Petitioner sheweth unto this Honble Court that to your Petitioners said Answer the Complainant did Exhibit and file his Replication thereto and thereby setting forth that he was really ignorant whether your Petitioner was named Francisca or Francesco but if it was material towards Elucidating the merits of the Cause he prayed leave to rectify the same upon the Statue of Amendment and Jeofail by substituting the

the Letter O instead of the Letter a and thereupon calling your Petitioner Francisco instead of Francisca and at the same time to observe that it was as the Repliant would pretend a Wretched Subterfuge in order to Evade the payment of a Just debt and that no Defendant would make use of so frivolous a Plea who had a Just Defence to make That your Petitioner had as the Complainant pretended admitted that Sufficient property had been recovered wherewith to pay off not only the legacy of the Complainant but also of his Brother Samuel Disley — That to prove your Petitioner was personally Answerable for the mony the Complainant Did crave leave to state that some time in the year One thousand Seven hundred and Eighty five without proving the Will of your Petitioners said Testator your Petitioner took upon himself as Executor to appoint William Gordon in your Petitioners said Answer named his Constituted Attorney in which capacity the said William Gordon received the Sum of five hundred and fifteen Pagodas from Lieutenant Abram Jarvis and who was Administrator of the Estate and Effects of James Leslie the Trustee named in your Petitioners said Testators will and the Complainant did pretend that from that period the said Sum of five hundred and fifteen Pagodas became Assets in the hands of your Petitioner that the said William Gordon the Attorney of your Petitioner also obtained a Certificate for the Arrears of pay due to your Petitioners said Testator Amounting to the Sum of two hundred and thirty one Pagodas which Certificate having been transmitted to the Residency to your Petitioner a Bond was granted for the same by the Honble Company with Interest at and after rate of Eight per Cent per Annum, and the Complainant did say that a Bond of that kind, was one of the best securities which could then be positively obtained and that your Petitioner so far from having any reason a discount at the rate of twenty five per Cent ought with the money received from the said Lieutenant Abram Jarvis to have

purchased

purchasd another Bond of the said Honble Company or otherwise have lent it out upon good Security until the Complainant and his Brother had severally attaind the age of twenty one years and appropriating such part of the Interest as might have been necessary for their Education and support and the Complainant did say amongst other things that although it would appear that there was more than Sufficient to pay the Legacy due to the Complainant and to provide for his younger Brother yet that there must be other property belonging to the Estate of your Petitioners said Testator which never had as the Complainant insinuated been accounted for and which he did pretend your Petitioner had refused to discover although Interrogatid by his the Complainants said Bill to that effect that it was well known, as the Complainant did pretend he could prove that your Petitioners said Testator left a House and other property and the Complainant did further say that the Account Current Annexed to and Exhibited with the answer of your Petitioner was highly Erroneous, and that it did contain charges which he had no right to make against the Estate of your Petitioner said Testator — That by referring to the Will copy whereof was to the Complainants Bill annexed it would appear that John Disley your Petitioners Elder Brother had no more bequeathed to him than one Pagoda that such being the case your Petitioner could have no right to charge the Estate any disbursemints made on account of the said John Disley, that if your Petitioner had any thing to charge the Complainant with your Petitioner ought to have set forth the particulars in his Answer by which means the Complainant did say he would have been Enabled to reply thereto, that he the Complainant left Pallancottah and came to Madras in or about the month of August which was in the Year of our Lord one thousand seven hundred and Eighty Six that he resided with your Petitioner until the begining of the month of December following at which

period

period your Petitioner proposed to the Complainant to Enter into the Profession of a Watch Maker and to become an apprentice to one Joseph Bonifas who was his step Son that the Complainant having no dislike to the profession he agreed to enter into that line of life, and having reason to believe your Petitioner would be carefull in providing him a good Master he entend into articles of Indenture to serve the said Joseph Bonifas for the space of Seven years and the said Joseph Bonifas did Covenant to teach the Complainant his trade and provide him with diet and lodging and Cloathing during the term of his Apprenticeship that Complainant soon had occasion to observe as he did pretend that his Master was from many Causes ill qualified to teach him his Trade, that before the third Year of his apprenticeship had Expired his said Master contracted an habit of drinking and was enable to attend the duties of his profession that in the situation his said Master had retired to a Tobe where he lived in a small House and could only support himself by disposal of his Tools and Implements — that so miserable was the Complainants situation that he not only was in want of Cloathing but even at times of food, and had it not been owing to the humanity of a native Malabar who lived Contigious to his Master and who frequently gave him Rice, he must have been in danger of starving that Complainant having been at length roused to a sence of his situation he resolved to Extricate himself from it and accordingly went to your Petitioner and requested he would prevail on the said Joseph Bonifas to deliver up his Indentures — that with that fair and equitable requisition your Petitioner refusing to comply the Complainant procured a Petition to be drawn up to the then Justice and praying to be relieved from the Indentures he was under to his said Master — That in consequence thereof the said Justice sent People to bring the said Joseph Bonifas but that he was not be found — That your Petitioner hearing of the measures pursued by the Complainant took the merit of finishing the business by applying to the said Joseph Bonifas and prevailing on him to deliver up the Indentures — That thereupon the Complainant mentioned to your Petitioner an opportunity he had of serving the remainder of his time with M.r Hurst and requested his assistance to accomplish it, that to that requisition your Petitioner not only refused assent, but insisted Complainant would serve out his time with John Jozo your Petitioners son, who was also a Watch Maker — That Complainant having refused compliance therewith they had Actually formed a plan to send Complainant to Sea, as he had been credibly informed — That your Petitioner Continued to refuse his assent to Complainants going to Thomas Hurst until he found it would have been accomplished without his means when your Petitioner consented and accordingly became one of the Securities for the Complainant That if your Petitioner as the Complainant would insinuate had confined himself to the matter in issue which was simply whether the Complainant had a right to the Legacy bequeathed to him by your Petitioners said Testator or not he would in that case have considered the foregoing Narrative to have been unnecessary, but that as your Petitioner had stated in his Answer That he had always acted as a father to the Complainant and treated him with tenderness and affection and that the Complainant had been guilty of much Ingratitude in forcing him to the said Court the Complainant considered it as a Duty which he owed to himself to Expose your Petitioners false assertions and to shew that if the Complainant had not possessed a small

small share of landable spirit and ambition, he would have been that wretched out cast and Vagabond which they had attempted to make him. That Complainant did on attaining his one and twentieth year apply to your Petitioner for his Legacy that instead of receiving any Satisfaction he was wantonly annexed and put off with frivolous Excuses and that therefore after an application was made by his attorney at Law for that purpose the present Action was brought — That the only charge which your Petitioner had a right to make against the Complainant, the Complainant did say was for Lodging and dieting from the month of August One thousand Seven hundred and Eighty Six to the first day of December in the said Year and for any Cloaths that he might have found him during that period / and which the Complainant did pretend his Master to whom he was bound an Apprentice should be charged with That your Petitioner did sell a Slave Girl mentioned in his Testators Bill which he had not brought to Credit and Lastly that your Petitioner was in posession of Assets sufficient not only to pay off his Legacy but also to provide for that of his minor Brother. —

And your Petitioner Sheweth that to the Complainants said Replication your Petitioner did Exhibit and file his Rejoinder and did therein and thereby state that the Complainant by Replying to your Petitioners said Plea had admitted that the same was well pleased in Law, and that by praying to have the misnomer rectified, he had admitted the truth thereof and your Petitioner did thereon pray the Judgement of the said Mayors Court as in and by his said plea he had before prayed and amongst other things your Petitioner did state that he had not recovered sufficient assets of the Estate of his said Testator to pay off the

the Legacy of the Complainant and of his Brother Samual Disley that he could not consistent with the trust reposed in him pay unto the Complainant any part of his Legacy but by an Equal share with his Brother the said Samuel Disley — That the said William Gordon was appointed to receive the assets belonging to the Estate of your Petitioners said Testator and that your your Petitioner was Justified in so doing in as much as your Petitioner said that the said assets did lie in a Country many hundred miles distant from Madras, and it was unreasonable in the Complainant to suppose that your Petitioner could precede so far himself and therefore that the reasoning of the Complainant to shew that your Petitioner had assets in his hands which he never received was reasoning in opposition to demonstration that although the said William Gordon might have resided within the Jurisdiction of the said Court your Petitioner had not assets of the Estate wherewith to commence and carry on a Suit in the said Court against the said William Gordon — That if your Petitioners Testator had died leaving any realized property he your Petitioner would not have discounted the Certificate granted by the Honble Company, but as that was not the case your Petitioner was under the necessity so to do, and your Petitioner did state that he had in and by his said answer shewn the reason why he could not have applied the money which was in the hands of Lieutenant Jervis in the manner as had been proposed by the Complainant insomuch as your Petitioner could not apply to any purpose, that which was not in his custody posession or power and your Petitioner did say that having answered to the Complainants Bill of Complaint and no Exception having been taken thereto it was impertinent and irrelevant in the Complainant to insinuate in the

the manner he had done in and by his said Replication that your Petitioners said answer was insufficient yet that your Petitioner willing to give every satisfaction to the said Mayors Court did say that he knew not, nor had he heard of any property belonging to the Estate of your Petitioners said Testator other than as your Petitioner had setforth the same in and by his said Answer and your Petitioner did admit that the Account Current to his your Petitioner said answer annexed was in one particular Erroneous because your Petitioner had inserted therein the name of John Disley instead of Thomas Disley, but not otherwise, that the Complainant well knew that it was he the Complainant who was meant and intended in the debt side of the said Account Current and not his the Complainants Brother John Disley and your Petitioner did state that it was the Complainant and not John Disley against whom the Charge was meant for diet, for money received from William Gordon and for Sundries from the Month of September One thousand Seven hundred and Eighty Six until the month of June One thousand Seven hundred and Ninety for that although the name of John Disley was by such Error substituted instead of Thomas Disley yet that your Petitioner had been sufficiently clear and distinct in his said Answer to Enable the Complainant to Reply thereto for your Petitioner did therein state that in administering to the Wants and supplying the necessities of the Complainant as aforesaid, he your Petitioner had advanced several sums of money for him the Complainant as your Petitioner had in his said Answer said would morefully appear by the Copy of an Account Current to your Petitioner said Answer annexed and thereupon your Petitioner sheweth he did submit to the

the said Court that the Complainant had replied to your Petitioners said answer as if the same had been a matter of fact although he the Complainant well knew in his own Conscience that the same was an Error and not the matter of fact and that he the Complainant was the person meant and intended in and by the said Account Current and Not John Disley a person whom the Complainant well knew he your Petitioner had not seen for fourteen years, and the Complainant also well knew that the said John Disley had been dead upwards of four years which was two years prior to the year One thousand Seven hundred and ninety when the said Account Current had been dated and your Petitioner did say that the length of matter which the Complainant had entered into in an attempt to Confute that part of your Petitioners Answer wherein your Petitioner had spoke of the protection he had given to, and the provision he had made for the Complainant and his Brother the said Samuel Disley and his Motives for so doeing did in fact corroborate the same for your Petitioner did say that the Complainant had shewn that he had resided with your Petitioner for many months and that your Petitioner had bound him an apprentice to a Watch maker but that before three years of his Apprenticeship had Expired his Master contracted a habit for drinking and that in consequence his Customers forsook him, a Circumstance which your Petitioner submitted to the said Court he could not have foreseen — And your Petitioner did say as to the distress which followed such the Conduct of the Complainants said Master your Petitioner had it not in his power to prevent or relieve and that as soon as he had heard thereof he did require the Complainants said Master to give up his Indentures which after much dispute and difficulty your Petitioner Accordingly did and which your

Petitioner

Petitioner did say the Complainant himself had; shewn was owing to the influence your Petitioner had over him and your Petitioner did say that it was instrue he the Complainant was as he had pritended reduced to the necesity of reciving common necesaries of life from a Malabar during the time his said Master resided in the Tope for your Petitioner did asert that his Doors were always open to him the Complainant, that he was always welcome to a share of what your Petitioner and his family partook of and that he the Complainant knowing the same did sometimes come to your Petitioners said House to Breakfast, dinner or supper as he chose, and your Petitioner did setforth that he had never insisted upon the Complainants serving out the remainder of his time with the said other Defendant John Joze, or refuse to allow him to go to Thomas Rurstin the Complainant Bill Named, that your Petitioner never once Entertained an idea of sending him on Board a ship as he would insinuate in and by his said Replication that at the time your Petitioner had bound the Complainant an apprentice to the said Joseph Bonifas he the said Joseph Bonifas was a man of Excellent character and well known to have had a through knowledge of his profesion that your Petitioner had always conducted himself towards the Complainant and his said Brother the said Samuel Disley as a tender parent; that he had always been ready to give to the Complainant every satisfaction touching the Will of your Petitioners said Testator, that the Complainant was himself well informed thereof and had in his posesion a Copy of the Will of your Petitioners said Testator before your Petitioner obtained posesion of the Original thereof that although the Complainants Brother was at the Charity School, it was only until such time as he would be old enough to be bound to some trade, or otherwise placed out so, as to be in a way to provide for himself the Expense of which would fall upon your Petitioner, who considered him as his own Son, that your Petitioner had made his charges against the Complainant as in and by the Account Current to your Petitioners said Answer annexed the same would appear and lastly that he your Petitioner was ready and willing to pay into the said Court the balance then in his hands, or otherwise to dispose of it, as they should think fit—

And your Petitioner sheweth that upon the foregoing proceedings Issue did join and rules did pass for the Examination of Witnesses, and Witnesses were Examined Accordingly on the part and behalf of the Complainant and on the part and behalf of your Petitioner—

And your Petitioner sheweth that to the second Interrogatory on the part and behalf of the Complainant Abram Butler did depose that he did know that the Complainant was bound an apprentice to Joseph Bonifas deceased That the said Joseph Bonifas did sometime after the Complainant was bound to him become unable to Exercise the duties of his Trade, in consequence of being Continually intoxicated — that he did afterwards reside in a House adjoining to the dwelling of the Deponent and did principally subsist by what he earned in repairing Watches belonging to the Respectives that the Complainant during the latter part of the time he resided with the said Joseph Bonifas was almost destitute of food and Cloathing that the Complainant did

did frequently apply to the Deponent for food to subsiston, and that he the Deponent did supply him therewith, that the Cause and reason of the Complainants making such application was — because he could not get any food from any other quarter, that the said Joseph Bonifas and his Wife were both generally in a state of intoxication — Thomas Barrett to the third Interrogatory on the part of the Complainant did depose that he did on the Second day of July One thousand seven hundred and Eighty Seven purchase — from your Petitioner a certain slave Girl named Cecilia for the sum of twenty Pagodas, that he did not know at the time he purchased the said slave girl that she was the property of the Estate of Peter Disley deceased but that when the Bill of Sale for the said Slave Girl was delivered to him by your Petitioner, he found that the said Slave Girl was the property of the Estate of Peter Disley deceased — John Bird to the fourth Interrogatory on the part of the Complainant did depose that he was well acquainted with your Petitioners said Testator in his life time and that he was acquainted with him about Eighteen years — that your Petitioners said Testator did depart this life at — Palamcottah, but that he did not reside there at the time of his decease having left it about Six Weeks before that he knows your Petitioners said Testator did leave a House — and furniture behind him, that he did not know what was the value thereof but believed it might be about three hundred pagodas nor did he know by whom it was occupied on the death of your Petitioners said Testator, but that it was occupied sometime afterwards by Captain Bruce and that he

he did not know what became of the said House and furniture afterwards — George Chalmers Esquire to the fifth Interrogatory on the part of the Complainant did dispose that he was applied to by the Complainant in his the Deponents professional Capacity to demand from your Petitioner payment of the sum of five hundred Pagodas being the Amount of Legacy bequeathed to him by his father that Deponent did make an application accordingly to your Petitioner for the same in writing but that he received no — Answer to the said Application and your Petitioner Sheweth that the said George Chalmers did also to the last Interrogatory depose that at the request of the Complainant, he waited upon Doctor William Gordon in the pleadings named Since his return from England to Enquire whether he had any and what Sum of Money in his profession — belonging to the Estate of your Petitioners said Testator, that thereupon the said William Gordon did produce his Books to the Deponent — wherein there appeared a Balance of about three hundred pagodas to be due from him to your Petitioners — that the said William Gordon admitted such balance was owing to your Petitioner as Executor of your Petitioner said Testator, but said that the said William Gordon had Executed a Bond for the same, which Bond he believed your Petitioner had deposited with Peter Bodkin to Secure a debt which he your Petitioner owed to the said Peter Bodkin and that the reason which the said William Gordon gave for thinking so, was that he had paid part of the Interest due on the said Bond to the said Peter Bodkin — George Moss to the Sixth Interrogatory on the part of the Complainant did depose that he did by the desire of your Petitioner draw out a Power of attorney from him in favor of William Gordon that he believes the said Power of attorney was

was printed one in the common form and that he also believed it was
granted for the purpose of receiving some property belonging to the Este
of your Petitioners said Testator, that he believed the said William
Gordon did by virtue thereof collect the same but the Deponent did
not recollect what particular Assets belonging to the said Estate of y
Petitioners said Testator to the Seventh Interrogatory that Complaina
did frequently complain to Deponent of his Situation during the
time he was an apprentice to Joseph Bonifas and that the pa
cular grievances of which he complained were, that he was n
taken proper care of, or instructed in his busines by the said Joseph Bonifas, t
the Complainant did frequently Express a strong wish to be relieved fro
his Indentures to the said Joseph Bonifas and to be bound to Thomas Hurst
that the Complainants reasons for Expressing such wish was the improper
manner in which he was treated by the said Joseph Bonifas — that he did not
recollect whether he did or did not give the Complainant any advice regarding
the measures he should pursue to accomplish the same — Thomas
Ledsham to the same Interrogatory did depose that the Complainant
did frequently complain to Deponent of his Situation during the time he
was an apprentice to Joseph Bonifas, and that the particular grie
vances of which he complained were the want of cloaths and Victuals and
that his master did not instruct him in his business — that he the
Complainant did frequently Express a strong wish to be relieved
from his Indentures to the said Joseph Bonifas and to be bound to
Hurst of Fort St. George, that his the Complainants reasons for Express
ing such wish were the grievances he Experienced from his said
Master that he did advise the Complainant to make Application to
the Justice and to state his grievances to them as the only means
he

he could pursue to accomplish his Wishes —

And your Petitioner Sheweth that on the part and
behalf of your Petitioner Simon Martinis and John Maddox to the second
Interrogatory and Severally depose that they did know your Petitioner, that he had
always been called and known by the Name of Francisco that the difference
between the names of Francisco and Francisca were that the former was mas=
culine and the other feminine — and your Petitioner Sheweth that Miguel
Joze to the third Interrogatory on the part of your Petitioner did depose that he did
know that the Complainant did upon his Arrival from Palamcottah at
Madras some time in the year of Our Lord One thousand Seven hundred
and Eighty Six take up his residence and lodge and diet with your Petitioner
and that he the Complainant did so reside lodge and diet with your Petitioner
about Seven months after his Arrival — and to the fourth Interrogatory the
said Miguel Joze did depose that your Petitioner did sometime after the Arrival
of the Complainant at Madras desire him to apply himself to some profession he might
chose and that upon the Complainants Expressing a preference to that of a Watch
maker, he your Petitioner did ask if the Complainant would serve his apprentice=
ship to that trade with Joseph Bonifas then of Madras Watch maker, to which
the Complainant assented and that your Petitioner did immediately settle with
the said Joseph Bonifas and Accordingly place out the Complainant with him
as an apprentice — To the Sixth Interrogatory that Deponent did know
that the Complainant during the time he was an apprentice to the said
Joseph Bonifas and subsequent thereto from time to time did come to the House
of your Petitioner and there on such occasions call for and order whatever Victuals
and necessaries he stood in need of and that his the Complainants necessities
were punctually attended to by your Petitioner and his Servants that the

Complainant

Complainant did whenever in want of Cloathing and other necessaries apply to your Petitioner for the same and that your Petitioner did supply the Complainant with Cloathing and also money for other necessaries he the Complainant required— that your Petitioner did always shew a tenderness and affection towards the Complainant and the Complainants Brother and treat them in the same manner as if they had been his own Children— And your Petitioner Sheweth that Mariana Rico did also to the said third fourth and Sixth Interrogatories on the part of your Petitioner depose in like manner and form as the said Miguel Joze—

And your Petitioner sheweth that Charles Loyd, John Pellow and Lind Pereira to the fifth Interrogatory on the part of your Petitioner did depose that they were well acquainted with Joseph Bonifas late of Madras Watch Maker in his life time, that the said Joseph Bonifas bore a very good Character in the Settlement with respect to his Morals and that he was very well skilled in his profession and your Petitioner sheweth that John Mayers to the Sixth Interrogatory did nearly depose in manner and form as the said Miguel Joze and Mariana Rico had done on the part and behalf of your Petitioner as herein above recited—

And your Petitioner Sheweth that thereupon publication did pass, and the said Cause was set down to be heard and the same coming on to be heard on tuesday the fifth day of November in the present year of our Lord One thousand seven hundred and ninety three the said Mayors Court was 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 Peter Disley deceased the full full and just Sum of five hundred pagodas together with all Interest as there was, or should thereafter become due thereon until full payment made at the rate of Eight per Cent per Annum from the periods at which your Petitioner received the said Sums which your Petitioner had acknowledged to have received and upon the rest from the date of the said Decree till the same should be paid and in default of Assets that he do pay the Amount out of his own pocket with Costs of Suit out of his own pocket as by the said Decree Copy whereof is hereunto annexed for the inspection of this Honble Court the Original being ready to be produced at the hearing may more fully and at large 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 your Petitioner doth humbly conceive that the said Decree of the said Mayors Court is Contrary to Law insomuch as it doth in the first place give unto the Complainant more than he has prayed for in and by his said Bill of Complaint for he therein prays that he may be decreed his Legacy of five hundred Pagodas from the time of his attaining the Age of one and twenty years which he shews was on the twelfth day of April which was in the year of our Lord one thousand seven hundred and ninety two and in the second place insomuch as the said Mayors Court have Decreed that in default of Assets your Petitioner doth pay the said Sum of five hundred Pagodas out of his own pocket which your Petitioner humbly submits to this Honble Court is Contrary to the Law because an Executor is not bound to pay debts and Legacies further than

than the afsets in his hands belonging to the Estate of his Testator will ~
Extend and never out of his own pocket Except after Judgement a devasta=
vit is proved against him and then only in the amount of the Devasta=
vit and your Petitioner further submits to this Honble Court that so far from
proving a devastavit the Complainant has not Even attempted to prove
afsets in your Petitioners hands and therfore the same can be taken ~
only as your Petitioner has admitted the same in and by his said answer
~ and he therein shews that he has received the sum of three hundred
and ninety one pagodas twenty two fanams and forty Cash and ~
no more, and which the said Mayors Court seem to have had in
Contemplation at the time they granted their said Decree for they therein
direct your Petitioner to pay Interest from the period which he had ~
received the sums which he has acknowledged to have received and if
the said Mayors Court could adjudge that your Petitioner should pay an
Interest from the time only in which he received the sums by him
acknowledged to have been received the said Mayors Court did virtu=
=ally admit that your Petitioner did not receive any other sum than
he had so acknowledged and therfore both in Justice and in Equity ~
your Petitioner ought not to have been decreed any further sum than
he had so received and from the date of which the Interest decreed is
to commence, and that your Petitioner has not received any further
Sum is clear from the Testimony of George Chalmers who deposes
that

that William Gordon in the pleadings named did shew his Books to him
the Deponent and that thereby it did appear and the said William ~
Gordon did admit the fact so to be, that a balance of three hundred Pagodas
was due and owing to your Petitioner on account of the said Estate of your
Petitioners said Testator which corresponds with, and consequently ~
establishes the account given in by your Petitioner with his said answer ~

Secondly ..... Because an Executor never pays Costs out of his own
pocket but in cases of a Devastavit which so far from having been ~
proved against your Petitioner, the Complainant has not even proved
any afsets and the said Mayors Court in giving their Judgment
had no other ground than the afsets admitted by your Petitioner
in any by his said Answer by which it appeared that your ~
Petitioner had received the sum of three hundred and ninety one
Pagodas twenty two fanams and forty Cash and no more that ~
from and out of the said sum of three hundred and ninety one
Pagodas twenty two fanams and forty Cash he had laid out and
Expended for the use and on account of the Complainant the sum
of one hundred and forty four Pagodas and twenty fanams and
that therfore your Petitioner had a balance in hand of two hundred
and forty seven pagodas two fanams, and forty Cash and no more
and your Petitioner submits to this Honble Court that even had afsets ~
been proved yet that no devastavit could have been enforced against
your

your Petitioner without a distinct action brought for such devastavit and upon full proof and Judgment thereon, and consequently your Petitioner Submits to this Honble Court that the said Mayors Court ought not to have decreed your Petitioner to pay Costs out of his own Pocket—

Thirdly ..... Because the said Mayors Court have not allowed the sum Expended by your Petitioner for and on Account of the Complai=nant amounting to the sum of one hundred and forty four pagodas and twenty fanams which they ought to have done as your Petitioner has stated the same upon Oath in and by his Answer and although your Petitioner did make a mistake in the said Account by Substituting the name of John instead of Thomas the name of the Complainant and that the Error must have been halpable is Evident insomuch as that your Petitioner did in and by his said answer say that he had laid out and Expended considerable sums of money on account of the Complainant, and did only refer to the account itself for the particulars thereof and your Petitioner did also prove the said disbursements as far as the nature of the Case would admit by the deposition of Miguel Joze and Mariama Bieu to the third and Sixth Interrogatory nor did the Complainant himself disavow standing indebted unto your Petitioner although he did Evade the same and therefore your Petitioner humbly Submits that the said Mayors Court ought to have deducted from any sum they might have

have bun pleased to Decree for the Complaint the Amount which had been Expended and laid out by your Petitioner on his the Complainants account as aforesaid and your Petitioner is advised that Even had your Petitioner received afsets to the Amount sued for by the Complainant yet that the said Mayors Court ought not to have decreed the same to be paid unto the Complainant—

Fourthly ..... Because the Complainants younger Brother is also a Legatee under the Will of your Petitioners said Testator and there=fore is Entitled in Equal degree with the Complainant, and your Petitioner is advised that where there are not afsets sufficient to pay off all Legacies, that the Legatees share in proportion, and that one Legatee is not by Law allowed to come in and take the whole amount of his Legacy to the Utter Exclusion of the other Legatees—

Lastly ..... Your Petitioner says that although the Complainant has made many charges in his Bill of Complaint and brought forward a Variety of Extraneous matters in his Replication in order to injure the Character of your Petitioner, and in the attempt to Excite a prejudice against the defence by him set up to his the Complainants Bill of Complaint, yet that he has not Supported the same by Evidence, for your Petitioner Sheweth that although the Complainant has proved that your Petitioners said Testator died posfesed of a House and furniture at Palamcotah worth

worth three hundred pagodas yet that he has not attempted to shew that your Petitioner did posess himself thereof and it appears by the Will of your Petitioners said Testator that the said House was not to be disposed of and that it was left to other purposes than to the use of the Complainant and although he has attempted to shew that your Petitioner had Sold a slave Girl yet the Evidence of Thomas Barrett to that point is loose and indefinite and further your Petitioner sheweth unto this Honble Court that the slave Girl belonging to your Petitioners Testator in his life time was directed by his said Will to be left at Palamcotah where your Petitioner believes she now is, and says that the slave Girl by him disposed of to the said Thomas Barrett was his your Petitioners own property that although the Complainant had declared that he should have been starved had it not been for a native Malabar yet he produces one Abram Butler to shew that it was he who supplied the Complainants wants, and he also contradicts the Complainant in another Instance for the Complainant says that his Master Boniface lived latterly by disposing of his working Tools, and that he the Complainant disposed of them whereas Abram Butler reducing the said Boniface as low as possible in his Idea says he supported himself by repairing Watches for the natives. On the other hand your Petitioner has clearly supported the several matters and things setforth in his Answer as far as the nature of the case would admit He has proved that the Complainant lodged with him for many months that your Petitioner did desire him to Choose some profession and on his fixing upon that of a Watch maker your Petitioner did bind him an apprentice to the said Boniface who your Petitioner did also prove was at that time a man of good moral Character and that he was skilled in his profession. your Petitioner also proved that the Complainant when an apprentice to Boniface and subsequent thereto did frequently come to the House of your Petitioner and call for what he wanted and that he was punctually attended to by your Petitioners servants that when in want of Cloathing he did apply to your Petitioner who did supply him therewith and with money for such other necessaries as he the Complainant required and that your Petitioner did shew a tenderness towards the Complainant and his Brother in the same manner as if they had been his own Children and therefore your Petitioner humbly submits to this Honble Court that the said Mayors Court ought not to have decreed as hereinbefore setforth and further submits to this Honble Court that the Decree of the said Mayors Court is contrary to Equity and to the Law

For all which Reasons and such others as may be urged at the hearing your Petitioner doth humbly pray that this Honble Court will be pleased to Reverse the said Decree of the said Mayors

Mayors Court so far as the same goes against your Petitioner personally and for as much as that your Petitioner in and by his said Answer upon Oath has setforth the Amount balance in his hands belonging to the Estate of his said Testator to be a Just balance and as your Petitioner had offered to pay the same in such manner as the said Mayors Court might direct and as the Complainant has not proved nor has he attempted to prove any further or other Sum received by your Petitioner and by him Confessed as aforesaid or any other Assets save and Except the Bond Executed by William Gordon and which the Complainant himself shews has not been discharged and which your Petitioner has shewn he has not been able to get discharged that this Honourable Court will be pleased to Allow your Petitioner his full Costs to be paid by the Complainant and that this Honble Court will also be pleased to give unto your Petitioner such other and further Relief in the premises as to this Honourable Court may seem meet —.

(Signed) J. Stuart Hall.
Solicitor for Appellant

Mayors

Mayors Court at Madraspatnam.

Tuesday the 5th day of November Anno Domini 1793

Present

John Milford Esqr Mayor
Josias Dupre Porcher and Andw Ross
Aldermen.

Between Thomas Disley of Fort Saint George Inhabitant Complainant and Francesca Joze and John Joze of Madras 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 a Will annexed The Defendant Francisco Jozes Plea and Answer with Copy of an Account Current annexed The Answer and Disclaimer of the Defendant John Joze The Amended Replication with Copy of an Exhibit annexed The Amended Rejoinder of Francisco Joze and John Joze 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 Francisco Joze do pay unto the Complainant out of the Estate and Effects of Peter Disley Deceased the full and Just Sum of Five Hundred Pagodas / Pags 500 .. .. / together with all such Interest

Interest as now is or shall hereafter become due thereon untile full Payment is made at the rate of Eight per Cent p. Annum from the periods at which he received the Sums which he Acknowledges to have received and upon the rest from the date of the Decree tile the same is paid and indefault of Assetts that he do pay the Amount Decreed out of his own Pocket with Costs of Suit out of his own Pocket and It is further Ordered and Decreed that the Bill of Complaint so far as relates to the Defendant John Joze be dismissed and that the Complainant do pay the Costs attending the Defence Setup by him he having been unnecessarily made a party to the Suit—

P. Ellis

(Signed) G. Taylor Regr

A True Copy
(Signed) James Stuart Hall
Solr for Appellant

To

To the Honourable Sir Charles Oakely Baronet

— President and Governor &c in Council
Fort St George

In the Honble
Court of Appeals

Between Thomas Disley of Madras
Inhabitant Complainant and Francisco Joze
and John Joze also of the same place Inhabitants
Defendants —

The Answer of the above named Complainant to the petition and Appeal of Francisco Joze one of the above named Defendants —

This Respondent for Answer to the said Appellants petition of Appeal or unto so much thereof as is necessary for this Respondent to make answer unto Answereth and saith

Filed in my Office
the 25th January 1794
Chas N. White
Clerk

That he admits to have on or about the Eighth day of June in the year of our Lord one Thousand seven hundred and Ninety two filed his Bill of Complaint in the Honourable the Mayors Court of Madras pat-
. nam against the above named Appellant Francisco Joze and also against John Joze the other Defendant in the said cause named as Executors of the last Will and Testament of peter Disley deceased for the recovery of a Certain Legacy by the said Will left and bequeathed to this Respondent which said Bill of Complaint being set forth and recited in and by the said Appellants petition of Appeal This Respondent craves Leave to refer thereunto and prays that he may have the full benefit and advantage thereof and this Respondent further admits that to the said Bill of Complaint the said Appellant

Francisco

Francisco Jone did file a plea and Answer to which plea and Answer this Respondent afterwards put in a Replication and the Defendant Rejoined But this Respondents says that the said Replication has not been fairly recited in the said petition and Appeal several parts which are favorable to this Respondent having been wholly suppressed Wherefore this Respondent Craves this Honourable Court to refer to the original Replication and prays that he may have the full benefit and advantage thereof. And this Respondent further admit that upon the proceedings ifsue Joined and rules prafsed for the Examination of Witnefses and that Witnefses were accordingly examined as well on the part of the Appellant as on the part and behalf of this Respondent And that the substance of the Evidence given was in effect and purport the same as that which has been setforth and recited by the Appellant in his said petition of Appeal And this Respondent further admits that publication having prafsed the said Cause was set down for hearing and on Tuesday the fifth day of November which was in the year of our Lord one thousand seven hundred and ninety three came on to be heard by and before the said Honourable Mayors Court when they 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 peter Disley deceased the full amount of Five hundred Pagodas together with all interest as then was or should thereafter become due thereon until full payment is made at the rate of Eight per Cent per annum from the period at which the appellant had acknowledged the receipt

receipt of Certain sums and upon the remainder from the date of the Decree and in default of assetts that the appellant Francisco Jone should pay the amount out of his own pocket as also costs of suit. And the said Mayors Court further ordered and Decreed that the Bill of Complaint so far as it related to the Defendant John Jone should be dismifsed and that this Respondent should pay the Costs attending the Defence set up by him She said Mayors Court considering that he had unnecefsarily been made a party to the Suit as by the said Decree Copy whereof is annexed to the appellants Appeal relation being thereunto had will morefully and at Large appear And this Respondent denies that the appellant Francisco Jone is aggrieved by the Decree of the said Mayors Court or that he has Just cause to Appeal therefrom but on the contrary this Respondent has reason to Consider himself aggrieved by that part of the Decree of the said Mayors Court which directs this Respondent to pay the Costs of the defence set up by the said John Jone —

And for Answer to the first reason given by the appellant This Respondent denies that the Mayors Court have acted contrary either to Law or Equity in decreeing more than what this Respondent originally prayed for in and by his said Bill of Complaint Because when this Respondent first instituted the present Suit He was not in poffefsion of those facts and Circumstances which the subsequent pleadings disclosed But when it appeared by the answer of the appellant that he had many years ago been in poffefsion of assetts sufficient to pay off the Legacy and that he had not appropriated the interest according to the directions in his Testators Will contained

and

and whim from the nature of the defence set up it appeared to be the manifest intention of the appellant to withhold from this Respondent by every litigious means his Just right It was regular for this Respondent to Crave additional relief in his Replication and which he accordingly did by praying that in default of the Appellant praying this Respondents Legacy from the Assetts of his Testator that then he should be decreed to pay the same personally and as it did appear that the interest arising on the said Legacy had not been paid according to direction in the Will But that the appellant had appropriated the same to his own use This Respondent further prayed that he should be decreed payment of the interest which prayer this Respondent humbly submits was only adding to though still forming part of the prayer of the Bill of Complaint And therefore the said Honourable Mayors Court in complying therewith did that which the Law strictly sanctioned and which both Equity and Justice required For the appellant in his answer mentioned that he had received Certain sums of Money on Account of his Testator and although Commanded by the Will to Appropriate the interest thereof towards the maintenance and support of this Respondent and his Brother until they respectively attained the age of Twenty one years he had not proved any specific disbursement although Called upon by this Respondent to do so in the Course of of the pleadings the interest therefore on the respective sums received by the appellant became from the aforegoing Circumstance as much the right of this Respondent as the principal did and it would have been injustice to have withheld it from him. And this Respondent admits that Executors when they act fairly and honestly under

under the trust reposed in them are not bound to pay Debts and Legacies further than the Effects of their Testators will extend But if they plead a false plea or Commit a Devastavit or waste in the Estate then they become personally Answerable And this Respondent saith that the appellant did that which subjected him to a personal decree for by his own shewing he has or ought to have received on account of his Testators Estate the principal sum of seven hundred and Forty six Pagodas thirty two fanams and forty Cash yet still he obstinately persisted in saying that he was not answerable for more than Two hundred and forty seven Pagodas two fanams and four Cash But the said Mayors Court determined otherwise upon the pleadings and Evidence brought before them and which Consequently established a Devastavit or Mismanagement which made him personally answerable For this Respondent saith that in the Books of the first legal authority a Devastavit is defined to be a mismanagement of the Estate and Effects of the deceased in squandering and misapplying the Assetts Contrary to the trust and Confidence reposed in them and for which Executors and administrators shall answer out of their own pocket as far as they had or might have had Assetts of the deceased and hence it is laid down in the Books that Executors may be guilty of a Devastavit not only by a direct abuse by them as by spending and abusing the Effects of the deceased But also by such Acts of Negligence and wrong administration as will disappoint Creditors and the Legatees of their debts and therefore it hath been held that if an Executor sells the Testators Goods at an under value for his own advantage That is a Devastavit and he

he shall answer the real value and it is further laid down that if an Executor Trusts to another person to recover money of his Testator that shall be assetts whether such person repays him or not. And this Respondent for further answer to the first reason or Cause of Appeal saith that there was no further proof of assetts necessary than the appellants own Confession for in his answer to this Respondents Bill of Complaint he admits that Dr Wilkins Gordon recovered as his Attorney the sum of Five hundred and fifteen Pagodas thirty two fanams and forty Cash which together with the Certificates amounted altogether to the sum of seven hundred and forty six Pagodas thirty two fanams and forty Cash against this admitted sum therefore with the interest due thereon the said Honourable Mayors Court gave their Decree But as the intention of the appellant to withhold from this Respondent by reducing this sum to the pitiful balance of two hundred and forty seven Pagodas two fanams and forty Cash was manifested they did in order to counteract the dishonest efforts of the appellant upon the principles and under the authorities aforestated further Decree that the appellant in default of producing Assetts should pay the amount with Costs of Suit out of his own pocket. And this Respondent humbly submits that without this Decree the end of Justice would not have been attained nor this Respondent in the smallest Degree benefited For a Judgment against the Estate of the appellants Testator only would in a great measure have rendered the process of Execution nugatory inasmuch as this Respondent could not have had recourse to the appellants person in the event of his not fulfilling a Decree But must have been under the necessity —

necessity of Commencing another suit and unnecessarily proving that which had already been fully admitted by the appellant namely assetts sufficient to pay off this Respondents Claim —

And for Answer to the second reason given by the Appellant as Cause of appeal This Respondent saith That the said Honourable Mayors Court could not consistently with Justice have done otherwise than ordering the appellant to pay costs of suit because through his means and owing solely to his litigious Conduct in disputing the payment of a Just claim were these acts incurred This Respondent saith that from the whole of the proceedings in this suit The appellant appears to have so grossly abused the trust reposed in him by this Respondents Father that instead of simple Costs of Suit he Justly merited some severer mark of the reprehension and displeasure of the said Mayors Court for it doth appear that upon the Death of Doctor Leslie which happened in the year one Thousand seven hundred and Eighty five The Appellant began to act under the Will although he did not produce it until Compelled to do so by process of Citation taken out by this Respondent from which it would appear that he not only expected to escape the burthen of delivering in an Inventory and account Current with the Estate of his Testator But that he expected the Will itself might be forgot and that he should never be Called upon for the payment of these Legacies mentioned in it. And this Respondent saith it doth further appear from uncontrovertable Evidence namely

from

from the Testimonys of Sergeant Bird and Mr Thomas Barrett the
the appellant hath suppressed property belonging to his Testators E
the former shewing that there was an house and furniture at Palamcot
belonging to Peter Disley unaccounted for while the latter proved that
had purchased from the Appellant the Slave Girl mentioned in the
the proceeds of which has also been unaccounted for And it doth fur
appear that a Bond executed to the appellant by Dr Gordon for the
money which he charges to be the the property of the Estate has been
deposited with Mr Peter Bodkin to secure the repayment of some private
Debt of his own and that he has received the interest which at different
times fell due upon it And this Respondent further saith that although
the Appellant in his answer to the Bill of Complaint has positively
sworn that he ever has been ready to account with him for the Legacy
of his Father yet the reverse appears to be the case from the Letter written
by this Respondents Attorney George Chalmer Cosby whereof is annexed
to the Replication as well as from the Testimony given by him which
shews that he had ineffectually applyd for payment The Appellant
not having even deigned to send any answer to his Letter and which
consequently forced this Respondent to institute the present suit for the
recovery of his legacy from all which concurring and aggravating
circumstance this Respondent humbly Contends that the said Honourable
Mayors Court would have acted Justly in decreeing exemplary Costs
out of the appellants own Packet instead of simple costs

And for Answer to the third reason given by the
appellant as Cause of appeal This Respondent saith that it has by no
means been proved that the sum of one hundred and forty four Pagodas

and

and Twenty fanams or any other sum whatever was disbursed for
this Respondent although the different Items Composing the account
annexed to the answer are of a nature easily to admit of proof
If they had actually been paid away and it was incumbent on the
appellant to have brought forward such proof Because this Respondent
in his Replication to the appellants answer denies the Charges
and calls upon him to shew and prove any specific disbursements
which he had made and therefore this Respondent doth humbly
insist that the said Mayors Court could not have given credit
for such an unsupported statement

And this Respondent for Answer to the fourth
reason given by the appellant admits that Legatees where
there are not sufficient assetts to pay off the whole ought to share
the assetts Proportionally But this Respondent humbly Contends
that such Doctrine doth by no means apply in the present case
For the Appellant has or at least ought to have assetts sufficient
not only to satisfy this Respondent But also to provide for his
Minor Brother

To the last reason or allegation of the Appellant wherein
it is said that many Charges have been made and a variety of
Extraneous matter introduced by this Respondent both in the
Bill of Complaint and Replication with the view of exciting a
prejudice against the Defence set up by him all which Charges
the appellant says are unfounded and totally unsupported by
Evidence This Respondent for answer thereunto denies that he has
made any Charge in his pleadings whereof proof has not been
given nor has he introduced any thing extraneous or irrellevant

to

to the subject matter now before this Honourable Court For what might be otherwise Considered as Extraneous and irrelevant is only an answer too and fair refutation of the many false assertion Contained in the appellants pleadings For the said Appellant Francisco Jose has setforth that he had for some years past been obliged to administer to the wants and supply the necessities of this Respondent who was the Brother of his the appellants late wife and who being otherwise friendless he Considered it as his duty to provide for and protect him to the utmost of his abilities and that in administring to the wants and supplying the necessities of this Respondent he had advanced a Considerable sum almost to as great a portion of the assetts as Came to this Respondent share or that he ought to have received But that such Consideration never operated with him as his Wishes were to bring up his Testator Children as his own and in that light he Considered this Respondent That having so acted as a father to this Respondent he submitted how ungrateful the returns had been in being forced by this Respondent into a Court of Justice at a time when he was ready to give every information and satisfaction in his power relative to the affairs of the Estate This Respondent saith that assertions so very extraordinary and so void of truth naturally required an answer and hence it became incumbent on this Respondent in Vindication of himself to state the Conduct which the appellant had pursued towards him in first binding him an Apprentice to a relation of his one a man of a worthless and profligate Character and unable from his Excessive failings to teach this Respondent his profession and it was also incumbent on this Respondent to state the extreme miseries which he had suffered during his Servitude and the danger he ran of starving had it not been for the humanity of a Native Malabar man who supplied him with food at times and the means which he had taken to Effect a release from this servitude and further it was natural from such premisses for this Respondent to infer that if he had not possessed a small share of laudable pride spirit and ambition he would have been the wretched outcast and Vagabond which the appellant had attempted to make him Whereas if the appellant had acted in that manner which Every honest man placed in his situation would have done where two orphan Children friendless and unprotected were left to his care That the two sums which the Appellant became Answerable for instead of being reduced to the wretched balance as stated in the Exhibit annexed to and Exhibited with the appellants plea and answer would have amounted to the sum of Pagodas 1138.32.12 —

And this Respondent for further answer to the several matters in the said allegations contained says that having proved that his father left a house and furniture at palamcottah it was by no means necessary to shew that the appellant had taken possession thereof for that became

became an implied duty incumbent on his situation as Executor and if by any Negligence or inattention on his part It has not been realized yet having admitted the fact the valued amount of the house has to every intent and purpose become assetts in his hands for which he is answerable. And this Respondent for further Answer saith that the Evidence of Thomas Barrett is not loose or indefinite as the appellant has been pleased to term it But on the Contrary his Testimony Clearly proves that the Slave Girl which was sold to him is the very person mentioned in the will. And this Respondent further saith that what the appellant has setforth respecting the said Slave Girl has been improperly and irregularly introduced in his appeal because this Circumstance was remarked upon in the Replication yet no notice thereof was taken in the Rejoinder nor any thing shewn in Evidence to prove that the Slave Girl was his own as has been falsely Asserted by the appellant and therefore this Respondent conceives that what the Appellant has setforth respecting the said Slave Girl being new matter and of Course inadmissable in an appeal should be expunged from the record And this Respondent having answered the several allegations or causes of Appeal introduced by the appellant Conceives that nothing more is necessary to be by him setforth to establish the propriety and Justice of making the appellant answerable personally for the legacy bequeathed by this Respondents father in manner as the Mayors Court hath adjudged it yet although this Respondent Conceives that full Justice has been rendered to him by the said Decree so far as relates to the

legacy

legacy and the payment of the appellants own costs he never theless Considers himself aggrieved by that part of it which directs payment of the Costs of the Defendant John Joze who appears to have been a Confederate with and accessary to all his fathers litigious schemes This Respondent saith that the Will of his deceased father required a very simple duty from the appellant it stipulated that the Legacy which was bequeathed to this Respondent should be paid at the age of Twenty one and the Interest in the mean time towards his maintenance neither these acts of bounden duty however did the appellant think proper to Comply with when this Respondent therefore had attained his one and Twentieth year He called upon him for his due but no attention whatever was paid to his own personal application or to the subsequent Call of his Attorney at Law Hence it became necessary to have recourse to Coercive measures to obtain that redress which amicable means had failed in procuring The Defendant John Joze was therefore necessarily made a party to the suit because he was named in the Will as an Executor Had his name been omitted the Bill of Complaint would as this Respondent is advised have been subject to a Demurrer and this Respondent saith that from the extraordinary and unwarrantable pleadings of the said Francisco Joze and John Joze their intentions towards this Respondent became fully manifested and which was to with hold from this Respondent his Just right by every possible means Wherefore the said Mayors Court

viewing

viewing the Confederacy of the said Francisco Jose and John Jose to injure and oppress this Respondent should have decreed the whole of the Costs to be paid by the opposite party —

For all which reasons and such others as may be urged at the hearing this Respondent humbly prays that the decree of the Mayors Court may be affirmed with exemplary Costs to be paid by the Appellant —

(Signed) G. Chalmer

Solicitor for Respondent

Court of appeals

Court of Appeals
Madraspatnam

Saturday the 7th day of June
Anno Domini 1794

Between Francisco Jose of Madras Inhabitant Executor of Peter Disley deceased Appellant and Thomas Disley of Fort St George 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 Honourable the Mayors Court together with the Decree of the said Court given in this Cause on Tuesday the 5 day of November Anno Domini 1793 upon due Consideration had of the matters therein Severally Contained and of the Pleadings and Arguements used by the Attornies on both sides This Court doth think fit to Order and Decree and doth Accordingly Order and Decree that the said Decree of the Honourable the Mayors Court do stand affirmed except in respect to the Charge of Interest which the Court doth think fit to Order and Decree shall commence from the 12 April 1792 the day on which the Respondent attained the age of 24 years and Except in respect to the Costs of Suit which Costs this Court doth further Order and Decree in both Courts by the Appellants to be paid from the Estates of Peter Disley and in default of Assets only from the Appellants Own Pocket

O Henry (Signed) Robert Clerk C.Ct.

To the Honourable Sir Charles Oakley Baronet
Governor in Council at Fort St George

In the Honble
the Court of Appeals
Madraspatnam

Between Joseph Antonio Complainant
by Bill of Revivor ~~viz~~ Thomas Cockburn
and Samuel Moocartish Moorat Surviving
Executors of Edward Raphael Deceased –

The Humble Petition and Appeal of the said
Thomas Cockburn and Samuel Moocartish Moorat
Executors as aforesaid –

Shew

That the said Joseph Antonio did sometime on or about the Twenty Sixth day of September last past exhibit in the Honourable the Mayors Court at Madraspatnam a Bill of Revivor against your Petitioners setting forth among other things that the said Edward Raphael in his life time on or about the Twenty fifth day of September which was in the year of our Lord one thousand seven hundred and eighty nine file his Bill of Complaint against them for the recovery of the Sum of Fourteen Thousand seven hundred and seventy nine Pagodas Twelve fanams and Twenty eight Cash praying that he might be decreed to pay the same together with such Interest as there was or should thereafter become due thereon also all Costs of Suit and that he the said Joseph Antonio might be Summoned to Appear and answer the said Bill that he was so summoned and did appear accordingly and put in his answer to the said Bill and thereafter to wit on or about the second day of March one Thousand Seven hundred and Ninety he did file a Cross Bill and on or about the Twentieth of October following a Supplemental Bill that thereafter on the usual proceedings Issue did Join in the said Cause and Cross Cause and witnesses were Accordingly Examined and the said Bill of Revivor did also set forth that before the said Cause was brought to hearing the said Edward Raphael did leave the Jurisdiction of the said Court and did proceed to England and the said Bill of Revivor did also Set forth that on or about the sixteenth day of December in the year of our Lord One Thousand seven hundred and ninety one The said Cause coming on to be heard The said Court did order and Decree that the Original Bill filed by the said Edward Raphael should be dismissed with Costs – and that he the said Edward Raphael should pay the Costs of the Cross and Supplemental Bills and the Complainant Joseph Antonio did in his said Bill of Revivor refer to the Decretal order of the said Mayors Court and the Bill of Revivor did also state that before any further process was had on the said Decree for Costs accounts were received of the death of the said Edward Raphael and that the said Edward Raphael departed this life previous to the said decretal order and the Complainant thereafter nevertheless states that by reason of the death of the said Edward Raphael the process on the said decretal order was and is abated –

And the Complainant further states that the said Edward Raphael having previous to his death duly made his last Will and Testament appointing your Petitioners and Miguel Joannes

Filed in my Office
the 23d December 1793
E. N. White, Clerk

Joannis since deceased his Executors thereof and who had Accordingly proved the same—

And the said Bill of Revivor Charged that he the said Joseph Antonio by reason of the premisses had become entitled to have the said Decretal order revived and Carried into execution and to have the same benefit and relief against your Petitioners as he might have had against their Testator—

And that the said Decretal order might stand revived and Carried into Execution against your Petitioners as Surviving Executors of the said Edward Raphael and that he might have the benefit and advantage thereof or such other General relief in the premisses under the particular Circumstances of the Case as to the said Court might appear agreable to Equity and good Conscience—

and the said Bill did further pray that your Petitioners might be summoned to shew Cause why the said Decree should not stand and be revived &c—

your Petitioners shew that they were advised that a Bill of Revivor did not lie upon a Decree for Costs only and did therefore appear and put in a Demurrer to the said Bill of Revivor and for Cause of Demurrer shewed that it appeared by the Complainants own shewing that altho the said Edward Raphaels Bill was dismissed without allowing the Relief therein sought that there was not also any thing executory decreed to be done by him upon the Complainants Cross and Supplemental Bills But that the said Bill being dismissed with Costs and nothing done by the Decree but the giving of Costs your Petitioners were advised that there cannot be a Revivor upon the said Decree or upon the said Decretal Order for Costs only which being a personal Injury both in Law and Equity die with the person wherefore your Petitioners did demurr to the said Bill of Revivor and humbly demanded the Judgment of the said Court whether they should be compelled to put in any other answer &c—

Whereto the said Complainant did on or about the Twenty ninth day of October last past did put in a Joinder maintaining that your Petitioners assertion that a Bill of Revivor for Costs doth not lie was erroneous in fact and injurious in its principles and that he had rightly brought his Bill of Revivor &c

your Petitioners shew that the said Demurrer and Joinder did come on to be argued on the Tenth day of this present month of December when the said Court were of opinion that the said Demurrer was insufficient and did therefore order that the Demurrer should be over ruled with Costs and that a Decree do pass against your Petitioners for Costs upon taxed Bills being produced—

By which said Decree of the said Court your Petitioners do conceive that they are aggrieved and the Estate of their Testator injured because they are advised that the said Court consistent with the Rules and practice of both Law

Law and Equity could not order the Decree by the Complainant prayed to stand revived the same being merely for Costs muchlys your Petitioners are advised Could the said Court grant a Decree upon the said Bill of Revivor in the nature of a Decree upon the merits of a Cause before them for hearing your Petitioners do therefore appeal therefrom to this Honourable Court - and for further Cause of appeal pray to shew that the said Decree is not warranted by the Bill of Revivor nor the prayer thereby made the Decree in its present form and Direction going against your Petitioners individually and not against them as Executors of their Testator or against the Estate of the Testator and furthermore because the said Decree goes to supply a defect in the Complainants Bill of Revivor which doth not shew that he had the Costs upon the former Decree taxed in as much as the present Decree does not go to the Confirmation of Costs supposed to be taxed upon the former Decree two years previous thereto but to give Costs upon Bills not at that time taxed - and your Petitioners further shew that the Course and practice of both Law and Equity being that Costs die with the party either plaintiff or Defendant except in Cases of Decrees to which there is a Sum of money to be paid or a duty annexed they did conceive that they are not bound by the said Decree of the Mayors Court and that they should do a prejudice and injury to themselves and to the Estate of their Testator if they were to Comply therewith and do therefore appeal therefrom to the Judgement of this Honourable Court and your Petrs say that they are supported in their said Appeal by a variety of Cases similar in Law and Equity & therefore pray that the Complainants Bill of Revivor may be dismissed and that the said Decree may be reversed with Costs

/Signed/ Henry DeRieux
Attorney for appellant

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 10th day of December Anno Domini 1793

Present

John Milford Esqr Mayor
James Call William Webb
Jos. Dupre Porcher Andrew Ross
Benjn Roebuck James Daly
William and Abbott

Joseph Antonio
Thomas Dere Cockburn and Samuel Moscarlish Moorat Surviving
Executors of Edward Raphael Deceased

Aldermen

Bill of Revivor 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 On Hearing the Arguments made use of by the Attornies and on due Consideration had thereon The Court are of Opinion that the Demurrer is insufficient it is therefore ordered that the Demurrer be overruled with Costs and that a Decree do pass against the Defendants for the Costs upon taxed Bills being produced -

A true Extract
/Signed/ George Taylor Asst

true Copy
/Signed/ W. Dupuy
Attorney for Appellant

To the Honourable Sir Charles Oakeley Baronet
President and Governor &c in Council
Fort St George

In the Honourable the Court of Appeals

Between Thomas Cockburn and Samuel Moscartish Morat Surviving Executors of Edward Raphael deceased Appellants and Joseph Antonio Respondent -

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

This Respondent admits he did on or about the Sixth Day of September last Exhibit and file in the Honourable the Mayors Court at Madraspatnam a Bill of Review against the appellants in manner and form as in this appellants said Petition and Appeal is Setforth and this Respondent admits that to such his Bill of Review the Appellants did Demur and by their said Demurrer did setforth the several matters in and by their said Petition of Appeal setforth and this Respondent admits that he did Join in Demurrer upon the grounds stated by the appellants in and by their said Petition of appeal and as the same are more particularly setforth in this Respondents Joinder to which he prays reference and this Respondent admits that the said Demurrer and Joinder did come on to be argued on or about the time in the appellants Petition of appeal mentioned before the said Mayors Court and that thereupon the said Mayors Court were pleased to order and did accordingly order that the

Filed in my Office
the 27th January 1794.
Chas. S. White Clk

the said Demurrer should be over ruled with Costs and that a Decree should pass against the Appellants for Costs upon taxed Bills being produced But this Respondent doth deny that the said Mayors Court did them or that they have at any time since made any Decree in the said Suit wherein this Respondent is Complainant and the said appellants are Defendants for this Respondents says he has not yet produced the taxed Bills required and on which the said Decree is to be granted and therefore this Respondent says that the appellants in appealing from a Decree of the said Mayors Court in the said Cause has so appealed from a Decree that is not yet in Existence nor can it Exist untill this Respondent shall have produced taxed Bills as aforesaid so that if those taxed Bills shall not be produced there never can be a Decree and upon the Consideration of these facts this Respondent is advised that the assertion in the appellants said Petition of appeal Contained that they are aggrieved and that the Estate of their Testator is injured by the Decree of the said Mayors Court in the said Cause have made an assertion without a foundation and that they have Appealed to this Honourable Court for redress without having suffered any kind of grievance and this Respondent submits to this Honourable Court that if the appellants had any grievance to Complain of and thereon to appeal to this Honourable Court it was from the order of the said Mayors Court whereby the said Mayors Court did order that the appellants said Demurrer should be over ruled which is the only order in the Cause which at present Can effect them as the order for a Decree Depends upon Contingent Circumstances which may or may not take

place

place as may morefully Appear by reference had to the Extract from the Minutes of Court to the appellants said Petition of appeal annexed which this Respondent prays may be taken as part of this his answer But the appellants have not Complained of any grievance having accrued either to them or to the Estate of their said Testator by reason of the said order of the said Mayors Court by which their said Demurrer was over ruled and therefore that their said Petition of appeal is misconceived and without any foundation whatever either in Law or in Equity and this Respondent therefore submits to this Honourable Court that he ought not to make any other Answer to the appellants said Petition of appeal but if this Honourable Court should be pleased to think otherwise and that this Respondent ought to make a full answer thereto then this Respondent by way of further answer to the appellants said Petition of appeal says that pending the original Suit setforth in this Respondents said Bill of Revivor the Complainant therein named did depart this Life and that the Cause did Come on to be heard subsequent to his decease although the fact was not then perhaps known to his agents at Madras but this Respondent says that the said Complainant having died before the Cause was heard it was not in the power of this Respondent to procure taxed Bills of Cost previous to the said Complainants decease and therefore this Respondent says that the appellant Cannot consistent with reason have resource to the maxim of Law by which it is laid down that if a party be decreed to pay Costs only and die before taxed Bills be produced the Costs shall die with him because Costs being a

personal

personal thing it die with him and the Bills not having been taxed the amount is not Sufficiently ascertained to become a debt for this Respondent shews as hereinbefore shewn that in the present Case the party was actually dead before the Cause was heard and that therefore it was impossible for this Respondent to get his Costs taxed before his the said partys decease and this Respondent is advised that as there was no delay on his part the Law will not punish him for a negligence where it was impossible for him to perform the thing required the Lord Chancellor Hardwicke always thought the rule respecting Costs in the Instance above alluded to as very strict and his Lordship and the late Lord Chancellor have Expressed a satisfaction whenever they had an Opportunity by any favourable Circumstance although Ever so slight to take the question out of that rule and this Respondent is advised and humbly submits to this Honourable Court from the premises that the present Case is not within the Rule and this Respondent therein further submits to this Honourable Court that the Complainant in the said Original Cause had previous to the decesion of the said Mayors Court Departed from the Jurisdiction thereof and therefore Even had he been living at the time when his said Bill of Complaint was Dismissed this Respondent could not have served him with a Copy of the Decree of the said Mayors Court therein and this Respondent says he is advised that notwithstanding the assertion of the Appellants to the Contrary in their said Petition of Appeal Contained that there is not any one Case to be met with either in Law or in Equity

similar

similar to the one before this Honourable Court and this Respondent submits to this Honourable Court that the prayer of the appellants said Petition of Appeal is in itself inconsistent and negatory insomuch as it prays that this Repliants said Bill of Revivor should be Dismissed without praying that the order of the said Mayors Court for dismission of their Demurrer to the said Bill of Revivor should be Reversed and insomuch as it prays that the Decree of the said Mayors Court should be Reversed when in fact there was not nor is there any such Decree in Existence and therefore and as it may appear to this Honourable Court that the appellants said Petition of appeal is calculated to Vex and delay this Respondent in the Premisses and prevent him so far as in them the appellant lies from obtaining a Decree of the said Mayors Court when he shall have produced his taxed Bills of Cost this Respondent humbly prays that the Appellants said petition of appeal may be dismissed with such Exemplary Costs as in the Wisdom of this Honourable Court may seem Meet—

/Signed/ J. Stuart Hall.

Solicitor for Respondent

Court of Appeals

Court of Appeals
Madraspatnam &c

Saturday the 7th day of June
Anno Domini 1794

Between Thomas Cockburn of Fort St. George
Esqr and Samuel Mocarthish Moorat Surviving
Executors of the last will and Testament of Edward
Raphael Deceased Appellants and Joseph
Antonio of Madras 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 Honourable the Mayors Court together with the Order of the said Court given in this Cause on Tuesday the 10th day of December Anno Domini 1793 upon due Consideration had of the Matters therein Severally Contained and of the Pleadings and arguments used by the attornies on both sides This Court doth think fit to Order and Decree and doth Accordingly order and Decree that the said Order of the Honourable the Mayors Court dated the 10th day of December Anno Domini 1793 be reversed and that the Demurrer in this Cause be allowed as good and Sufficient in Law and the Court doth further order and Decree that the Respondent do pay all Costs in both Courts—

/Seal/ Signed/ Robert Clerk etc

Tothe Honble Sir Charles Oakeley Baronet

Governor and in Council

Fort Saint George

In the Honble the Court of Appeals

Between Kistna Row Complainant

and Daniel Murray Defendant—

The Humble Petition and Appeal of the above named Defendant

Sheweth

That the Complainant above named did on or about the twelth day of April (which was in the year of our Lord One thousand Seven hundred and ninety three Exhibit and file his Bill of Complaint in the Honourable the Mayors Court at Madraspatnam against your Petitioner for the recovery of the sum of six hundred and thirteen star Pagodas Twenty eight fanams and ten Cash stating that the same did arise and become due upon a Certain promisary note granted by your Petitioner to the Complainant on the tenth day of January which was in the year of our Lord one thousand seven hundred and seventy nine for the sum of Two hundred and Twenty four star Pagodas payable in three Months from that date and upon a Certain receipt for the sum of five star Pagodas being Cash paid this Petitioner by the Complainant on the Twenty second day of April in the same year and the said Complainant did by an account annexed to his said Bill of Complaint state an Interest upon the promisary Note and receipt as aforesaid for the space of thirteen years and eleven Months amounting to the sum of Three hundred and eighty four star Pagodas twenty eight fanams and ten Cash which made up the aforesaid sum of Six hundred and thirteen star Pagodas Twenty eight fanams and ten Cash for which his said Bill of Complaint was filed—

Filed in my Office
this 24th February 1794
Chas. N. White
Sub

and your Petitioner sheweth unto this Honourable Court that to the Complainants Bill of Complaint as aforesaid your Petitioner did on or about the fourth day of June and in the said year One thousand seven hundred and ninety three Exhibit and file his Plea and answer and did thereon and thereby set forth and make Appear that during the year of our Lord one thousand seven hundred and seventy nine the time of the granting of the note and receipt as is stated by the Complainant in his said Bill of Complaint your Petitioner was within the Jurisdiction of the said Mayors Court and that he so remained for two years then next following the fact being as by the said Plea and answer is made to appear that the Petitioner was living within the Jurisdiction of the said Court from the year of our Lord One thousand seven hundred and seventy six until the Month of October one thousand seven hundred and eighty one and that during which time the said Complainant did not nor did he at any time either before or since directly or indirectly make any demand upon your Petitioner for the supposed debt and your Petitioner in and by his said

said Plea and answer did further state that in the Month of July in the year one thousand seven hundred and eighty one he did resign the service of the Nabob of Arcot in which he held the rank of Cornet and did proceed to Calcutta in the Month of February one thousand seven hundred and eighty two where he resided intill the Month of August one thousand seven hundred and ninety during the whole of which time he never heard of any demand made against him by the Complainant either directly or indirectly and your Petitioner did further state that he returned to Madras in the months of September one thousand seven hundred and ninety from which time till within a few Months last past he has always resided in Madras yet no Demand whatever has been made upon him by the Complainant or by any Person for him untill a short time previous to the filing of the Bill of Complaint as aforesaid Therefore your Petitioner did plead the statute of Limitation made in the Twenty first year of the reign of James the first in Bar to the Complainants right of action against your Petitioner And your Petitioner sheweth that to your Petitioners said Plea and answer the Complainant did file a general replication which containing nothing pertinent to the matter in issue he did on or about the Twenty third day of July in the said year one thousand seven hundred and ninety three pray leave to Exhibit and file an amended Replication wherein he stated and pledged himself to prove that the aforesaid statute of limitation was no bar to the recovery of the said debt by the Complainant and enters into a long

long detail of matter which your Petitioner humbly Conceiving not to be at all relevent to the question in issue doth not think it necessary to travers and your Petitioner sheweth that to the said amended Replication your Petitioner did on or about the Twentieth day of August in the said year Exhibit and file his Rejoinder whereupon Issue did Join and Rules did pass for the Examination of witnesses and the Complainant did Examine Lieutenant Colonel Dugala Campbell and three Natives named Vencata Row Ram Row and Mootian the first of which Natives named vencata row to the second Interrogatory did depose that the Defendant your Petitioner did Execute the note for two hundred and twenty four Pagodas as stated in the Bill of Complaint and that he knows the debt to have been demanded from the Defendant your Petitioner about the latter end of the year one thousand seven hundred and eighty one but he does not attempt to prove that any Demand was ever made for the same since that Period and your Petitioner sheweth that the second Witness named Ram row to the second Interrogatory did also depose that the original debt of two hundred and Twenty four Pagodas was Demanded from the Defendant now your Petitioner in the year one thousand seven hundred and eighty one but does not attempt to prove that any Demand was ever made for the same since that time and also in likemanner doth the other native witness named Mootian depose to the third Interrogatory that the Demand was

was made on the Defendant now your Petitioner in the year one thousand seven hundred and eighty one but he doth not attempt to prove that the same Demand has ever been made since that time and your Petitioner sheweth that the Deposition of the other witness Lieutenant Colonel Dugald Campbell goes only to prove that he knew the Complainant and Defendant now your Petitioner in this Cause and that they both served under his Command in the year one thousand seven hundred and seventy nine and part of the year one thousand seven hundred and eighty the Complainant as a Writer and the Defendant your Petitioner as a Cornet but as to the remainder of his the said Lieutenant Colonel Dugald Campbell's Deposition it states only as to matter of belief and what he has heard but does not set forth Circumstances coming within his own knowledge and your Petitioner sheweth that no Witnesses whatever have been Examined in this Cause on his part and behalf by reason that he was for some time induced to secrete himself under an apprehension of being arrested and therefore could not call those proofs which he otherwise should have been enabled to do and by which he would have fully substantiated the truth of what he stated in his answer and Rejoinder and your Petitioner sheweth that the time for the Examination of Witness in this Cause having according to the rules of Court elapsed & Publication did pass and the said Cause did come on to be heard on the Eleventh day of February in the year of our Lord one thousand seven hundred and ninety four when the said Mayors Court then sitting

Consisting

Consisting of H. L. Mitchell Andrew Reid and John Mitford Esquires having taken the same into Consideration they were divided in their opinion as to the Judgement which ought to be given but the majority appearing infavour of the Complainant the Court were pleased to order and accordingly did order and decree that your Petitioner do pay unto the Complainant the full and Just Sum of Six hundred and thirteen star Pagodas Twenty eight fanams and ten Cash together with all such Interest as there was or should hereafter become due thereon also Costs of the suit as by the said Decree Copy whereof is hereunto annexed for the Inspection of this Honourable Court the original being ready to be produced when required may appear and your Petitioner sheweth that by the aforesaid decree he doth Conceive himself much aggrieved and doth therefore Appeal therefrom to this Honourable Court - Because your Petitioner did in and by his Plea and answer upon Oath shew that from the year One thousand seven hundred and seventy nine the time when the Cause of action is stated to have Commenced untill the beginning of the present year one thousand seven hundred and ninety four your Petitioner has been within the power of the Defendant and he might had he thought proper have instituted a suit against him for by the said Plea and answer it is made Clearly to Appear that from the year one thousand seven hundred and seventy nine untill the Month of July in the year one thousand seven hundred and eighty one your Petitioner

was

was living within the Jurisdiction of the Mayors Court and serving as a Cornet of Horse and from the Month of February one thousand seven hundred and eighty two 'till the month of august one thousand seven hundred and ninety your Petitioner was living in Calcutta from which place he did return to Madras in the month of September one thousand seven hundred and ninety and when he has constantly resided ever since Except for two or three months last past Therefore your Petitioner doth humbly contend that his Case is Clearly Comprehended within the intent and meaning of the Statute of Limitation aforesaid and which Statute is declared to be in force in India as by reference to the Honourable East India Companys Letter of the Eleventh day of February one thousand seven hundred and fifty six in the fifth Paragraph of which are the following Words We are sensible "that many inconveniencies arise from persons being at "Liberty to bring actions for state Demands but we are "advised that the Law has left every one at Liberty to sue "for his Demand at any Distance of time and that it was "not in the power of any Court of Justice by any rule "or order to Confine any person to a fixed time for the bringing "of action to recover his right this it Continued 'till "the 21st James 1st when an act was made which was Called the "Statute of Limitation and which shews that no such restraint "could be imposed upon the Subjects by any Less authority "than Parliament and therefore we cannot Carry it farther "than the legislature has thought fit to do and this act is in force at

at our settlements and the Mayors Court must Conform to it—

And therefore your Petitioner submits to this Honble Court that the said Mayors Court ought not to have decreed upon the Complainants said Bill of Complaint but ought to have Dismissed the same as being Effectually barred by the statute of Limitation aforesaid—

For all which reasons and such others at may be offered at the hearing your Petitioner most humbly prays that this Honourable Court will pleased to Reverse the said Decree of the said Mayors Court and that your Petitioner may have such other and further Relief in the premises as to this Honourable Court shall seem meet—

(Signed) G. P. Cook
Solicitor for Appellant

Mayors

Mayors Court at
Madraspatnam

Tuesday the 18th day of February
Anno Domini 1794

Present
Hy. Chr. Michell Esqr. Mayor
Andrew Ross John Mitford
and Benjn. Roebuck Aldermen

Between Kistna row of Madras Inhabitant Complainant and Daniel Murry of the same place Merchant but late a Cornet in the old first Regiment of Cavalry in the service of the Nabob of Arcott 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 three Exhibits annexed the Defendants Plea and Answer with Copies of seven Exhibits annexed the amended Replication with Copies of an Exhibit marked with Letter C annexed the Rejoinder the Interrogatories and Depositions on the part of the Complainant with Exhibits marked AB and C 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 Six hundred and Thirteen star Pagodas twenty eight fanams and ten Cash Star Pagodas 613.28.10 together with all such Interest as now is or shall hereafter become due thereon until full Payment is made also all Costs of this Suit—

Mayors Court

By Order
(Signed) J. Taylor Regr.

Atrue Copy
(Signed) J. Rock
Solicitor for appellant

To

To the Honourable Sir Charles Oakeley Baronet

Governor in Council

Fort St George.

Between Kistna Row Respondent

and Daniel Murray Appellant —

The Answer of Kistna Row the above named Respondent to the petition and Appeal of the above named Appellant

This Respondent for Answer to the said petition and Appeal admits that he did on or about Twelfth day of April which was in the year of Christ one Thousand Seven hundred and ninety three Exhibit and file his Bill of Complaint in the Honourable the Mayors Court at Madraspatnam against the above named appellant for the recovery of the sum of six hundred and thirteen Star Pagodas twenty eight fanams and ten cash Current Money of Madras being the amount principal and interest due on a certain promissary note and receipt granted by the said appellant to this Respondent and bearing date respectively the tenth day of January which was in the year of Christ one Thousand seven hundred and seventy nine and twenty second day of April in the same year And this Respondent for further answer saith that the appellant having with the view of concealing the real state of the case omitted in his said petition and Appeal to recite

Filed in my Office this 7th March 1795
Chas N. White Clk

recite some material parts of the said Bill of Complaint This Respondent Conceives it necessary to state that he did further Charge in his said Bill that after the said promissary note became due he made frequent Applications to the said Appellant for payment thereof But under various pretences he evaded the same and soon Afterwards Departed from the Jurisdiction of the said Mayors Court to foreign parts or places beyond the Seas by reason whereof this Respondent became unacquainted with his place of residence and Consequently unable either to Demand or enforce the payment of his Debt and that he had but lately known of the arrival of the said appellant within the Jurisdiction of the said Court But since that period he hath frequently and in amicable manner demanded payment of the said promissary note and receipt with interest thereon due to which the appellant he paid no kind of attention And this Respondent admits that to the said Bill of Complaint the appellant did on or about the fourth day of June and in the said year one Thousand seven hundred and ninety three Exhibit and file a plea and answer which said plea and answer has not been fairly recited and setforth in the said petition and Appeal The Appellant having inserted therein such parts as he Conceived would Answer his own purpose and omitting those which operated against himself Wherefore this Respondent conceives it necessary to setforth and recite fairly the said plea and answer and first the Appellant for plea and that during the year one Thousand seven hundred and seventy nine he was within the Jurisdiction of the said

Mayors

Mayors Court and there remained for two years subsequent to the
tenth day of April in the said year on which day this Respondent
had in his Bill of Complaint stated that a note of hand on which
the present Suit was instituted became due That he the appellant
was at that time a Cornett in the first Regiment of Cavalry in
the service of his Highness the Nabob of Arcot and in that situation
remained and resided with the English army who were then
encamped on the Redhills near to Pondicherry untill the
Month of october which was in the year one Thousand seven
hundred and eighty about which time he the appellant
proceeded with the Regiment to Saint Thomas Mount and
the said appellant for further Cause of plea and that the Redhills
as well as Pondicherry (after the Siege) were within the Juris-
diction of the said Honourable Mayors Court Consequently
process might have issued therefrom had this Respondent
thought proper so to do or had he considered his demand to be a
Just one and the said appellant for further plea said that he
was ready to prove to the satisfaction of the said Mayors Court
by the attestation of several respectable Witnesses that he was
living in Camp or in Contonement within the Jurisdiction of the
said Mayors Court from the month of September one Thousand
seven hundred and seventy six untill the months of October one
Thousand seven hundred and Eighty one in support of the
truth of which and in further proof thereof he prayed leave to
annex and accordingly did annex the Copies of Seven different
pay and Batta Chitts which bore the attestation of the Military
Paymaster

Paymaster General The originals whereof the said appellant
said were signed by the then Town Major Sydenham the paymaster
of Fort St George William Hamilton and John Turing Esquires
and Francis Laird Esquire the Commissary General of Fort St George
from which Documents he said it was fully shewn that he the appellant
did actually reside at Madras in the Month of March April May June
and July one Thousand seven hundred and Eighty one during which
time neither at any time before or since did this Respondent as the
appellant has Charged either directly or indirectly make any
Demand upon the appellant for the supposed debt nor did this
Respondent ever Commence any action whatsoever against him
for the recovery of the same or any part thereof untill the present
Suit was brought and the said Appellant for further plea
said that some time in the Month of July one Thousand seven
hundred and eighty one as aforesaid he the appellant thought
proper to resign the service of the Nabob and having remained
some Months at Madras and Afterwards at Masulipatam
and Vizagapatnam he quitted the Coast of Coromandel about
the Month of February one Thousand seven hundred and
Eighty two and proceeded to Calcutta where he arrived in the
Month of April from which time untill the Month of august
one Thousand seven hundred and ninety he resided and did
not Depart to foreign parts or places beyond the seas as by this
Respondents Bill of Complaint was falsely stated and the
appellant further said that during the whole of such time he
never heard of any demand made against him by this Respondent
either

either directly or indirectly and the appellant further said that he returned from Calcutta to Madras in the Month of September one Thousand seven hundred and ninety from which time to the present he had always resided there a period now of nearly three years yet no demand whatever had been made by this Respondent nor did he or any person on his part so much as shew the Appellant the note for the recovery of which the present Bill of Complaint was filed but on the Contrary he the appellant was wholly ignorant of the same until the receipt of a letter of Demand from this Respondents attorney Mr George Chalmer previous to the Commencement of the present Suit and the said appellant further said that if this Respondent had been conscious that the present debt was a Just one what were his reason for not making his demands during so long a space as thirteen years during a Considerable portion of which time the Defendant did reside within the Jurisdiction of the Honourable Mayors Court and more especially when it was remembered that he the appellant was on the Spot at the time the said note was stated to have become due and for many months afterwards as had already been shewn by the pay and batta Chitta and which the Appellant said he was ready to make appear in the most full and satisfactory manner That no demand whatever was made by this Respondent as had been falsely stated in the Bill of Complaint The appellant therefore did plead the statute of Limitation in bar to this Respondents right of action against him contending that the same was instituted in an illegal manner and the said appellant further said that in no wise waving his said plea but fully relying and insisting thereon for

Answer

Answer to the residue of this Respondents Bill or unto such parts thereof as he was advised to be materiah or necessary for him to make answer unto said that he wholly and absolutely denied to stand indebted to this Respondent in the sum of six hundred and thirteen Pagodas Twenty eight fanams and ten Cash or in any other sum or sums of money whatever and the said Appellant further said that this Respondent had brought an action against the appellant more out of ill will and with a view to harrass and perplex his mind than with any Expectation of recovering any sum of Money And this Respondent further admits that to the said plea and answer he did file an amended Replication wherein he admits to have given a very Circumstantial account of the nature of the Claim which he had upon the appellant But this Respondent denies that any thing therein Contained was irrelevant to the matters in Issue on the contrary they tended to illustrate the Case and to Controvert the many untruths in the said appellants plea and answer set forth And first this Respondent saith that he did in his Replication say that he would prove that the sum for which he had brought his action was Justly due to him and that the statute of Limitations in bar to the recovery of the said Debt was unproperly pleaded by the said appellant and in order to illucidate the transaction This Respondent did in his said Replication state that the appellant being in the month of January which was in the year of Christ one Thousand seven hundred and twenty nine indebted to this Respondent in the sum of Two hundred and twenty four pagodas Current

Money

Money of Madras gave his promissary note for the same Copy whereof marked with the Letter A was to this Respondents Bill annexed and therein and thereby referred to and as a further Security for the repayment thereof the said Appellant did at the same time grant an order on Mr Charles M.pherson then paymaster of the first Regiment of Cavalry in the service of the Nabob of arcott and of which Regiment the said appellant was a Cornet to pay to this Respondent or his order the sum of Two hundred and twenty four star pagodas out of the first of his money which Came unto his the said Charles M.phersons hands and to pass the same to Account of his pay and this Respondent in his said Replication further said that the said order was presented to the said Charles M.pherson and by him Accepted but his subsequent death which happened soon afterwards prevented the Discharge of the said promissary note through that intended medium And this Respondent for further Answer saith that he did in his said Replication admit it to be true as was stated in the plea and answer that the Defendant might have resided within the Jurisdiction of the Mayors Court for two years subsequent to the tenth day of April one Thousand seven hundred and seventy nine being the period when the said promissary note fell due But this Respondent would not admit the truth of the assertion of the appellant namely that this Respondent never did at any time before or After that period Directly or indirectly Demand payment of his debt For in his said Replication He declared and said he would thereafter

prove

prove that the appellant had sworn to a falsehood and in his conscience well knew that this Respondent had frequently Demanded payment of his said debt For that when the said note became due this Respondent immediately Demanded from the said Appellant payment thereof who pleaded inability to Discharge the same. but mentioned to this Respondent that a Considerable sum was due to him from the Nabob on account of arrears of pay which he would Appropriate to the Discharge of this Respondents Claim whenever it was forthcoming at the same time the Appellant requested a further Loan of five Pagodas which this Respondent advanced him and took his receipt for the same Copy whereof marked with the Letter **B** was to this Respondents Bill of Complaint annexed and therein and thereby referred to and this Respondent in his said Replication further said that the appellant having afterwards received some pay he Expected that the appellant would have Discharged his debt agreeably to the promises which he made But when applied to on that behalf the appellant mentioned that he had purchased some goods from a Pondicherry merchant and that if he did not pay for the same it would reflect disgrace upon himself as well as upon his Country and in that manner while the appellant was possessed of the means to Discharge the debt did he evade doing it and this Respondent further said that the said first Regiment of Cavalry did some time either in the month of September or October in the year of one Thousand seven hundred and Eighty leave their encampment at the Redhills which is near

to

to pondicherry and Came down to Saint Thomas Mount The war having
them broke out with Hyder Alikhan when this Respondent
again applyd to the appellant who was then living at the time in a
Tavern for payment of his debt and then received a promise of it's being
punctually discharged in one month but at the Expiration of the time
fixed when Called upon to make good the promise the Appellant
offered a Gold Watch which he said was worth Two hundred and
fifty Pagodas and requested that it might be taken in lieu of the
debt which this Respondent peremptorily refused to do insisting
that the money should be paid That in Consequence thereof the
appellant required a further indulgence of time which this
Respondent granted to him until business rendering it absolutely
necessary for this Respondent to go to Trichenopoly he informed
the appellant that unless the Demand was paid he should be
obliged to have recourse to Legal measures to enforce the same on
which occasion the said appellant mentioned that as the then Vakeel
of the said first Regiment was brother in Law to this Respondent that
he would pay the amount of the note to him and thereupon earnestly
intreated that it might be left with him and this Respondent
further stated in his said Replication that in order to accomodate
the Appellant he did thereupon leave the said note with his
Brother in law who some time after this Respondents departure
for Trichinopoly sent to the Appellant to Demand payment
thereof But to his utter surprize and astonishment the appellant
not only refused payment of the note but Denied that he was
the person mentioned to have Executed the same and even went

So

so far as to beat and ill use the person who presented it that such
Extraordinary Conduct being reported to this Respondent he proceeded
as soon as conveniency and the situation of his Affairs would permit
to the presidency but on his arrival the appellant had Departed
therefrom by which means this Respondents became utterly unacquain-
ted with his situation and Consequently unable to enforce the
payment of his debt by a legal procedure and this Respondent in
his Replication did further state that from that period he had from
the nature of his occupation as a renter of the Honourable Company
been mostly absent from the presidency and it was but lately
that he has heard of the return of the appellant to Madras when
he took the earliest Opportunity to prefer his Claim and this
Respondent in his Replication further said that he could not
pretend to say whither the said appellant did reside in
Bengal after his Departure from the Jurisdiction of this
Honourable Court this Respondent being utterly unacquainted
with the place of residence If his situation in Bengal had
been publickly avowed and that this Respondent had known
thereof he Certainly would have used due diligence to prefer
and make known his claim and if to this Respondents
Knowledge he had lived within the Coercion of the Courts
of Judicature he would have had recourse to Legal process
to enforce the same but totally unacquainted with his place
of residence This Respondent could not of course do it—

And this Respondent in his said Replication
further submitted to the said Mayors Court that the Statute of

The

the 21st James the 1st for the Limitation of actions never was intended
by the Legislature to protect and countenance litigious people in decli
the payment of their Just and Lawful Debt and which obviously
must be the Case if the appellant was allowed to prevail in the plea
which he has set up For upon these principles any debtor desirous
of defrauding his Creditors need only to Conceal himself for six
years and then appear and say that his Claim was barred by act of
parliament and the Statute which the Wisdom of the Legislature
had thought fit to enact for the good of the Subject would be produc
of worse evils than those which it was intended to remedy And
this Respondent admits that to this said amended Replication
the Appellant did on or about the Twentieth day of august in the
said year file a Rejoinder wherein he denied as he had he said already
done in his plea and answer to the Bill of Complaint to stand
indebted to this Respondent in the Sum of six hundred and
thirteen star pagodas Twenty eight fanams and ten Cash or in any
other sum whatever nor Could he the appellant allow that any matter
had been shewn by this Respondent wherein he could Justly make
any such or other Claim and for further Rejoinder the said Appellant
said that altho at that Distant period of time he Could not recollect
the particular Circumstance of the note of hand and the order upon
Charles Mcpherson and his Acceptance of the same neither Could
he state up to what period the Accounts of the Regiment were
settled by the Nabab or whether they were yet settled but the
appellant said that he did in the most positive manner deny the
assertion of this Respondent which stated that he the appellant had

purchased

purchased Goods which put it out of his power to Discharge the
pretended debt as he also did in like manner deny the further assertion
of this Respondent of his living in a Tavern and promising payment
or the offering a Gold watch as a Security for the same for the fact
was that upon his return from the encampment at the Red Hills in
the month of octaber one Thousand seven hundred and Eighty as
stated by this Respondent he did as did also the other Officers
of his Regiment live and reside in a house at Treplicane belonging
to the Nabab which had been provided Expressly for them and
with respect to the fabricated story of the Gold watch the appellant
did aver and say that he never was possessed of a Gold Watch of the
value of two hundred and fifty Pagodas or of any other value
during the whole or any part of the time that he was in the service
of the Nabab or for a long time afterwards and therefore he could
not offer that which he had not and the said Appellant Craved
leave to draw the attention of the Honourable Mayors Court
to the improbability of the aforesaid Assertion being fact because
this Respondent had found the Great difficulty which he stated
to have done in obtaining the money and had suffered so much
ill treatment from the Appellant it was not likely that he would
have refused a security valued as was said at Two hundred
and fifty Pagodas at the same time that the original note upon
which he had brought his action and which Constituted
his then Demand amounted to no more than Two hundred
and Twenty four Pagodas and which being dated in January
one Thousand seven hundred and seventy nine Could not have

much

much interest due upon it as the period when this offer was made
Appeared be this Respondents own shewing to have been in the month
of October or November one Thousand seven hundred and Eighty and
the said appellant further said the assertion Contained in the
plea and answer stating that he did not quit the Jurisdiction of the
said Honourable Mayors Court till about the month of February one
Thousand seven hundred and Eighty two was strictly true and
which was about fifteen months after the date of this Respondents
return from Trichenaply to the presidency for the said Appellant
has stated that this Respondent in his Replication said that upon
his Brother in laws Acquainting him that the Appellant had refused
payment of the note and had gone so far as to beat him he then
returned to the presidency but on his arrival the Appellant had
Departed therefrom by which means this Respondent became
utterly unacquainted with his situation and Consequently unable
to enforce the payment of his Debt by a legal proceedure whereas
the said appellant did solemnly Affirm and his Rejoinder
said he would in due time prove to the Conviction of the said
Honourable Mayors Court that after the date as aforesaid and
previous to his Departure for Bengal he served one Compaign
against Hyder Ally Khan and remained several Months at the
presidency nor did he quit the Jurisdiction of the said Honourable
Court until the period before stated say February one Thousand
seven hundred and Eighty two therefore the assertion of this
Respondent in his Replication was in that particular false and
untrue for he had not only the power to have commenced his suit
against

against the appellant but had ample time for so doing and for
which no reason could be Assigned but that of this Respondent
being Conscious that no Actual Debt was due to him from the
Appellant and the appellant said that the Assertion Contained
in this Respondents said Replication that it was but lately that he
heard of his the appellants return to Madras when he both the
earliest opportunity to prefer his Claim was on the very face of
it untrue for the said appellant said and would in due time prove
that he had been at the presidency of Fort Saint George three
years last past all but one month and that nearly two years
of which time he had been Employd as a writer in the office
of the Military Secretary in the Honourable the East India
Companys service and as a further proof that this Respondent
and his Attorney at Law knew of his residence at Fort Saint George
as aforesaid the Appellant begged leave to state that a suit at Law
was commenced against him in the said Honourable Court upwards
of two years ago by the Gentleman who was this Respondent
Attorney as such it must appear almost impossible that this
Respondent should be ignorant of where the appellant was to be
found and the appellant said that he denied that his situation in
Bengal was not publickly avowed as was falsely stated by this
Respondent for the said Appellant said that during his residence in
Calcutta he was Employed as a Writer by the Commissary General
the Secretary and the Accountant General attending Always in
the publick office of the Honourable the East India Company as
well as being in business for himself as a Merchant and in the Course of
which

which business his name had frequentlty Appeared in advertizements in the public News papers and therefore this Respondent might have issued process against him from the Supreme Court had he thought so to do and therefore the appellant humbly trusting that the said Honourable Court would be satisfied of the evil intentions of this Respondent towards him did fully rely upon the plea as stated in his plea and answer as aforesaid and humbly hoping that the said Honourable Court would in their Judgment determine that the action was barred and Completely done away under the statute of Limitation enacted in the Twenty first year of the Reign of James the first and which was fully avowed to be inforce in the British Settlement in India And this Respondent further admits that on or about the Twentieth day of August in the said year one Thousand seven hundred and ninety three issue Joined in the said Cause and rule passed for the Examination of Witnesses and that in order to establish and prove the several matter and things by this Respondent alledged he Causes Lieutenant Colonel Dugald Campbell and three native Witnesses named Vencata row Ram row and Mootian to be Examined and this Respondent saith that as the appellant has Endeavoured to place an interpretation on the Testimony of the said Witnesses very Different from what their Deposition convey he Conceives it necessary for the illucidation of truth fairly to state the same and first this Respondent saith that Ram row being Examined to the second Interrogatory Deposed and said That he belonged to the first Regiment of native Cavalry late in the Service of the Nabob of arcott during the whole of the year

One

one Thousand seven hundred and seventy nine and that he served in the Capacity of a Vakeel and that the said Regiment was then Commanded by Captain Dugald Campbell That this Respondent and the Appellant did also serve in the said Regiment That he the Deponent knew that the said Appellant some time in the beginning of the said year one Thousand seven hundred and seventy nine became indebted to this Respondent in the sum of Two hundred and Twenty four Pagodas by borrowing that sum that the said Appellant did Execute a paper writing to this Respondent for the same and that the Exhibit produced and shewn to him at the time of his Examination marked with the letters A & C were of the proper hand writing of the appellant Daniel Murray and that the same were granted by him to secure the repayment of the money so borrowed and that he was present when this Respondent lent the same to the Appellant —

To the third Interrogatory the said Vencata Row further deposed and said that he was present many times when this Respondent demanded from the Appellant payment of the promissary note or exhibit A in the Aforegoing Interrogatory mentioned that the Appellant did not refuse to pay the same but only pleaded inability to discharge it that the Appellant afterwards requested this Respondent to supply him with a further sum of Five Pagodas and that this Respondent did comply with the Appellants requisetion and obtained a receipt for the same She said Deponent further said that he recollected that the Appellant did soon afterwards receive some arrears of pay but the Deponent did not know

how

how much the Deponent further said that this Respondent did again Demand payment of the promissary Note in the presence of him the Deponent but that the said appellant did not Comply with such Demands but alledged that he was obliged to pay the money he had received for arrears of pay to some Merchants at pondicherry from whom he had purchased different articles promising at the same time to Discharge this Respondents Demand in a short time This Deponent further said that the first Regiment of Cavalry did about one year afterwards return to Saint Thomas Mount and that this Respondent did renew his Demand for payment that he was afterwards present when the appellant requested this Respondent to take a Gold watch in liquidation of his debt but that this Respondent did not accept thereof but said that he must be paid in ready money and the said Witness further deposed that the appellant did reside at a house near the Cheina bazar in the Black Town of Madras

To the fourth Interrogatory the said Vencatarow said that this Respondent did leave Madras and go to Tritchinopoly some time in the year one Thousand seven hundred and Eighty one and did previous to his Departure deposit with the Deponent the Exhibit A B & C produced during his Examination that he did in consequence thereof make several application to the appellant for the payment of the money due to this Respondent and that the appellant told the Deponent that he would Discharge the same so soon as he was in cash that he had heard that the Appellant did afterwards depart from Madras and go to Bengal

Some time over about the end of the year one Thousand seven hundred and Eighty one and about twenty days after he made his last Application for the payment of the money due to this Respondent The Deponent further said that this Respondent had since that period been mostly absent from Madras and that he had filled the Station of Hamildar And this Respondent further saith that Ram Row being also produced and Examined on the part of this Respondent deposed and said That he was present in the year of Christ one Thousand seven hundred and Eighty one When this Respondent demanded from the Appellant payment of a promissary note for two hundred and twenty four Pagodas that the said appellant did not discharge the said note but promised to do so in the space of one month That he was again present when this Respondent Demanded payment of the said note at which time the Appellant said he would pay it in ten days time to which this Respondent did not at first Consent but said that he would prosecute him in Court on which the Appellant offered to give his watch the value of which he said was two hundred and fifty Pagodas in liquidation of the debt but that this Respondent refused to Accept of such offer and insisted on being paid in money That however the Appellant did by intreaty and Solicitation at length prevail on this Respondent to Deliver the promissary note aforesaid with another note for five Pagodas unto the hands of this Respondents Brother in law Vencata row to whom the said Defendant promised to pay the amount This Respondent being about to Depart for Tritchinopoly

and

and the said Deponent further said that the said appellant then resided at a house near the China Bazar And this Respondent further saith that Mootian being also produced and Examined on the part of this Respondent deposed and said That he was sent to Demand payment of the promissary note from the Appellant That he was so sent by one Vencata row Brother in Law to this Respondent in whose care the said note was left by this Respondent some time in the year one Thousand seven hundred and eighty one That the Appellant did not refuse to pay the said note but offered to pay the same if the Deponent would Deliver it into his hands but that he the Deponent being apprehensive that the Appellant would not perform his promise if he got possession of it shewed him the said note and required him to pay the money down on the Table on which account the appellant was angry with the Deponent and offered to beat him mentioning at the same time that his name was Daniel Murray which Circumstance the Deponent Mootian said he communicated to the said Vencatarow who thereupon went to the appellant and after having had some Conversation on the Subject returned and Acquainted the Deponent that the appellant was ready to pay the money and that he had only been Angry with the Deponent for having Demanded the same when three or four Gentlemen were present the said Mootian further deposed and said that the appellant resided at that time at a punch house near the China Bazar And this Respondent admits that Colonel Dugald Campbell was also Examined as a Witness on the part and behalf of

of this Respondent and that this Testimony while it went to establish the Claim which this Respondent had upon the appellant at the same time shewed that this Respondent from the nature of his occupation as a renter of the Honourable Company residing in the interior parts of the Country Could not have known of the Appellants return to Madras at the period which by the appellant has been asserted And this Respondent admits that no Witnesses were Examined on the part of the Appellant But whether the same was owing to the cause imputed by the appellant in his said petition and Appeal namely the necessity of Concealing himself under the fear of being arrested It is impossible for this Respondent to Ascertain whatever might have been his situation respecting other Claims they Certainly can have no Connection with or relation to the present action and it Appears that the Appellant had ample time for the Examination of Witnesses Issue having Joined in the Cause on or about the Twenty seventh day of August and publication passed on the Seventeenth day of December following including a period of four Months while the usual time allowed by the Rules are practice of the Mayors Court is only five Weeks And this Respondent admits that on Tuesday the Eleventh day of February last the said Cause came on to be heard and determined by and before the said Honourable Mayors Court when they were pleased to order and Decree and did Accordingly order and Decree that the Appellant should pay unto this Respondent the full

and

and Just sum of Six hundred and thirteen Pagodas twenty eight fanams and ten Cash together with such interest as there was or should thereafter become due thereon also all Costs of Suit as by the said Decree Copy whereof is to the appellants Petition and Appeal annexed relation being thereunto had doth and will morefully and at large appear And this Respondent denies that the appellant is agrieved by such Decree or that he has any Just cause to appeal therefrom as by him has been falsely stated in his said petition and Appeal. And for answer to the reasons given by the appellant This Respondent saith that although the appellants said plea and answer is upon oath yet the several matters and things therein setforth are controverted by the Evidence adduced on the part of this Respondent which at once supports his right of Action and Exposes the many untruths and falsities in the said plea and Answer Contained which plea and Answer manifests on the face of it wilful and Deliberate perjury in the appellant he not having attempted to prove any one of those pretended facts which by Solemn Oath he had pledged himself to do and this Respondent further saith that by the pleadings in this suit and by the Evidence adduced in support thereof he has Clearly shewn that his action is not nor ought to be barred by the Statute of Limitations This Respondent having proved that he did himself and by other repeatedly demand from the Appellant payment of his debt in the year one Thousand seven hundred and seventy nine Eighty and Eighty one and that he so Continued his Demands and received promises of

payment

payment from the Appellant until he Departed from Madras to foreign parts or places where his situation and place of residence became unknown to this Respondent And this Respondent further saith that the Appellant has not by any proof shewn that he did reside at Calcutta or that he did return to and live at this presidency since the Year one Thousand seven hundred and ninety and which might easily have been done If such had been the fact But ever Admitting the latter of these Assertions to be true still six years must run from the periods of such return to occasion the said statute of Limitation to Operate as a Bar to the Suit—

For all which reasons and such others as may be urged at the hearing this Respondent humbly prays that the Decree of the said Mayors Court may be affirmed with Costs to be paid by the Appellant—

(Signed) G. Chalmer
Solicitor for Respondent

Court of Appeals

Court of Appeals
Madraspatnam } ss

Saturday the 7th day of June
Anno Domini 1794

Between Daniel Murry of Madras Merchant
but late a Cornet in the Old first Regiment of Cavalry
in the Service of the Nabob of Arcott Apellant and
Kistnarow of the same place Inhabitant Respondent

This Cause coming on this day to be heard and debated before
this Court by the attornies on both sides upon hearing the Petition of appeal
and answer and the Several Exhibits of the Honourable the Mayors
Court together with the Decree of the said Court given in this Cause on
Tuesday the 11th day of February Anno Domini 1794 upon due
Consideration had of the matters therein severally Contained and
of the Pleadings and arguments used by the Attornies on both sides
This Court doth think fit to Order and Decree and doth
accordingly order and Decree that the said Decree of the Honourable
the Mayors Court do stand Affirmed expect inrespect to the Charges
of Interest at 12 p Cent p Annum upon the original sum of Bagd 229 —
which the Court doth think fit to order and Decree shall be at
and after the rate of 8 p Cent p annum and that the appellants
Petition be hence dismissed with Costs —

/Signed/ Robert Clerk
Clk

To the Honourable Sir Charles Oakeley Baronet
President in Council
Fort Saint George

In the Court of Appeals
at Madraspatnam

Between Soonoo Pedda Kistnamah Chitty
Petitioner and Thomas Chase Respondent —
In the Cause of Thomas Chase Complainant
and Soonoo Ramah alias Chinna Sawmy
Defendant —

The Humble Petition and Appeal of the above named Respondent

Sheweth

That your petitioner did on or about the Eighteenth day of
June which was in the year of our Lord One thousand Seven hundred and
Ninety one Exhibit and file a Bill of Complaint in the Mayors Court
at Madraspatnam against the above named Soonoo Ramah alias
Chinna Sawmy for the recovery of the sum of Six hundred and eighty
five Pagodas due and owing unto your Petitioner from the said Soonoo
Ramah alias Chinna Sawmy upon a Bond or Obligation to which
Bill of Complaint the Defendant appeared by his attorney at
Law and the time limited by the Rules of the said Mayors Court for
answering the said Bill of Complaint having expired and no
answer having been filed thereto the said Mayors Court did on the
Second day of August in the said year of our Lord one thousand
seven hundred and Ninety one grant a Decree against the said
Defendant for the amount of your Petitioners said demand and

Filed in my office
the 25th Nov. 1793
Chas K. White
Clk

the

the term of fourteen days allowed by the Charter having elapsed without the said Defendant satisfying the said Decree or Appealing therefrom the said Mayors Court were pleased to grant a Writ of Execution against the goods Chattels and Effects of the said Defendant directed to the Sheriff of the Town of Madraspatnam and the Districts thereof who by virtue thereof did seize one Quarter Share of a certain House and Ground situated in Soancoo Ramahs Street Between the Houses of Chinna Kistnamah Chitty and Major Clerk and advertised the same for sale as the Property of the said Defendant he having a right to the said Houses Jointly with his three Brothers to wit Sunkoo pedda Kistnamah Chitty sunkoo Sashachellum and sunkoo Vencatachellum —

Your Petitioner sheweth that after the said premises were seized and advertized for sale as aforesaid the petitioner did on or abut the nineteenth day of January which was in the year of our Lord One thousand seven hundred and ninety two file a petition in the said Mayors Court therein reciting the Cause hereinbefore by your petitioner already recited and pretending that the said one Quarter share of the said House and premises so seized as aforesaid was not the Property of the Defendant but that the whole of the said House and Ground was the sole and entire property of the petitioner and that he hath Accordingly enjoyed the same and had been in peaceable and quiet possession thereof for fifteen years then last past and upwards and that no part thereof belonged to the Defendant and the said Petitioner did in and by his said petition pray that the said Mayors Court would Order the Sheriff to take off his seals from the said Premises and

your

your petitioner to pay all costs of the said Petition —

To which said petition of the said Soancoo Pedda Kistnamah 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 premises so seized as aforesaid were not the Sole property of the petitioner but the Joint and undevided property of the said Defendant and of his said three Brothers to wit the petitioner Soancoo Shashachellum and Soancoo Vencatachellum and your Petitioner did in and by his said Answer setforth that some time in the year of our Lord one thousand Seven hundred and seventy Seven Soancoo Chinnah Kistnamah Chitty disagreed with his other Cousins Soancoo pedda Kistnamah Chitty the said Petitioner Soancoo Shashachellum Chitty and soancoo Vencatachellum Chitty and the Defendant the said Soancoo Ramah Chitty in Consequence whereof a Division of their Family Estate which were very Considerable took place according to which Division the said Estate was divided into two Equal parts or shares one part of which came into the hands of the said Soancoo Chinna Kistnamah Chitty as the representative of the Elder Branch of the Family and the other part into the possession and power of his four Cousins to wit the said petitioner soancoo Shashachellum Chitty Soancoo Vencatachellum Chitty and the Defendant the said Soancoo Ramah Chitty as the Representatives of the Younger Branch of the Family all which your Petitioner said he would prove to the satisfaction of the said Mayors Court —

Your Petitioner did further setforth that the said one half of the Estate in the possession of the Petitioner and his

his said three Brothers remained them undevided and that the Defendant the said Soonoo Pramah Chitty and his Family live in the House which was seized under and by virtue of the said Writ of Execution and that the said Defendant has the same power and Influence and enjoys the same previleges Equally as his said three Brothers –

Your Petitioner did further setforth that According to the Custom of Indians especially those of the Banian Cast whereof the Petitioner and his said three Brothers are Members of the Defendant had devided his Estate with his other three Brothers neither he nor they could do so without previously Convening a meeting of the principal Members of the Cast who should be Witness to such Devision of the Estate but which your Petitioner Asserted never was the case nor was the said one half of their Family Estate ever devided between them and as your Petitioner had been informed if such had been the Case the Quarter share of the Defendant would amount were then to no less a sum than Fifteen or Twenty thousand Pagodas because that According to the Custom among the Indians the whole of the individual Acquisitions in Trade or otherwise are the Joint and equal Property of all the Brothers to the moment the Division takes place and such Property is also Subject to the payment of the Individual debts of each of the Brothers so that in fact According to the Indian Laws your Petitioner said that the property of the said Petitioner was Subject to the Claim of your Petitioner on the Defendant as much as any Goods or Estate which ... might be in the actual possession of the Defendant –

Your Petitioner did also setforth other matters

Respecting

Respecting the relative Rights of the Petitioner in the Cause and the Defendant and them prayed that from a Consideration of the Premises the said Mayors Court would be pleased to Direct the Sheriff to proceed to a sale of the said premises to satisfy the Decree of the said Mayors Court in favor of your Petitioner and your Petitioner did also pray that the Petitioners said petition might be Dismissed with Costs to be paid by the Petitioner –

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 Mayors Court on Tuesday the Twelfth day of this " Instant November when the said Mayors Court thought proper to order that the prayer of the Petitioners Petition be held good and that the sheriffs seals be taken off the said Premises and that your Petitioner Pay double Costs of suit as by the said Petition and Answer and other the ... Proceedings thereon had in the said Mayors Court together with the order thereof herewith sent for the Inspection of the Honourable the Court of Appeals reference being thereunto Respectively had may more fully Appear your Petitioner Craving as full and ample benefit from them and each of them as if they and each of them had been herein before as full length setforth

From which said order of the said Mayors Court your petitioner doth appeal to this Honourable Court of appeals as he Conceives the same Erroneous and that your Petitioner is much aggrieved and injured thereby for the following among other reasons –

First..... Because the above named Soonoo Chinnah Kistnamah Chetty the

Cousin

Cousin of the Defendant hath deposed to the truth of the several Matters above setforth respecting the Division of the Family Estate and the Right of Property of the Defendant Jointly with his three Brothers to the House seized under the Warrant of Execution in the above Cause and that such Right of property not only extends to the Family Estate but to the acquisitions in Trade or otherwise and that such Property is subject to the individual Debts of each —

Secondly..... Because that Meddah Ball Kistnah Chetty and Moolinga Ramah Sawmy Chitty depose to their Knowledge of the Family Affairs of the Defendant and his three Brothers and to the like purport generally as hath been deposed unto by the said Soonoo Chinnah Kistnamah Chetty and the like is also in part deposed unto by Medda Carnakistnah Chetty who also deposes to his belief that the Defendant is intitled unto one Quarter share of the House seized under the Warrant of Execution in the above Cause —

Thirdly..... Because that by the Laws of the Gentoos which Religion the Defendant and his said three Brothers as also their Cousin the said Soonoo Chinna Kistnamah Chetty profess the Elder Brother is only Trustee or Guardian for the other Brothers who till a Division takes place has an equal Right to the property with such Elder Brother as by Reference to the said Gentoo Laws may appear —

Fourthly..... Because that the impression under which the Mayors Court superseded the Warrant of Execution and awarded double Costs against your petitioner to wit that he suffered himself to be the instrument for determining the Relative rights of the said Parties to their Family property is equally injurious to himself and to some of them & himself in as much as that he is thereby deprived of his Legal Remedy to recover a Just

Just debt to some of the Parties to with the three young Brothers of the petitioner before the Mayors Court inasmuch as it confirms to him his asserted Right to the whole of the Property seized altho he hath a Right only to a fourth part thereof —

Fifthly..... Because that such impression even if founded which your Petitioner doth not admit for he solemnly declares that the Defendant owes him the sum sued for is in no wise injurious to any person for instead of being an injury it might to have gone to the Establishment of the Defendants Family Rights which have been usurped by the said Petitioner as his Elder Brother who instead of being the Defendants Guardian hath fraudulently usurped his property —

Sixthly..... Because such impression even if founded would not be dissonant to the Practice in the Law Courts in England for therein Titles to Estates are often tried under feigned Actions A Trial by Ejectment is thus defined "Ejectment is an action of Trespass brought by the Lessee "of a term of years to recover such term when he is ousted thereof the "origin improvement utility ease and Expedition of this ingenious "fiction is now generally used to recover the possession of Lands and "supplies the place and is adopted in lieu of many nay almost all real "actions for the trial of Titles to the possession of Lands —

"The method of Commencing the above actions is by "signing a Lease and a nominal Plaintiff an ejector or nominal "Defendant and thereupon to draw a fictitious declaration against "such feigned ejector with notice or subscription at the bottom thereof "to the Tenant or Tenants in possession of the Premises intended "to be recovered for him her or them to Appear and defend his her or

their

their Title to such Premisses or else that the feigned ejector will suffer Judgment to be signed against them by default where by the Tenant or Tenants in possession will be ejected of the Premisses they respectively hold

The Court of Kings Bench considers the declaration as process, 1 Stra 567 Common Pleas as the first Process Barnes 173. 186. and K. B. punishes contemptuous words spoken of the declaration on delivery as a contempt of the Court 1 Stra Rep. 567 —

Which Mode of trying the Defendants Title to the House in question doth as your Petitioner humbly insists accord as far as the relative Practice of the said two Courts will admit to the said trial by Ejectment and your Petitioner further submitteth that the Court by the Judgment in question hath subjected itself to such Punishment as his Majestys Court of Kings Bench may think proper to inflict for a Contempt of the Court in as much as the said Judgment is more strongly Expressive of a Contempt of its Process than any Contemptuous words which may be spoken thereof —

For all which reasons and such others as may be offered at the hearing of this Cause your petitioner prays that the said Petition of the said Sumboo Pedda Kistnamah to the Mayors Court may be Dismissed with the Costs to be paid by them and that the Sheriff may be directed to proceed in the Sale of the said Premisses so seized in the Execution in the above Cause

Signed / Stephen Popham for Self & Robert Williams } Solrs for Appellant

Extract

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 12th day of November Anno Domini 1793

Present

John Mitford Esqr Mayor
William Webb and William Abbott
Aldermen

Mssrs Aldermen Call. Porcher Ross Michell Roebuck Daly and Cockburn take their Seats upon the Bench —

Thomas Chase

vers

Suncoo Ramah alias Chinna Sawmy

Petition of Suncoo Peddoo Kistnamah Chetty Read

Amended Answer read

Interrogatories on the part of the Petitioner read

Three Depositions taken thereunto read

Exceptions of the Petitioner to the Latter part of the second Interrogatories exhibited to and the Depositions made thereto by Suncoo Chinna Kistnamah Chetty Medda Carro Kistnah Chetty Medda Ballahistnah Chetty Moolinga Rama Sawmy Chetty and Mah Goorvapah Chetty Answer thereto read —

The first Exception and the Answer thereto coming on to be argued and determined this day in the presence of the Attornies on both sides and on due Consideration had thereon The Court are of Opinion that the first Exception is insufficient It is therefore Ordered that the same be over ruled with Costs —

Second

Second Exception to the fourth Interrogatories and the Deposition of Munjestoory Narsimah Chetty given therein read
Answer thereto read

The Second Exception and the Answer thereto coming on to be argued and determined in the presence of the Attornies and on due Consideration had thereon The Court are of Opinion that the second Exception is good it is therefore Ordered that the further Interrogatories and the Deposition of Munjestoory Narsimah Chitty be Suppressed and that the Respondent do pay the Costs of the second Exception —

Interrogatories on the part of the Respondent Read
Four Depositions taken thereunto read the Witness N3 did not Sign his Deposition

The Matter in dispute between the petitioner Suncoo peddah Kistnamah Chitty and the Respondent Thomas Chase coming on to be Determined this Day in the presence of the Attornies on both sides On Hearing the 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 prayer of the Petitioners Petition be granted and that the Sheriffs Seals be taken off the premises in question and that the Respondent be taxed with double Costs —

A True Extract
/ Signed / G. Taylor Regr

To

To the Honourable Sir Charles Oakeley Baronet

President in Council

Fort Saint George

In the Court of Appeals at Madraspatnam

Between Suncoo Pedda Kistnamah Chetty Petitioner and Thomas Chase Respondent In the Cause wherein the said Thomas Chase is Complainant and Suncoo Ramah alias Chinna Sawmy is Defendant —

The Answer of the said Suncoo Pedda Kistnamah Chitty the Petitioner above Named to the Petition and Appeal of the said Thomas Chase Appellant —

Filed in my Office the 13th Dec 1793
Chas. N White Clerk

This Respondent admits that the said Appellant at the time in his said Petition and Appeal mentioned file and Exhibit his Bill of Complaint against the said Defendant Suncoo Ramah alias Chinna Sawmy for the recovery of the sum of six hundred and eighty five Pagodas thereby alledged and pretended to have been due and owing from the said Defendant to the said appellant and this Respondent admits that the said Defendant did go through the form of appearing to the said Bill of Complaint and of suffering a Decree to pass against him the said Defendant by default in the said suit and that a writ of Execution did afterwards issue upon the post of the said Decree against the goods and Chattles of the said Defendant and that the sheriff by virtue thereof did seize one quarter share of a certain Dwelling House and grounds

grounds whereon the same stands situate as in the said Petition and Appeal is mentioned which premises so seized were at the time of such Seizure and for a long time previous thereto and still are the absolute property of this Respondent and are not nor is any part thereof the property or belonging to the said Defendant and this Respondent saith that the said Bill of Complaint and the said subsequent proceedings so as aforesaid had thereupon were Concerted by the said Appellant and the said Defendant to draw in question this Respondents title to the said House and premises before the said Mayors Court contrary to the Express Letter of His late Majesties most gracious Charter and the spirit and meaning thereof and which will hereafter fully appear This Respondent further answering saith he admits that he did on or about the time in the said Petition and Appeal mentioned file his Petition in the said Mayors Court not pretending but asserting as the truth is that the said quarter share of the said House and grounds so as aforesaid seized was the absolute property of this Respondent at and before the time of such seizure and this Respondent also admits that he did also in and by his said Petition set forth the several other matters and things and pray such relief as in the said Petition and appeal is particularly stated and this Respondent admits that the said appellant did on the first day of May in the year of our Lord one thousand Seven hundred and Ninety two file his amended answer to this Respondents said Petition setting forth the several matters and things which in and by the said appellants said Petition and appeal are particularly set forth and mentioned and further stating that when the said appellant filed his said Bill of Complaint in

in the said Mayors Court this Respondent tried by every means and persuasions in his power to Constrain the Defendant to give him a release or discharge specifying or importing that he the Defendant had received his one fourth share of the said Estate well knowing as the said appellant alledged the Just right he would have to sell the said Premises for payment of his said demand in case he should obtain a Decree and that the said Defendant peremptorily refused to sign any such release or discharge and that in Consequence of such alledged refusal the said Defendant and his three Brothers were at variance This Respondent admits that upon the said Petition and answer issue was Joined and that Publication afterwards passed This Respondent saith that the said Appellant hath by his said Petition and Appeal left out the whole of the evidence on the part of this Respondent with a view thereby to make it appear that this Respondents said Petition was unsupported by evidence whereas this Respondent saith that Vardapah Chitty of Madras shop keeper aged fifty five years to the first Interrogatory on the part of this Respondent deposed that he had known this Respondent forty years or upwards and to the second Interrogatory deposed That he the said Deponent knew a certain dwelling House wherein this Respondent at the time of the said Deponents examination lived situated in Seuca Ramahs Street between the House of Ehenna Kistnamah Chetty and Major Clarke in that part of Madras Called the Mahratta Town and that this Respondent lived and resided in the said House for thirty years or thereabouts and that this Respondent since the death of his this Respondents

Father

Father which happened about fourteen years ago enjoyed the peaciable
possession of the said House and that this Respondent hath since the
death of his said Father been Considered and respected to be the sole
owner of the said House and Ground and the said Deponent further
deposed that he knew the said House and Ground to be taken in
Execution at the suit of the appellant against the said Defendant
and that the Defendant had not then nor at any time therefore
any right title or Authority to Mortgage the said House and Ground
or any part thereof and this Respondent further saith Thatono Arnachal-
-lah of Madras aged forty five years deposed that he knew this
Respondent thirty five years and to the said Interrogatory Deposed
that he knew the premises in question and that the Respondent
hath lived in the said House and peaceably enjoyed the possession
thereof for fifteen years and that he the Deponent Considered this
Respondent to be the sole and lawful proprietor thereof and that he
did not believe the said Defendant had any right or Authority to
Mortgage the same or any part thereof and this Respondent further
saith that Junganah Chetty of Madras Merchant another witness
produced on the part of this Respondent to the second Interrogatory
deposed to the same effect and this Respondent further saith That
the said Verdapah Chetty being also Examined to the third Interrogatory
on the part of this Respondent deposed that the Defendant Suncoo
Ramah at the time of the said Deponents Examination lived with
this Respondent in the House in question and that the said
Defendant Suncoo Ramah so lived there by permission of this

Respondent

Respondent and not in his the said Defendants own right and
that this Respondent has full right and authority to Compel the
said Defendant to quit the said House and to live elsewhere and
that the premises in question or any part thereof is not subject to the
payment of any debt or debts the Defendant may have contracted at
any time heretofore because that this Respondent has the exclusive
right and title to the said House and Ground and the said Depo-
-nents Sungamah Chetty and Arnachella to the same third Interro-
-gatory also deposed to the like effect and that this Respondent was the
sole lawful owner and possession of the said House as by the said
several Depositions to which this Respondent Humbly Craves leave
to refer relation being thereunto had will more fully appear and
this Respondent saith he did Except to the latter part of the said
Interrogatory exhibitted on the part of the said Respondent and
to the Depositions of Suncoo Chinna Kistnamah Chetty Canabist-
-nah Chetty Medda Ballahistnah Chetty and Moolinga Rawma-
-sawmy taken thereto for that the said Latter part of the said second
Interrogatory is leading in the following words to wit Did or did not
the Petitioner in trust for himself and his said three Brothers receive
one moiety or half part of the said Estate If yea was the same
ever divided between them do you or do you not know that on
House has been seized under and by virtue of a Warrant of
Execution issued in the above cause If yea is or is not such

House

House the joint and equal property of the Defendant and his said three Brothers or of whom else and has or has not the Defendant a right to one quarter part thereof or how otherwise and the said Appellant answered the said Exceptions and denied that the said Interogatory was leading This Respondent saith that upon the aforesaid proceedings the matter of the said Petition was set down to be heard and Accordingly came on to be heard at the time in the said Petition and appeal mentioned when the said Mayors Court was pleased to over rule the said Exceptions so by this Respondent taken to the said Interrogatory and Depositions and to make such order upon the prayer of this Respondents said Petition as in the said appellants said Petition and appeal is setforth—

The said Respondent in answer to the first cause or reason by the said appellant assigned saith That by the said appellants answer to this Respondents Petition it appears of the said Appellants own shewing as if the said House and Ground which has been so seized by the Sheriff was the Joint and undivided property of this Respondent and his said three Brothers Suncoo Sasachella Suncoo Vencatachella and the Defendant Suncoo Ramah and it also appears by the Testimony of Suncoo Chinna Kistnamah Chetty That a devision of the paternal estate took place and that receipts for property Delivered by the Deponent

to

to them were signed by the whole and not by one Brother acting for another and which fact of granting separate receipts this Respondent Humbly submits to this Honourable Court shews that the receipt of one of the Brothers for the shares of the others of them would not be deemed a Sufficient Discharge or acquittal and from thence it follows that the bare act of one of the said Brothers cannot be binding upon the others or others of them Although the said Deponent Suncoo Chinna Kistnamah Chetty hath been hardy enough to Depose it to be the rule and Custom amongst his Cast that until the division of the paternal estate takes place the whole of the individual acquisitions of the family in trade or otherwise is subject to the payment of the individual debts of each of the Brothers yet this Respondent thereupon nevertheless humbly trusts That such pretended Custom so highly repugnant to reason and natural Justice can never be admitted or countenanced by this Honourable Court for if the property of an undivided family should be held liable to the payment of the debts of any individual of such family in the General and unqualified Sense that the appellant has endeavoured to establish it would follow that this Respondents property is liable to be Charged by the said Defendant with the payment of any debt which the said Defendant may think proper to Contract so far as this Respondents

estate

estate may Extent which would leave this Respondents property entirely at the mercy of the Defendant This Respondent submits to this Honourable Court that if the Defendant was a Brother of an undivided family it by no means follows that by being one of an undivided family the Defendant can bind this Respondents property or fix upon him the payment of a debt which this Respondent never Contracted nor was in any wise Assenting unto and this Respondent saith he does humbly conceive that the second and third Causes or reasons by the said Appellant assigned are refuted by this Respondents Answer to the said first cause by the said Appellant assigned —

This Respondent in Answer to the fourth Cause or reason by the said appellant assigned Saith that the said order of the Mayors Court from which the said Appellant hath appealed to this Honourable Court is well founded for that it appears by this Respondents said Petition to the Mayors Court that he hath been fifteen years in the quiet and peaceable possession of the premises inquestion which is also fully in evidence and in no wise disproved by the said Respondent and the weight of evidence of this Respondents absolute right to the said premises being infavor of this Respondent and compiled with the said length of possession was sufficient ground for Allowing the prayer of this Respondents said Petition and this Respondent saith that if the said Bill of Complaint had been filed for the sole purpose of recovering a Just and bonafide debt which this Respondent by no means admits to be the Case the said appellant has still his remedy against the said Defendant upon whose Credit alone the said Appellant must have taken the said Bond and to whom the said appellant should have resorted for Satisfaction by the Summary process of a Warrant of Commitment and should not have disturbed this Respondent in the possession of the said premises and this Respondent saith he cannot of his own knowledge set forth whether the said Mayors Court did or did not as stated by the said Appellant consider him in the light of an instrument for Calling in question the relative rights of this Respondent and of the said Defendant But that the said Respondent was actuated by such motives when he Commenced his said suit in the Mayors Court does appear not only from the subsequent proceedings which were had in the said Cause but also from the reasons and causes by the said Appellant in his said Petition and appeal assigned For that the said Appellant doth allege that the said order of the Mayors Court is injurious to this Respondents younger Brothers in as much as it confirms this Respondents right to the whole of the property seized and further that if the said appellant had been able to maintain the

the said seizure it could have Established this Respondents family rights which avowed object of interference on the part of the said Appellant with the family Concerns of this Respondents doth evidently shew that the said appellant did not institute his said Suit for the purpose of recovering a Bonafide debt and that the said Bond was not executed for an actual debt by the said Defendant to the said appellant owing does further appear from the Appellant not having given any evidence of the Consideration for which the said Bond was granted which the said appellant might and ought to have done if he had actually given a good and Valuable Consideration to the said Defendant for the same This Respondent in answer to the sixth cause or reason by the said Appellant assigned saith he admits that an Ejectment is as stated by the Appellant assigned action and this Respondent also admits that the said Suit which was as aforesaid brought by the said Appellant against the said Suncoo Ramah alias Chinna Sawmy in the Mayors Court under which this Respondents property was so seized is also assigned action and a shift resorted to be by the said Defendant in which the said appellant is instrumental for the purpose of eluding the charter granted at Westminster in the Kingdom of Great Britain on the Eight day of January in the Twenty sixth year of the Reign of his late Majesty George the Second then King of

of Great Britain and so forth to the united Company of Merchants of England trading to the East Indies whereby amongst other things the Mayor and aldermen for the time being of Madraspatnam are Constituted a Court of Record by the Name of the Mayors Court at Madraspatnam for the hearing and Determining all civil actions and Pleas between party and party that should or might arise or happen or that had arisen or happened within the said Town of Madraspatnam or within any of the Factories Subject or Subordinate unto Fort Saint George or the Governor or President and Council of Fort Saint George aforesaid Except such suits or actions should be between the Indian Natives of Madraspatnam only In which case his said Majesty willed that the same should be Determined among themselves unless both partys should by Consent submit the same to the determination of the said Mayors Court and this Respondent saith that the said Mayors Court having thereby a limitted and Circumscribed Jurisdiction so far as respects Indian Natives it was and is as this Respondent humbly submits to This Honourable Court the duty of the said Mayors Court to Carry the said Charter strictly into Execution According to the true meaning letter and Spirit thereof and not to suffer the same to be evaded nor by any feigned Action to draw the rights of Indian Natives into question before the said Mayors

Court

Court as the said Charter has Expressly exempted them from the Jurisdiction thereof Except in Cases where parties by consent submit their rights to the determination of the said Court And this Respondent submits to this Honourable Court that the said Appellant should not by his said Petition and Appeal have impugned the proceedings of the said Mayors Court in the manner in which he has therein done

For all which causes and reasons and for such others as may be offered at the hearing of the Appellants said Petition and Appeal This Respondent humbly prays that the said order of the Mayors Court may stand and be affirmed and that the Petition of the said Appellant be hence dismissed with Exemplary Costs to be paid to this Respondent by the said Appellant and that this Respondent may be further and otherwise relieved in the premises as to this Honourable Court shall seem meet and as the Nature Merits and Circumstances of this Respondents case shall require —

Sig[d] John White Sol[r] for the Respondent

Court of Appeals

Court of Appeals at Madraspatnam

Saturday the 7th Day of June Anno Domini 1794

Between Thomas Chase of Fort St. George Esq[r] Appellant and Suncoo Pedda Mistanaud Chitty 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 Hon[ble] the Mayors Court together with the Order of the said Court given in this Cause on Tuesday the 12th day of November Anno Domini 1793 Upon due Consideration had of the matters therein severally Contained and of the Pleadings and Arguments used by the Attornies on both sides This Court doth think fit to Order and Decree and doth Accordingly Order and Decree that the said Order of the Hon[ble] the Mayors Court do stand Affirmed and that the Appellants Petition be hence dismissed with Single Costs in both Courts

/Signed/ R. Clerke Cl[k]

Lo

To the Honourable Sir Charles Oakely Baronet
Governor &c in Council of
Fort St George

In the Honourable the
Court of Appeal

Between Charles Loyd
Complainant and Stephen Towns and
Candraigula Juggernaut Row Defendants

The humble Petition and Appeal of Candraigula Jug-
naut Row one of the above named Defendants

Sheweth

That the Complainant Abovenamed did on or about the 18th Day of January and in the present year of Christ 1793 Exhibit and file his Bill of Complaint in the Mayors Court of Madraspatnam against your Petitioner and the said other Defendant for the recovery of the Sum of One thousand two hundred and Eighty four Pagodas Thirteen fanams and forty Cash Current money of Madras pretending the same to have arisen and become due on a Bond Executed by your Petitioner in Conjunc-tion with the said other Defendants —

Filed in my Office
the 18th November 1793
Charles N White
Clerk

And your Petitioner sheweth that the said other Defendant being within the Jurisdiction of the said Court and your Petitioner having been served with process to Appear to and answer the said Bill your Petitioner did accordingly on or about the twenty sixth Day of March which was in the said present year of Christ 1793 Exhibit and file his answer to the Complainants said Bill of Complaint thereon and thereby Setting forth that although he should admit to have Executed the Bond in question yet that your Petitioner did deny he did either directly or indirectly receive any manner of Consideration on account thereof and further that your Petitioner had heard and believed the fact so to be that the said other Defendant and the Complainant having had dealings and transactions together there might have been an Apparent balance of Accounts in his the Com-plainants favour and that it was upon that apparent balance that the Bond in question was Executed and not upon an account of Cash then lent and Advanced the said other Defendant and therefore the Complainant did not run any risk upon and and on account of the Security of your Petitioner and your Petitioner did also state that he was not Concerned or interested in any the Dealings and transactions between the Complainant and the said other Defendant and that he Executed the said Bond at the instance and request of the said other Defendant and

and that thereupon your Petitioner did humbly submit to the said Mayors Court that he did not stand indebted unto the Complainant in the Sum sued for or any part thereof —

And your Petitioner sheweth unto this Honourable Court that to your Petitioners said Answer the Complainant did Exhibit and file his Replication and as the same did not Contain any new or pertinent matter your Petitioner did Exhibit and file a General Rejoinder and your Petitioner sheweth that upon the above proceedings Issue did Join and rules did pass for the Examination of Witnesses and the Complainant did Examine Arroonachellum Moodily who Deposed that he had been to Demand payment of a Sum the Amount of which he had forgot arising out of a Bond which he knew nothing of but he says that your Petitioner did at all times Acknowledge the Justice of the demand and crave the indulgence of time for the payment thereof —

And your Petitioner sheweth unto this Honourable Court the said Cause was set down to be heard and Determined and the same Coming on to be heard and Determined on the Fifth day of this present Instant the said Mayors Court was pleased to Order and Decree and did Accordingly order and Decree that your Petitioner do pay unto the Complainant the full and Just Sum of One Thousand two Hundred and Eighty four Pagodas thirteen fanams and forty Cash together with all such Interest as there was or should thereafter become due thereon untill full payment made also all Costs of Suit as by the said Decree Copy whereof is hereunto annexed for the inspection of this Honourable Court the Original being ready to be produced at the hearing may more fully and at large appear

By which said Decree of the said Mayors Court your Petitioner doth conceive himself aggrieved and doth therefore Appeal thereupon to this Honourable Court for the following amongst other reasons —

First ..... Because your Petitioner in and by his said Answer upon Oath did shew that although he might have Executed the Bond in question Jointly with the other Defendant Stephen Towns yet that he did not receive any manner of Consideration on Account thereof and that the debt if any for which the said Bond was Executed was not for money then Lent and advanced nor on Account of any recent transaction in which the Complainant and the said other Defendant Stephen Towns had been Concerned together and Consequently the same was not on account of money lent and advanced by the Complainant to the said other Defendant Stephen Towns nor on

on account of any transaction that he had taken place between them upon the Credit responsibility and good faith of your Petitioner and further your Petitioner did in and by his said Answer shew that he never was Connected with the said Concerns of the Complainant and the said other Defendant Stephen Towns nor in any wise interested therein and in so much as the Complainant has not attempted to shew that any Consideration was ever given to your Petitioner on Account of the Bond upon which he has pretended to bring his action against your Petitioner nor has he in any wise transferred the several matters and things in your Petitioners said answer Contained and as your Petitioner is advised that no Instrument is binding upon a party unless Consideration proved and unless it be proved that money was lent and Advanced or other Credit given by one party to another upon the Credit responsibility and good faith of a third person your Petitioner doth humbly submit to this Honourable Court that the said Decree of the said Mayors Court is contrary to Law

Secondly --- Because the Complainant has not proved the debt for which he has brought his action which he ought to have done to entitle himself to a Decree but instead of Examining any person to the Execution of the Bond he has Brought forward a man who deposes that he has frequently demanded of payment

payment of a Sum of money the amount of which he does not recollect that he had on the part of the Complainant Applied to your Petitioner several times and that your Petitioner had promised payment thereof which cannot legally or otherwise Apply to the Bond in question —

Thirdly & Lastly Because the Complainant has Carried on the action against your Petitioner without bringing the said other Defendant before the said Mayors Court which it was incumbent on him to have done as the said other Defendant was within the Jurisdiction of the said Mayors Court or have shewn good and sufficient Cause to the Contrary for otherwise it will appear the premisses considered that there was some Conclusion between the Complainant and the said other Defendant to injure your Petitioner and defraud him of his property and this is the more evident as the Complainant has kept back the said Bond Refused to prove the execution thereof or the Consideration money that had been paid on Account thereof and therefore and for as much as the said Bond is said to have been Executed Jointly by your Petitioner and the said other Defendant Stephen Towns and the said Stephen Towns was within the Jurisdiction the said Mayors Court ought not to have given a seperate Decree against your Petitioners —

For all which reasons and such others as may be offered at the hearing your Petitioner

Petitioner most humbly prays this Honorable Court will be pleased to Reverse the said Decree of the said Mayors Court and that your Petitioner may have such other and further Relief in the premises as in the Wisdom of this Honourable Court shall seem meet

/Signed/ J. Stuart Hall

Solicitor for Appellant

Mayors

Mayors Court as } Tuesday the 5th day of November
Madraspatnam } Anno Domini 1793

Present

LS John Mitford Esqr. Mayor
Josias Du Pre Porcher and Andrew Ross
Aldermen

Between Charles Loyd of Madras Merchant Complainant and Stephen Towns Captain in the Honourable Companys Service and Condraigula Juggernaut Row at present of Madras Inhabitant Defendants

Mayors Court

This Cause coming on to be Heard and Debated this Day in the presence of the Attornies on both Sides on Reading the Complainants Bill with Copy of an Account Current Annexed the Affidavit the Defendant Condraigula Juggernaut Rows Answer the Replication the Seperate General Rejoinder the Interrogatories and Deposition 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

the Defendant Jaggernaut Row do pay unto the Complainants the full and Just Sum of One thousand Two hundred and Eighty four Pagodas thirteen fanams and forty Cash Pag.s 1284..13..40 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 —

Pbur

/Signed/ G.s Taylor Reg.r

a true Copy/ Signed/ J. Stuart Hall
Sol.r for appellant

To

To the Honble Sir Charles Oakely Baronet
President in Council &.a Fort St George

In the Honorable the Court of Appeals } Between Charles Loyd Complai:nant and Stephen Towns & Condraigula Jaggernaut Row Defendants

The Answer of the above named Charles Loyd to the Petition and Appeal of Condraigula Jaggernaut Row one of the aforesaid Defendants

This Respondent for answer unto the said Petition and Appeal or unto so much thereof as this Respondent is advised is material or necessary for him to make answer unto answereth and saith that it is true that this Respondent did on or about the eighteenth day of January and in the Year of our Lord one thousand seven hundred and ninety three Exhibit and file his Bill of Complaint in the Honourable the Mayors Court at Madraspatnam against the Petitioner for the recovery of the Sum of One Thousand two hundred and eighty four Star Pagodas thirteen fanams and forty Cash as is by him stated in his said petition and in the said Bill of Complaint so Exhibited he this Respondent did set forth the manner in which the said Debt of One thousand two hundred and eighty four Star Pagodas

Filed in my Office the 26th January 1794
Chas N White Clerk

Star Pagodas thirteen fanams and forty Cash became due and owing to him and to the Justness of the said Debt he this Respondent did make Affidavit before the Mayor of Madras-patnam whereupon the said Mayor did order that a Summons returnable immediately and a Warrant of Arrest should issue against both the said Defendants and which was Accordingly issued and the said Warrant was duly served upon one of the said Defendants who is the present petitioner but notwithstanding Every possible deligence had been used by the proper Officer appointed for that purpose both at the time the said Warrant of arrest was issued and since to serve the same upon the other of the said Defendant yet that he not been able so to do as will Appear by a reference to the return made by the said Officer and now on record in the said Mayors Court and this respondent doth also admit that the said Petitioner the then Defendant did on or about the 26th Day of March in the year of our Lord one thousand seven hundred and ninety three Exhibit and file his answer to this Respondents said Bill of Complaint stating in manner as is by him setforth in his said Petition save and Except that the Petitioner in his said petition hath setforth the Words of the Defendant in his said answer to have been "That

although

although he should admit to have Executed the Bond in question yet he did deny &c.—

Whereas the words in the answer of the Defendant as Exhibited in the said Mayors Court to the Bill of Complaint of this Respondent on the said 26th Day of March were He this Defendant answereth and saith that he admits to have Executed the Bond in question but denys &c. And the Respondent sheweth unto this Honourable Court that to the said answer he this Respondent did file his Replication but he denies that the same did not contain any thing new or pertinent to the matter in Issue as is unjustly stated by the Petitioner in his Petition for this Respondent saith that in his replication he setforth that he did not know and therefore Could not shew what were the Motives that induced the said Defendant Vandraigula Jaggernaut Row to Join with the other Defendant the said Stephen Towns in the execution of the Bond for which he this Respondent had filed his Bill of Complaint neither could he say whether he the said Vandraigula Jaggernaut Row did or did not receive any or what consideration on account thereof but this Respondent declared that the Debt for which the said Bond was given was a Just and true debt and that he would not at any time have taken in payment the seperate Bond of the said Stephen Towns for the Amount in question as he never thought him of sufficient property sufficient

Sufficient for the payment of such a Sum and this Respondent did further state in his said Replication that he did refuse to receive the Bond of the said Stephen Towns unless he could procure some good and sufficient Person to Join with him therein as a further and better Security and this Respondent sheweth to this Honourable Court that he did further setforth in his said Replication that the said Stephen Towns having proposed the said petitioner Condraigula Joggernaut Row as a Person who was ready and willing to become Jointly bound with him he this Respondent did make enquiry as to his solidity and having been informed that Mr Antonio DeSouza and other Merchants had taken his security to a considerable amount he this respondent was satisfied and did Accordingly accept the Bond for which his Bill of Complaint in the present suit was filed and this Respondent further sheweth unto this Honourable Court that he did also set forth in his said Replication that the this Respondent had been in habits of almost constant intercourse with the said Defendant now the Petitioner Condraigula Joggernaut Row ever since the granting of the Bond in question and that he the said Condraigula Joggernaut Row never did in the least dispute or in any manner call in question the said Bond or give this Respondent the most distant reason either directly or

indirectly

indirectly to suppose that he meant to object to Discharge the same until a short time previous to the filing of the Bill of Complaint as aforesaid nor had he assigned any other reason to this Respondent for the non payment thereof save and Except that it was not convenient for him so to do —

And this Respondent sheweth to this Honble Court that to the foregoing replication the Petitioner did not think proper to reply Except by a general Rejoinder as is by him stated in his said Petition whereupon issue did Join and Rules did pass for the Examination of Witnesses and this Respondent did proceed to Examine one Arroonachellum as a Witness in this Cause but this Respondent denies that the words of the deposition of the said Arroonachellum Moodelly are stated by the Petitioner in his Petition truly and prays leave to refer to the original Depo: sition on record in the Mayors Court . And this Respondent doth admit that Publication having passed in the said Cause the same was set down for hearing and Accordingly Came on to be heard when the said Mayors Court was pleased to order and decree in manner as setforth by the petitioner in his said Petition and by which he the Petitioner was required to pay to this Respondent the full and Just Sum of One thousand two hundred and Eighty four

Star

Star Pagodas Thirteen fanams and forty Cash, together with Interest and Costs of Suit as well more fully and at large Appear upon the proceedings of the Honourable the Mayors Court to which as well as to all other proceedings had in the said Cause this Respondent begs Leave to refer and to have such full and ample benefit — thereof as if the same were herein at large setforth—

And this Respondent humbly Contends that by the said Decree of the Honourable the Mayors Court as aforesaid he hath not received any advantage further than what he was Legally and substantially Entitled to and that the petitioner hath incurred no wrong & damage thereby which Could have warranted him or given him any Cause or Colour to Appeal therefrom for the following among other Reasons—

This Respondent in Answer to the first reason Assigned by the petitioner saith that the petitioner having admitted in his Original answer the execution of the Bond on which this action had arisen it became unnecessary for this Respondent to have entered into any evidence whatever for the petitioner doth not setforth any matter either in his answer or in the Evidence that could bar this Respondent of recovery under the said Bond Either that it was Collusively or fraudulently Obtained or Executed under Duress or Compulsion and which alone this Respondent is advised and informed Could Legally be pleaded in Bar of this action For whether the Petitioner did or did not receive a Consideration Consonant and agreeable to the Amount of the said Bond is a Question

question not in issue and Consequently irrelevant to the Cause It is evident that he voluntarily entered into the Obligation and for which the Law will presume the Consideration whether the petitioner did or did not actually receive any Sums of Money by reason of the execution thereof it is not of Objection to this Respondents right for the other of the Defendants namely Stephen Towns did receive a Credit with this Respondent from the addition of the Petitioners Name and undertaking for the payment of the sum Constituted in the said Bond or Otherwise what necessity were there for his Signature and Seal being subscribed and set thereto and a stay in Demand and giving time for the satisfaction of a Debt on the Credit and faith of a third Person though he be altogether disinterested in the original Debt is a good and legal Consideration and on which an action may be brought and as in the present instance Justly and legally maintained for the motive of a party who engages by a solemn instrument for the Payment of anothers Debt cannot be understood nor is it necessary to be understood by the obligee and it is for the convenience and advantage of the obligor that the additional security is offered and whether or not such security doth receive an Acknowledgement for the Consideration from the obligor may be Disputed between the two obligors but never between the Joint Obligors and the obligee—

To the second reason assigned by the said petitioner This Respondent

answereth and saith that the Execution of the Bond being Confessed by the petitioner in his answer it was not incumbent on this Respon: dent to prove any thing further for the due Execution of a Bond being Acknowledged by the obligors the Consideration is Always presumed and taken for granted unless some legal obligation is Assigned and pleaded and which the Petitioner hath not assigned or pleaded and therefore this Respondent did not hold himself bound to shew the nature of a Debt which was Confessed by the Parties themselves—

To the Last reason assigned by the said petitioner This Respon: dent answereth and saith that he is Advised and informed that it was Lawful for him to bring either or both of the Parties before the Mayors Court as he might have found it Convenient or most for his advantage to do for the Bond on which the action has arisen is a Joint and separate Bond and this Respondent saith that he instituted his suit against the two obligors Condraigula & Jaggernaut Row and Stephen Towns the petitioner Jointly—

And this Respondent further saith that it is not Apparent by any evidence produced in the said cause that the said Stephen Towns one of the original Defendants was within the Jurisdiction of the said Mayors Court—

And this Respondent Lastly saith that the said Bond on which this Action was instituted at the instance and prayer of the Petitioner was produced and Exhibited in the course of the said cause and read and considered at the final hearing of the same—

For which Reasons and such others as may be Offered at the hearing this Respondent prays that the said Decree of the Honourable the Mayors Court aforesaid may be Confirmed and that the petitioners said Petition and Appeal may be dismissed with Costs to be paid by the Appellant—

/Signed/ G. P. Cook

Solicitor for Respondent

Court of Appeals

Court of Appeals
at
Madraspatnam

Saturday the 7th day of June
Anno Domini 1794

Between Condraigula Juggernat Row at Present of Madras Inhabitant Appellant and Charles Loyd of Madras 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 Honble the Mayors Court together with the Decree of the said Court given in this Cause on Tuesday the 5th day of November Anno Domini 1793. 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

/Signed/ Robert Clerk
Ctk

To

To the Honble Sir Charles Oakeley Baronet
Governor &c in Council
Fort St George

In the Honourable
the Court of Appeals

Between Charles Loyd Complainant
and Condraigula Juggernaut Row Defendant

The humble petition and Appeal of the above named Defendant—

Sheweth

That the Complainant above named did on or about the Eighteenth day of January which was in the present year of Christ one thousand Seven hundred and ninety three Exhibit and file his Bill of Complaint in the Mayors Court at Madraspatnam against your Petitioner for the recovery of the sum of Seven hundred and sixty two Pagodas thirty two fanams and sixty five Cash pretending the same to have arisen and become due upon a Bond or Obligation Executed by your Petitioner to the Complainant—

Filed in my Office
the 8th November 1793
Chs N. White
Clk

And your Petitioner sheweth unto this Honourable Court that to the Complainants said Bill of Complaint your Petitioner did on or about the Twenty Sixth day of march and the said year of Christ one thousand seven hundred and ninety three your

Petitioner

Petitioner Exhibit and file his Answer and did therein and thereby
state that although he might have Executed the Bond in question
yet that your Petitioner was not thereby or by reason thereof indebted
unto the Complainant in the sum sued for or any part thereof and
thereupon your Petitioner did state that in the Month of February
and year of Christ One thousand Seven hundred and ninety two
your Petitioner was prevailed upon by Stephen Towns an Officer in
the Service of the united Company of Merchants of England trading
to the East Indies under their Presidency of Fort Saint George to
Join with him in a Bond to the Complainant on Account of a
Sum of money by him the said Stephen Towns due to him the
Complainant on Account of some dealings and transactions between
them and your Petitioners did state that some time afterwards
the Complainant did on the said Bond so Executed by your
Petitioner and the said Stephen Towns Commence an Action in
the said Court and did thereon arrest your Petitioner the said
Stephens not being to be found as your Petitioner was informed
and your Petitioner did say that having been thus arrested he
did pray unto the Complainant the sum of five hundred Pags
together with the Costs of the said suit and give a Bond for the
Remainder with a Warrant of Attorney to Confess Judgment
that a short time afterwards the Complainant did Apply to your

Petitioner

Petitioner and request him to Execute a Common Bond which
your Petitioner did Execute accordingly and which was the Bond in
question and that thereupon the Complainant did give up to your
Petitioner the said Bond and Warrant to Confess Judgment
and which was of record in the said Mayors Court and your
Petitioner did in and by his said answer further say that he
had not received either directly or indirectly from the Complainant
for and on Account of the said first Bond Executed Jointly
with the said Stephen Towns nor for the said Bond with the Warrant
to Confess Judgment nor for nor on Account of the Bond upon
which the Complainant had brought his present suit any manner
of Consideration that the first Bond upon which the present
action had arisen was not Executed upon an Account of Cash
formerly lent and advanced to the said Stephen Towns and therefore
the Complainant did not run any risk upon and on account of the
security of your Petitioner and further your Petitioner did say that
he was not Concerned in any the dealings and transactions between
the Complainant and the said Stephen Towns and that he Executed
the said first Bond upon which the present action had arisen
at the instance and request of the said Stephen Towns and
thereupon your Petitioner did humbly submit to the said Mayors
Court that he did not stand indebted unto the Complainant in the

Sum

sum sued for, or any part thereof—

And your Petitioner sheweth that to your Petitioners said answer the Complainant did Exhibit and file his Replication and as the same did not contain any thing pertinent to the matter in ifsue your Petitioner did Exhibit and file a Genral Rejoinder— And your Petitioner sheweth that thereupon Ifsue did Join and rules did pafs for the Examination of Witneyses and the Complainant did Examine one Witneys Arnachellum Moodely who to the second Interrogatory did depose that the Complainant did frequently Order the Deponent to go to your Petitioner and Demand payment of a certain Bond granted by your Petitioner to the Complainant but that he did not receive the amount of the said Bond that Deponent did in Conformity to such directions repeatedly go to your Petitioner and request him to Discharge the same that he went Twenty or thirty times to Demand payment of the same about Six Months ago that your Petitioner promised to Discharge the same but did put off the payment under various pretences that the Complainant did at times fully Acknowledge the Justneys of the Complainants said Demand and had frequently requested your Petitioner to prevail on the Complainant to indulge him with further time to Discharge the same the Deponent believed the present Demand of the Complainant against your petitioner was a true and Just Demand—

And your Petitioner Sheweth that publication having thereon thereon paſsed the said Cause was set down to be heard and the same did Accordingly Come on to be heard on the fifth Day of November in the present year of Christ One thousand Seven hundred and ninety three when the said Mayors Court was pleased to order and Decree and did Accordingly order and Decree that your Petitioner do pay unto the Complainant the full and Just Sum of seven hundred and Sixty two Pagodas thirty two fanams and sixty five Cash together with all such Interest as then was or should thereafter become due thereon also Costs of the said Suit as by the said Decree Copy whereof is hereunto annexed for the inspection of this Honourable Court the original being ready to be produced when required may Appear—

By which said Decree your Petitioner doth Conceive himself much aggrieved and doth therefore Appeal therefrom to this Honourable Court for the following amongst other Reasons—

First..... Because your petitioner did in and by his said answer shew that the Bond in question did originate in and grow out of another Bond formerly Executed by your Petitioner and

and Stephen Towns and for which said Bond so Jointly Executed by your Petitioner & the said stephen Towns your Petitioner did not receive any manner of Consideration whatever. by your Petitioner did shew that the said Stephen Towns pretending that he was indebted unto the Complainant did prevail upon your Petitioner to Join him the said Stephen Towns in a Bond to the Complainant on account thereof and that your Petitioner did Execute the Bond accordingly whereupon your Petitioner did shew that as the transaction for which the said Bond was so Executed did not take place nor was the Consideration of the said Bond paid by the Complainant to the said Stephen Towns for or upon account of the Credit or upon the good faith and credit of your Petitioner but that the same was a state Transaction in which as your Petitioner did in and by his said answer shew he had no manner of Connection nor was in any wise interested therein either directly or indirectly the said Mayors Court ought to have Considered it as a fraudulent act on the part of the Complainant in Collusion as it should seem with the said Stephen Towns to defraud your Petitioner of his property and as what is once fraudulent must ever remain so the said Mayors Court ought to have Considered the Bond in question as Contrary to Law and tending to injure and Oppress your

Petitioner

Petitioner and that the Collusion between the Complainant and the said Stephen Towns is Evident insamuch as that the Complainant did arrest your Petitioner and keep him in Confinement on Account of the said Joint Bond by the said Stephen Towns and your Petitioner Executed as aforesaid without taking the necessary measures to bring the said Stephen Towns before the said Mayors Court and did Continue to keep your petitioner in Confinement until he had paid apart of the Amount of the said Bond and Executed another Bond with a Warrant of Attorney to Confess Judgment and Subsequently the Bond in question for the remainder —

Secondly.... Because although your Petitioner did in and by his said answer shew the Oppressive Conduct of the Complainant and that your Petitioner had not received any Consideration for the Bond upon which the Complainant had brought his Action against your Petitioner nor in any wise interested or Concerned in the transactions and dealings between the Complainant and the said Stephen Towns for and upon Account of which the former bond was Executed by your Petitioner Jointly with the said Stephen Towns yet the Complainant did not attempt to shew by Evidence any matter or thing to the Contrary by way of a traverse or denial of your Petitioners said answer and

did

did therefore in Effect confess and admit to be true the same as therein stated by your Petitioner and therefore your petitioner submits to this Honourable Court that the said Majors Court ought not to have decreed upon the Complainants said Bill of Complaint but ought to have dismissed the same as unsupported and as having Clearly Originated in fraud and collusion—

For all which reasons and such others as may be Offered at the hearing your Petitioner Most humbly prays that this Honourable Court willbe pleased to Reverse the said Decree of the said Mayors Court and that your petitioner may have such other and further Relief in the premises as to this Honourable Court shall seem meet—

Signed/ J. Stuart Hall.

Solicitor for Appellant

Mayors

Mayors Court at
Madraspatnam

L.S

Tuesday the 5th day of November
Anno Domini 1793

Present

John Mitford Esqr. Mayor
Josias Du. Pre. Porcher & Andrew Ross
Aldermen.

Between Charles Loyd of Madras Merchant Complainant and Condraigula Jaggernaut Rowat present of the same place Inhabitant Defendant—

This Cause Coming on to be Heard and Debated this day in the Presence of the Attornies on both sides On Reading the Complainants Bill with Copy of an Account Current annexed the Affidavit The Defendants Answer The Replication the General Rejoinder The Interrogatories and 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

Mayors Court

of

of Seven hundred and Sixty two Pagodas thirty two fanams and Sixty five Cash / Pagodas 762..32..65. together with all such Interest as now is or shall hereafter become due thereon untill full Payment is made also all Costs of this Suit—

Pr Cur

(Signed) G. Taylor Regr

A true Copy

(Signed) J. Stuart Hall

Solicitor for Appellant

To the Honorable Sir Charles Oakley Baronet

President in Council &c. Fort Saint George

In the Honble the Court of Appeals

Between Charles Loyd

Complainant and Condraigula Jaggernaut Row Defendant—

The Answer of the above named Charles Loyd to the Petition and Appeal of Condraigula Jaggernaut Row the above named Defendant—

Filed in my Office the 20th January 1794 Chas N. White Clerk

This Respondent for answer unto the said Petition and Appeal or unto so much thereof as this Respondent is advised is material or necessary for him to make answer unto answereth and saith that it is true that this Respondent did on or about the Eighteenth day of January and in the year of our Lord one thousand Seven hundred and ninety three Exhibit and file his Bill of Complaint in the Honourable the Mayors Court at Madraspatnam against the Petitioner for the recovery of the Sum of Seven hundred and sixty two star Pagodas thirty two fanams and Sixty five Cash as is by him stated in his said Petition and in the said Bill of Complaint so Exhibited and he this Respondent did set forth how the said debt of Seven hundred

Sixty

sixty two Star Pagodas thirty two fanams and sixty five Cash became due and owing and to the Justness of which he this Respondent did make Affidavit before the Mayor of Madraspatnam whereupon the said Mayor did order that a Summons returnable immediately and a Warrant of arrest should Issue against the said Defendant and which was Accordingly done and the said Warrant was duly served upon him now the Petitioner and this Respondent doth also admit that the said Petitioner the then Defendant did on or about the Twenty sixth day of March in the said year of our Lord One Thousand Seven hundred and ninety three Exhibit and file his answer to this Respondents Bill of Complaint as aforesaid stating in manner as is by him setforth in his said Petition and this Respondent sheweth unto this Honourable Court that to the said answer he this Respondent did file his Replication but he denies that the same did not Contain any thing new or pertinent to the matter in Issue as is unjustly stated by the Petitioner in his Petition for this Respondent saith in his Replication he did state that he did not know and therefore could not setforth what were the motives that induced the said Defendant Condraigula Jaggernaut Row to Join with the other Defendant the said Stephen Towns in the Execution of the Bond for which he this Respondent had filed his Bill of Complaint neither could he say whether he the said Condraigula Juggernaut Row did or did not receive any or what Consideration on Account thereof but this Respondent did state that he verily believed that there must have been a Consideration given to the said Stephen Towns previous to his Joining in the Execution of the said Bond as mentioned by this Defendant in his answer otherwise it was not reasonable to be supposed that he would have paid the five hundred Pagodas as was acknowledged by him in his said answer and this Respondent saith that he did further state in his Replication that the debt for which the said Bond was given was a Just and true debt originally due from the said Stephen Towns to this Respondent but upon the Respondents pressing him for the discharge thereof he the said Stephen Towns did propose the Defendant as his security and did become answerable for the same and this Respondent did further state in his said Replication that he thought the Defendant a fair and honest man and a man of property and this Respondent in his said Replication did further state that the said Stephen Towns had Accordingly Executed a Bond Jointly with the Petitioner and that some time afterwards when the said Bond

Bond became payable this Respondent did Demand the same and after several fruitless Applications did institute a suit against the Petitioner and did arrest him for the amount whereupon he did pay the Sum of Five hundred Pagodas and Costs of suit and did request further time for the payment of the remainder of the debt which being granted he did Execute a Bond and Judgment and this Respondent in his said Replication did further shews that after some time the Petitioner made a settlement of Accounts with this Respondent and did then Execute the Bond for which the present action was brought and this Respondent in his said Repli: cation did further state that he had been inhabits at almost Constant intercourse with the Petitioner ever since the granting of the Bond now in suit and that he the Petitioner never did dispute or in any manner all in question the Justness of the said Bond orgive this Respondent the most distant reason either directly or indirectly to suppose that he designed to object to the discharge thereof neither did he ever assign any other reason to this Repliant for the non payment thereof until after the Commencement of the present suit save and Except that it was not convenient to him and this Respondent sheweth to this Honourable Court that to the foregoing Replication the Petitioner did not think proper to reply Except by a general Rejoinder as is by him stated in his said

said Petition whereupon Issue did Join and rules did pass for the Examination of Witnesses and this Respondent did proceed to Examine one Arroonachellum as a Witness in this Cause but this Respondent denies that the words of the deposition of the said Arrunachellum Moodelly are not stated by the Petitioner in his Petition Accurately and prays leave to refer to the original Affidavit with the records of the Mayors Court by which it will Appear that the said Witness Arrunachellum in answer to the second Inter: = rogatory did depose that the Defendant now the Petitioner did at all times fully Acknowledge the Justness of the Complainants demand and this Respondent doth admit that Publication having passed in the said Cause the same was set down for hearing and was Accordingly heard when the Mayors Court was pleased to order and decree in manner as setforth by the Petitioner in his said Petition and by which he the Petitioner was required to pay to this Respondent the full and Just sum of Seven hundred and sixty two star Pagodas thirty two fanams and sixty five Cash together with the Interest and Costs of suit as will more fully and at Large Appear upon the proceedings of the Honourable the Mayors Court to which as well as to all other proceedings had in the Cause this Respondent begs leave to refer and to have such full and ample benefit thereof as

as if the same were herein at large setforth and this Respondent humbly Contends that by the said Decree of the Honrable the Mayors Court as aforesaid he hath not received any advantage further then what he was legally and substantially intitled to and that the Petitioner hath incurred no wrong or damage thereby which could have warranted him or given him any Cause or Colour to Appeal therefrom for the following Among other reasons This Respondent in answer to the first reason assigned by the Petetioner saith that the Petitioner having fully admitted in his original answer the Execution of the Bond on which this Action had arisen it became unnecessary for this Respondent to have Entered into any Evidence whatever for the Petitioner doth not setforth any matter Either in his answer or in Evidence that Could bar this Respondent of recovery under the said Bond and whether the Petitioner did or did not receive a Consideration Consonant and agreeable to the Amount of the said Bond is a question not in Issue and Consequently irrelevant to the Cause It is evident that he voluntarily entered into the Obligation and for which the Law will presume the Consideration and it is also fair and reasonable to believe that a real and valuable Consideration Actually was received by the Petitioner from the Circumstance of his having According to his own shewing paid the sum of Five hundred Pagodas part of the former Bond as

as before stated but whether or not this was the Case yet the Credit with this Respondent was given by reason of the Petitioners Obligation for the payment of the Sum Conditioned for in the said Bond and the motive of a party who engages by such a solemn Instrument for the payment of anothers debt cannot be understood nor is it necessary to be understood by the Obligee To the Second reason assigned by the said Petitioner This Respondent answereth and saith that the Execution of the Bond being Confessed by the Petitioner in his answer it was not incumbent on this Respondent to prove any thing further for the due Execution of a Bond being acknowledged by the obligor the Consideration is always presumed and taken for granted and therefore this Respondent did not hold himself bounden or think it any way necessary to shew the nature of a Debt which was Confessed by the party himself and this Respondent Craves leave to refer to the answer of the said Petitioner whereby it will appear that nothing therein Contained did render it necessary or indeed did warrant this Respondent ingoing into a long and expensive Examination to prove circumstances no way relevant to the matter at Issue for the said answer contains not any Charge of Oppression Fraud or Collusion on the part of this Respondent notwithstanding the Petitioner hath from motives Apparent thought proper to introduce such Charges in his present Petition no doubt with a view to insinuate that such were contained in

in his original answer and this Respondent doth aver that had any such Charges been brought forward against him he would have fully answered and refuted them and this Respondent Lastly saith that the said Bond on which this action was instituted at the instance and prayer of his Petitioner was produced and Exhibitted in the Course of the said Cause and read and Considered at the fenal hearing of the same —

For which reasons and such others as may be offered at the hearing this Respondent prays that the said Decree of the Honble the Mayors Court as Aforesaid may be Confirmed and that the Petitioners said Petition and Appeal may be dismissed with Cost to be paid by the Appellant —

/Signed/ J. P. Cook,

Solicitor for Respondent

Court of Appeals

Court of Appeals
at
Madraspatnam

Saturday the 7th day of June
Anno Domini 1794

Between Condraigula Juggernaud Row at Present of Madras Inhabitant Appellant and Charles Lyall of Madras Merchant Respondt

This Cause Coming on this day to be heard and debated before this Court by the Attornies on both sides upon hearing the Petition of Appeal and Answer and the Several Exhibits of the Honble the Mayors Court together with the Decree of the said Court given in this Cause on Tuesday the 5th day of November Anno Domini 1793 upon due Consideration had of the Matters therein Severally Contained And of the Pleadings and Arguments used by the Attornies on both sides This Court doth think fit to Order and Decree and doth Accordingly Order and Decree that the said Decree of the Honble the Mayors Court do stand affirmed and that the appellants Petition be hence dismissed with Cost.

/Signed/ Robert Clerk
Clk

To

To the Kings Most Excellent Majesty in Council

Between Charles Leyd Complainant

and Stephen Towns and Condraigula Juggernaud

Row Defendants—

humbly Sheweth

The humble Petition and Appeal of Condraigula Juggernaud Row one of the above named Defendants—

That the Complainant above named did on or about the Eighteenth day of January and in the present year of Christ One thousand seven hundred and ninety three Exhibit and file his Bill of Complaint in the Mayors Court of Madraspatnam against your Petitioner and the said other Defendant for the recovery of the Sum of One thousand two hundred and Eighty four Pagodas thirteen Fanams and forty Cash Current Money of Madras pretending the same to have arisen and become due on a Bond Executed by your Petitioner in Conjunction with the said other Defendant to the Complainant

Filed in my Office the 20th June 1794 Robert Clerk Ctt

And your Petitioner sheweth that the said other Defendant being without the Jurisdiction of the said Court and your Petitioner having been served with process to appear to and answer the said Bill your Petitioner did accordigly on or about the Twenty Sixth day of march which was in the said present year of Christ One thousand Seven hundred and Ninety three Exhibit and file his answer to the Complainants said Bill of Complaint therein and thereby setting forth that although he should admit to have Executed the Bond in question yet that your Petitioner did deny he did either directly or indirectly receive any manner of consideration on Account thereof and further that your Petitioner had heard and believed the fact so to be that the said other Defendant and the Complainant having had dealings and transactions together there might have been an Apparent balance of

of Accounts in his the Complainants favor and that it was upon that apparent balance that the Bond in question was Executed and not upon an Account of Cash then lent and Advanced to the said other Defendant and therefore the Complainant did not run away with upon and on Account of the Security of your Petitioner and your Petitioner and your Petitr did also state that he was not Concerned or interested in any the dealings and transactions between the Complainant and the said other Defendant and that he Executed the said Bond at the instance and request of the said other Defendant and that thereupon your Petitioner did humbly Submit to the said Mayors Court that he did not stand indebted unto the Complainant in the Sum Sued for or any part thereof—

And your Petitioner Sheweth unto this honourable Court that to your Petitioner said Answer the Complainant did Exhibit and file his Replication and as the same did not Contain any new or pertinent Matter your Petitioner did Exhibit and file a General Rejoinder—

And your Petitioner sheweth that upon the above proceedings Issue did Join and rules did pass for the Examination of Witnesses and the Complainant did Examine C. Arconachellam Moodelly who Deposed that he had been to Demand payment of a Sum the Amount of which he had forgot Arising out of a Bond which he know nothing of but he says that your Petitioner did at all times Acknowledge the Justice of the Demand and know the indulgence of time for the payment thereof—

And your Petitioner Sheweth unto this Honourable Court the said Cause was set down to be heard and Determined and the same coming on to be heard and determined on the fifteenth day of this present Instant the said Mayors Court was pleased to

to order and Decree and did accordingly order and Decree that your Petitr do pay unto the Complainant the full and Just Sum of One thousand two hundred and Eighty four Pagodas thirteen fanams and forty Cash together with all such Interest as there was or should thereafter become due thereon untill full payment made also all Costs of Suit as by the said Decree reference being thereunto may Appear —

That By the said decree of the said Mayors Court your Petitioner did Conceive himself aggrieved and did thereafter appeal therefrom to the Court of Appeals at Madraspatnam for the following Amongst other reasons —

First Because your Petitioner in and by his said Answer upon Oath did shew that Although he might have Executed the Bond in question Jointly with the other Defendant Stephen Towns yet that he did not receive any manner of Consideration an Account thereof and that the debt if any for which the said Bond was Executed was not for money then lent and Advanced nor on Account of any recent Transaction in which the Complainant and the said other Defendant Stephen Towns had been Concerned together and Consequently the same was not on Account of money lent and advanced by the Complai= =nant to the said other Defendant Stephen Towns nor on Account of any transaction that had taken place between them upon the Credit responsibility and good Faith of your Petitioner and further your Petitioner did in and by his said answer shew that he never was Connected with the said Concerns of the Complainant and the said other Defendant Stephen Towns nor in any wise interested therein and inso much as the Complainant had not attempted to shew that any

any Consideration was ever given to your Petitioner on Account of the Bond upon which he had pretended to bring his action against your Petitioner nor had he in any wise traversed the several matters and things in your Petitioners said answer Contained and as your Petitioner was advised that no Instrument was binding upon a party unless Consi= =deration proved and unless it be proved that money was lent and Advanced or other Credit given by one party to another upon the Credit Responsibility and good faith of a third person your Petitioner did submit to the said Court that the said Decree of the said Mayors Court was Contrary to Law —

Secondly Because the Complainant had not proved the debt for which he had brought his action which he ought to have done to have Entitled himself to a decree but instead of Examining any person to the Execution of the Bond he had brought forward a Man who deposed that he had frequently Demanded payment of a Sum of Money the amount of which he did not recollect that he had on the part of the Complainant Applied to your Petitioner Several times and that your Petitioner had promised payment thereof which could not Legally or otherwise Apply to the Bond in question —

Thirdly and Lastly Because the Complainant had Carried on the Action against your Petitioner without bringing the said other Defen= =dant before the said Mayors Court which it was incumbent on him to have done as the said other Defendant was within the Jurisdiction of the said Mayors Court or have shewn good and sufficient Cause to the Contrary for otherwise it would Appear the premises Considered that there was some Collusion between the Complainant and the said

Other

other Defendant to injure your Petitioner and defraud him of his property and this was the more evident as the Complainant had kept back the said Bond refused to prove the Execution thereof or the Consideration Money that had been paid on Account thereof and therefore and for as much as the said Bond was said to have been Executed Jointly by your Petitioner and the said other Defendant Stephen Towns and as the said Stephen Towns was within the Jurisdiction the said Mayors Court ought not to have given a Seperate decree against your Petitioner and your Petitioner Sheweth unto your Most Excellent majesty in Council that to your Petitioner said Petition of Appeal the Complainant did Exhibit and file his answer Repleate with Vague Evasive and impertinent matters and your Petitioner Sheweth unto your most Excellent Majesty in Council that your Petitioners said Petition of Appeal and the Complainants answer thereto Coming on to be heard and determined before the said Court of Appeals on the Seventh day of June in the present year of Christ one thousand Seven hundred and ninety four the said Court of Appeals was pleased to order and Decree and did Accordingly order and Decree that the said Decree of the said Mayors Court should stand Affirmed and that your Petitioner said Petition of Appeal should be dismissed with Costs By which said Decree of the said Court of Appeals your Petitioner doth Conceive himself much aggrieved and doth therefore Appeal from the said Decrees of the said Mayors Court and Court of Appeals to your most Excellent Majesty in Council for the Reasons in your Petitioners said Petition of Appeal to the said Court of Appeals setforth and in this your petitioners Petition of Appeal to your most Excellent Majesty in Council recited —

And thereon your Petitioner most humble prays that your most Excellent Majesty in Council will Vouchsafe to reverse the said Decrees of the said Mayors Court and Court of Appeals and grant unto your Petitioner such further and other relief as to your most Excellent majesty in Council Shall seem Meet —

/Sig/ J Stewart Wall.
Solicitor for Appellant

Court

Court of Appeals }
Madraspatnam. } ss.

Saturday the 7th day of June
Anno Domini 1794

Between Condraigulu Juggernaut Rowat
Present of Madras Inhabitant Appellant and
Charles Loyds of Madras 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 Honourable the Mayor Court together with the Decree of the said Court given in this Cause on Tuesday the 5th Day of November Anno Domini 1793 upon due Consideration had of the matters therein severally Contained and of the Pleadings and arguments used by the attornies on both sides This Court doth think fit to Order and Decree and doth accordingly order and Decree that the said Decree of the Honourable the Mayors Court do stand affirmed and that the Appellants Petition be hence dismissed with Costs—

By Cur.

/Signed/ Robert Clerke
Clerk

a true Copy
/Signed/ J. Stuart Hall.
Solicitor for Appellant

Saturday

Saturday the 14th June 1794—
Sir Charles Oakeley Baronet
Ernst William Fallofield and
Geore Westcott—

In the Hon^ble the Court of Appeals

In the matter of Appeal wherein
Rajastree Latchamanarow is
Appellant and Thomas Parry
is Respondent
In the Cause wherein
Thomas Parry is Compl^t
and
Ram Row is Defendant—

The Affidavit of James Stuart Hall one of the Solicitors of this Hon^ble Court and Solicitor for the Appellant—

The above named James Stuart Hall maketh Oath and saith that the above named Rajastree Latcha=mana Row and Ram Row were at the time of filing the Petition of Appeal by the above named Appellant in this Hon^ble Court in the Service of this Highness the

the Nabob and this Deponent hath heard and verily believes that shortly after filing the said Petition of Appeal in this Honble Court as above stated the said Rajastree Latchamana Row and Ram Row were both ordered into confinement of their Master his said Highness the Nabob in some Fort in the interior part of the Carnatic so that this Deponent has not been nor is he able to have access to the said Latchamanarow and therefore this Deponent is incapable of receiving any Instructions from him for his guidance should this Honble Court be pleased to Determine in favour of the Prayer of the Petition of Appeal and the Respondent should Appeal to his Majesty in Council or should it become necessary for the appellant to appeal to his Majesty in Council and this Deponent further says he does not know nor does he believe that the said Rajastree Latchamunarow has any Agent or Attorney at Madras or within the Jurisdiction of this Honble Court —

Sworn to this 14th day of June 1794 /Signed/ J. Stuart Hall
before me /Signed/ J. Daly Aldn

To

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

In the Court of Appeals
at Madraspatnam —

Between Caumatchy Ammah of Madras Inhabitant Acting Administratrix of Neliyapah Commandant Deceased Complainant and Vencataramiah Bramany of the same Place Inhabitant Defendant —

The humble Petition and Appeal of the above named Defendant —

Sheweth

That on the Ninth day of February in the year of Our Lord One thousand Seven hundred and Ninety two the above named Complainant as Acting Administratrix of Neliyapah Commandant Deceased did Exhibit and file her Bill of Complaint in the Mayors Court at Madraspatnam against your Petitioner for the recovery of the Sum of Three thousand and thirty Eight star Pagodas

Filed in my Office the 17th March 1794.
Chs. N. White Cler

Pagodas and three fanams thereby charged to be due and owing to the Complainant as Administratrix aforesaid by your Petitioner upon a Bond Executed by your Petitioner to the said Camatchey Ammah's Intestate a Copy of which said Bond was annexed to the Complainants said Bill of Complaint and prayed to be admitted as part thereof and the said Caumatchey Ammah did further by her said Bill of Complaint set forth that she frequently made Application to your Petitioner for payment of the said Sum of Three thousand and thirty Eight star Pagodas and three fanams but that your Petitioner refused to pay the same the said Complainant by her said Bill of Complaint therefore prayed That your Petitioner might be Decreed to pay unto her the said Complainant as Administratrix aforesaid the said Sum of Three thousand and thirty Eight star Pagodas and three fanams and also all Costs of the said Suit - To which said Bill of Complaint your Petitioner did on or about the Tenth day of April in the said year One thousand Seven hundred and Ninety two file his Answer and thereby denied to be indebted unto the said Complainant either as Administratrix of the said Neleyapah Commandant Deceased or otherwise

otherwise in the Sum of Three thousand and thirty Eight Star Pagodas and three fanams or in any such Sum of Money but your Petitioner admitted that he did on or about the thirteenth day of March which was in the year of Our Lord One thousand Seven hundred and Eighty Eight duly Execute to the Complainants said Intestate the Bond which the said Complainant had as aforesaid put in suit against your Petitioner and your Petitioner in his said Answer further set forth that there had been Money Transactions and dealings between your Petitioner and the said Intestate upon Account of supplying the East India Company with Bullocks, and such Accounts having been adjusted a balance of Three thousand Pagodas thereupon appeared in favor of the said Intestate, for which your Petitioner executed the said Bond And your Petitioner in his said Answer further set forth that shortly after the said Bond had been executed /to wit/ on the Seventeenth day of the said Month of March your Petitioner paid unto the said Complainants said Intestate the Sum of Two hundred star Pagodas upon Account of the said Bond And your Petitioner in his said Answer further set forth that on the thirtieth of the said Month your Petitioner

paid

paid the said Intestate the further Sum of Seven hundred and fifty star Pagodas upon the same Account And your Petitioner in his said Answer further setforth that he also did on the Twenty sixth day of April in the said year One thousand Seven hundred and Eighty Eight pay- the said Intestate in his life time the further Sum of One thousand star Pagodas upon the same Account, and as appeared by three several receipts for the same duly granted by the said Intestate in his lifetime, true Copies of the Translation whereof were to your Petitioners said Answer annexed, to which your Petitioner referred, the Originals of which receipts were ready to be produced when required, And your Petitioner in his said Answer further setforth that shortly after the said three payments were made your Petitioner went up to the Country, but previous to his departure he Ordered his Gomastah to pay the Residue of the Monys then due upon the said Bond to the said Intestate if he should require the same in the absence of your Petitioner- And that your Petitioners said Gomastah Accordingly paid the said Intestate at the times mentioned in the Account Current annexed to the Complainants Bill of Complaint, the respective Sums of Four hundred Pagodas,

and

and Five hundred Pagodas therein mentioned- And your Petitioner further setforth that the said Intestate did shortly afterwards as your Petitioner was informed and verily beleived apply to your Petitioners said Gomastah fully to discharge the said Bond, and that the said Gomastah was ready and offered so to do, but that upon the said Gomastah requiring the said Intestate to deliver up the said Bond, the said Intestate as your Petitioner has been informed and verily beleived refused so to do, alledging that his receipts were outstanding, being the three receipts hereinbefore mentioned and that until the same were returned to him the said Intestate, he would neither deliver up the said Bond or pass any further Voucher respecting the same, which receipts the said Gomastah could not then deliver up to the said Intestate, they being then in the custody of your Petitioner, and that thereupon the said Gomastah declined paying off the Balance due upon the said Bond- and your Petitioner in his Answer further setforth that before any thing further was done respecting the said Bond the said Intestate died- And your Petitioner further setforth in his said Answer that shortly after the said Intestates Death his Wife the now Complainant, Accompanied by her brother demanded of

your

your Petitioner the remainder of the Monies which were then due upon the said Bond, And your Petitioner thereupon informed them, that it should be paid to whoever should Administer to the Estate of the said Intestate - And your Petitioner in his Answer further set forth and admitted that the said Complainant together with Tandavaroya Moodliar in the said Complainants Bill of Complaint named obtained letters of Administration of the goods and chattles of the said Deceased, and renewed their Application to your Petitioner respecting the said Bond - and your Petitioner thereupon desired to have Credit given him for the Amount of the said three receipts hereinbefore mentioned and for the other Monies which were paid upon Account of the said Bond, and that your Petitioner would then pay whatever Balance should Appear against him - And your Petitioner in his Answer further set forth that instead of the said Complainant complying with such the Reasonable request of your Petitioner, She the said Complainant immediately afterwards without giving credit for the Amount of the said three receipts Exhibited the said Bill of Complaint against your Petitioner for the recovery of the full Sum of Three thousand and thirty Eight Star Pagodas

Pagodas and three fanams And your Petitioner by his Answer admitted his being indebted to the said Complainant as Administratrix aforesaid upon Account of the said Bond in the Sum of Two hundred and Sixty Eight star Pagodas Twenty five fanams and forty Cash and no more, as was particularly shewn by an Account Current annexed to your Petitioner said Answer, to which your Petitioner humbly referred, and your Petitioner in his Answer also Set forth that he had always been ready and willing and then was ready and willing to pay to the said Complainant as Administratrix as aforesaid the said Two hundred and Sixty Eight star Pagodas Twenty five fanams and forty Cash - And your Petitioner then brought the said Two hundred and Sixty Eight star Pagodas Twenty five fanams and forty Cash into Court ready to be paid to the said Complainant if she would accept of the same in full Satisfaction of her said Demand and in bar of all Interest and Costs —

To which said Answer the Complainant on the fifteenth day of May One thousand Seven hundred and Ninety two, Replied and for Replication thereunto said, That your Petitioner was Indebted to her the said Complainant in the said Sum of Three thousand and thirty

thirty Eight Star Pagodas and three fanams, and that your Petitioner did not at the periods in his said Answer setforth pay unto the said Complainants Intestate the said several Sums of Money, as setforth in the Answer of your Petitioner; or any part thereof, for that the Receipts alledged to have been granted by the Complainants said Intestate, were never granted by him and that the signatures thereto, were not of his hand writing, and that the name to the several receipts affixed was not the name of her said Intestate, because it was not spelt Nellyapah but Nellian, for that in all his Transactions and Dealings he was known by that name, and no other; and thereupon the Complainant alledged that the said Receipts were fictitious and brought forward by your Petitioner with a View of defrauding the Complainant in the premises — and the said Complainant has in her said Replication setforth, that She does not know whether her Intestate did or did not apply to the Gomastah of your Petitioner for the payment of the Money due on the said Bond, but that She well knew that the Gomastah of your Petitioner never did pay the Sums of Four hundred Pagodas and Five hundred Pagodas, as Setforth in your

your Petitioners Answer nor any other Sum or Sums of Money whatever to the said Complainants said Intestate on Account of the said Bond, nor on any other Account, but that the said Sums were paid by your Petitioner himself to the said Complainants Intestate, and that the said Complainant in consequence thereof wrote off the same thereon, and further that your Petitioner knew not as the said Complainant alledged how to introduce the said pretended receipts otherwise than to set up a pretext that the said two Sums of Four hundred Star Pagodas and five hundred star Pagodas were paid by his Gomastah during his absence, and that the said Complainants said Intestate did think proper in such the Transaction with your Petitioners said Gomastah, to do that which was regular and customary, but which he had not observed in his Transactions with your Petitioner that is to say, to indorse on the said Bond the Amount received on Account thereof And the said Complainant in her said Replication further setforth that her Intestate never did refuse to indorse on the back of the said Bond, any Sum of Money paid in liquidation thereof, and that therefore the Assertion

of

of your Petitioner in his said Answer contained, that his said Gomastah offered to pay the balance due on the said Bond, provided the said Complainants said Intestate would deliver up the same or Endorse the balance which his your Petitioners said Gomastah then so offered, is without foundation or truth and the said Complainant for further Replication setforth, that your Petitioner never did desire her to give him Credit for the Amount of the said Three pretended Receipts before mentioned — And further that the Complainant never knew that there were any Receipts against the Amount Conditioned to be paid by the said Bond, other than the two Receipts indorsed thereon, and that the receipts by your Petitioner set up are fictious, and that the Signatures thereunto Set and subscribed, were not of the Hand writing nor did they express the name of the said Intestate —

To which said Replication your Petitioner did on or about the Twenty Sixth day of June in the same year file his Rejoinder, thereby setting forth that his said Answer and every part thereof was true, and that he did not stand indebted to the said Complainant in the Sum by the said Bill alledged, but

but admitted as in his said Answer is fully and at large setforth, that he stood indebted unto the Complainants Intestate in the Sum of Two hundred and Sixty Eight Pagodas twenty five fanams and forty Cash and no more, for that the several and respective Sums of Money in your Petitioners Answer setforth, were by the Gomastah of your Petitioner paid unto the said Intestate in his life time, and which fully and clearly appeared to have been received by the Complainants said Intestate, by three Receipts so given by the said Intestate to your Petitioners Gomastah — And your Petitioner said that the said three Receipts were not brought forward with the fraudulent views in the Complainants said Replication untruly alledged, but for the Sole purpose of obtaining due Credits for Actual payments so by your Petitioner made to the said Intestate, and farther that the Complainants said Intestate was as well known by the name of Nellian as of Nellapah and that some times he signed his name Nellian, and at other times he signed his name Nellyapah, And your Petitioner also in his said Rejoinder setforth that an Indian Native seldom had one uniform way of Signing or spelling his name, and which appeared by

by a reference to the said three Receipts which severally begun in the name of Nelleyapah and conclude with the Name Nellean, and your Petitioner denied that the said Intestate did always use and was known by the name of Nelleapan, and none other, for that the Contrary thereof appeared by the Complainants own Shewing, inas much as she not only commenced the said suit as Administratrix of Nelleyapah, but the Bond in question was also taken in the Name of Nelleyapah, and in further manifestation thereof, the said Complainant did by her said Replication – admit that the said Intestate was known by the name of Nelleyapah, and the said Complainant did on or about the Twelfth day of June after filing her said Replication, Apply to the Honble the Mayors Court for permission to amend the same, alledging therein that her Intestate was always known by the name of Nelleapah, which the said Mayors Court was pleased to allow, desiring at the same time that no advantage should be thereafter taken by such Amendment and your Petitioner further set forth in his said Rejoinder that the Sums of Four hundred Star Pagodas and Five hundred star Pagodas credited in the said Account Current were paid by your Petitioners Gomastah, to the said Intestate, upon your Petitioners Account in the absence of your Petitioner; and that such Payment so made by your Petitioners Gomastah was a fact, and not a pretext as by the said Replication is untruly alledged – and that your Petitioner did not as alledged by the Complainants said Replication, write off the said Sums of Four hundred Star Pagodas, and Five hundred star Pagodas upon the said Bond, and that the balance then so due and owing would in the life time of the said Intestate have by your Petitioners said Gomastah, been paid off and discharged but that the said Intestate refused to deliver up the said Bond to your Petitioners Gomastah, unless the receipts herebefore granted on receiving the said three Sums in part Payment thereof, were by your Petitioners Gomastah delivered up, which at that period could not be done, as the said three Receipts were then in the posession of your Petitioner, who was absent from Madras – and that the sweral Sums of Money in the said Receipts mentioned were actually and bonafide paid by your Petitioner to the said Intestate – your Petitioner further Sheweth that upon the aforesaid pleadings, Issue was Joined and Witnesses were Examined as well on the part of the Complainant

Petitioners

Complainant, as of your Petitioner - And your
Petitioner Sheweth, that Senevasia Iyengar a
Witness produced Sworn and Examined on the
part and behalf of the said Complainant, to the first
Interrogatory said that he knew the Complainant and
your Petitioner and that he had known them many
years, and to the second Interrogatory the said Depo=
=nent deposed that he was Acquainted with the
Transactions relative to a Bond granted by your
Petitioner to the said Intestate, to the Amount of Three
thousand Star Pagodas, and said he went with the
said Intestate to demand payment of the Amount of
the said Bond from your Petitioner, and that your
Petitioner paid the Sum of Nine hundred Star Pagodas,
at two different times, and that the said Intestate did
Sign an Acknowledgement on the Bond for the said
Sum of Nine hundred star Pagodas - and that your
Petitioner did Acknowledge that he stood indebted unto
the said Intestate, in the whole Amount of the said
Bond, excepting the two Sums he paid in part
thereof and that the Sums so paid by your
Petitioner were written off on the said Bond,
and

and that the said Intestate did Sign the same,
and that he the Deponent was well Acquainted
with the Character and hand Writing of the said
Intestate, and had often seen him write, and often
received letters from him, and that he looked at the
paper writing then produced, purporting to be
receipts for Money received by the said Intestate from
your Petitioner, and that the names therein respectively
set and subscribed, were not of the proper hand writing
of the said Intestate, and that he the Deponent was
induced to believe the same, were not the Signatures
of the said Intestate because the said Signatures
differed from his the said Intestates proper
hand Writing, and that in the said Signatures
the name Appears Nelleyan instead of Nelleyapen
— That he also looked at the Bond from your
Petitioner to the said Intestate and that the
Signature opposite the Two Sums Acknowledged
to have been received was of the proper hand
writing of the said Intestate - and your Petitioner
Sheweth That on the fifteenth day of June One
thousand

thousand Seven hundred and Ninety three, —
Vencatachella Moodelly a Witness produced Sworn
and Examined on the part and behalf of the said —
Complainant to the first Interrogatory said that he
knew the Complainant and your Petitioner, & that he
had known them for many years, and to the said —
Second Interrogatory deposed to the like effect as the
said former Witness had deposed unto, and further that
on his the Deponents Accompanying the Intestate's
Brother and Administrator Tondavaroya Moodiliar,
to the house of your Petitioner, That your Petitioner
promised to pay the said Tondavaroy Moodiliar the
Sum of Two thousand and One hundred star Pagodas,
being the Balance of the Principal due on the said
Bond, but that your Petitioner would not pay the
said Tondavaroy Moodiliar the Interest to which the
said Tondavaroy Moodiliar Answered, that you
meaning your Petitioner must pay the Interest —
To the third Interrogatory the said Deponent deposed
that he went again to the house of your Petitioner
about a fortnight afterwards, for the purpose of receiving
the

the Money before mentioned and that the said Tandava=
=roya Moodiliar demanded the Sum of Two thousand
and One hundred Star Pagodas from your Petitioner,
and also the Interest due thereon, and that your Petitioner
did Acknowledge to be indebted in the said Sum, and
promised to pay the same, but that your Petitioner at
that time Assigned as an excuse for not paying the
same, that he had received Five thousand Madras —
Pagodas from Nellore which he would convert into Star
Pagodas, and that when he had done so, he would —
discharge the balance due on the Bond in question
and that Nyneapah Moodelly, Sadaswa Moodelly —
Syandea Moodelly, Soobaroy, Kistnier Vencataramier,
and some others were present when the said demand was
made, and that your Petitioner promised he would
discharge the principal of the said Bond, but that the
said Tandavaroya Moodiliar insisted on being —
paid the whole of the said Demand. To the fourth
Interrogatory he said that he was perfectly acquainted
with the Malabar Language and that the —
Malabars have one uniform way of Signing and
Spelling

spelling their names, and that it was customary, and the uniform practice among the Natives in signing Bonds and Receipts for Money, and in signing Letters or other writings to subscribe their names different to what they are generally called or known by and not by the name that he may subscribe to any Deed or writing, and that the Complainants Intestate usually subscribed his name Nelleyp and was generally known by the name of Nelleyapah Commandant—

And your Petitioner Sheweth that on the Eleventh day of June One thousand Seven hundred and Ninety three Soobroya Pillay Conicoply as witness produced Sworn and Examined on the part and behalf of the said Complainant, to the first Interrogatory said that he knew the Complainant and your Petitioner, and to the former part of the said Second Interrogatory deposed to the same effect as the last Witness, and further that your Petitioner did promise to pay the said Tondavaroy Moodiliar in case he could produce a proper Person to Assure your Petitioner that he the said Tondavaroy Moodiliar was entitled to receive the said Money, which the said Tondavaroya Moodiliar promised to do

do, and to the third Interrogatory he said that he did about a fortnight afterwards Accompany the said Tondavaroya Moodiliar to the house of your Petitioner, and that the said Tondavaroya Moodiliar did demand a Sum of Money from your Petitioner amounting to Two thousand and One hundred Star Pagodas Principal and three hundred and odd Pagodas Interest on Account of the before mentioned Bond, and that your Petitioner did Acknowledge to be indebted in the said Sum and promised to pay the same, and that your Petitioner did Assign for none Payment of the same, the Reason set forth by the last Witness, and that Ramia Pillay Venataromiah Nymeapah Moodelly Venatachella Moodelly Kistnain Sadaseva Moodelly, and some other Persons were present at the time the said demand was made by the said Tondavaroya Moodiliar, And your Petitioner promised to pay the Amount, the latter part of the said Interrogatory deposed to, corresponder with what the last Witness deposed, and to the fourth Interrogatory he has deposed to the same effect as the last Witness, and concludes with Deposing that the Intestate always subscribed his Name Nelleyaper, and that he was generally known by the name of Nelleyapah Commandant—

And

And your Petitioner Sheweth that Kistnaw Conicoply a Witness produced Sworn and Examined on the part and behalf of the said Complainant, to the first Interrogatory said he knew the Complainant and your Petitioner, and to the former part of the second Interrogatory deposed to the same Effect as the former Witness, and further said that he did about four or five years ago Accompany Tondavaroya Moodeliar the Brother and Administrator of the said Intestate to the house of your Petitioner, for the purpose of receiving the Balance due on the Bond in Question, and that your Petitioner did promise, provided the said Tandavaroyah Moodeliar would produce some Person that would Assure your Petitioner that the said Tandavaroya Moodeliar was entitled to receive the same, and to the third Interrogatory the said Deponent said that he did about a fortnight afterwards Accompany again the said Tondavaroya Moodeliar to the house of your Petitioner for the purpose of Receiving the Money before mentioned and that the said Tondavaroy Moodeliar did demand a Sum of Money from your Petitioner and that the Sum so demanded was Two thousand and One hundred

hundred Star Pagodas and that your Petitioner promised to pay the same and that your Petitioner made the same excuse as the other witness deposed respecting the Madras Pagodas and that the following persons Nincapah Moodeliar Soobarroya Vencalachella Moodelly Sadaseva Moodelly Vencataramiah and some others were present at the time the said demand was made by the said Tondavaroya Moodeliar and that your Petitioner promised to pay the amount and that your Petitioner said he would only pay the Principal of the said Bond to which the said Tondavaroya Moodeliar did not Consent, and to the fourth Interrogatory deposed to the same effect with the other witnesses with respect to his knowledge of the Malabar Language and the Signatures of Malabars in general and further sets forth that it is customary when a Suit is instituted in the name of a Person that such suit Suit be Instituted in the name he is generally called or known by and not by the name that he may subscribe to any Deed or writing and concludes his deposition by setting forth, that the Manner in which the Intestate usually subscribed was Nellyapen, and he was generally known by the name of Nellyapah Commandant And your Petitioner Sheweth, That Moota Moodeliar a witness produced Sworn and Examined on the part and behalf of the said Complainant to the first additional Interrogatory said, he knew the Complainant and your Petitioner and to the Second additional Interrogatory deposed to the same effect as the former Witness, and further that he was present and

did

did go with the said Intestate in his life time to demand payment of the amount of the said Bond from your Petitioner about Six years ago, and that the sum your Petitioner paid was Nine hundred Star Pagodas at different times - and that an acknowledgment on the back of the said Bond was signed by the said Intestate and that your at the time he made the last payment acknowledged, that he stood indebted unto the said Intestate in the whole amount of the said Bond - excepting the Two Sums he paid in part thereof and that the Sums so paid were written off on the said Bond, and that the said Intestate did Sign the same, and that he was well acquainted with the Character and Manner of the hand writing of the said Intestate, and that he had looked at the paper writing produced and Shewn to him, purporting to be receipts for money received by the said Intestate from your Petitioner and that the names thereon respectively set and subscribed are not of the proper hand writing of the said Intestate and further that the motives which Induced him to believe the same not to be the signature of the said Intestate, are, that the signatures to the said - Papers are different from the manner and Character of the said Intestates hand writing And that the said Signatures are Nellian instead of - Nellyapen and that he had looked at the Paper writing them produced purporting to be a Bond from your Petitioner to the said Intestate - and said that the Signature Opposite to the two Sums Acknowledged to have been received in part of the said Bond was of the proper hand writing of the said Intestate And your Petitioner Sheweth that Ramiah Pilley,

a

a witness produced Sworn and examined on the part and behalf of the said Complai=nant to the first Interrogatory said that he knew the Complainant and your Petitioner and to the Second Interrogatory said he knew the Bond was given to the said Intestate by your Petitioner, and that although the said Bond was in the name of the said Intestate yet the money was justly due from your Petitioner to the said Intestate Vencala Ramapilla Tambro Naick and the said Deponent but that the principal part of the said Bond was the property of the said Intestate And the remainder belonged to Vencata Ramahpilla Tomboo Naick, and the said Deponent and that the Sum of Four hundred Pagodas was paid the twenty Second day May One thousand Seven - hundred and Eighty eight and a receipt for it given signed by the said Intestate as appears endorsed on the Bond that on the second Day of June in the same year another Receipt was given for Pagodas Five - hundred and that the said Intestate took his Share out of the above mentioned Sums and gave to the said Vencataramapellah Tomboo Naick and the said Deponent their Respective Shares and to the third Interroga=tory said that the Payments of the aforesaid sums four hundred Star - Pagodas, and five hundred Star Pagodas were made in the hous of your Petitioner and that the Sum of Nine hundred Star Pagodas was - wrote off on the Bond at his House at Madras, and to the last - Interrogatory said that he this Deponent with the said Vencata Rammah Pillay, and Tomboo Naick after the said Intestates

decease

decease demanded of his widow the full proportion of their Sums due on the said Bond which they have Received and that the remainder was the property of the Complainant and which were the only witnesses that were examined on the part of the said Complainant

And your Petitioner Sheweth Boloosoo Seataramiah a witness produced Sworn and examined on the part and behalf of your Petitioner and to the first Interrogatory said that he knew the Complainant and your Petitioner and to the Second Interrogatory Said that he was in the Service of your Petitioner in the month of February in the year of our Lord One thousand Seven hundred and Eighty Eight and that he did continue therein till that time in the Capacity of Comicoffy and that he had looked at the paper writing then produced and Shewn to him, marked with the Letter A bearing date the thirteenth day of March One thousand Seven hundred and Eighty Eight and purporting to be a Bond from your Petitioner to the said Intestate, and that he knew of Certain Monies having been paid by your Petitioner on account of the said Bond and that he had seen the said Intestate write and subscribe his Name and that he was acquainted with the manner and Character in which he wrote that he had looked at the Several receipts then produced and Shewn to him No. 1 No. 2. and No. 3. and said that they were made signed and given by the said Intestate for the considerations mentioned in the said receipts on account of the said Bond and to the third Interrogatory Said he had looked at the paper writing produced and Shewn to him at the time of his Examination marked with the Letter a bearing date the thirteenth day of March one thousand Seven hundred and Eighty Eight purporting to be a Bond from your Petitioner to the said Intestate and said that he did pay Two hundred Star Pagodas on the Seventeenth day of March Seven hundred and fifty Star Pagodas on the thirtieth day of March One thousand Star Pagodas on the Twenty Sixth day of April, four hundred star Pagodas on the twenty Second day of May, and Five hundred Star Pagodas on the second day of July one thousand Seven hundred and Eighty Eight to the said Intestate on account thereof and that the Body of the first Indorsement which appears on the back of the said Bond was in the Hand writing of one Verdiah Cash Keeper to your Petitioner and that the Body of the Second Endorsement was in the hand writing of the Said Deponent and that the said Intestate did in his life time about three months previous to his death demand from your Petitioner and not from the said Deponent the payment of the Balance due upon the said Bond but did not know whether the said Balance was or was not paid

And your Petitioner Sheweth That Coduna Ramiah a Witness produced Sworn and Examined on the part and behalf of

of your Petitioner to the Second Interrogatory said he was in the Service of your Petitioner in the month of February one thousand seven hundred and Eighty Eight and that he did continue therein since that period in the Office of Cash keeper that he had looked at the paper writing produced marked with the Letter A bearing date the thirteenth day of March one thousand Seven hundred and Eighty Eight purporting to be a Bond from your Petitioner to the said Intestate and that he knew of certain Sums of Money having been paid by your Petitioner to the said Intestate on account thereof and that he had seen the said Intestate in his life time write and subscribe his name and was acquainted with the manner and character in which he wrote and he had looked at the Several Receipts produced at the time of his Examination marked respectively No. 1. No. 2. and No. 3 and said that the same were signed and given by the said Intestate on the days on which they were respectively dated for the Consideration and account mentioned in the said produced Receipts And that the Signatures thereto were of the proper hand writing of the said Intestate

And your Petitioner Sheweth that Mooringa Ra[illegible] a witness produced Sworn and Examined on the part and behalf of your Petitioner to the Second Interrogatory said that he was in the Service of your Petitioner in the year One thousand Seven hundred and Eighty Eight in the Capacity of Comicoply and that he had looked at

at the paper writing then produced marked with the letter A bearing date the thirteenth day of March One thousand Seven hundred and Eighty Eight purporting to be a Bond from your Petitioner and that he knew that the Sum of Two thousand Eight hundred and fifty Star Pagodas had been paid by your Petitioner to the said Intestate on account thereof and that he had seen the said Intestate write and subscribe his Name and that he was acquainted with the Manner and character in which he wrote and that he had looked upon the Several Receipts then produced and marked respectively No. 1. No. 2. and No. 3 and said that the said Receipts were given on the days on which they were respectively dated by the said Intestate for the Considerations in each Receipt mentioned - and on account of the Bond in Question and that the Signatures thereto were written by the said Intestate and were in his proper hand writing, and to the third Interrogatory said he had looked at the paper writing then produced marked with the Letter A. bearing date the thirteenth day of march One thousand Seven hundred and Eighty Eight purporting to be a Bond from your Petitioner and that Codunda Raumiah Cash keeper to your Petitioner did pay unto the said Intestate Nine hundred Star Pagodas at two different times on account thereof and that the Bodies of the two Endorsements which appear at the foot of the said Bond were written by Boolooso Settaramiah and that the said Intestate in his life time did not demand from the said Deponent the Payment of the Balance due upon the said Bond but that he had heard

heard that he did demand from the other Servants of your Petitioner

And your Petitioner Sheweth that Casavaperooma Moodelly a witness produced Sworn and Examined on the part and behalf of your Petitioner to the first Interrogatory said he knew the Complainant and your Petitioner and to the fourth Interrogatory said that he did know and was intimately acquainted with the said Intestate and was so acquainted with him for the space of twelve years, and that he used in his Transactions and dealings the Names of Nellyapah. Nellian, and Nellepen, and that the said Names were Synonimous and import one and the same Person and that the said Intestate in his life time used each name occasionally and was as well known by the one name as the other—

And your Petitioner Sheweth that Sooriah Braminy a Witness produced Sworn and examined on the part and behalf of your Petitioner to the fourth Interrogatory said, that he did know and was intimately acquainted with the said Intestate for the Space of twelve years and that he used in his Transactions and dealings the names of Nelleyapah Nellian and Nellypan and that the said Names were Synonimous and import one and the same Person and that the said Intestate did in his life time use the three before mentioned Names and was as well known by one Name as the other and which were the only witnesses that were examined on the part of your Petitioner—

And your Petitioner further Sheweth that Publication

passed

passed in the said Cause which was afterwards set down for hearing and coming on to be heard by and before the said Mayors Court on Tuesday the fourth day of this present month of March the said Court did think fit to Order and Decree your Petitioner to pay unto the said Complainant the Sum of three thousand and thirty eight star Pagodas and three fanams together with all such Interest as then was or should thereafter become due thereon until full Payment should be made and it was further Ordered and Decreed that your Petitioner be taxed with double Costs of Suit as will more fully and at large appear by a Copy of the said Decree hereunto annexed for the Inspection of this Honble Court—

From which said Decree of the said mayors Court your Petitioner Appeals to this Honble Court as he conceives the the same is erroneous and that he your Petitioner is materially aggrieved thereby for the following amongst other reasons—

First..... Because that the said Complainant has by no means Supported her said Bill of Complaint and Replication—

Secondly Because it Appears by your Petitioners said answer which has also been fully and clearly proved on the part of your Petitioner that the said three Several Sums of Money acknowledged by the said Receipts were Actually and Bonafide paid by your Petitioners Goomastah to the said Intestate in his life time for and on account of the said Bond in Question for that it clearly appears by the Deposition of Ramiah Pillah

a

a witness on the part and behalf of the said Complainant. That the said Bond was given by your Petitioner to the said Intestate but for the Joint Benefit and advantage of the said Deponent Vencata Ramapilla Tomboo Naick and the said Intestate and that the said Deponent knew that your Petitioner had paid unto the said Intestate at two several Payments the Sum of Nine hundred Star Pagodas and that the said Depoment which the said Vencata Ramapilla & Tomboo Naick at the decease of the said Intestate wrote to the said Complainant for their full proportion that was then due on the said Bond and which said Proportion or Share was by them received from the said Complainant Therefore your Petitioner humbly submits what has been by your Petitioner in his said Answer setforth relating to the Payment of the said three several Sums of Money by his said Gomastah so far from being refuted was strongly corroborated by the Gomastah was the fact and that the payment thereof so far from being refuted was strongly corroborated by the testimony of the said Ramah Pillo and that such payment must have been well known to the said Complainant otherwise it is not to be presumed that She would upon the simple request of the said Ramah Pillah and the said Vencataramapilla and Tombo Naicks have paid them their respective Shares due on the said Bond—

Thirdly..... Because If your Petitioner was to Comply with the said Decree of the said Mayors Court regarding the Payment of the said Sum of Three thousand

Thousand and thirty Eight Star Pagodas and three fanams it would be a great Hardship upon your Petitioner he having caused the greatest part of the said Sum to be already paid off and discharged—

Fourthly.... Because Instead of the said Bill of Complaint being dismissed with Costs, your Petitioner is by the said Decree Taxed with double costs whereby as well as being Decreed to pay the said Sum of Three thousand and thirty Eight Star Pagodas and three fanams with Interest your Petitioner thinks himself particularly Aggreived—

For all which Reasons and such others as shall or may be assigned at the hearing of this Cause your Petitioner most humbly prays that the said Decree of the said mayors Court may be reversed and set aside with Costs to be paid by the said Complainant and that your Petitioner may be further and otherwise relieved in the premises as to this Honble Court shall seem meet—

/Signed/ John White
Gilb. Reckets
Solicitors for appellant

Mayors

Mayors Court at }
Madraspatnam }

Tuesday the 4th day of March
Anno Domini 1794—

L.S.

Mayors Court

Present

Hon.ble Michell Esquire Mayor
James ball William Webb
Jos. DuPre Porcher Andrew Ross
John Mitford Benjamin Roebuck
James Daly & Alex.r Cockburn

Aldermen

Between Caumatchy Ammah of Madras
Inhabitant the Acting Administratrix
of Nelayapah Commandant Deceased
Complainant and Vencataramiah now or
late also of Madras Bramin 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 the Translate of a writing Obligatory and an account Current annexed The Defendants Answer with Copies of three Receipts and an Account Current annexed, The Replication The Rejoinder the Interrogatories & Depositions on the part of the Complainant with one Exhibit annexed The Interrogatories and

Depositions

Depositions on the part of the Defendant with one Exhibit annexed On Hearing the Pleadings made use of by the Attornies and on due Consideration had thereon This Court doth think fit to Order and Decree and doth Accordingly Order and Decree that the Defendant do pay unto the Complainant the full and Just Sum of Three thousand and thirty eight Pagodas & three fanams /Pag.s 3038. 3. —/ together with all such Interest as now is or shall hereafter become due thereon untill full Payment is made and It is further Ordered & Decreed that the Defendant be taxed with double Costs of Suit—

Hbur
/Signed/ George Taylor Regr.

A True Copy
/Signed/ John White
Gilb.t Ricketts
Sol.rs for Appellant

To

To the Honorable Sir Charles Oakeley Baronet

President in Council &c. &c.

Fort Saint George

In the Court of appeals

Between Caumatchy ammah of Madras Inhabitant acting administratrix of Nellyapah Commandant deceased complai=nant and Vencataramyah Braminy of the same place Inhabitant Defendant—

The Answer of the Above named Complainant to the Petition of appeal of the above named Defendant—

This Respondent admits that She did on or about the ninth day of February which was in the Year of Christ one thousand Seven hundred and ninety two as acting Administratrix of the above Named Nellyapah Commandant exhibit and file her Bill of Complaint in the Mayors Court of Madraspatnam against the Appellant for the recovery of the Sum of three thousand and thirty eight Pagodas and three fanams as justly due and Owing unto her as administratrix as aforesaid by the Appellant upon his Bond executed to this Respondents Intestate in his lifetime And this Respondent admits that She did in and by her said Bill of Complaint setforth the Several matters and things and thereupon pray the said mayors Court as in and by the Appellants said Petition of Appeal the same are particularly setforth And this Respondent admits that to her said Bill of Complaint to her said Bill of Complaint the Appellant did exhibit and file his Answer and that the same might have contained the Several matters and things in and by the Appellants said Petition of appeal stated and insisted on—

And this Respondent admits that to the Appellants said Answer she did duly exhibit and file his Replication in the said mayors Court and that she did therein and thereby maintain and support the Several Charges in her said Bill of Complaint contained and state the several other matters and things in the Appellants said Petition of appeal recited—

And this Respondent admits that the Appellant did to his said Replica=tion exhibit and file his Rejoinder and that the same may have contained the Several matters and things in the appellants said petition of Appeal setforth That thereupon issue did join and rules did pass for the Examination of witnesses and that witnesses and third witnesses were accordingly examined on both sides and admits that the statement of Evidence in the Appellants said Petition of Appeal may be correct so far as the same extends and also admits that publication did pass and that thereon the cause was set down to be heard and that the same did accordingly come on to be heard at the time in the appellants said Petition of appeal setforth and this Respondent admits that at the hearing of the said Cause the said mayors Court did think fit to Order and decree and did accordingly order and decree that the Appellants should pay unto this

Respondent

Filed in my Office the 19th April 1796
Chas. N. White Clk

Appeal

Respondent the Sum of three thousand and thirty Eight Star Pagodas and three fanams together with all such Interest as then was or should thereafter become due thereon until full payment should be made and that it was further ordered and decreed that the Appellant should be taxed with double Cost of Suit but this Respondent doth not admit that the Appellant is in any wise aggrieved by the said Decree of the said Mayors Court or that he has any reason or cause of Appeal therefrom to this honble Court and

To the Appellants first Reason for appeal this Respondent say that notwithstanding the Assertion of the Appellant to the Contrary, she this Respondent has fully supported her said Bill of Complaint and Replication by the evidence adduced on her behalf

To the Second Reason for Appeal this Respondent submits to this Honble Court notwithstanding the Assertion of the Appellant to the contrary that the Appellant has not in and by his said Answer or other wise fully or in any degree proved that the said three several sums of money pretended to have been acknowledged by the three pretended receipts herein before mentioned were paid either by his Gomastah or by any other person to this Respondents said Intestate in his life time for and on account of the Bond in question And this Respondent says that the Shewing of the Appellant in and by his said second reason is a departure from his said answer and in full contradiction thereto for in and by his said answer he declares that the said several sum of money for which the said three pretended receipts are said to have been granted by this Respondents said

Intestate

Intestate were by him the Appellant paid to this Respondents said Intestate and are the three first Items composing a part of the account Current to the Appeallants said answer annexed and in and by his said second reason for appeal he says that the same were paid by his Gomastah And the Appellant in and by his said Reason for appeal further says that it clearly appears by the Testimony of Rammah Pilley a witness examined on the part of this Respondent that the Bond in question was by him executed to this Respondents said Intestate for the joint benefit and advantage of the deponent and Tomboo Naich and this Respondents said Intestate and that he the Appellant had on account thereof paid unto this Respondents said Intestate at two different payments the Sum of Nine hundred Pagodas that he the deponent and the said Tomboo Naich had written to this Respondent for their full proportion that was due on the said Bond and that she had in consequence paid the same and the Appellant concludes from thence that it is fully proved that the said three several Sums of money by him stated to have been paid by his said Gomastah so far from being refuted was corroborated by the Testimony of the said Rammah Pillay and that such was the fact whereupon this Respondent says that the said Rammah pilley in proving and the appellant in admitting the payment of the said two Several Sums of five hundred and four hundred Pagodas making together the Sum of nine hundred Pagodas to have been paid by the Appellant Shews that the two last items in the said

account

account Current to the appellants said answer annexed were paid by the appellant himself which is all that this Respondent has contended for and which she avers to be the fact and it effectually does away present set up by the appellant in his said answer and totally destroys the gest thereof as the appellant in and by his said answer asserts that he did not pay but that it was his Gomastah who paid the said two several Sums of five hundred and four hundred Pagodas and that it was himself and not his Gomastah who paid the said three several Sums of two hundred seven hundred and fifty and one thousand Pagodas and from thence Shews the reason why the balance by him said to be the balance due to this Respondent to wit the Sum of two hundred and sixty eight Pagodas twenty five fanams and forty cash was not paid off and the said Bond delivered up to be cancelled- for the appellant in and by his said answer of his insisting that the said Several Sums of two hundred Pagodas seven hundred and fifty and one thousand Pagodas were paid by himself to this Respondents said Intestate proceeds in the words following that is to Say" this Respondent " went up the country and did previous to his departure order his Gomastah " to pay the residue of the said monies then due upon the said Bond that his " said Gomastah did accordingly pay to the said Intestate at the times in " the account Current to the Complainants said Bill of Complaint annexed " the respective sums of four hundred and five hundred Pagodas that the " Intestate did shortly afterwards as this Defendant has heard and

believes

" believes apply to the said Gomastah to discharge the said Bond that the " said Gomastah was ready and offered so to do but upon his requesting the said " Intestate to deliver up the said Bond on to endorse thereon the balance which " the said Gomastah then offered the said Intestate as this Respondent has been " informed and believes refused so to do alledging that his receipts were outstanding " which receipts the said Gomastah could not deliver up they being then in the " Custody of this Defendant" which this Respondent submits to this Honble " Court was accordinging to the appellants own shewing as herein above refered to a false statement of the fact but it appears to have been the only means the appellant would resort to to evade the payment of a just debt Two " Sums of money had been paid on account of his said Bond and " receipts were regularly given on the back thereof for the Same and therefore in order to give a color to the extraordinary three receipts for three Several Sums pretended to have been paid on account of the said Bond and of which no mention is made as in the two other Instances upon the said Bond he pretended that he himself paid the Sums setforth in the latter and that his said Gomastah paid the Sums setforth in the former and then to account for the balance remaining due not having been discharged and the Bond delivered up to be cancelled he says that going up the country he carried the three pretended receipts with him and that when his said Gomastah during his absence offered payment of the said alleged balance to this Respondents said Intestate and required the said Bond

to

to be thereon given up to be cancelled this Respondents said Intestate
refused either to receive the said balance or to deliver up the said Bond to
the Appellants said Gomastah giving as a reason as the Appellant pretended
that the said three several several receipts were out standing against him but
the appellant has none Shewn that he himself paid the said two Several
Sums of five hundred and four hundred pagodas which are the last Items
mentioned in the account Current to his said answer annexed and conse=
=quently the Objections pretended to have been made by this Respondents said
Intestate never could have been made because the pretended grounds thereof
could not have existed and the fact truely stated is as the Appellant has
shewn it to be in his said second Reason for appeal that the appellant
did himself actually pay to this Respondents said Intestate on account
of the said Bond the two Several sums of five hundred and four hundred
pagodas for which the said two several receipts appear on the said Bond
and which were the only sums ever paid on account thereof and this Respon
=dent therefore submits to this Honble Court that the appellant instead of
being aggrieved as he has pretended by the said Decree of the said Mayors
Court has by his own Shewing fully demonstrated the Justness and equity
thereof that he has no cause of appeal therefrom and that his motive for
appealing must be to keep this Respondent as long as possible out of her Just
rights & to harrass and distress her by a vexatious Litigation

To the third Reason this Respondent says that the same doth not contain any merits

and consequently does not shew any cause against the said decree of the said
Mayors Court for although the Appellant doth thereby pretend that he had
caused the greatest part of the amount of the Sum decreed to be paid of and
discharged yet he has not adduced any evidence to support the same and
this Respondent says as he has hereinabove shewn that the Appellant in giving
his reasons for appealing from the said decree of the said mayors Court has deman
=strated that the Matters and things by him set up as a defence against this
Respondents said Bill of Complaint and Contained in his the appellants
said answer upon Oath and upon which he had Relied are fallacious and
therefore he has changed the same in his appeals to this Honble Court from
the said decree of the said mayors Court and this Respondent trusts that it will
hereafter appear to this Honble Court that the witnesses produced by the appellant
have proved the fallacy of the said matters and things in the appellants said
Answer contained and have in many Instances contradicted themselves—

To the fourth Reason this Respondent says that it clearly appeared to the said mayors
Court that the Conduct of the appellant was altogether incorrect that the
defence set up by him to this Respondents said Bill of Complaint was
replete with untruths and that he had attempted to support the same
by fabricated vouchers that his witness chiefly his own servants gave such
testimony as did not deserve any credit and that therefore the said Mayors
Court did think proper to mark their dis approbation of the unfair and
Litigious proceedings of the appellant with double Costs and thereupon

this

this Respondent submits to this Honble Court that the Appellant is by no means aggrieved by the said Decree of the said mayors Court—

And this Respondents in order further to Shew the justness of her cause the fraudulent and evil Intentions of the Appellant in the premisses and the equity of the said decree of the said mayors Court begs leave to — Macerategate the Evidence on the part of the Appellant and bring forward such matters relative thereto as may illustrate the whole Boolsoo to the Second Interrogatory says that the receipts Nos 1. 2. and 3 were made signed and given by Nelleapah Commandant and afterwards by shews that they were made by himself for he says that the bodies thereof were drawn by him the Deponent To the third Interrogatory he says that he paid to this — Respondents Intestate the Several Sums of Two hundred seven hundred and fifty and one thousand Pagodas and also the sums of four hundred and five hundred pagodas which is a direct contradiction to the Appellants Answer upon Oath for he therein declares as herein above shewn that the three former of those sums were paid by himself and the Appellant when accounting for the Bond not having been fully discharged says in his said Answer that hes said Gomastah offered to pay the balance that was due thereon but that the Intestate refused to deliver up the said Bond until the pretended Receipts that were out standing were first returned to him and that his said Gomastah would not comply as those receipts were with himself and that before any thing further could be done on the said Bond

the

the Intestate died But the said Boolsoo in his deposition on the part of the Appellant says that this Respondents Intestate did about three months before his death demand the balance due to him from the appellant himself and not from him the Deponent which this Respondent submits to this Honble Court is a contradiction to the assertion by the appellant stated in his said Answer and justifies the conclusion that if the appellant had at any time been absent from Madras he had returned thither before the death of this Respon-dents said Intestate and proves the pretext regarding the receipts being — outstanding to have been as it ready was without any manner of foundation Cotundah Ramiah to the Second Interrogatory says that the said Receipts were signed and given by this Respondents Intestate to the Appellant Boolsoo Shews that the receipts were given to him and it appears that the appellant was not present and this Respondent says that no such receipts ever were given by her Intestate either to the said Boolsoo or to the Appellant Moorgapa Ramiah to the third Interrogatory says that Cotunda Ramiah paid the Sums of four hundred and five hundred Pagodas to this Respondents Intestate this is contradicted by Boolsoo who says that those sums were paid by — himself and although the said Cotunda Ramiah is Interrogated to the same point he does not say that he paid those sums Moorgapa further says that the bodies of the endorsements upon the backs of the said Bonds were written by Boolsoo himself says that the body of one of them was written by Verdiah the Cash keeper and this Respondent having thus shewn the evidence on

the

the part of the appellant prays leave to add that the Evidence on her behalf support his Bill of Complaint and Replication in the clearest manner several witnesses examined to the second Interrogatory prove the payment of the Sums of five hundred and four hundred Pagodas to have been made by the appellant — himself that the name Nellian offered to the pretended Receipts are not of the hand writing of this Respondents said Intestate who always signed his name Nelleapen and that when the said two Sums of five hundred and four hundred pagodas were paid as above mentioned the appellant acknowledg that the Sum of two thousand one hundred Pagodas remained due on the said Bond and kistnayer to the said second Interrogatory says that he attended Tondavaroy moodeliar brother to your Petitioners said Intestate to demand from the appellant the balance so remaining due and that the appellant did promise to pay the same if the said Tondavaroy could produce a person to Shew that he was entitled to receive it and Soobaroy Pillay and — Vencatachella moodelly to the same Interrogatory corroborate the Testimony given by the said kistnayar Vencatachella moodelly Soobaroy Pilly and kistnayer shew that about fourteen days after the application of the said Tondaroy Moodelliar to the appellant as above stated they did attend the said Tondaroy Moodelliar to the appellant from whom the said Tondavaroy did again demand the said sum of two thousand one hundred pagodas and the Interest due thereon that the appellant did acknowledge the same to be due and that the said Tondavaroy had a right to —

demand

demand it observing that Nineapah moodelly had proved the fact to him and assigned as a reason for not paying it to the said Tondavaroy immidiately that he must first exchange into Star Pagodas a Sum of money which he had received in madras pagodas and objected to the paying of Interest From all which matters and things this Respondent humbly submits to this Honble Court that the said decree of the said Mayors Court is equitable and just and that she has been greatly aggrieved by the litigious and unjust conduct of the appellant

This Respondent therefore humbly prays that this Honble Court will be pleased to affirm the said decree of the said Mayors Court and that the appellants said Petition of appeal may be dismissed with such exemplary costs as to this Honble Court may seem meet —

/Signed/ James Stuart Hall
sol.r for Respondent

Court of Appeals

Court of Appeals at Madraspatnam:

Saturday the 11th day of June Anno Domini 1796

Between Vencataramiah Brameny of Madras inhabitant appellant and Saumatty ammah of madras Inhabitant the acting administratorix of Neleyapah Commandant deceased Respondent—

This cause coming on this day to be heard and debated before this Court by the attornies on both sides it was moved by the attorney for the appellant that the matter before the Court was between two natives and therefore the decree of the Honble the mayors ought to be reversed because two natives are by the charter restricted from sueing each other to which the attorney for the Respondent shewed that the appellant, the Defendant in the mayors Court, had not offered any Plea to the jurisdiction of the Court but had appeared to the Bill filed by the Respondent Complainant in the mayors Court, and had gone to issue and the hearing of the cause without any manner of objection upon taking the same into consideration and it appearing to the Court that no Plea to the Jurisdiction of the mayors Court was filed nor any matter stated in the proceedings to shew the unwillingness of the appellant to abide the Judgement of the said Court and this Court considering the same as sufficient evidence of his Consent to submit to the jurisdiction of the mayors Court doth think fit to order that the motion of the attorney for the appellant be over ruled and 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 4th day of March anno Domini 1794 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

Pour [Signed] Robert Clerke
Clk

To

To the Kings Most Excellent Majesty in Council

Between Caumatchy ammah of madras Inhabitant acting administratrix of Nelleyapah Commandant deceased Complainant and Vencata-ramiah Braminy of the same place Inhabitant Defendant

The Humble Petition and appeal of the above named Defendant

Most humbly Sheweth-

That on the Ninth day of February in the years of our Lord One thousand Seven hundred and Ninety two the above named Complainant as acting administratrix of Nelleyapah Commandant Deceased did Exhibit and file her Bill of Complaint in the mayors Court at Madraspatnam against your Petitioner for the Recovery of the Sum of Three thousand and thirty Eight Star Pagodas and three fanams thereby Charged to be due and owing to the Complainant as administratrix aforesaid by your Petitioner upon a Bond Executed by your Petitioner to the said Caumatchy Ammahs Intestate a Copy of which said Bond was annexed to the Complainants said Bill of Complaint and prayed to be admitted as part thereof and the said Caumatchy Ammah did further by her said Bill of Complaint set forth that She frequently made application to your Petitioner for Payment of the said Sum of Three Thousand and thirty Eight Star Pagodas and three fanams but that your

Filed in my Office the 27th June 1794
Robert Clerke Clk

your Petitioner refused to pay the same the said Complainant by her said Bill of Complaint therefore prayed that your Petitioner might be Decreed to pay unto her the said Complainant as administratrix aforesaid the said Sum of Three thousand and Thirty Eight Star Pagodas and three fanams and also all Costs of the said Suit to which said Bill of Complaint your Petitioner did on or about the Tenth day of april in the said year one thousand Seven hundred and ninety two file his answer and thereby denied to be indebted unto the said Complainant Either as administratrix of the said Nelleyapah Commandant Deceased or otherwise in the Sum of Three thousand and thirty Eight Star Pagodas and three fanams or in any such Sum of Money but your Petitioner admitted that he did on or about the Nineteenth day of march which was in the years of our Lord one thousand Seven hundred and Eighty Eight duly Execute to the Complainants said Intestate the Bond which the said Complainant had as aforesaid put in Suit against your Petitioner and your Petitioner in his said Answer further set forth that there had been many Transactions and dealings between your Petitioner and the said Intestate upon account of supplying the East India Company with Bullocks and such accounts having been adjusted a Balance of Three thousand Star Pagodas thereupon appeared in favor of the said Intestate for which your Petitioner Executed the said Bond and your Petitioner in his said Answer further Set forth that shortly after the said Bond had been Executed

to

to wit/ on the Seventeenth day of the said month of March your Petitioner paid unto the said Complainants said Intestate the sum of Two hundred Star Pagodas upon account of said Bond and your Petitioner in his said Answer further setforth that on the thirteenth of the said month your Petitioner paid the said Intestate the further Sum of Seven hundred and fifty Star Pagodas upon the same account and your Petitioner in his said answer further setforth that he did also on the Twenty Sixth day of April in the said year One Thousand Seven hundred and Eighty Eight pay the said Intestate in his life time the further Sum of one thousand Star Pagodas upon the same account and as appeared by three Several receipts for the same duly granted by the said Intestate in his life time true Copies of the Translations where of were to your petitioners said answer annexed to which your Petitioner referred the Originals of which receipts were ready to be produced when required and your Petitioner by his said answer further setforth that Shortly after the said three payments were made your Petr. went up the Country but previous to his departure he ordered his Gomastah to pay the residue of the monies then due upon the said Bond to the said Intestate if he should require the same in the absence of your Petitioner and that your petitioners said Gomastah accordingly paid the said Intestate at the times mentioned in the account Current annexed to the Complainants Bill Complaint the respective sums of four hundred Star Pagodas

and

and of Five hundred Star Pagodas therein mentioned and your Petitioner further setforth that the said Intestate did shortly afterwards as your Petitioner was informed and verily believed apply to your Petitioners said Gomastah fully to discharge the said Bond and that the said Gomastah was ready and offered so to do but that upon the said Gomastah requiring the said Intestate to deliver up the said Bond the said Intestate as your Petitioner has been informed and verily believed refused so to do alledging that his Receipts were outstanding being the three receipts herein before mentioned and that until the same were returned to him the said Intestate he would neither deliver up the said Bond or pass any further voucher respecting the same which receipts the said Gomastah could not then deliver up to the said Intestate they being then in the Custody of your Petitioner and that thereupon the said Gomastah declined paying off the Balance then due upon the said Bond and your petitioner in his answer further setforth that before any thing further was done respecting the said Bond the said Intestate died and that shortly after the said Intestates death his wife the now Complainant accompanied by her Brother demanded of your Petitioner the remainder of the monies which were then due upon the said Bond and your Petitioner thereupon informed them that it should be paid to whoever should administer to the Estate of the said Intestate, and your Petitioner in his answer further setforth and admitted that the said Complainant together with Tandavaroya moodelliar in the said Complainants Bill of Complaint named Obtained Letters of administration

of

of the goods and Chattles of the said Deceased and renewed their Application to your petitioner Respecting the said Bond and your Petitioner thereupon desired to have Credit given him for the amount of the said three Receipts herein before mentioned and for the other monies which were paid upon account of the said Bond and that your Petitioner would then pay whatever balance should appear against him and your Petitioner in his Answer further setforth that Instead of the said Complainants Complying with such the reasonable request of your Petitioner She the said Complainant immediately afterwards without giving Credit for the amount of the said three receipts exhibited her said Bill of Complaint against your Petitioner for the Recovery of the full sum of Three thousand and thirty Eight Star Pagodas and three fanams and your Petitioner by his answer admitted his being indebted to the said Complainant as administratrix aforesaid upon account of the said Bond in the Sum of Two hundred and Sixty Eight Star Pagodas Twenty five fanams and forty Cash and no more as was particularly shewn by an account Current annexed to your Petitioners said Answer to which your Petitioner humbly referred and your Petitioner in his Answer also setforth that he had always been ready and willing and then was ready and willing to pray to the said Complainant as administratrix as aforesaid the said sum of Two hundred and sixty Eight Star Pagodas twenty five fanams and forty Cash and your Petitioner then brought the said sum of Two hundred and sixty Eight Star Pagodas

Twenty

Twenty five fanams and forty Cash into Court ready to be paid to the said Complainant if she would accept of the same in full satisfaction of her said demand and in Bar of all Interest and Costs-

To which said Answer the Complainant on the fifteenth Day of May one thousand Seven hundred and Ninety two Replied and for Replication thereunto said that your Petitioner was Indebted to her the said Complainant in the said Sum of Three thousand and thirty eight star Pagodas and three fanams and that your Petitioner did not at the periods in his said answer setforth pay unto the said Complainants Intestate the said Several sumes of money setforth and mentioned in the answer of your Petitioner or any part thereof for that the receipts alledged to have been granted by the Complainants said Intestate were never granted by him and that the signatures thereto were not of his hand writing and that the name to the Several Receipts affixed was not the name of her said Intestate Because it was not spelt Nellegapah but nellian for that in all his Transactions and dealings he was known by that name and no other and thereupon the Complainant alledged that the said Receipts were fictitious and brought forward by your Petitioner with a view of defrauding the Complainant in the premises and the said Complainant has in his said Replication setforth that She does not know whether her Intestate did or did not apply to the Gomastahs of your Petitioner for the payment of the money due on the said Bond but that She well knows that the Gomastahs of your Petitioner never did pay the sums of Four

hundred

hundred Star pagodas and Five hundred star Pagodas setforth in your Petitioners Answer nor any other sum or sums of money whatever to the said Complainants said Intestate on account of the said Bond nor on any other account but that the said sums were paid by your Petitioner himself to the said Complainants Intestate and that the said Complainant in Consequence thereof wrote off the same thereon and further that your Petitioner knew not as the said Complainant alledged how to introduce the said pretended Receipts otherwise than to set upon pretext that the said Two Sums of Four hundred Star Pagodas and Five hundred Star Pagodas were paid by his Gomastah during his absence and that the said Complainants said Intestate did think proper in such the Transactions with your Petitioners said Gomastah to do that which was regular and customary but which he had not observed in his Transactions which your Petitioner that is to say to indorse on the said Bond the amount received on account thereof and the said Complainant in her Replication further setforth that her Intestate never did refuse to endorse on the Back of the said Bond any sum of money paid in liquidation thereof and that therefore the assertion of your Petitioner in his said Answer Contained that his said Gomastah offered to pay the Balance due on the said Bond provided the said Complainants said Intestate would deliver up the same or endorse the Balance which his your Petitioners said Gomastah then so offered is without foundation or truth and the said Complainant

Complainant for further Replication setforth that your Petitioner never did desire her to give him Credit for the amount of the said three pretended Receipts before mentioned and further that the Complainant never knew that there were any receipts against the amount Conditioned to be paid by the said Bond other then the two Receipts indorsed thereon and that the receipts by your petitioner set up are fictious and that the signature thereunto set and subscribed were not of the Hand writing nor did they express the Name of the said Intestate

And your Petitioner Sheweth unto your most Excellent Majesty in Council to which said Replication he did on or about the Twenty Sixth day of June in the same year file his Rejoinder, thereby setting forth that his said answer and every part thereof was true and that he did not stand indebted to the said Complainant in the sum by the said Bill alledged but admitted as in his said answer is fully and at large setforth that he stood indebted unto the Complainants Intestate in the Sum of Two hundred and Sixty Eight Star Pagodas Twenty five fanams and forty Cash and no more for that the several and respective Sums of money in your Petitioners Answer setforth were by the Gomastah of your Petitioner paid unto the said Intestate in his life time and which fully and clearly appeared to have been received by the Complainants said Intestate by three Receipts so given by the said Intestate to your Petitioners Gomastah and your Petitioner said that the said three receipts were not brought forward with the

the fraudulent view in the Complainants said Replication untruly alledged but for the Sole purpose of Obtaining due Credits for actual payments so by your Petitioner made to the said Intestate and further that the Complainants said Intestate was as well known by the name of Nellian as of Nelleya-pah and that some times he signed his name nellian and at other times he signed his name Nelleyapah and your Petitioner also in his said Rejoinder setforth that an Indian native seldom had one uniform way of signing or Spelling his name and which appeared by reference to the said three Receipts which Severally began in the name of Nelleyapah and Conclude with the name Nellian and your Petitioner denied that the Said Intestate did always use and was known by the name of Nelliapan and none other for that the Contrary thereof appeared by the Complainants own Shewing in as much as She not only Commenced the said Suit as administratrix of Nelleyapah but the Bond in question was also taken in the name of Nelleyapah and in further manefestation thereof the said Complainant did by her said Replication admit that the said Intestate was known by the name of Nelleyapah and the said Complainant did on or about the Twelfth day of June after filing her said Replication Apply to the Hon^ble the mayors Court for permission to amend the same alledging therein that her Intestate was always known by the name of Nelliapen which the said mayors Court was pleased to allow desiring at the same time that no advantage should be them after taken by such amendment and

your

your Petitioner further setforth in his said Rejoinder that the sums of Four hundred Star pagodas and five hundred Star Pagodas Credit in the said Account Current were paid by your Petitioners Gomastah to the said Intestate upon your petitioners Account in the Absence of your Petitioner and that such payment so made by your Petitioners Gomastah was a fact and not as pretext as by the said Replication is untruely alledged and that your Petitioner did not as alledged by the Complainants said Replication write off the said sums of Four hundred Star Pagodas and Five hundred Star Pagodas upon the said Bond and that the Balance then so due and owing would in the life time of the said Intestate have by your Petitioners said Gomastah been paid off and discharged but that the said Intestate refused to deliver up the said Bond to your Petitioners Gomastah unless the receipts he before granted on receiving the said three sums in part payment thereof were by your petitioners Gomastah delivered up which at that period could not be done as the said three Receipts were in the posession of your Petitioner who was absent from madras and that the Several sums of money in the said Receipts mentioned were actually and bonafide paid by your Petitioner to the said Intestate

Your Petitioner further sheweth to your most Excellent majesty in Council that upon the aforesaid pleadings issue was Joined witnesses were Examined as well on the part of the Complainant as of your Petitioner and your Petitioner Sheweth that Seneravasa Iyingar a

witness

witness produced sworn and examined on the part and behalf of the said Complai=nant to the first Interrogatory said that he knew the Complainant and your Petitioner and that he had known them many years and to the said Interrogatory the said Deponent deposed that he was acquainted with the Transactions relative to a Bond granted by your Petitioner to the said Intestate to the amount of Three thousand star Pagodas and said he went with the said Intestate to demand payment of the amount of the said Bond from your Petitioner and that your petitioner paid the sum of Nine hundred Star Pagodas at two different times and that the said Intestate did signe an acknowledgement on the Bonds for the said Sums of Nine hundred Star Pagodas and that your petitioner did acknowledge that he stood indebted unto the said Intestate in the whole amount of the said Bond Excepting the two sums he paid in part thereof and that the sums so paid by your Petitioner were written off on the said Bond and that the said Intestate did sign the same and that he the Deponent was well acquainted with the Character and Hand writing of the said Intestate and had often seen him write and often Received Letters from him and that he Looked at the paper writing then produced purporting to be receipts for money received by the said Intestate from your Petitioner and that the names thereon respectively set and subscribed were not of the proper hand writing of the said Intestate and that he the Deponent was indorced to believe the same were not the signatures of the said Intestate

Intestate because the said Signatures differed from his said said Intestates proper hand writing and that in the said signatures the name appears Nellian instead of Nellagapen that he also looked at the Bond from your Petitioner to the said Intestate and that the signature opposite the two sums acknowledged to have been received was of the proper Hand writing of the said Intestate and your Petitioner sheweth That on the Fifteenth day of June one thousand Seven hundred and ninety three Vencatachella moodelly Witness produced sworn and Examined on the part and behalf of the said Complainant to the first Interrogatory said that he knew the Complainant and your petitioner and that he had known them for many years and to the said second Interrogatory deposed to the like effect as the said former witness had deposed unto and further that on his the Defendants accompanying the Intestates Brother and Administrator Tondavaroya moodeliar to the House of your Petitioner That your Petitioner promised to pay the said Tondavaroya moodeliar the sum of Two thousand and one hundred Star Pagodas being the balance of the principal due on the said Bond but that your petitioner would not pay the said Tondavaroya Moodeliar the Interest to which the said Tondavaroya moodeliar Answered that you meaning your petitioner must pay the Interest to the third Interrogatory the said Deponent deposed that he went again to the House of your petitioner about a fortnight afterwards for the purpose of receiving the money before mentioned and that

that the said Tondavaroya moodelliar demanded the sum of Two thousand and one hundred Star Pagodas from your Petitioner and also the Interest due thereon and that your Petitioner did acknowledge to be indebted in the said sum and promised to pay the same But that your Petitioner at that time Assigned as an excuse for not paying the same that he had Received Five thousand Madras Pagodas from Nellore which he would Convert into Star Pagodas and that when he had done so he would discharge the Balance due on the Bond in question and that Nineapah Moodelly Sadaseva moodelly Syanadee Moodelly Soobarey Ristnier Vencataramier and some others were present when the said demand was made and that your Petitioner promised he would discharge the principal of the said Bond but that the said Tondavaroy moodelliar insisted on being paid the whole of the said demand To the fourth Interrogatory he said that he was perfectly acquainted with the malabar Language and that the malabars have one uniform way of signing and spelling their names and that it was Customary and the uniform practice among the natives in signing Bonds and receipts for money and in signing Letters or other writings to subscribe their names different to what they are generally called or known by and not by the name that he may subscribe to any deed or writing and that the Complainants Intestate usually Subscribed his name Nellyapen and was generally known by the

the name of Nelleyapa Commandant

And your Petitioner Sheweth unto your most Excellent Majesty in Council that on the Eleventh day of June one thousand Seven hundred and Ninety three Soobaroya Pillay Concophy a witness produced Sworn and examined on the part and behalf of the said Complainant to the first Interrogatory said that he knew the Complainant and your Petitioner and to the former part of the said Second Interrogatory deposed to the same effect as the last witness and further that your Petitioner did promise to pay the said Tondavaroya moodelliar in Case he would produce a proper person to Assure your Petitioner that he the said Tondavaroya moodeliar was entitled to receive the said money which said Tondavaroya Moodelliar promised to do and to the third Interrogatory he said that he did about a fortnight afterwards Accompany the said Tondavaroya moodeliar to the House of your Petitioner and that the said Tondavaroya moodeliar did demand a sum of money from your Petitioner Amounting to Two thousand and one hundred Star Pagodas principal and three hundred odds star pagodas Interest on Account of the before Mentioned Bond and that your Petitioner did acknowledge to be indebted in the said sum and promised to pay the same and your Petitioner did Assign for non payment of the same the reason setforth by the last witness and that Ramachella Vencataramiah nineyapah Moodelly, Venceatachella moodelly Ristnier Sadaseva moodelly and some other persons were present at the time the said demands was made

by

by the said Tondavaraya moodeliar and your Petitioner promised to pay the Amount, the latter part of the said Interrogatory deposed to Corresponds with what the last witness deposed and to the Fourth Interrogatory he has deposed to the same effect as the last witness and concludes with deposing that the Intestate always subscribed his name Nelleyapen and that he was generally known by the Name of Nelleyapah Commandant and your Petitioner Sheweth unto Your most Excellent Majesty in Council that Kistnayen Conicopilla a witness produced sworn and examined on the part behalf of the said Complainant to the First Interrogatory said he knew the Complainant and your Petitioner and to the former part of the Second Interrogatory deposed to the same Effect as the former witness and further said that he did about four or five years Ago Accompany Tondavaraya moodeliar the Brother and administrator of the said Intestate to the House of your Petitioner for the purpose receiving the Balance due on the Bonds in Question and that your Petitioner did promise provided the said Tondavaraya moodeliar would produce some person that would assure your Petitioner that the said Tondavaraya Moodeliar was entitled to receive the same and to the Third Interrogatory the said Deponent said that he did about a fortnight afterwards accompany again the said Tondavaraya moodeliar to the House of your Petitioner for the purpose of Receiving the money before mentioned and that the said Tondavaraya moodeliar did demand a Sum of money from your Petitioner and that the sum so demanded was Two thousand and one hundred

Star

Star Pagodas and that your Petitioner promised to pay the same and that your Petitioner made the same excuse as the other witnesses deposed respecting the madras pagodas and that the following persons nineyapah Moodeliar Soobarayo Vencatachella Sadaseva moodelly vencataramiah and some others were present at the time the said demand was made by the said Tondavaraya Moodeliar and that your Petitioner promised to pay the Amount and that your Petitioner said he would only pay the principal of the said Bond to which the said Tondavaraya moodelliar did not Consent and to the fourth Interrogatory deposed to the same effect with the other witnesses with respect to his knowledge of the malabar Language and the Signatures of malabars in General and further setforth that it is Customary when a Suit is Instituted in the name of a person that such suit be instituted in the name he is generally called or known by and not by the name that he may Subscribe to any Deed or writing and concludes his deposition by setting forth that the manner in which the Intestate usually subscribed was Nelleyapen and he was generally known by the name of Nelleyapah Commandant And your Petitioner Sheweth unto your most Excellent majesty in Council That Mootoo Moodelliar a Witness produced Sworn and Examined on the part and behalf of the said Complainant to the first additional Interrogatory said he knew the Complainant and your Petitioner and to the second additional Interrogatory deposed to the same effect as the former witness

and

and further that he was present and did go with the said Intestate in his life time to demand payment of the amount of the said Bond from your Petitioner about Six years ago and that the sum your Petitioner paid was Nine hundred Star Pagodas at different times and that an acknowledgement on the back of the said Bond was signed by the said Intestate and that your Petitioner at the time he made the last payment acknowledged that he stood indebted unto the said Intestate in the whole amount of the said Bond excepting the two sums he paid in part thereof and that the sums so paid were written off on the said Bond and that the said Intestate did sign the same and that he was well acquainted with the character and manner of the Hand writing of the said Intestate and that he had looked at the paper writing produced and Shewn to him purporting to be receipts for money Received by the said Intestate from your Petitioner and that the names therein respectively set and subscribed are not of the proper hand writing of the said Intestate and further that the motives which Induced him to believe the same not to be the signature of the said Intestate are that the signatures to the said papers are different from the manner and Character of the said Intestates Hand writing and that the said Signatures are Nellian instead of Nelleyapen and that he had looked at the paper writing then produced purporting to be a Bond from

from your Petitioner to the said Intestate and said that the signature opposite to the two Sums acknowledged to have been Received in part of the said Bond was of the proper Hand writing of the said Intestate and your Petitioner Sheweth that Ramiah Pillah a witness produced sworn and examined on the part and behalf of the said Complainant to the first Interrogatory said that he know the Complainant and your Petitioner and to the Second Interrogatory said he knew the Bond was given to the said Intestate by your Petitioner and that although the said Bond was in the name of the said Intestate yet the money was jointly due from your Petitioner to the said Intestate, Vencata Ramiah pillah Tomboo Naick and the said Deponent but that the principal part of the said Bond was the property of the said Intestate and the remainder belonged to Vencata Ramiah Pilla Tomboo Naick and the said Deponent and that the sum of Four hundred Star Pagodas was paid the Twenty Second day of May one thousand Seven hundred and eighty eight and a receipt for it given signed by the said Intestate as appears indorsed on the Bond that on the second day of second day of June in the same year another Receipt was given for Five hundred Star Pagodas and that the said Intestate took his share out of the above mentioned sums and gave to the said Vencataramiah Pilla Tomboo naick and the said Deponent their Respective Shares and to the third Interrogatory said that the payments of the aforesaid sums of Four hundred Star

pagodas

pagodas and five hundred Star Pagodas were made in the House of your
Petitioner and that the sum of Nine hundred Star Pagodas was wr
off on the Bond at his House at madras and to the last Interrogat
said that he this Deponent with the said Vencata Ramapilla and Jo
Naich after the said Intestates decease demanded of his widow the
full proportion of their sums due on the said Bond which they have re
and that the remainder was the property of the Complainant and which
the only witnesses that were Examined on the part of the said Complain
And your Petitioner Sheweth unto your most Excellent majesty in
Council That Boolooroo Seataramiah a Witness produced Sworn and
examined on the part and behalf of your Petitioner and to the first
Interrogatory said that he knew the Complainant and your Petitio
And to the second Interrogatory said that he was in the Service of you
Petitioner in the month of February in the Year of our Lord One thous
Seven hundred and Eighty Eight and and that he did continue there
till that time in the Capacity of Conicoply and that he had look
at the paper Writing then produced and Shewn to him marked
the Letter A bearing date the thirteenth day of march one tho
Seven hundred and eighty eight and purporting to be a Bond fro
your Petitioner to the said Intestate and that he knew of certain
monies having been paid by your Petitioner on account of the so
Bond and that he had seen the said Intestate write and su

the

his name and that he was acquainted with the manner and Caracter in which
he wrote that he had looked at the Several Receipts then produced and shewn
to him N.1. N.2. & N.3 and said that they were made signed and given by
the said Intestate for the Considerations mentioned in the said Receipts on
account of the said Bond and to the third Interrogatory said he had looked
at the paper writing produced and shewn to him at the time of his
Examination marked with the letter A bearing date the thirty first day
of march one thousand Seven hundred and Eighty eight purporting
to be a Bond from your Petitioner to the said Intestate and said
that he did Pay Two hundred Star pagodas on the Seventeenth day of march
Seven hundred and fifty Star Pagodas on the thirteenth day of March one
thousand Star Pagodas on the Twenty Sixth day of April Four hundred
Star Pagodas on the Twenty Second day of may and five hundred Star
Pagodas on the Second of July one thousand Seven hundred and Eighty
Eight to the said Intestate on account thereof and that the Body of the
first Indorsement which appears on the Back of the said Bond was
in the Hand writing of one Verdiah Cash Keeper to your Petitioner
and that the Body of the Second Endorsement was in the Hand writing
of the said Deponent and that the said Intestate did in his life time about
three months previous to his death demand from your Petitioner and not
from the said Deponent the payment of the Balance due upon the
said Bond but did not know whether the said Balance was or was

not

most prior — And Your Petitioner Sheweth unto your most Excellent majesty in Council that Codundaramiah a witness produced Sworn and Examined on the part and behalf of your Petitioner to the Second Interrogatory said he was in the Service of your Petitioner in the month of February one thousand Seven hundred and eighty eight and that he did Continue therein since that period in the Capacity of Cash keeper that he had looked at the paper writing produced marked with the Letter A bearing date the thirteenth day of March one thousand Seven hundred and eighty eight purporting to be a Bond from Your Petitioner to the Said Intestate and that he knew of certain Sums of money having been paid by your Petitioner to the said Intestate on account thereof and that he had seen the said Intestate in his life time write and subscribe his name and was acquainted with the manner and Character in which he wrote and he had look at the Several Receipts produced at the time of his Examination marked respectively N.1. N.2 and N.3 and said that the same were signed and given by the said Intestate on the days on which they were respectively dated for the Consideration and account mentioned in the said produced Receipts and that the Signatures thereto were of the proper Hand writing of the said Intestate and your Petitioner Sheweth unto your most Excellent majesty in Council that Moreinga Ramiah a Witness produced Sworn and Examined on

on the part and behalf of your Petitioner to the Second Interrogatory said that he was in the Service of your Petitioner in the year one thousand Seven hundred and Eighty Eight in the Capacity of Conicoply and that he had looked at the paper writing then produced marked with the letter A bearing date the thirteenth day of march one thousand Seven hundred and eighty eight purporting to be a Bond from your petitioner and that he knew that the sum of Two thousand Eight hundred and fifty Star Pagodas had been paid by your Petitioner to the said Intestate on account thereof and that he had seen the said Intestate write and subscribe his name and that he was acquainted with the manner & character in which he wrote and that he had looked upon the Several Receipts then produced and marked respectively N.1 N.2 and N.3 and said that the said Receipts were given on the days on which they were respectively dated by the said Intestate for the considerations in each of the Receipts mentioned and on account of the Bond in question and that the signatures thereto were written by the said Intestate and were in his proper hand writing and to the third Interrogatory said he had looked at the paper writing then produced marked with the Letter A bearing date the thirteenth day of march one thousand Seven hundred and Eighty Eight Purporting to be a Bond from your Petitioner and that Codundaramiah Cash keeper to your Petitioner did pay unto the said Intestate Nine hundred Star Pagodas at two different times on account thereof and that the Bodies of the two Endorsements which

appear

Appear at the foot of the said Bond were written by Bodoosoo Settaramiah and that the said Intestate in his life time did not demand from the said Deponent the payment of the Balance due upon the said Bond but he had heard that he did demand it from the other Servants of your Petitioner and your Petitioner Sheweth that Casavaparoomah modelly a witness produced Sworn and Examined on the part and behalf of your Petitioner to the first Interrogatory said he knew the Complainant and your Petitioner and to the fourth Interrogatory said that he did know and was intemately Acquainted with the said Intestate and was so acquainted with him for the space of Twelve years and that he used in his Transactions and dealings the Names of Nelleapah nellian and nellepen and that the said names were Synonemous and import one and the same person and that the said Intestate in his life time used each name occasionally and was as well known by the one name as the other - and your Petitioner Sheweth that Sooliah Braminy a witness produced Sworn and examined on the part and behalf of your Petitioner to the fourth Interrogatory said that he did know and was intimately Acquainted with the said Intestate for the space of Twelve years and that he used in his Transactions and dealings the Names of Nelleyapah nellian and nellypan and that the said names were Sinonimous and import one and the same person and that the said Intestate in his life time use the three before mentioned names and was as well known

by

by one name as the other and which were the only witnesses that were examined on the part of your Petitioner - And your Petitioner further Sheweth that Publication passed in the said Cause which was afterwards Set down for hearing and coming on to be heard by and before the said Mayors Court on Tuesday the fourth day of this present month of March the said Court did think fit to Order and Decree your Petitioner to pay unto the said Complainant the sum of three thousand and thirty eight Star pagodas and three fanams together with all such Interest as there was or should thereafter become due thereon until full payment should be made and it was further Ordered and Decreed that your Petitioner be taxed with double Costs of Suit -

From which said Decree of the said mayors Court your Petitioner did appeal to the Honble Court of Appeals as he conceived the same to be highly erroneous and that your Petitioner was materially aggrieved thereby for the following among other Reasons -

First ..... Because that the said Complainant has by no means supported her said Bill of Complaint and Replication -

Secondly ..... Because it appears by your Petitioners said Answer which has also been fully and clearly proved on the part of your Petitioner that the said three Several Sums of money Acknowledged by the said Receipts were actually and bonafide paid by your Petitioners Gomastah to the said Intestate in his life time for and on account of the said

Bond

Bond in question for that it clearly appears by the Deposition of Ramiah Pillah a witness on the part and behalf of the said Complainant that the said Bond was given by your Petitioner to the said Intestate but for the Joint benefit and advantage of the said Deponent Vencata Ramah Pilla Tomboo naich and the said Intestate and that the said Deponent knew that your Petitioner had paid unto the said Intestate at two Severall payments the sum of Nine hundred Star Pags and that the said Deponent with the said Deponent with the said Vencata Ramah pilla Tomboo naich at the Decease of the said Intestate wrote to the said Complainant for their full purportion that was then due on the said Bond and which said proportion or share was by them received from the said Complainant Therefore your Petitioner humbly submits what has been by your Petitioner in his said answer setforth relating to the payment of the said three severall sums of money by his said Gomastah so far from being refuted was strongly corroborated by the Gomastah was the fact and that the payment thereof so far from being refuted was strongly corroborated by the Testimony of the said Ramah pilla and that such payment must have been well known to the said Complainant Otherwise it is not to be presumed that She would upon the Simple request of the said Ramiah pillah and the said Vencata Ramah pillah and Tomboo naich have paid them their respective shares due on the said Bond

Thirdly

Thirdly ..... Because If your Petitioner was to Comply with the said Decree of the said mayors Court regarding the payment of the said sum of three thousand and thirty eight star Pagodas and three fanams it would be a great hardship upon your Petitioner he having caused the greatest part of the said sum to be already paid off and discharged

Lastly ..... Because Instead of the said Bill of Complaint being dismissed with Costs Your Petitioner is by the said Decree Taxed with double Costs whereby as well as being Decreed to pay the said sum of three thousand and thirty Eight Star Pagodas and three fanams with Interest your Petitioner thinks himself particularly aggrieved

To which said Petition and appeal the said Cauinatchiy ammah did put in her Answer and thereon did admit that She did on or about the ninth day of February which was in the year of Christ One thousand seven hundred and ninety two as acting administratrix of the above named Nelleyapah Commandant exhibit and file her Bill of Complaint in the mayors Court of Madraspatnam against your Petitioner for the recovery of the sum of three thousand and thirty eight pagodas and three fanams as Justly due and owing unto her as administratrix as aforesaid by your Petitioner upon his Bond executed to the said Complainants Intestate in his life time and the said Complainant did admit that she did in and by her said Bill of Complaint setforth the several matters and things and thereupon did pray the said mayors Court as in and your Petitioners

said

said petition of appeal the same are particularly set forth and the said Complaint did also admit that to her said Bill of Complaint your petitioner did exhibit and file his Answer and that the same might have Contained the Several matters and things in and by your Petitioners said Petition of appeal stated and insisted an-

And the said Complainant did admit that to your Petitioners said answer she did duly exhibit and file her Replication in the said mayors Court and that She did therein and thereby maintain and support the Several Charges in her said Bill of Complaint Contained and state the several other matters and things in your Petitioners said Petition of appeal recited - and the said Complainant did admit that your Petitioner did to her said Replication exhibit and file his Rejoinder and that the same might have Contained the several matters and things in your Petitioners petition of appeal set forth That thereupon issue did join and rules did pass for the examination of witnesses and that Witnesses were Accordingly examined on both sides and also admits that the Statement of Evidence in your Petitioners said Petition of appeal might be correct so far as the same extended and also admits that publication did pass and that thereon the Cause was set down to be heard and that the same did Accordingly come on to be heard at the time in your Petitioners said petition of appeal set forth

set forth and the said Complainant did admit that at the hearing of the said Cause the said mayors Court did think fit to Order and Decree and did accordingly order and Decree that your Petitioner should pay unto the said Complainant the sum of three thousand and thirty eight Star Pagodas and three fanams together with all such Interest as then was or should thereafter become due thereon until full payment should be made and that it was further Ordered and Decreed that your Petitioner should be taxed with double Costs of Suit but the said Complainant did pretend that your Petitioner was not in any wise aggrieved by the said Decree of the said mayors Court and also pretended that your Petitioner had no reason or Cause of appeal therefrom to the Honble the Court of Appeals at Madras and

To your Petitioners first reason for appeal the said Complainant says that notwithstanding the assertion of your Petitioner to the Contrary she the said Complainant had fully supported her said Bill of Complaint and Replication by the evidence adduced on her behalf

To the second Reason for appeal the said Complainant submitted to the said Honble Court notwithstanding the assertion of your Petitioner to the Contrary that your Petitioner had not in and by his said Answer or otherwise fully or in any degree proved that the said several sums of Money Acknowledged by the three receipts herein-

before

before mentioned were paid either by his gomastah or by any other person to the said Complainants said Intestate in his life time for and on account of the Bond in Question and the said Complainant sayd that the Shewing of your Petitioner in and by his said second Reason is a departure from his said Answer and in full contradiction thereto for in and by his said Answer your Petitioner declared that the said Several sums of money for which the said three receipts were granted by the said Complainants said Intestates were by him your Petitioner paid to the said Complainants said Intestate and were the three first Items composing a part of the account Current to your Petitioners said answer annexed and in and by your petitioners said second reason for appeal your Petitioner sayd that the same were paid by his Gomastah and your Petitioner in and by his said reason for appeal further sayd that it clearly appeared by the Testimony of Ramiah Pillay a witness examined on the part of the said Complainant that the Bond in Question was by him executed to the said Complainants said Intestate for the Joint benefit and advantage of the deponent and Tomboo Naich and the said Complainants said Intestate and that your Petitioner had on account thereof paid unto the said Complainants said Intestate at two different payments the sum of nine hundred Pagodas that he the deponent and

the

the said Tomboo naich had written to the said Complainant for their full proportion that was due on the said Bond and that She had in Consequence paid the same and your Petitioner concluded from thence that it had been fully proved that the said three Several Sums of money by him stated to have been paid by his said Gomastah so far from being refuted was corroborated by the Testimony of the said Rammah Pillay and that such was the fact whereupon the said Complainant sayd that the said Rammah Pillay in proving and your Petitioner in admitting the payment of the said two several sums of five hundred and four hundred Pagodas making together the sum of nine hundred pagodas to have been paid by your Petitioner shewd that the two last items in the said Account Current to your Petitioners said answer annexed were paid by your Petitioner himself which was all that the said Complainant had contended for and which she averd to be the fact and it effectually does away the pretext set up by your Petitioner in his said answer and totally destroys the gist thereof as your Petitioner in and by his said answer asserted that he did not pay but that it was his Gomastah who paid the said two Several Sums of five hundred and four hundred Pagodas and that it was himself and not his Gomastah who paid the said three several Sums of two hundred

Seven

Seven hundred and fifty and one thousand pagodas and from thence shewd the reason why the balance by him said to be the balance due to the said Complainants to wit the Sum of two hundred and sixty Eight pagodas twenty five fanams and forty cash was not paid off and the said Bond delivered up to be cancelled for your Petitioner in and by his said Answer after insisting that the said several sums of two hundred pagodas Seven hundred and fifty and one thousand Pagodas were paid by himself to the said Complainants said Intestate proceeded in the words following that is to Say "This Defendant went up the Country and did previous to his departure order his Gomastah to pay the residue of the said monies then due upon the said Bond that his said gomastah did accordingly pay to the said Intestate at the times in the account Current to the Complainants said Bill of Complaint annexed the respective sums of four hundred and five hundred Pagodas that the Intestate did shortly afterwards as this Defendant has heard and believes apply to the said Gomastah to discharge the said Bond that the said Gomastah was ready and offered so to do-but upon his requesting the said Intestate to deliver up the said Bond or to endorse thereon the balance which the said gomastah then offered the said Intestate as this Defendant has been informed and believes refused so to do alledging that his receipts were outstanding which Receipts the said Gomastah could not deliver up they being

then

then in the Custody of this Defendant" which the said Complainant submitted to the said Honourable Court was according to your Petitioners own shewing as hereinabove referred to a false statement of the fact but it appeared to have been the only means your Petitioners could resort to to evade the payment of a just debt Two sums of money had been paid on account of your Petitioners said Bond and receipts were regularly given in the back thereof for the same and therefore in order to give a color to the three receipts for three several sums paid on account of the said Bond and of which no mention is made as in the two other Instances upon the said Bond your Petitioner pretended that he himself paid the sums setforth in the latter and that his said Gomastah paid the sums setforth in the former and then to account for the balance remaining due not having been discharged and the Bond delivered up to be cancelled he said that going up the Country he carried the three receipts with him and that when his said Gomastah during his absence offered payment of the said alledged balance to the said Complainants said Intestate and required the said Bond to be thereon given up to be cancelled the said Complainants said Intestate refused either to Receive the said balance or to deliver up the said Bond to your Petitioners

said

said Gomastah giving as a reason that the said three several Receipts were outstanding against him but your Petitioner had not shewn that he himself paid the said two several sums of five hundred and four hundred pagodas which are the last Items mentioned in the Account Current to his said answer annexed and consequently the Objections pretended to have been made by the said Complainants said Intestate never could have been made because the pretended grounds thereof could not have existed and the fact truly stated is as your Petitioners had shewn it to be in his said second Reason for appeal that your Petitioner did himself actually pay to the said Complainants said Intestate on account of the said Bond the two Several Sums of five hundred and four hundred Pagodas for which the said two several receipts appear on the said Bond and which were the only sums ever paid on Account thereof and the said Complainant therefore submitted to the said Honble Court that your Petitioner instead of being aggrieved by the said Decree of the Mayors Court had by his own shewing fully demonstrated the Justness and equity thereof that he had no Cause of Appeal therefrom and that his motive for appealing must be to keep the said Complainants as long as possible out of her Just Rights and to harrass and

distress

distress her by a vexatious Litigation—

To the third Reason the said Complainant says that the same did not contain any merits and consequently did not shew any cause against the said Decree of the said Mayors Court for although your Petitioner did thereby pretend that he had caused the greatest part of the Amount of the sum Decreed to be paid off and discharged yet he had not adduced any evidence to support the same and the said Complainant says as she had hereinabove shewn that your Petitioner in giving his reasons for appealing from the said Decree of the said Mayors Court had demonstrated that the matters and things by him set up as a defence against the said Complainants said Bill of Complaint and Contained in his your Petitioners said Answer upon Oath and upon which he had relied were fallacious and therefore he had changed the same in his appeal to the said Honble Court from the said Decree of the said Mayors Court and the said Complainants trusted that it would thereafter appear to the said Honble Court that the witnesses produced by your petitioner had proved the fallacy of the said matters and things in your petitioners said Answer Contained and had in many Instances contradicted themselves—

I.

To the fourth Reason the said Complainant sayd that it clearly appeared to the said mayors Court that the Conduct of your petitioner had been altogether in correct that the defence set up by him to the said Complainants said Bill of Complaint was replete with untruths and that he had attempted to support the same by fabricated vouchers that his witness & chiefly his own servants gave such Testimony as did not deserve any Credit and that therefore the said mayors Court did think proper to mark their disapprobation of the proceedings of your Petitioner with double Costs and therefore upon the said Complainant submitted to the said Honble Court that your Petitioner was by no means aggrieved by the said Decree of the said Mayors Court - and the said Complainant did by his said answer further setforth That Boolsoo to the second Interrogatory sayd that the Receipts N. 1. 2. and 3. were made signed and given by Nellcapah Commandant and afterwards he shewd that they were made by himself for he sayd that the bodies thereof were drawn by him the Deponent To the third Interrogatory he sayd that he paid to the said Complainants Intestate the several sums of two hundred seven hundred and fifty and one thousand Pagodas and also the sums of four hundred and five hundred

Pagodas.

Pagodas which is a direct Contradiction to your Petitioners answer upon Oath for he therein declared as herein above shewn that the three former of those sums were paid by himself And your Petitioner when Accounting for the Bond not having been fully discharged sayd in his said answer that his said Gomastah offered to pay the Balance that was due thereon but that the Intestate refused to deliver up the said Bond until the Receipt that were out standing were first returned to him and that his said Gomastah could not comply as those Receipts were with himself and that before any thing further could be done on the said Bond the Intestate died But the said Boolsoo in his deposition on the part of your Petitioner sayd that the said Complainants Intestate died about three Month before his death demand the Balance due to him from your Petitioner himself and not from him the Deponent which the said Complainant Submitted to the said Honble Court was a Contradiction to the Assertion by your Petitioner stated in his said Answer and Justifies the conclusion that if your Petitioner had at any time been absent from Madras he had returned thither before the death of the said Complainants said Intestate and proved the pretext regarding the Receipts being out standing to have been as it really was without any Manner of foundation Coondah Ramiah to the Second Interrogatory sayd that the said Receipts were signed and given by the said Complainants Intestate to your Petitioner Boolsoo shews that the Receipts were given to him and it appears that your Petitioner was not present and the said Complainant sayd that no such Receipts ever were given by her Intestate either to the said Boolsoo or to your Petitioner Moorgapah Ramiah to the third Interrogatory

sayd

Said that Colundah Ramiah paid the Sum of four hundred and five hundred Pagodas to the said Complainants Intestate this is contradicted by Boolsoo who Says that those Sums were paid by himself and although the said Colunda Ramiah is Interrogated to the same point he did not say that he paid those Sums Moorgapah further Says that the bodies of the endorsements upon the back of the said Bonds were Written by Boolsoo himself Says that the body of one of them was written by Verdiah the Cash Keeper and the said Complainant prays leave to add that the evidence on her behalf Support her Bill of Complaint and Replication in the Clearest Manner several Witnesses examined to the Second Interrogatory proved the payment of the Sums of five hundred and four hundred Pagodas to have been made by your Petitioner himself that the Name Nellian affixed to the pretended Receipts was not of the hand writing of the said Complainants said Intestate who always Signed his Name Nellapen and that when the said two Sums of five hundred and four hundred Pagodas were paid as above mentioned your Petitioner Acknowledged that the Sum of two thousand one hundred Pagodas remained due on the said Bond and Kistnyer to the said Second Interrogatory Said that he attended Tandavaroy Moodelliar brother to the Complainants said Intestate to demand from your Petitioner the balance so remaining due and that your Petitioner did promise to pay the same if the said Tondavaroy could produce a Person to Shew that he was entitled to receive it And Soobaroy Pillay and Vencatachella Moodelly to the same Interrogatory corroborated the testimony given by the said Kistnayer

Vencatachella.

Vencatachella Moodelly Soobaroy Pillay and Kistnayer Shewed that about fourteen days after the application of the said Tandavoy Moodelly to your Petitioner as above stated they did attend the Said Tandavoy Moodelly to your Petitioner from whom the Said Tondavaroy did again demand the said Sum of two thousand one hundred Pagodas and the Interest due thereon that your Pet.r did acknowledge the same to be due and that the said Tondavaroy had a right to demand it observing that Nineapah Moodelly had proved the fact to him and Assigned as a reason for not paying it to the said Tondavaroy immediately that he must first exchange into Star Pagodas a Sum of Money which he had Received in Madras Pagodas and Objected to the paying of Interest from all which Matters and things the Said Complainant humbly Submitted to the Said Honble Court that the Said Decree of the said Mayors Court was equitable and just.

And Your Petitioner Sheweth unto your Most Excellent Majesty in Council that his Petition and Appeal and the Answer of the said Complainant thereto came on to be heard and determined on the fourteenth day of this present Instant June by the said Court of Appeals at Madras which said Court thought proper to confirm the Decree of the said Mayors Court with Costs of the Suit in the said Court of Appeals to be paid by your Petitioner all which will More fully and at Large Appear by Reference to the Several Proceedings had in the Above Cause in the said Mayors Court and Court of Appeals to which said Several Proceedings and to each of them Respectively your Petitioner prays leave to

Refer

Veser and to have such full and ample benefit of them and each of them as if they and each of them were hereunbefore fully stated and set forth and made part of the appeal. — From which said Decree of the said Mayors Court and Court of Appeals your Petitioner most humbly appeals to your Most Excellent Majesty in Council for the Reasons assigned in your Petitioners said appeal to the Court of Appeals at Madras as above stated as also for the following among other reasons. —

First. . . . . Because the reasons assigned by your Petitioner in his Petition and appeal to the Court of Appeals at Madras ought to have induced the said Court of Appeals to have reversed the Decree of the Mayors Court as they are well founded and drawn from clear and indisputable facts deposed by the Witness examined on the part and behalf of your Petitioner and your Petitioner having most clearly proved the Payment of the several Sums of Money in his Answer to the Complainants Bill of Complaint particularly set forth he conceives himself justly entitled to set off the same against the Claim of the said Complainant. —

Secondly. — — Because that if the said Mayors Court had jurisdiction of the said suit which your Petitioner in no wise admits the said Court ought not to have given a Decree for more than the — Amount by your Petitioner acknowledged to be due unto the — Complainant and your Petitioner is advised that the said Mayors Court should have further Decreed that each party should have paid their own Costs instead of which your Pet.rs Case did not meet with the attention it Merited and Moreover

Your

Your Petitioner was taxed with double Costs in the Mayors Court and with all Costs in the Court of Appeals and furthermore your Petitioner most humbly submits to your Most Excellent Majesty in Council that the proceedings of the said Mayors Court are in this respect coram non Judice in as much as the said Intestate was in his lifetime an Indian Native and that as well his Representatives as your Petitioner are Indian Natives. —

For all which Reasons and such others as may be offered at the hearing of this Cause Your Petitioner Most humbly Prays that the said Decrees of the said Mayors Court and Court of Appeals at Madraspatnam be reversed and set aside and that the Complainants be ordered to pay all Costs of Suit. —

/Signed/ Gilb.t Ricketts for John White & Self —

Solicitors for Appellant. —

Court,

Court of Appeals
at
Madraspatnam } Saturday the 14th day of June
Anno Domini 1794

Between Vencataramiah Brameny of Madras Inhabitant appellant and Caumatchy Ammal of Madras Inhabitant the acting Administratrix of Neleyapah Commandant deceased Respondent —

This Cause coming on this day to be heard and debated before this Court by the Attorneys on both sides it was moved by the Attorney for the appellant that the Matter before the Court was between two Natives and that therefore the Decree of the Honble the Mayors Court ought to be Reversed because two Natives one by the Charter restricted from Sueing each other to which the Attorney for the Respondent shewed that the Appellant / the Defendant in the Mayors Court had not offered any Plea to the Jurisdiction of the Court but had Appeared to the Bill filed by the Respondent Complainant in the Mayors Court / and gone to Issue and the hearing of the Cause without any Manner of Objection upon taking the same into Consideration And it Appearing to the Court that no Plea to the Jurisdiction of the Mayors Court was filed nor any matter stated in the Proceedings to shew the unwillingness of the appellant to abide the Judgment of the said Court and this Court Considereng the same as sufficient evidence of his Consent to Submit to the Jurisdiction of the Mayors Court doth think fit to order that the Motion of the Attorney for the appellant be over Ruled and upon hearing the Petition of appeal and answer and the several Exhibits of the Honble the Mayors Court together with the Decree of the said Court given in this Cause on Tuesday the 15th day of March Anno Domini 1794 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 that the appellants Petition be hence dismissed with Costs —

Hour / signed / Robert Clerk Clk
a true Copy
/ signed / Gilbt Puchetts for John White
Self
Solr for Appellant

To

To the Honourable Sir Charles Oakeley Baronet

President and Governor &c in Council

Fort St George

In the Honourable } the Court of Appeals }

Between Sooloocaum Chitty of Madras Inhabitant Complainant and Chenglerayan also of the same place Inhabitant Defendant —

Sheweth The petition and Appeal of the above named Defendant

That on or about the Eleventh day of December and year of Christ one thousand Seven hundred and ninety the Complai-
Filed in my Office : nant above named did Exhibit and file his Bill of Complaint
the 24th March 1794 in the Mayors Court at Madraspatnam against your Petitioner for
Chas N White --- Clk the recovery of the sum of two hundred and fifty one pagodas and Twenty four fanams Current money of Madras pretending the same to be due and owing unto him the Complainant upon a Mortgage Bond or Obligation Executed by your Petitioner and setting forth that your Petitioner being previous to the month of February in the year of Christ one thousand seven hundred and Eighty four indebted unto the Complainant in the Sum of One hundred and forty Pag your petitioner did at this the Complainant request Enter into and duly Execute the Bond or obligation above recited in the name of Thomas Davis late of Fort Saint George Esquire deceased he the Complainant preferring

preferring taking the said Bond in his name to his own, because he thought it would be as he the Complainant did pretend more punctually paid According to a Custom practised among the natives of taking Securities for their debts in the name of Some European Gentlemen but that the Debt was really and truly belonging to him the Complainant and no part of it whatever belonging to the said Thomas Davis that some time afterwards the said debt not having been paid or any part of it, the said Thomas Davis did on the first day of march one thousand Seven hundred and Eighty five assign the same over to the Complainant as by an assignment Endersed on the original mortgage Bond Copy whereof was to his said Bill annexed the Complainant did say would morefully appear and the Complainant did thereupon in and by his said Bill pray that your petitioner might be decreed to pay unto him the Complainant the said sum of two hundred and fifty one Pagodas and Twenty four fanams together with all such Interest as there was or should thereafter become due thereon with all Costs of Suit—

And your Petitioner Sheweth unto this Honble Court that to the Complainants said Bill of Complaint your Petitioner did Exhibit and file his several Pleas and answer and for Plea did say that it appeared by the said Bill of Complaint and the Exhibits thereunto annexed that the ground upon which the present action was brought was a pretended mortgage Bond or Obligation pretended to have been

been Executed by your Petitioner unto Thomas Davis therein named and bearing date the fifteenth day of February which was in the year of Christ one thousand Seven hundred and Eighty four for the Sum of One hundred and forty Pagodas with an Interest thereon at the rate of Twelve per Cent per annum and payable in two different payments on or before the thirteenth day of July then next Ensuing and which said pretended mortgage Bond or Obligation was by the Complainant said to have been assigned over to him by the said Thomas Davis by the Words following to wit" I have therefore transferred and set over the Premises unto Soolacaun Chitty without Any power from the said Thomas Davis to the Complainant to sue in the Name of the said Thomas Davis and the said Thomas Davis was not made a party in the said Bill your petitioner did therefore plead that a Bond being a Chose in action could not be assigned over so as to Enable the Assignee to sue in his own name and when Bonds or Obligation were assigned it was done with a power of attorney to receive and sue in the Assignors name and it was the Established rule in Courts of Law and Equity that in a Suit upon the Assignment of a Bond or obligation such Suit should be prosecuted in the name of the Assignor by his Attorney the Assignee which indispensable Rule and all and singular the premises your petitioner did plead in Bar to the Complainants said Bill and your Petitioner not waiving or

departing

Departing from his said plea but wholly relying and insisting thereon for further Plea did say that it appeared by the Complainants own shewing in and by his said Bill of Complaint that Thamas Davis therein named the pretended Assignor of the pretended Bond or Obligation upon which the Complainant had brought his action against your Petitioner never had any the least right or title whatever in the said pretended Bond or Obligation or to the monies thereby pretended to be Secured and as a man who had no right or Title in a thing Could not assign the same and for as much as the scope and end of the Complainants said Bill was to Compel your Petitioner to pay to the Complainant the sum of two hundred and fifty one Pagodas and twenty four fanams and for as much as the Complainant and your Petitioner were both natives of India and as your Petitioner had not Submitted to be sued by the Complainant in the said Mayors Court your Petitioner did plead in Bar thereto and for plea did shew that by the Charter granted at Westminster in the Kingdom of Great Britain on the Eighth day of January in the Twenty Sixth year of the Reign of his late &c. Majesty George the Second then King of Great Britain and so forth to the united Company of Merchants of England trading to the East Indies &c. whereby it was amongst other things Enacted that the mayor and aldermen for the time being of Madraspatnam should for ever thereafter be and they were thereby Constituted a Court of Record by the name of the Mayors Court at

at Madraspatnam and that they or any three or more of them whereof the Mayor or the Senior Alderman for the time being there residing there to be one might and they were thereby authorized to try hear and Determine all civil Suits actions and Pleas between party and party that should or might arise or happen or that had arisen or happened within the said Town of Madraspatnam or within any of the Factories Subject or Subordinate unto Fort Saint George or to the Governor or President and the Council of Fort Saint George aforesaid Except such Suits or Actions should be between the Indian Natives of Madraspatnam only In which Case his said Majesty willed that the same should be Determined among themselves unless both partys should by Consent submit the same to the &c. Determination of the said Mayors Court which Charter and particularly the said Clause therein and thereinbefore recited your Petitioner did plead in Bar to the Complainants said Demand and your Petitioner not waiving or Departing from his said several Pleas but relying and humbly insisting thereon for further Plea did say that the scope and End of the Complainants Bill was to Compel your Petitioner to pay to the Complainant the sum of two hundred and fifty one Pagodas and twenty four fanams thereby suggested to be due and owing to the &c. Complainant upon a pretended assignment of a Bond or Obligation pretended to have been Executed by your Petitioner to Thamas Davis therein named whereof a paper writing said to be a Copy was to the Complainants said

Bill

Bill annexed and whereby it appeared that the said pretended Bond or Obligation never was Signed sealed or Delivered by your Petitioner and thereupon your Petitioner did deny that the said pretended Bond or Obligation to be his Deed as by the Complainant the same were Charged to be in and by his said Bill and upon which the Complainant had grounded his right of action against your Petitioner and your petitioner did plead the same in Bar to the Complainants said Bill of Complaint and your Petitioner not waiving his said Pleas but wholly relying and insisting thereon for Answer to the residue or to such part of the Complainants Bill as your Petitioner was advised to make answer unto he your Petitioner did answer and say That he denied to be Justly and truly indebted unto the Complainant Either in the Sum of Two hundred and fifty one Pagodas and Twinty four fanams as in and by his the Complainants said Bill of Complaint the same was Charged and setforth or in any other sum or Sums of Money whatever and your Petitioner did further deny to have been indebted to the Complainant previous to the year of Christ One thousand Seven hundred and Eighty four or at any other time whatever either in the Sum of one hundred and forty Pagodas or in any other Sum or Sums of Money and further your Petitioner denied that he Ever had either at the time aforesaid or at any other Time whatever any manner of dealings or transactions with the Complainant whereby or by reason whereof he could have became so

indebted

indebted as aforesaid and thereupon your Petitioner did say it would Appear and to your Petitioner declared the truth to be that the Complainant never did request your Petitioner to Execute the pretended Mortgage Bond or Obligation of which a writing said to be a Copy thereof was to the Complainants said Bill annexed and your Petitioner did say that to his Knowledge and belief he never saw Thomas Davis the pretended Obligee in the said pretended Bond or Obligation named nor did your Petitioner Ever sign and Deliver any Bond or Obligation note or Other Instrument whatever in the presence of Poonaspaulum Terooveacanasoo and Vaparey Annachellum the persons whose names Appear as subscribing Witnesses to the said pretended Mortgage Bond and your Petitioner did also say that the Complainant had no ground or Color of right whereby to Call him your Petitioner in question before the said Mayors Court and that it was Evident by the Complainants own shewing that the pretended Bond or obligation upon which he had brought his suit against your Petitioner was a mere fiction and that the pretended receipt said to have been granted to him the Complainant by the said Thomas Davis as and for the amount thereof together with the Interest thereon had no foundation in fact but that the same was so granted merely to give a Color to such fiction for the Complainant in and by his said Bill declared that although the said pretended Bond or obligation was Executed to the said Thomas Davis yet that the said Thomas Davis never had any the

least

least right or title whatever therein or to the premises thereby setforth whereupon your Petitioner did say that it Appeared by the complai-
nants own shewing that the said Bond or Obligation and the said receipt was so Act of fraud and Collusion between him the Complainant and the said Thomas Davis upon the inequitious principle and with the Evil design of depriving him your Petitioner of his property by the most fraudulent means Contrary to Equity and good Conscience and forasmuch as all matters of Fraud were properly Cognizable by, and the particular province of a Court of Equity your Petitioner humbly Craved the benefit therein in the Like manner and to the full Extent as if he had by Plea pleaded the same —

And your Petitioner Sheweth unto this Honourable Court that to your Petitioners said Plea and answer the Complainant did Exhibit and file his Replication thereto and thereby setting forth that in regard to the legal objection taken to same pretended omis-
sion in the Indorsement on the back of the Bond in question the fact was that the Debt was not for any Money or Other Value given by Thomas Davis whose name was mentioned therein to your Petitioner but the debt was originally and Justly and truly due and owing from your Petitioner to the Complainant and the name of the said Thomas Davis was only made use of in trust for the Complainant according to a Common Custom among the

the natives of this Country to take Bonds and other Securities in the name of Europeans all which in due time he did say he would fully prove to the satisfaction he hoped of the said Mayors Court for the Complainant did say that the doctrine respecting Choses in action was Confined to the Courts of Common Law and that any person to whom a debt had been Assigned or for whom a debt was held in trust might sue for it in the Court of Chancery in his one name and therefore there was no necessity of his being Empowered to sue in the name of any other person and the Complainant did say that the present Case was strictly within the Rules Either of an Equitable Assignment or Declaration in trust and the
original mortgage Bond Containing also your Petitioner Consent to be sued in the said Mayors Court incase the Bond was not duly paid the present Suit was strictly within the Rules and practice of the said Mayors Court as well as of the Court of Chancery and that your petitioner was bound to Answer the Complainants Bill That in regard to the second plea which stated that the said Thomas Davis had no right to the money Secured by the said Bond and that therefore he could not Assign any right the Complainant did say that it was not pretended he Ever did Assign any right to the Complainant but it was merely an Acknowledgment and so intended of the Money secured by the Bond being really
due

due to the Complainant an in regard to the Charters restraining suits between natives from being brought in the said Mayors Court it did add unless both partys Consent thereto which Consent was Testified in the present Suit by the written agreemint of your Petitioner that in regard to the third Plea setup which stated that your Petitioner never signed the Bond in question it was a most absurd perversion of of the fact for the Bond was not only signed but was altogether written by your Petitioner himself and he added at the End of it in his own hand Writing the following Words" Thus I have Voluntarily given you this mortgage Bond Drawn and signed by Chenglevoy am own Hand Writing and yet your Petitioner did say that it appeared by this very writing that it was not his Deed not however to Enter into Legal niceties of what was a Bond or not it was well known that it had been the practice of the said Court to Distinguish of these written Engagements of the natives by the name of Bonds tho they had not the legal Characteristicks of Seals and they were of Evidently such a Voucher of a debt as was Sufficient to make your Petitioner answer to a suit brought upon them and the Complainant did say in reply to the answer of your Petitioner that he your Petitioner was Justly and truly indebted to the Complainant in the Sum of Money sued for and in order to Explain to the said Mayors Court how the Debt arose the Complainant did say that one

Conagaraya

Canagaraya pillay was indebted to this Complainant in the sum of Four hundred and fifty pagodas and he informed the Complainant that your Petitioner and his Partner Seroovoocarasoo were indebted unto him the said Canagaray Pillay in a sum of One hundred and forty Pagodas and he would get them to Execute a mortgage Bond to the Complainant for that sum in part of the said four hundred and fifty Pagodas to which the Complainant having Consented one of the said parties namely the said Chenglevoy your Petitioner gave the Bond in question to the Complainant and the said Seeroova: carasoo the other partner signed his name as a Witness to the said mortgage Bond upon which the said Canagaraya gave a receipt for that Sum to your Petitioner and that the Complainant gave a Receipt to the said Canagaraya Pillah which was really the whole of the Transaction and the name of the said Thomas Davis was inserted at the request of the Complainant According to a Custom Common among the natives as was above noticed and in regard to its not being Executed in the presence of the Witnesses therein named the Complainant did insist that it was Executed in their presence or at least fully acknowledged by your Petitioner in their presence to be his hand writing and they were requested by your petitioner himself to sign their names as Witnesses thereto and the Complainant did further say that your Petitioner had often been requested by the

Complainant

Complainant to pay the Amount of the Bond to which he never made the least objection Except his not having Money and always faithfully promised to pay it as soon as he could get money which the Complainant did pretend he could prove by the Several people who Event at different times to demand it, and more particularly at the time that your Petitioner requested the Complainant to lend him the mortgage Deed as mentioned in the Affidavit filed in this Cause when your Petitioner in the most solemn manner Assure the Complainant in the presence of several People whom he had ready to produce that he would Certainly pay off the amount due upon the said Bond in a short time

And your Petitioner Sheweth unto this Honourable Court that to the Complainants said Replication your Petitioner did Exhibit and file his Rejoinder and therein and thereby setforth that in and by the Complainants Bill of Complaint and the Exhibits thereto annexed it would Appear that the said Bill was brought upon the pretended Assignment of a Bond by your Petitioner Executed to Thomas Davis in the said Bill named and the Complainant in and by his said Replication did Assert that the said Thomas Davis never did give any valuable Consideration on Account thereof and that your Petitioner was not indebted to the said Thomas Davis which your petitioner did state it did in fact appear by the Complainants own shewing

shewing that the whole was a matter of Collusion to oppress your Petitioner and that the said Thomas Davis in order to give a Color to such Oppression and Collusion had granted a Receipt upon the back of the said pretended Bond to the Complainant for the full amount and Interest as if he the Complainant had bonafide paid the said Thomas Davis and actually received the same and your Petitioner did thereupon further shew that the Complainant by his own shewing had brought his action against your Petitioner upon false premises that the Doctrine in your Petitioners said Plea contained respecting as those in action Applied to the practice of the said Mayors Court beyond the Course of which your Petitioner did not think it necessary to range and in support of his said Plea your petitioner did say that whenever a Bond was assigned the Assignee could only sue thereon in the name of and as Attorney to the Assignor that Even if the said Bond had been strictly legal and by your petitioner duly Executed the power to sue in the said Court as therein setforth did not give the Complainant any authority to sue your Petitioner because the said Bond recognised the said Thomas Davis as the Obligee and him only and that the name of the Complainant not appearing therein Could not in Law or in Common Sense be meant or indended thereby but your Petitioner did not admit the Legality nor the due Execution of the said Bond and that although the

Complainant

Complainant in and by his said Bill of Complaint declared that the said debt not having been paid or any part of it the said Thomas Davis did on the first day of march in the year of Christ one thousand Seven hundred and Eighty five assign the same over to the Complainant as the same appeared by an Assignment Endorsed upon the original mortgage Bond or Obligation whereof a Copy he further Declared was to his said Bill annexed yet in and by his said Replication in Reply to your Petitioners Plea thereon he did say that it was not pretended the said Thomas Davis did assign any right to him the Complainant but that it was merely an Acknowledgment and so intended by the money secured by the said Bond being really due to the Complainant and your Petitioner referring to the said Endorsement which declared that he the Complainant had paid the full amount principle and Interest of the said Bond to the said Thomas Davis and that therefore the said Thomas Davis had transferred and set over the premises unto the Complainant did submit such the self Evident Contradiction and palpable inconsistencies of the Complainant to the said Mayors Court and did say that his plea of non Est factum was well founded notwithstanding any thing to the Contrary in the Complainants said Replication contained that although between two natives the legal Characteristicks of seals and other forms might not be attended to yet that the same irregularities and want of form did not apply to the Transactions between natives and Europeans that it appeared by the Complainants own shewing that the Bond in question was not a Transaction between two natives and that he denied as in and by his said Plea and answer he had thereunto before denied being indebted unto the Complainant in the Sum of four hundred and fifty Pagodas or in any other Sum or Sums of money whatever and that the new matter in the Complainants said Replication contained relative to Canagaroy Pillay and the pretended Transaction between the Complainant the said Canagaroy Pillay and your Petitioner was a departure from the Complainants said Bill of Complaint and was altogether irrelevant and impertinent that your Petitioner never borrowed nor received any Money from nor did he Ever owe Money to the said Canagaroy pillay and as to the other new matters in the Complainants said Replication set forth your Petitioner did say the same and Every part thereof were and was without any kind of foundation and was altogether untrue and that the Complainant so far from having Ever Demanded payment of the Bond in question as by him pretended the first time your Petitioner had Ever heard from the Complainant on account thereof was through his the Complainants Attorney at Law a very short time previous to the Commencement of the present suit and your Petitioner did

did through a friend question the Complainant thereon who did then not only Declare and deny in the presence of such friend and other Credible persons of his Ever having any such Demand against your Petitioner as the Letter of his Attorney at Law Expressed but that your Petitioner was in no other manner or wise whatever indebted to him —

And your Petitioner Sheweth unto this Honourable Court that upon the above proceedings Issue having Joined the Rules did pass for the Examination of Witnesses and Witnesses were accordingly Examined on both sides —

And your Petitioner sheweth unto this Honourable Court that Veroovoocarasoo Moodelly to the Second Interrogatory on the part and behalf of the Complainant did Depose that he had looked at the Paper Writing produced and shewn to him at the time of his Examination marked with the Letter A and purporting to be a written Bond or obligation in the Malabar Character from your Petitioner to Thomas Davis in the said written obligation named for the principal Sum of one hundred and forty Pagodas and that Canagaroy Pilla did request your Petitioner to set his name as a Witness thereto and that the name Veroovoocarasoo set and subscribed as a Witness to the said written obligation was of his own hand writing that he had often seen your Petitioner write and subscribe his name and was acquainted with the manner and Character of his hand writing that he knew the Entire of the body of the said pretended written obligation and the name

Chenglevoy

Chenglevoy an thereunto set and subscribed as a party Executing the same was of the hand Writing of your Petitioner Canagaroy pillah to the third Interrogatory on the part and behalf of the Complainant did Depose that he had looked upon the Paper Writing produced and shewn to him at the time of his Examination marked with the Letter A and purporting to be a Written Bond or obligation in the Malabar Character from your Petitioner to Thomas Davis in the said written Obligation named that he did know Arnachellum pillah whose name appeared subscribed as a Witness to the said Bond and that he had seen him write and subscribe his name and believed the name arnachellum pillah set and subscribed to the said produced written obligation to be of the hand writing of the said arnachella pillah - that he had seen your Petitioner write and subscribe his name and was Acquainted with the Character of his hand Writing that he believed that the Entire of the body of the said produced written Obligation and the name Chenglevoy an thereunto set and subscribed as a party Executing the same was of the hand writing of your Petitioner and to the sixth Interrogatory the said Canagaroy Pillay did Depose that it was the Custom among the natives Inhabitants of Madras to take and receive Bonds or other Securities for their own individual debts in the name and payable to their masters or other Europeans that Bonds or other Securities for money given in such manner were considered as a final Settlement of such Demand and in Every respect to preclude the Creditor from again Demanding his debt in the same manner as if the Bond or other Security had been made out in his own name that he

he had looked upon the Paper Writing produced and shewn to him at the time of his Examination marked with the Letter A and purporting to be a Bond or written obligation in the malabar Character from your Petitioner to Thomas Davis in the said written Obligation named that he had seen the same before and that the same was Entered into pursuant to such Custom as before mentioned Kellapilla to the third Interrogatory on the part and behalf of the Complainant did Depose that he had Looked upon the Paper Writing produced and shewn to him at the time of his Examination marked with the Letter A purporting to be a Bond or Obligation in the malabar Character from your Petitioner to Thomas Davis in the said written Obligation named that he did know arnachella pilla whose name Appeared subscribed as a Witness to the said Bond and that he the said arnachella pilla was the Deponents Elder Brother that the said arnachella pilla died about five years ago that he had often seen the said arnachella Pilla write and subscribe his name and that he believed the name Arnachella pilla set and subscribed to the said produced written Obligation to be of the proper hand writing of the said Arnachella pilla that he had often seen your Petitioner write and subscribe his name and was acquainted with the manner and Character of his hand Writing that he believed the Entire of the said produced written Obligation, and the name Chenglerayan thereunto subscribed as a party Executing the same to be of the proper hand writing of your Petitioner Vydena da pillah to the said third Interrogatory on the part and behalf of the Complainant did also Depose that he had Looked at the paper

Writing

Writing produced and shewn to him at the time of his Examination marked with the Letter A purporting to be a written Bond or obligation in the malabar Character from your Petitioner to Thomas Davis in the said written obligation named that he did know Arnachella pilla whose name appeared subscribed as a Witness to the said Bond that the said arnachella pillah died about Six years ago that he had often seen the said arnachella pillah write and subscribe his name and that he did Also see the said Arnachella pilla set and subscribe his name that said produced written obligation that he had often seen your Petitioner write and subscribe his name and was acquainted with the manner and Character of his hand Writing that he saw your Petitioner write the Entire of the Body of the said produced written Obligation and also subscribe his name Chenglerayen thereunto as a party Executing the same To the fourth Interrogatory the said Vydenada pillah did Depose that he had Looked at the paper writing shewn to him at the time of his Examination marked with the Letter A purporting to be a written Bond or obligation in the malabar Character from your Petitioner to Thomas Davis in the said written obligation named that he was Employed and sent by the said Thomas Davis the Deponents master at that time several times in the year one thousand Seven hundred and Eighty four to Demand payment of the amount of the said Bond and that he had since that time been Employed and sent by the Complainant to whom the said Bond had been made over several times also to Demand payment of the said Bond that he did Demand the same

from

from your Petitioner and that the Amount of the Monies so De
was about one hundred and forty Pagodas principal and Inte
due thereon that he was not paid the same and that the Answe
received from your Petitioner when he Demanded the sam
behalf of the said Thomas Davis was that he would pay the sa
as soon as he sold the produce of a Paddy filed and that thes
he received when he Demanded the same on behalf of the Com
-nant was that he your Petitioner was willing to pay the Princip
if the Complainant would give up the Interest To the Sixth In
-yatory the said Vydinadapilley did Depose that it was Custom
among the native Inhabitants of Madras to take and receive P.
or other Securities for their own Individual debts in the names a
payable to their master or other Europeans and that Bonds or o
Securities for money given in that manner were Considered
final Settlement of such Demand and in every respect to pre
the Creditors from again Demanding his debt in the same me
as if the Bond or other Security had been made out in his own
that he had Looked at the Paper Writing produced and shewn
him at the time of his Examination marked with the Letter
purporting to be a Bond or written obligation in the Malabar
Character from your Petitioner to Thomas Davis that he had b
seen the same and that he Knew such Bond was Entered
pursuant to such Custom and to the Last Interrogatory the
vydinadapillay did Depose that your Petitioner was indeb

in

in the sum of one hundred and forty Pagodas to one Canagarey pilla
who took a Bond for it in the name of the said Thomas Davis who made
over the same to the Complainant Directing the Deponent at the same
time as his Writer to Demand the amount of the said Bond and to
pay the same to the Complainant Delivering at the same time into
the hands of the Deponent the Title Deeds of a Paddy field which
was mortgaged by your Petitioner for securing the payment of the said
Bond that your Petitioner did some time afterwards request the
Deponent to send the Title Deeds to nagapah Chetty the then
Renter of the House farm to enable your Petitioner to Enjoy the
produce of the said paddy fields without Molestation from the Renter
which the Deponent did accordingly but your Petitioner did in a
fraudulent manner go to the Renter and receive the said Title
Deeds under promise of Delivering the same to the Deponent
but instead of doing so he had kept them in his own possession
Appoopilla to the fourth Interrogatory on the part and behalf of the
Complainant did Depose that he had Looked at the paper
Writing produced and shewn to him at the time of his Examination
marked with the Letter A and purporting to be a written Bond
or obligation in the malabar Character from your Petitioner to Tho's
Davis in the said written obligation named that he was not
Employed nor sent by any person to Demand payment of the
amount of the said Bond but that he accompanied one Vydena-
dapilla who was sent by the Complainant to Demand the amount

of

of the said Bond from your petitioner and heard your petitioner promise to pay the principal of the said Bond provided the Com: plainant would give up the Interest and Robert Henderson to the fifth Interrogatory on the part and behalf of the Complainant did prove the hand Writing of Thomas Davis—

And your Petitioner sheweth unto this Honourable Court that on the part and behalf of your Petitioner Vencatakistnaio Moodeliar to the second Interrogatory did depose that he was present when the Complainant and your Petitioner met about three years ago at the House of Venaigum Moodeliar that he did not hear from your Petitioner but did hear the said venaigum Moodeliar question the Complainant as to his right of instructing Mr Walker an Attorney at Law to make a Demand of a Certain Sum of Money which your Petitioner never owed that the Complainant Answered that your Petitioner did not owe him any Sum or Sums of money nor did he instruct Mr Walker the attorney at Law before mentioned to send your Petitioner a Letter of Demand and to the last Interrogatory that the said Venaigum Moodeliar requested the Deponent to write an answer to the said attorney at Law in reply to the Letter of Demand sent by him to your Petitioner as before mentioned and in which answer your petit: informed him the said attorney at Law the purport of the Conver: sation above mentioned Moato Camarapah to the third Interrogatory did Depose that he did at the instance of your Petitioner make

an

an Enquiry from the Complainant respecting the nature of his Claim against your Petitioner and the Letter of Demand which had been sent to him by the Complainant thro the means of his Attorney at Law that the information given to the Deponent by the Complainant was that he had no Demand against or any Money transactions with your Petitioner but mentioned at the same time that a person Called Vydenadapillay did request him the Complainant to permit him to make use of his the Complainants name in Carrying on a suit in the said Mayors Court against your Petitioner and therefore he the Complainant had reason to believe that the Letter of Demand in question was procured by the said Videna: dapillah that he had heard and did believe from the reasons above stated that the Complainant had no Interest in the present Suit but that the same was Carried on by the said Vydenadapilla in order to Defraud your Petitioner of his property — and Veeraper: maul to the said third Interrogatory did depose that he did at the Instance of your Petitioner make an Enquiry from the Complainant respecting the nature of his Claim against your Petitioner and the letter of Demand which had been sent to him by the Complainant thro the means of his attorney at Law that the Information given by the Complainant to the Deponent respect: ing the premises was that he the Complainant never had any money or other Transactions with your Petitioner and that he did not send or cause to be sent any Letter of Demand to your

Petitioner

Petitioner by means of an Attorney at Law that he had no Concern whatever in it and also Declared that all that he knew of the above matter was that one Vydenada pillah requested him to allow the said Vydenadapillah to Commence a suit in his the Complainants name Against your Petitioner but that he the Complainant did not Comply with such request and that the Complainant did not mention the name of the person who had procured the said letter of Demand to be written to your Petitioner and that he the Deponent believed the aforesaid Vydenadapillah was the person that carried on the present Suit against your Petitioner —

And your Petitioner Sheweth unto this Honourable Court that thereupon the Complainant did Exhibit and file certain Exceptions to the Interrogatories and Depositions adduced on the part and behalf of your Petitioner and for first Cause of Exception did say that he Excepted to the said Interrogatory and to the Deposition of Vencatahistnath Moodeliar taken thereto because that the said Interrogatory was leading and also because that the same Interrogatory and deposition taken thereto were irrelevant to the matter in issue in the Cause and also to the Deposition of the said Vencatahistnath Moodeliar taken to the said last Interro- gatory because that the said deposition was impertinent to the matter in issue in this Cause and inadmissible —

And for Second Cause of Exception the said Complainant did say that he did Except to the third Interrogatory Interrogatory filed and Exhibited on the part of your Petitioner and to the Depositions of Mootoo Comarapah and Veerapermaul Moodeliar taken thereto because that the said second Interrogatory was leading impertinent and irrelevant to the matter in issue in the Cause and because that the Depositions of the said Mootoo Coma- rapah and Veerapermaul Moodeliar to the said third Interrogatory were also impertinent and irrelevant to the matter in issue in the Cause and inadmissible —

And your Petitioner sheweth unto this Honourable Court that to the Complainants said Exceptions your Petitioner did Exhibit and file his answer and thereon and thereby in Answer to the Complainants said first Cause of Exception did deny the second Interrogatory administered to Vencatahistnath Moodeliar and the deposition taken thereon to be leading or that the same was irrelevant to the matter in issue in this Cause on the Contrary your Petitioner did say that the said second Interrogatory and the Deposition taken thereto and also that the last Interrogatory administered to the said Vencatahistna Moodeliar were pertinent and relevant to the matter in issue in this Cause and therefore your Petitioner did humbly submit to the said Mayors Court that the Depositions of the said Venkatahistna Moodeliar was good and admissible Evidence — and in answer to the Complainants said second Cause of Exception your Petitioner did deny that the third Interrogatory Exhibited to mootoo Comarapah and Veerapermaul

Moodeliar

Moodeliar and the Depositions taken thereon were either leading impertinent or irrelevant and did say that the same did support the Defence set up by your Petitioner in this Cause —

And your Petitioner Sheweth unto this Honble Court that thereupon publication having passed the said Cause was thereupon set down to be heard and the same coming on to be heard by and before the said Mayors Court on the Eleventh day of March and present year of Christ one thousand Seven hundred and ninety from when the said Court was pleased to Order that the Complainants said Exceptions should be over ruled with Costs and did further order and Decree Mr Alderman Ross dissenting therefrom that your Petitioner should pay unto the Complainant the full and Just Sum of two hundred and fifty one Pagodas and twenty four fanams together with all such Interest as there was or should thereafter become due thereon until full payment should be made also all Costs of suit as by the Copy of the said Decree and an Extract of the minutes of the said Mayors Court hereunto annexed for the inspection of this Honourable Court and prayed by your Petitioner to be taken as part of this his your Petitioners Petition of Appeal may morefully appear —

By which said Decree of the said Mayors Court your Petitioner doth Conceive himself much aggrieved and doth therefore appeal therefrom to this Honourable Court for the following amongst other Reasons —

First..... Because it Appears by the Complainants own shewing that his Bill of Complaint is defective for want of parties inasmuch as that he Charges that the pretended Bond upon which he has brought his action against your Petitioner is in the name of and assigned over to him by Thomas Davis and it is a rule not to be Departed from that where a Bond is assigned the Assignee must sue in the name and as Attorney of the Assignor and as the Complainant had not done so your petitioner did plead the said want of parties and further more Thomas Davis did appear by the Complainants own shewing not to have had any right in the said Bond and Consequently he had no right to assign the same to the Complainant and that as the said Thomas Davis had no right in the said Bond the matter became a transaction between two Indian Natives who are by the Character precluded from suing each other which several matters your Petitioner did also plead in Bar to the Complainants said Bill of Complaint and did likewise plead that he never had any Accounts or transactions with the Complainant or with the said Thomas Davis and that he never did Execute the Bond in question which said matters so pleaded by your Petitioner ought to have had due weight with the said Mayors Court and that thereon they ought to have Dismissed the Complainants said Bill of Complaint

Secondly... Because the Replication of the Complainant is a total Departure from his said Bill of Complaint and a Contradiction thereto in the most material part thereof for the Complainant in and by his said Bill says that your Petitioner previous to the

month

Month of February one thousand Seven hundred and Eighty four being indebted to him the Complainant in the Sum of One hundred and forty Pagodas did at his the Complainants request enter into and duly Execute the Bond in question and in his said Replication he says that one Canagarey Pillay being indebted unto him in the Sum of fourhundred and fifty Pagodas informed him that your Petitioner and his Partner Seroovoocarsoo stood indebted unto him the said Canagarey pillay in the sum of one hundred and forty Pagodas and that he would get them to Execute a mortgage Bond to him the Complainant for that sum and that the Complainant Consenting thereto your Petitioner did Execute the Bond in question that the said Canagarey gave a receipt for the said Sum of one hundred and forty Pagodas to your Petitioner and that the Complainant gave a receipt to the said Canagarey—

Thirdly..... Because the said Charge in the Complainant said Bill setforth and the charge in his said Replication Contained are both denied by the Testimoney of the most material Witness Deposing on his part for Vydenada Pillah to the last Interrogatory says that your Petitioner being indebted unto Canagarey Pillay he took the Bond in question for it on the name of Thomas Davis who assigned it over to the Complainant and your Petitioner further begs leave to shew that the Complainant in and by his said Replication says in Contradiction to your Petitioner answer that the said Bond was Executed by your Petitioner in the presence of the subscribing Witnesses or at least fully acknowledged by him in their presence to be his hand Writing and that they were requested by your Petitioner himself to sign their name as Witnesses thereto whereas Seroovacarsoo the pretended Surviving Witness says he set his name to the Bond at the request of the said Canagarey and it fully appears that he was not present at the Execution of the said Bond first Because he does not depose to that fact and secondly because he is interrogated to prove your Petitioner hand Writing which would have been unnecessary if he could have deposed that he had seen your Petitioner Execute the said Bond and your Petitioner begs leave to shew that the Complainant in and by his said Replication says that your Petitioner requested him to lend him the mortgage Deed with an assurance in the presence of several people who he did say were ready to be produced that your Petitioner would pay off his mortgage in a very short time but your Petitioner sheweth that none of these people were Ever produced and Vydenadah on the part of the Complainant shews that the said pretended mortgage Deed never was in the Complainants possession for that before the Assignment of the said pretended Bond he did deliver the said Deeds to nagapah Chitty from whom your Petitioner did afterwards receive the same but the said Nagapah Chitty was never produced as a Witness in the Cause and your Petitioner further submits to this Honourable Court that although it is charged by the Complainant in his said Bill that your Petitioner was indebted to him sometime in the year one thousand Seven hundred and Eighty four in the Amount sued for and Afterwards in and by

by his said Replication that it was to one Canagaray yet no one of the Witnesses produced on the part of the Complainant has attempted to prove the fact and it was incumbent on the Complainant to have adduced Testimony thereof as that fact was denied by your Petitioner in his answer and although the said Seroovacarsoo who is said to have been Jointly indebted with your Petitioner and signed the pretended Bond in question in proof thereof is brought forward on the part of the Complainant yet he is not Even interrogated to that point nor is the said Canagaray interrogated nor does he depose thereto although he is also Examined on the part of the Complainant nor does he say anything of the receipt which is said to have been given to him by the Complainant on account of the sum sued for and which it is pretended Credit was given to the said Canagaray by the Complainant and your Petitioner further prays leave to shew that the whole of the Evidence Deposing on the part of the Complainant to material matters appear to be Interested in the suit Canagaray is stated to be a Creditor to the Complainant and that the Sum sued for is to be deducted from such debt Seroovacarsoo is said to have been Jointly with your Petitioner indebted unto the said Canagaray and that the Bond in question was Executed on account thereof and Vydenada Pillay has Appeared in the Cause as the Complainants agent as will more fully Appear by the Copy of an affidavit hereunto annexed and prayed to be taken as part of this his your Petitioners Petition

of

of appeal and it is in Evidence that he is in fact the person who is Carrying on the present litigation to benefit himself solely and to Defraud your Petitioner of his property and that in truth the party who is named the Complainant has no interest what ever therein nor has he Ever been Consenting thereto as appears by the Testimony of Veerapermaul and mootoo Camarapah Witnesses produced on the part of your Petitioner—

For all which matters and things your Petitioner is advised the said Mayors Court ought to have Dismissed the Complainants said Bill of Complaint and that having on the Contrary decreed in favour thereof your Petitioner has good Cause of appeal therefrom and therefore—

Your Petitioner most humbly prays that this Honourable Court will Vouchsafe to Reverse the said Decree of the said Mayors Court and grant unto your Petitioner such further and other Relief in the premises as to this Honble Court may seem meet—

/ Signed / J Stuart Hall.
Solicitor for Appellant

Mayors

Mayors Court at
Madraspatnam

Tuesday the 11th day of March
Anno Domini 1794

Present
Henry Chz Michell Esqr Mayor
Andrew Ross & Benjn Roebuck
Aldermen

LS

Mayors Court

Between Sooloocann Chetty of
Madras Merchant Complainant and
Chenglerayan of the same place Inhabitant
Defendant—

This Cause Coming onto be Heard and Debated this day inthe Presence of the Attornies on both sides on reading the Complainants Bill with Copies of the Translation of a Mortgage Bond an Account Current and an Assignment annexed the Defendants Plea and Answer the Replication the Rejoinder the Interrogatories and Depositions onthe part of the Complai: nant the Interrogatories and Depositions onthe part of the Defendant one Exhibit onthe part of the Complainant 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 Defendant do pay unto the Complainant thefull and Just Sum of Two hundred

and

and fifty one Pagodas and twenty four fanams Pag 251..24
together with all such Interest as now is or shall hereafter become due thereon untill full Payment is made also all Costs of this Suit—

Pr Cur
/Signed/ G Taylor Regr

a true Copy

/Signed/ J Stuart Hall
Solicitor for Petition

Extract

Extract from the Minutes of a Court held at the Town Hall on Tuesday the 11th day of March Anno Domini 1794

Present

Henry Chz Michell Esqr
Andrew Ross and Benjn Roebuck
Aldermen

Sooloocaun Chetty
vers
Chengleroyan

Mr Alderman Ross dissents to the Resolution of the Court as in his Opinion the foundation of the Debt is not sufficiently clear and regular and that it is Calculated to avoid the restriction of the Charter that Indian natives shall not sue each other in this Court without mutual Consent—

A true Extract
(Signed) G Taylor Regr

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

Filed

Filed 30th July 1793

In the Honble the Mayors Court at Madraspatnam

Between Sooloocana Chetty late of Madras Merchant but who now Resides at Reculoor Complainant and Chengleroyen of Madras aforesaid Inhabitants Defendant—

Vydenauda Pillah of Madras Inhabitant Gomastah to Sooloocana Chetty the Complainant above named maketh Oath and Saith that the said Complainant now lives and Resides at Reculoor aforesaid which place is Twenty miles and upwards from Madras where he hath been for Six Months now last past and upwards this Deponent Saith that on Tuesday last the Twenty third day of July Instant an Order was made that Publication should pass in this Cause this Deponent further saith that the said Complainant hath materials Witnesses to Examine in the above Cause as he this Depanent is informed and believes to wit Suroonavoocarsoo Moodeliar of Madras and Nulla Pillay of Pullicat but that owing to the indisposition of his former Attorney at Law Mr Peter Walther now deceased and to the said Witnesses having been for a Considerable time past absent from Madras to wit the said Suroonavoocarsoo Moodeliar at Trinamally and the said Nulla Pillay at Pullicat aforesaid the said Complainants

Said

Said Witnesses have not been Examined nor hath any Witness or Witnesses as this Deponent has been informed and believes been Examined on the part of the said Defendant or of the said Complainant in the above Cause and this Deponent saith that the said Complainant said Witnesses are now Ready to be Examined and that without the benefit of their Testimony the said Complainant cannot as this Deponent has been advised and verily believes proceed with Safety to a hearing of this Cause and this Deponent saith that the said Complainant does not as this Deponent verily believes mean or intend to give the said Deponent any unnecessary delay in the prosecution of this Suit and that if this Honourable Court shall be pleased to enlarge Publication he hopes and expects to have the said Witnesses Examined in the Cause of one fortnight.

A True Translation as near as can be from the Malabar Language —

Ranganaudom
Interpreter

John White Attr for Complainant

/Signed/ J Stuart Hall
Atty for Appellant

To

To the Honourable Sir Charles Oakeley Baronet
President and Governor in Council &c
Fort Saint George

In the Honourable the Court of Appeals

Between Sooloocaun Chetty of Madras Inhabitant Complainant and Chenglenyan also of the same place Inhabitant Defendant —

The Answer of Sooloocaun Chitty to the Petition and Appeal of the above named Defendant —

The said Respondent admits that he did on or about the time in the Appellants Petition and Appeal mentioned file his Bill of Complaint in the Mayors Court at Madras patnam against the said Respondent for the recovery of the sum of two hundred and fifty one Pagodas and Twenty four fanams owing upon the said Respondents Bond and this Respondent admits that the said Respondents did Plead and answer to the said Bill of Complaint in manner as in his said Petition and appeal is particularly Set forth and mentioned and that this Respondent having replied to the said answer and the appellants having rejoined thereunto issue was thereupon Joined in the said Cause and Witnesses having been Examined as well on

Filed in my Office the 31st May 1794
Robert Clerk
Clerk

on the part of the said appellant as of this Respondent publication passed in the said Cause and the same having been set down for hearing the said Cause came on to be heard before the said Mayors Court on or about the Eleventh day of March now last past when the said Mayors Court was pleased to make such order and Decree therein as in the said Appellants Petition and Appeal is set forth and stated but this Respondent denies that the said Appellant is in any wise aggrieved thereby further than as the said appellant may Consider himself aggrieved by being decreed to pay a Just Debt which he endeavoured to with hold and evade the payment of and this Respondent in the first place prays leave to call the attention of this Honourable Court to the irregularity of the said appellant in annexing to his Petition and Appeal the Dissent of Mr Alderman Ross to the Decree of the said Mayors Court not that this Respondent is in any wise apprehensive that the dissent of the said learned Alderman can have the smallest weight with this Honourable Court in their decission upon the Respondent Case nor in any Degree operate to the prejudice of this Respondents But this Respondent saith he is advised that the annexing the dissent of any of the members of the Court below is Contrary to the form of practise ordered by this Honourable Court to be observed in appeals from the Decrees of the Mayors Court and this Respondent doth therefore except to the said annexed Copy of the said dissent and

and prays that the same may be expunged from the Record with exemplary Costs to be paid by the said Appellant and this Respondents doth further Except to the paper writing Annexed to the said Petition and appeal and purporting to be a Copy of an Affidavit because that the said affidavit was not read or prayed to be read upon the hearing of the said Cause and is therefore new matter which was not before the Court below or taken into Consideration upon the hearing wherefore this Respondent prays that the said paper writing may be Expunged from the Record with Costs to be paid by the said Appellant

And this Respondent in answer to the first reason by the said Appellant assigned say he denies that the said Bill of Complaint is defective but on the Contrary avers that the same has been regularly brought and this Respondent saith that the peculiar Jurisdiction of a Court of equity is to releave Suitors from the Scrupulous formalities of the Common Law and that Equity has a discretionary power to Afford relief according to the merits of the case and to that end to dispence with strict forms in the furtherance of Justice and this Respondent saith he is advised that although the forms of the assignment indorsed upon the back of the said appellants Bond may not Correspond Exactly with the Ideas of a strictly Conveyance yet it is nevertheless substantially good the said indorsement being

being in the words and figures following to wit Fort Saint George March 1st 1785 Received of Sooloocaun Chitty the Sum of One hundred and fifty star Pagodas with Interest to this day for the within mentioned Bond I have therefore Transfered and set over the Premises unto Sooloocaun Chitty Thomas Davis" and this Respondent saith he is advised that His Majesties High Court of Chancery of Great Britain has entertained suits upon exactly similar indoresements on Bonds and more particularly it is laid down by Lord Chancellor Hardwicke that though the Law does not admit an assignment of a chose in action as a Bond Equity does and that any words will do no particular words being necessary thereto as if says the same Judge it was wrote on the back of the Bond Whereas I have received the principal and interest from such a one do pay the obligor pay the money to him and which case no suit is as this Respondent humbly submits to this Honourable Court directly in point with the assignment from the said Thomas Davis to this Respondent and this Respondent denies that the present suit can in any wise be deemed or considered as an evasion of the Charter for that the Bond in suit has not only been granted by the said appellant to the said Thomas Davis the obligee thereof who assigned the same to this Respondent but the said Bond doth also contain an Express proviso that in case the monies therein mentioned should not be duly paid that the Amount thereof might be recovered by prosecuting the said appellant upon the said

Bond

Bond in the said Mayors Court whereby the said appellant did of his own act Submit himself to the Jurisdiction of the said Mayors Court in the event of his failing as he has done to discharge the said Bond and this Respondent as to the plea Multifarious in the said appellants said Petition and Appeal particularly set forth and mentioned saith that they are incongruous and that the one destroys the other for that double pleas are not Allowable and this Respondent saith that Although the said appellant hath in and by his plea and answer to this Respondents positively sworn that the said Bond was not his deed yet the said appellant in the line and first side of his Rejoinder to this Respondents Replication doth admit his having executed the said Bond and this Respondent thereupon submits to this Honble Court how little regard there is to be paid to the Pleas and answer of the said Appellant — and as to the Second reason by the said appellant Assigned relative to the Replication of this Respondent it is by far too trifling to take up the time of this Honble Court to answer as the substance of the said Replication has been received already in the said appellants said Petition of Appeal —

And as to the third reason assigned by the said appellant this Respondent humbly conceives this Honorable Court were in possession of every part thereof on perusing the said appellants said Petition of appeal as the same only goes to a repetition of matter before adduced in the recital of the Depositions taken in this Cause therefore this Respondent does not think it any way material to make any comments on the said last reason assigned by the said appellant but for the satisfaction of this Honble Court begs leave to refer to the original Depositions taken in the said Cause

And therefore and for as much as the Appellant hath not shewn any Just Cause why the said Decree of the said Mayors Court ought not to be Affirmed this Respondent prays that the same may be affirmed Accordingly and that the Appellants Petition and Appeal may be Dismissed with Costs to be paid by the said Appellant may further be Decreed to pay all Costs in this and in the said Mayors Court —

(Signed) Gilbt Bicketts for
John White and self
Solicitors for Respondent —

Court

Court of Appeals
Madraspatnam ss

Saturday the 14th day of June
Anno Domini 1794

Between Chunglevoy of Madras Inhabitant Appellant
and Sooloocaun Chitty of the same place Inhabitant
Respondent—

This Cause coming on this day to be heard and debated before this Court by the Attornies on both sides on the Motion of the Solicitors for the Respondent that an Affidavit of Vydenaudoo Pillays Petition of Appeal be expunged with Costs from the Proceedings of this Court because it does not appear to have made any part of the Proceedings in the Mayors Court This Court taking the same into Consideration Ordered Accordingly and upon hearing the Petition of Appeal and Answer and the several Exhibits of the Honble the Mayors Court together with the Decree of the said Court given in this Cause on Tuesday the 11th day of March Anno Domini 1794 upon due Consideration had of the matters therein Severally Contained and of the Pleadings and Arguments used by the Attornies on both sides This Court doth think fit to Order and Decree and doth Accordingly Order and Decree that the said Decree of the Honourable the Mayors Court dated the 11th day of March Anno Domini 1794 be reversed with Costs—

Per (Signed) Robert Clerk
Clk

To

To the Honble Sir Charles Oakeley Bart.
President & Governor &c. in Council
Fort St George,

In the Honble the
Court of Appeals

Between Jeptha Stephen Sister
and Next of kin of Gregoria Miguel
deceased by his Attornies Anna Seth Avoet
and Avoet Seth Complainants and Sarad
Coja Maul Defendant.—

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

Filed in my Office
the 31st March 1794
Chas N. White
Clk

Sheweth,

That on or about the twenty Sixth day of November
and Year of our Lord One thousand Seven hundred and Ninety
one the Complainant above Named did Exhibit and file his Bill
Complaint in the Mayors Court at Madraspatnam against your
Petitioner for the Recovery of the Sum of One thousand four hundred
and Seventy one Star Pagodas thirty three Fanams and Sixty
Cash Current Money of Madras and which the Complainant
did pretend Would better appear by the Copies of the Transla-
tion of an Award and an Account Current between the said
Anna Seth Avoet and your Petitioner and also of Another
account Current between the Complainant and your Petitioner
to her said Bill of Complaint annexed and your Petitioner

Sheweth

Sheweth unto this Honble Court that the Complainant did in And by her Said Bill State that the said Gregorio Miguel died in the year of our Lord One thousand Seven hundred And Seventy Six without having Made any Will or Testament whereupon the said Seth Aviet and your Petitioner obtained Letters of Administration of his Estate and Effects under the Seal of the said Mayors Court bearing date the fifteenth day of June in the said year of our Lord One thousand Seven hundred and Seventy Six that the Said Gregorio Miguel having died intestate And without any Lawful Issue leaving at the time of his death Magdalina Gregorio Miguel the Widow of the said deceased Gregorio Miguel did some time after apply to the said Seth Aviet And your Petitioner for the half of the said Estate and Effects of the said Gregorio Miguel as his Widow that the Complainant did also apply for the other half part of the said Estate and Effects as Sister and Next of kin to the said Gregorio Miguel that after Many Suits Controversies and disputes between the Said Administrators And the said Magdalania Gregorio Miguel and the Complainant the said Administrators agreed to devide the Estate and Effects into two equal Shares one Moiety thereof to be paid to the said Magdalena Gregorio Miguel and the other Moiety to the Complainant And Accordingly the Complainant did Receive one Moiety or half part of the Balance of the first and Second Accounts Current of the said Estate delivered by the Administrators into the said Mayors Court

that

that the said Magdalena Gregorio Miguel did also Receive her Share or the other half part of the said Balance thereof that the said Administrators did also on the Second day of December which Was in the Year of our Lord One thousand Seven hundred and Eighty Eight deliver a third Account Current of the Estate of the Said Gregorio Miguel into the said Mayors Court And did thereby confess that a Balance of two thousand One hundred And Seventeen Pagodas and Eleven fanams and forty Cash Was in their hands belonging to the Estate of the said Gregorio Miguel that Since the delivery of the said third Account Current in the said Mayors Court the said Seth Aviet departed this Life And your Petitioner became the Surviving And Sole Administrator of the said Gregorio Miguel And being in possession of the said Balance Was bound to pay unto the Complainant one Mouty or half part thereof being one thousand and fifty Eight Pagodas twenty Six fanams and Sixty Cash Which Sum she did claim as her legal and lawful property or Inheritance from the Estate of the said Gregorio Miguel that at the time of the death of the said Seth Aviet Several Accounts were Subsisting between the said Seth Aviet and your Petitioner Which said Several Accounts were after the death of the said Seth Aviet referred by the said Anna Seth Aviet And your Petitioner to the decision of Aratoon Jacob Manook Jacob Jan and Johannes Shamier Arbitrators indifferently Chosen by and between the said Anna Seth

Aviet

Avvet And your Petitioner to Arbitrate And Settle the said
accounts that the said Arbitrators did by their Award under
Date the Twenty Eighth day of September in the year of Our Lord
One thousand Seven hundred and Ninety one Among other things
adjudge that from the Estate of the said Gregorio Miguel
the Sum of One thousand and fifty eight Pagodas twenty
Six fanams and Sixty Cash the property of the Complainant remained
in the hands of the said Anna Seth Avvet And your Petitioner
And it was therefore Ordered that the said Anna Seth Avvet
should pay unto your Petitioner as the Surveying Administra-
-tor of the said Gregorio Miguel one half part of the said
Sum of one thousand And fifty Eight Pagodas twenty Six
fanams and Sixty Cash being the share due by the said
Seth Avvet as one of the Administrators of the said Gregorio
Miguel and that one half part of the said Sum of One
thousand and fifty Eight Pagodas twenty Six fanams
And Sixty Cash was Accordingly deducted from the
Claims of the said Anna Seth Avvet on your Petitioner
as the Complainant did pretend would appear by the
said Award to her said Bill Annexed And therefore that
the Complainant did Charge your Petitioner did illegally
hold possession of the said Sum of One thousand and
fifty Eight Pagodas twenty Six fanams And Sixty Cash
which should have been paid to the Complainant as her
legal Inheritance that the said Arbitrators did

further.

further Award that the Interest on the said Sum of One
thousand And fifty Eight Pagodas twenty Six fanams
And Sixty Cash if demanded by the Proprietor thereof should
be paid one half by your Petitioner And the other half
by the said Anna Seth Avvet that the said Arbitrators
did further Award that the said Anna Seth Avvet should
pay unto your Petitioner in order that he might carry the
Same to the Credits of the said Estate of the said Gregorio
Miguel the Sum of four hundred And Sixty three Pag.
thirteen fanams and forty Cash being a debt due by the
father of the said Seth Avvet to the Estate of the said
Gregorio Miguel and that Accordingly the said Anna Seth
Avvet in performance of the said Award did allow and
give Credit unto your Petitioner in her Account Current
the said Sum of four hundred and Sixty three Pagodas
thirteen fanams and forty Cash as by the said Account
Current to her said Bill Annexed She did pretend would
and that therefore she had an indisputable Claim to One half
part of the said Sum of four hundred And Sixty three
Pagodas thirteen fanams and forty Cash being two hundred
and thirty one Pagodas twenty Seven fanams and Sixty
Cash and the Complainant after interrogating your Pet.r
to the Several Matters in his said Bill of Complaint
contained did pray that your Petitioner might be
decreed to pay unto the Complainant the said Sum of One thousand

four

four hundred And Seventy one Pagodas thirty three fanams and Sixty Cash together with all Such Interest as there was or should thereafter become due thereon also all Costs of Suit. —

And your Petitioner Sheweth unto this Honble Court that to the Complainants said Bill of Complaint your Petitioner did exhibit and file his Answer And therein and thereby did Absolutely deny to Stand indebted unto the Complainant in the Sum of One thousand four hundred and Seventy One Pagodas thirty three fanams and Sixty Cash or in any Sum or Sums of Money whatever he admitted that the said Gregorio Miguel did depart this life intestate some time in the year of our Lord One thousand Seven hundred and Seventy Six And that thereupon Seth Aviet then of Madras — Merchant and since deceased And your Petitioner did duly obtain Letters of Administration to his the said Gregorio Miguels Estate and Effects under the Seal of the said Mayors Court in its Ecclesiastical Capacity that the said Gregorio Miguel having a died Intestate and without any Issue living Magdalena Gregorio Miguel his Widow did shortly afterwards apply to the said Seth Aviet and your Petitioner for the half part of the Estate and Effects of the said deceased that the Complainant did also apply for the remaining half part of the said Estate as Sister to the said deceased and that after Many Suits controversies and disputes between the said Administrators and the said —

Magdalena

Magdalena Gregoria Miguel they the said Administrators did at Length agree to devide the said Estate and Effects into two Equal Shares one Moiety thereof to be paid to the said Magdalena Gregorio Miguel and the other Moiety to the Complainant And that the Complainant did Accordingly And in consequence thereof receive one Moiety or half part of the Balance of the first and Second Accounts Current of the said Estate delivered by the said Administrators in this Honble Court in its Ecclesiastical Capacity that the said Magdalena Gregorio Miguel did also receive her share or the other half part of the said Balance that the Administrators did on the Second day of December which was in the year of Our Lord one thousand Seven hundred and Eighty Eight deliver a third Account Current of the Estate of the said Gregoria Miguel into the said Mayors Court in its ecclesiastical Capacity And did thereby Confess that a Balance of two thousand One hundred and Seventeen Pagodas Eleven fanams and forty Cash was then in their hands but your Petitioner does say that the Estate of the said Gregorio Miguel was Entirely Managed by Seth Aviet who was the acting Administrator therein and that the whole of the Monies and Effects of the Estate of the said Gregorio Miguel of every description together with all the Accounts relative thereto were possessed by and Remained in the hands of the said Seth Aviet who had the Entire Management And Arrangement thereof and every part thereof And that the said Sum of

Two

Two thousand One hundred And Seventeen Pagodas Eleven fanams and forty Cash Must Also have remained in the hands of the said Seth Aviet in conformity to a memorandum at the foot of the said third Account Current to Wit "That as a Suit is now depending in the Honble the Mayors Court between the Estate And Messrs Ross "And Cuthbert for which we have Advanced Money which "is not yet debited this Balance must remain in "our hands till the Suit is finally Settled Should any "Balance then remain the Sisters share shall be "delivered to her Attorney And Magdalenas Share to "Miguel Johannes Account her attorney as per Agreement "But in case this Balance is not Sufficient then the Sister "and Widows Must make good the deficiency" And your Petitioner did say that the Suit in the said Memorandum was still pending in the said Mayors Court And Solemnly declared that he never received from the said Seth Aviet the said Balance of two thousand One hundred And Seventeen Pagodas Eleven fanams and forty Cash or any part thereof or any other Sum of Money whatever on Account of the said Estate of the said Gregorio Miguel And therefore that he could not take upon himself to say what the Amount might be that he the said Seth Aviet Might have laid out for or by Reason of the said Suit as the Accounts thereof Entirely Kept by the said Seth Aviet And by him with held from

your

your Petitioner And that for a long time after the Decease of the said Seth Aviet the said Accounts Were with held from your Petitioner and was in the custody and possession of his Administratrix Anna Seth Aviet the Attorney of the Complainant that some time after the death of the said Seth Aviet your Petitioner did from Such of the Accounts and Memorandums as he could procure arrange the affairs of the said Estate of the said Gregorio Miguel as far as he was enabled so to do in order to discover the real State and true Situation thereof that to his great Surprise he did by such Means discover that a Balance of Six thousand One hundred And Eighty three Pagodas thirty Six fanams And twenty five Cash remained due from the said Estate of the said Gregorio Miguel to Several persons Whose Names together With the respective Sums so due were Set forth and Specified in the Schedule of an account to his said Answer Annexed that he had not in his Custody or possession a Single fanam in Cash belonging to the Estate of the said Gregorio Miguel And therefore and for Reasons already thereinbefore Set forth your Petitioner did say that he was not indebted unto the Complainant in the said Sum of One thousand four hundred And Seventy One Pags thirty three fanams And forty Cash Notwithstanding Any thing to the contrary in the Complainants said Bill contained & Notwithstanding the said Complainant did pretend that the said Sum of One thousand four hundred And Seventy One

Pags

Pagodas thirty three Fanams and forty Cash had arisen and grown due upon and by Virtue of an Award whereof a Copy translate was to the Complainants said Bill Annexed for your Petitioner did say he was advised that even the Award was not at all binding upon him inasmuch as that the Arbitrators therein Named did evedently grant the same under the misconceived Idea that your Petr had in his posfession the Balance of the said third Account Current delivered into the said Mayors Court to wit the Said Sum of two thousand One hundred And Seventeen Pagodas Eleven Fanams And forty Cash Never once adverting to the Memorandum thereinbefore Setforth at the foot of the Said third Account nor did the said Arbitrators at all take into their Consideration the want of Assets in the hands of your Petitioner as administrator as aforesaid Nor did the Said Arbitrators take into their Consideration that there Might have been outstanding debts against the Said Estate of the Said Gregorio Miguel and which your Petitioner had afterwards found to be the Case as thereinbefore Setforth And which at the time that the Said Arbitrators were arbitrating the Said Matters And at the time of their giveng their Award as aforesaid was as your Petitioner had thereinbefore Setforth totally unknown to him for the Reasons in his said Answer stated — Your Petitioner did believe that the Same was well known to the Complainants attorney the Said Anna Seth avect and that she did suppress the same the better to Answer her evil intentions against him

Your

Your Petitioner And so your Petitioner did say he did not doubt the same would appear to the said Mayors Court inasmuch as your Petitioner had thereinbefore declared and so your Petitioner did again assert the truth to be that the Affairs of the said Estate of the Said Gregorio Miguel were Solely Managed by the said Seth avect And as the Complainants said Attorney the said Anna Seth avect did obtain Letters of Administration of the Estate of the said Seth avect the Complainant Amongst other things became possessed of the Books and Papers Accounts and documents belonging to And the property of the said Estate of the said Gregorio Miguel and your Petitioner firmly believed in his own mind that if the said Arbitrators had Adverted to and been made acquainted with the Circumstance Above stated they would not have given the Ward in Manner form and Substance as was Setforth in the exhibit to the Complainants Bill annexed And would not have Adjusted your Petitioner to pay a Sum of Money which never came into his hands custody or possession and so the fact fully appeared by the said Memorandum to the said third Account Current Annexed for your Petitioner did say it appeared by the said Memorandum that the Balance of the said Account Current was Retained on Account of the Expences of the Said instituted as aforesaid against the said Andrew Ross and Alexander Cuthbert for the Recovery of a Sum of Money due to the said Gregorio Miguel of the said State and thereupon your Petitioner did say that the said Arbitrators could not in

Justice

Justice or Equity have adjudged the said Balance to Wit the said Sum of two thousand one hundred and Seventeen Pagodas Eleven fan and forty Cash to be paid to the Complainant on Account of any right she might have possessed in the said Estate as the Chiefs of the said Gregorio Miguel that your Petitioner did admit the said Gregorio Miguel did receive her Share of the said Balance but did say that the Same was paid to her through a Mistake at the time of Settling Accounts and paying the Balance of the said Second account which was detained on Account of a Suit then Subsisting between the Administrators and Magdalena Gregorio Miguel and which was Settled and the Balance thereof that was to Say of the said Second and third Accounts Current paid some short time Subsequent to the death of the said Seth aviet and long before your Petitioner could for the Reasons aforesaid have been acquainted With the real State of the said Gregorio Miguel And your Petitioner did humbly Submit to the Said Mayors Court that having committed an Error through Ignorance Was No good plea on the part of the Complainant that your Petitioner should Wilfully and contrary to his own conviction of the Justness thereof plunge deeper into Wrongs to the great injury of the Creditors of the said Estate of the said Gregorio Miguel and contrary to the trust Reposed in your Petitioners as Administrator as aforesaid that from his knowledge of the Sentiments Entertained by the said Magdalenea Gregorio

Miguel

Miguel and for other good Causes And Considerations he was firmly persuaded And Verily believed that if called Upon for that purpose she the said Magdalena Gregorio Miguel Would Refund to your Petitioner the Amount she might have received as her Share or proportion of the said Sum of two thousand one hundred And Seventeen Pagodas Eleven fanams and forty Cash And lastly your Petitioner did say that as he had no Assets in his Custody or possession Whereby to discharge the Claims of the Creditors of the Estate of the said Gregorio Miguel and for other Reasons thereinbefore Set forth he was advised that the Complainants said Bill was prematurely brought And that she had No Cause whatever Whereby to call your Petitioner in question before the said Mayors Court.

And your Petitioner Sheweth unto this Honble Court that to your Petitioners said Answer the Complainant did exhibit and file her Replication and did therein and thereby pretend that Notwithstanding any thing in your Petitioners said Answer contained that your Petitioner was indebted unto him in the Said Sum of One thousand four hundred and Seventy one Pag. thirty three fanams and Sixty Cash that your Petitioner had been very unguarded in delivering upon Oath Such an Answer as he had filed in the said Mayors Court for the Complainant did pretend she would prove to the Satisfac-

Satisfaction of the Said Mayors Court that almost every part thereof Was Without foundation and absolutely denied that the Estate of the Said Gregorio Miguel Was entirely Managed by the late Seth Avvet in his life time or that the Whole of the Monies and Effects of the Said Estate together with all the Accounts relative thereto Were possessed by and remained in the hands of the Said Seth Avvet or that the Said Sum of Two thousand One hundred and Seventeen Pagodas Eleven fanams and forty Cash being the Balance of the third Account Current delivered into the Said Mayors Court ever remained in his the Said Seth Avvets hands on the contrary that it was Notoriously known that the Business of the Said Estate Was transacted Managed and Carried on by both Administrators Jointly at the House of your Petitioner where a Room or Office was Chosen for the sole purpose of transacting the Affairs of the Said Gregorio Miguel each having a Key of his own to the Cash Chest and to the Said Office where all the Vouchers Books Papers and Accounts were deposited and that the Commission and other considerable profits Arising from the Estate of the Said Gregorio Miguel were Jointly And equally devided between your Petitioner and the Said Seth Avvet And Nothing

Was

Was done in the Affairs of the Said Gregorio Miguel by one Without the knowledge and concurrence of the other Administrator that While the Affairs of the Said Gregorio Miguel Were thus circumstanced and the Business thereof transacted at the House of your Petitioner it was absurd to Suppose that the Said Sum of two thousand One hundred And Seventeen pagodas Eleven fanams and forty Cash could have remained in the hands of One Administrator only to Wit the Said Seth Avvet that by the force of the said Memorandum Written at the foot of the Said third Account And Which your Petitioner had inserted in his Answer the Complainant did pretend. It Clearly Appeared that the Said Sum of Two thousand One hundred and Seventeen Pagodas Eleven fanams and forty Cash remained in the hands of both the Administrators but Whether the Said Balance remained in the hands of your Petitioner or not it did not by any Means affect the Claim of the Complainant on your Petitioner for that She had fully stated in her Bill of Complaint that your Petitioner received or at least had credit given from the Said Anna Seth Avvet for one half part of the Said Sum of One thousand and fifty Eight Pagodas twenty Six fanams and Sixty Cash as also for a further Sum of four hundred and Sixty three Pagodas thirteen fanams and forty Cash as appeared by the Award and the two Accounts Copies

whereof

Whereof were Annexed to the Complainants Bill of Compliant
and therefore your Petitioner could not pretend that he
had not in his hands any effects belonging to the Estate of the
said Gregorio Miguel that after the death of the said
Seth Aviet your Petitioner had desired the said Anna
Seth Aviet to let him have the key of the said Office —
which was kept by the said Seth Aviet in his life time
as he wanted to arrange the Accounts of the said Estate,
and that accordingly the said Anna Seth Aviet delivered
the said key to your Petitioner and who never returned
back the said keys to the said Anna Seth Aviet and the
Complainant did say that by such unfair Means your
Petitioner became entirely possessed of every thing belonging to
to the said Estate of Gregorio Miguel — that your Petr.
had again brought forward the same Schedule which
he once produced to and laid before the Arbitrators with
a View to Mislead their Judgment at the Settlement
of Accounts between your Petitioner and Anna Seth Aviet
as the Complainant did say would appear by the following
circumstance that after the death of the said Seth Aviet
your Petitioner and the said Anna Seth Aviet
had a difference of Accounts which they referred to
the decision of three Arbitrators — that the Arbitrators
at several days and took up Seven Months to —
investigate the Accounts of your Petitioner and the
said Anna Seth Aviet and during their investigations

Your

your Petitioner did lay before them on Account of the balance
which your Petitioner pretended to be due from the Estate of
the said Gregorio Miguel to Several persons and in
the same account your Petitioner did include the
Several Claims which your Petitioner had again brought
forward in the Schedule annexed to his said Answer
and that upon an investigation thereof by the said Arbitra-
-tors they found only two thousand two hundred and Twenty
Six Pagodas to be just debts due by the Estate of the said
Gregorio Miguel to Sundry Persons and the remainder
which your Petitioner had by his said Account produced
were not admitted by the Arbitrators as they were —
convinced that the Estate of the said Gregorio Miguel
could not have remained indebted in the Sum of
Six thousand four hundred and Eighty three Pagodas
thirty Six fanams and twenty five Cash for so long
a period as Sixteen or Seventeen years and more
especially as not a Person Mentioned in the said
Schedule or pretended by the Complainant ever appeared
or demanded the payment thereof that she would advert
to one Article of two thousand Nine hundred and forty
nine Pagodas thirty one fanams and fifty Cash Mentioned
in the said Schedule to be due to Alexander De Larche
which the Complainant did pretend was false as the
account between the Estate of the said Gregorio Miguel
and Alexander De Larche were finally closed and

Settled

Settled previous to the death of the Said Seth Aviet which your Petitioner could not pretend to be ignorant for he and the Said Seth Aviet as the Administrators of the Said Gregorio Miguel and the Said Alexander De Larche Signed and Exchanged the Accounts that She would prove to the Satisfaction of the Said Mayors Court that your Petitioner himself — acknowledged in his Case which he delivered to the Said Arbitrators for their Guidance at the time they Sat to Arbitrate the Accounts between the Said Anna Seth, Aviet And your Petitioner that the Estate of the Said Gregorio Miguel was indebted to the Complainant in the Sum of One thousand two hundred And Eighty Six Pag.s And Seven Eighths being the principle and Interest — arising from the Said third Account Current and Which your Petitioner insisted should be paid to the Complainant and the Complainant did further Say that it would Appear by the Copy of the Said Award Annexed to the Complainants said Bill that the Said Arbitrators did Award that the Said Sum of Two thousand two hundred and Twenty Six Pagodas should be paid half by your Petitioner and the other half by the Said Anna Seth Aviet to the Creditors of the Said Gregorio Miguel Whose Names were Mentioned in the Said Award Wherein the Complainants Name was the first and the Sum Asserted by the

the Administrators According to the Balances of the Said third Account Current to be due to the Complainant was one thousand and fifty Eight Pagodas twenty Six fa.s and Sixty Cash one half of Which Sum with Several others as Mentioned in the said Award Amounting in the whole to the Sum of One thousand One hundred and thirteen Pagodas was deducted from the Claims of the said Anna Seth Aviet on your Petitioner And the Complainant did pretend that under Such Progfs your Petitioner could not pretend that he had not in his Custody or possession a Single fanam belonging to the Estate of the Said Gregorio Miguel When he had Received or at least had credit from the Said Anna Seth Aviet for and on Account of the Estate of the Said Gregorio Miguel for two Several Sums of One thousand One hundred and thirteen Pagodas and of four hundred and Sixty three Pagodas thirteen fanams and forty Cash Making together the Sum of One thousand five hundred and Seventy Six Pagodas thirteen fanams and forty Cash as was fully Expressed in her Said Bill of Complaint and the Exhibits thereto Annexed. — That your Pet.r could not pretend that it was unknown to him when the Said Award was given for that your Petitioner was present at every Meeting held by the Said Arbitrators

And after the Award was given your Petitioner read it and was perfectly Satisfied therewith and returned his greatful thanks to the Arbitrators for the Impartial Justice done to him and that it would also appear by the Copy of a Letter Written by your Petitioner to the said Anna Seth Aviet to the Complainants said Replication Annexed, that your Petitioner had Submitted himself to the Said Award and therefore he should be compelled by the said Mayors Court to conform thereto inasmuch as the said Anna Seth Aviet had done so on her part that as to any Mistake which your Petitioner had made upon his Settling the Accounts of the Estate of the said Gregorio Miguel the Complainant did say was not the case for it Evidently appeared by the said Award that the said Anna Seth Aviet was bound to pay one half part of the Remaining debts of the said Gregorio Miguel and your Petitioner the other half part which one half parts so Ordered to be paied by the said Anna Seth Aviet was actually paid by her to your Petitioner or at least deducted from her Claims and Consequently your Petitioner was bound to Repay the same with his half part to the Complainant and to other Creditors of the said Gregorio Miguel whose Names were particularized in the said Award— that She had great Reason to believe

Believe that Magdalena Gregorio Would not Refund the Money unto which She in her Conscience knew herself to be so very well Entitled that her said Bill of Complaint was not prematurely brought but on the contrary your Petr. had resisted every effort of the Complainants Attornies to Settle Matters Amicably which was Manifest by his Refusing to comply with the terms of an Arbitration fairly Made by the Arbitrators indifferently Chosen by the said Anna Seth aviet and your Petitioner.—

And your Petitioner Sheweth unto this Honble Court that to the Complainants said Replication your Petitioner did exhibit and file his Rejoinder and therein and thereby Set forth that he denied to Stand indebted to the Complainant in the Sum Sued for or any part thereof but on the contrary that the Complainant actually stood indebted unto your Petitioner as Administrator as aforesaid in so much as the Complainant had Received More than She was Entitled unto as an Heiress of your Petitioners said Intestate that Notwithstanding the insinuation of the Complainant that your Petitioner had been unguarded in delivering upon Oath such an Answer as he had filed in the said Mayors Court and the Assertion that She the Complainant Would prove that almost every part thereof Was Without foundation for that the Matters and things in his said Answer Contained

were founded in truth and that notwithstanding any thing to the
contrary in the Repliants said Replication contained and the
plausebilities therein Setforth your Petitioner did say that the
Estate of the said Gregorio Miguel was entirely Managed by
the late Seth Averet who in and during his life time did
hold the possession of the whole of the monies and Effects
belonging to the said Estate together with all the accounts
Relative thereto and that thereby and by Means thereof the
said Seth Averet did amongst other Monies possess himself
of and retain in his hands Custody and possession the
Sum of two thousand One hundred and Seventeen Pes.
Eleven Sanams and forty Cash the stated Balance of the
said account Current with the Estate of the said Gregorio
Miguel and his Administrators delivered into the said
Mayors Court in its Ecclesiastical Capacity that he had in
his said account Entered into the Particulars relative
to the said Balance and assigned the best Reason in his
power on Account thereof and that although the Business
of the said Estate might apparently have been carried
on in the Name of the said Seth Averet — And your Pet.r
Jointly yet that it was Merely so in form and not in
Substance in order to Answer the purposes and promote
the designs of the said Seth Averet whose conduct in the
premises were Arbitrary Oppressive and Unjust as
Would hereafter fully appear that your Petitioner

did

did Admit a Room was taken in his House And that the same
Was set apart as an Office in which were kept the Papers
Books Accounts Cadjans and other Writings belonging to the
said Estate of your Petitioners said Intestate And that
the said Apartment was so appropriated because that the
said Seth Averet had not in his own House any Apartment
unoccupied and unemployed proper for that purpose that
although such Papers Books Accounts and other
Writings were so kept in your Petitioners House yet that
the said Seth Averet had the sole Management there of
and the entire Arrangement of the concerns of your Pet.rs
said Intestate and did from time to time take and carry
to his own house and there kept such Papers and Accounts
of Consequence as he thought proper and particularly the
Accounts of the Several Sums by him pretended to have been
disbursed and liquidated on Account of the said Estate
Nor did he give unto your Petitioner Any Information
as to the Matter of fact how and in what Manner
such disbursements And liquidations had been Made and
Even in prosecuting and depending Suits in the said Mayors
Court on Account of and Concerning the said Estate of your
Petitioners said Intestate the said Seth Averet did
hide from your Petitioner the Real Situation of
things under false pretences And that the said Seth
Averet did unwarrantably and unjustifiable detain in

his

his hands Sums of Money) belonging to the Estate And Credit the said Estate for More than had been received on account thereof and which your Petitioner did aver was the case when the first Account Current thereof was delivered into the said Mayors Court in its Ecclesiastical Capacity by your Petitioner and the said Seth Aviet but which false Statement your Petitioner Solemnly declard he knew Nothing of untill sometime Subsequent to the decease of the said Seth Aviet who of himself had Employed conicoplys and Writers to draw out the account with the said Estate of your Petitioners said Intestate in Order to their being delivered into the said Mayors Court as aforesaid and did otherwise transact and Manage the affairs of the said Estate as if he had been Sole Administrator so that your Petitioner was only Nominally an Administrator of the said Estate of the said Gregorio Miguel and was Never consulted or Advised with but when the said Seth Aviet founded Such Consulta=tion and Advice Necessary to Some Self Interested Views concealing at the same time the true state of the case from your Petitioner and although your Petitioner did frequently entreat and importune the said Seth Aviet in his life time to furnish him your Petr with the Accounts of the said Estate yet that the said Seth Aviet did put him off from time to time with

Various

Various Excuises pretending that he the said Seth Aviet was doing that which was proper and Necessary desireng your Petitioner to remain Satisfied untel a Suit then pending in the said Mayors Court between the Widow and the Administrators of the said Gregorio Miguel should be determined when he would let your Petitioner know the whole of his the said Seth Aviets transactions in the affairs of the said Gregorio Miguel and your Petitioner did say that some time afterwards the said Suit was determined in the said Mayors Court by a Decree in favor of the said Widow that thereupon the said Seth Aviet did insist upon appealing therefrom to the Court of Appeals and that the same was appealed Accordingly and that Soon after such Appeal was Lodged the said Seth Aviet did depart this life Intestate and thereby and by reason thereof and by reason of your Petitioners Ignorance of the Various transactions of the said Seth Aviet in the said Estate and of his Management therein as aforesaid the affairs of the said Estate were thrown into the utmost confusion so that your Petitioner was totally at a loss how to act in Arrangeng the same from all which circumstances your Petitioner doth humbly trust it Would Appear to the said Mayors Court that the Complainant was not Warranted in denyeng as she had done in and by her said Replication that the Estate of the said Gregorio Miguel Was Managed Entirely by the said Seth Aviet in his life time or in denying that the Whole of the Monies of the said Estate together with all

the

the Accounts Were possessed by and remained in the hands of the said Seth Aviet or in denying that the said Sum of Two thousand One hundred And Seventeen Pagodas Eleven fanams and forty Cash the balance of the third Account Current delivered into the said Mayors Court remained in his the said Seth Aviets hands, And as to the Commission And other Considerable profits by the Complainant in his said Replication pretended to have Arisen out of the said Estate of the said Gregorio Miguel and been received and Enjoyed by your Petitioner in an equal proportion with the Said Seth Aviet your Petitioner Solemnly declared that so far from deriving Considerable benefit And Advantage from the said Estate of the said Gregorio Miguel as Administrator thereof Jointly with the Said Seth Aviet he your Petitioner would be a considerable looser thereby Exclusive of the distress of Mind he had borne and suffered from the oppressive Conduct of evil disposed Persons who had interfered in the said Estate and Excited troublesome and unjust litigation And which at his your Petitioners advanced age being upwards of Sixty five years old was more than he was able to Support and contend with And it was that Circumstance the Circumstance of your Petitioners age and his Infirmities that enabled the said Seth Aviet the better to take the Advantage of your Petitioner as before stated that the Complainant had in and by her said Affection asserted that your Petitioner had required or at least had had

Credit

Credit from the said Anna Seth Aviet for one half part of the Sum of one thousand and fifty eight Pagodas twenty Six fs. and Sixty Cash and also for a further Sum of four hundred and Sixty three Pagodas thirteen fanams, and forty Cash as she the Complainant did pretend Would Appear by the Award and two Accounts Annexed to her Bill of Complaint which Assertion of the Complainant your Petitioner did say was contrary to the truth and thereupon your Petitioner did pray leave to shew to the said Mayors Court that some time after the death of the said Seth Aviet he detected an Error therein before mentioned in the Second Account Current of the Estate of the said Gregorio Miguel with the Administrators thereof delivered into the said Mayors Court in its Ecclesiastical Capacity for your Petitioner did say that in the said Account Current on the Credit side thereof there was the following Item to Wit, By sundry accounts which was debited in due form Account Pagodas 11,295. 6 3/4 - from which amount we found the right debt due to Sundry persons being Pagodas 4811.12. but Pagodas 6,483.15. were paid upon Supposition if the heirs should hereafter find that the Whole or any part thereof would be just debt herefs are to be Accountable for the same 6,483. 15. And your Petitioner did say that upon Examination he found that from and out of the said Sum of Six thousand four hundred and Eighty three Pagodas fifteen fanams there ought to have been paid to Sundry

Creditors

Creditors of the said Estate of the said Gregorio Miguel, and whose Names Appear with the respective Sums due to each person in a Schedule to your Petitioners said Answer Annexed the Sum of Six thousand One hundred and Eighty three Pags. thirty six fanams and thirty Six Cash.— And your Petitioner did say that upon such discovery and in order to remedy the evil as far as possible he your Petitioner did call upon the said Seth Aviet Co administrator with your Petitioner as aforesaid to account with him your Petitioner so that he might not bear the sole burthen thereof and in order to induce the said Anna Seth Aviet to comply with Such your Petitioners equitable and just request he did shew her an account whereby the said over charge was apparent but your Petitioner did say that the said Anna Seth Aviet instead of Complying with Such your Petitioners request and with some other demands at the same time Made by your Petitioner on the said Anna Seth Aviet she did absolutely refuse to come to any Account with him however the said Anna Seth Aviet did at length agree to settle all Matters in controversy between her and your Petitioner to the Arbetration of certain persons in the Complainants Bill of Complaint Named Who after Consideration had did give their Award and therein and thereby did amongst other things adjudge as in and by the Ninth Article of the said Award Might Appear in

Manner

Manner and form following to wit whereas it is made known that the said late Seth Aviet and the Opponent have been Admtors of the late Gregorio Miguel and they have accordingly acted in collecting and delivering the Estate of the said Gregorio Miguel deceased it appears that the said Gregorio Miguel is still indebted to some people wherefore it seemed good unto us that besides the aforementioned 9 Articles Amounting to 2,226 Pagodas Due to Sundry persons which said Sum should be paid by Opponent And whatever other Sum shall be demanded by any person whomsoever such debt should be paid by the Adminestrators of the said Gregorio Miguel deceased Concerning the Same premises whatever it may be one Moiety thereof to be paid by the Proponent and one Moiety by Opponent "from whence your Petitioner did say it was evident that the said Anna Seth Aviet was equally bound with your Petitioner to make good all differences Relative to the said Estate of the said Gregorio Miguel which the said Anna Seth Aviet absolutely refused to do in so much as she absolutely refused to bear her share or Proportion of the said Sum of 6,183 36/80 or any part thereof insinuating as Attorney for the Complainant that your Petitioner was alone Accountable to and ought to pay the Amount for which she the Complainant had brought his Suit against your Petitioner that as it appeared by the Complainants own Shewing that the Sum sued for depended upon the Balance of third Account Current delivered into the said Mayors Court and as that

Balance

Balance Must from the Nature of the thing have depended upon the
proceeding account and as the Estate was thereon Created for a larger
Sum than ought to have been setforth to wit the said Sum of 6783
Pagodas 36 fanams which was still due and owing to Sundry
Persons Creditors of said Estate the Complainant so far from
having any Claim upon your Petitioner as Administrator as aforesaid
had received a greater Sum than she was entitled to and
therefore instead of receiving More she ought to Refund a part of
that which she had already received — that had the Complainant
been acquainted with the detail of facts necessary for her infor-
-mation she never would have directed the prosecution of a
Suit against your Petitioner but which detail of facts your
Petitioner believed had been with held from her and that
under false pretences she had been instigated to commence her
said Suit by evil minded persons in order that thereby they
might have it in their power to harrass and distress your
Petitioner and your Petitioner did Submit to the said mayors
Court that the said Anna Seth aviet as the Attorney of the Complais
-nant knowing the premises ought to have informed —
the Complainant thereof and that in Neglecting or Refusing so to do
And on the other hand carrying on a Suit against your Pet.
which she knew and in her conscience believed to be unfounded
was very reprehensible that your Petitioner had not in his said
hands or possession any effects belonging to the Estate of the said
Gregorio

Gregorio Miguel And that even if he had in his hands or possession
effects Sufficient to discharge the Amount Sued for he would not
be Justified in paying the Same to the Complainant whilst there
Were Claimants against the Estate for a Much larger Sum
that after the death of the said Seth aviet your Petitioner did
admit he did apply to the Said Anna Seth aviet for the Key
of the Office Mentioned as aforesaid to have been appropriated to
the use of the said Estate of the said Gregorio Miguel and he
did so being best entetled thereto as Surviving Administrator
of the said Estate of the said Gregorio Miguel And that your
Petitioner being alone Entitled to the said Key as Surviving
Administrator as aforesaid the said Anna Seth aviet had
No right to Expect that your Petitioner would have Returned
the Same and thereupon your Petitioner did say that the keeping
possession of the said Key was not as the Complainant had in
and by her said Replication insinuated any wise unfair and
denied that he did by Means of the said Key or otherwise become
possessed of every thing belonging to the said Estate of the Said
Gregorio Miguel on the Contrary that the said Seth aviet did possess
himself of every Paper and document of consequence belonging
to the said Estate of which the said Seth Aviet had the Sole
Management That your Petitioner denied the said Schedule
to his said Account Annexed was ever produced to the Arbitrators
Chosen to Settle disputes in difference between him and the said
Anna Seth aviet with a View to Mislead their Judgement as
entirely

untruly stated on the Contrary your Petitioner did say the same was produced for the purpose of obtaining impartial Justice and that the Arbitrators in adjudging that the Sum of Two thousand two hundred and Seventy Six Pagodas only was due from the said Estate to the Creditors thereof did certainly proceed upon a Mistaken Idea because the fact spoke for itself and as the Amount stated in his schedule was unsatisfied the persons therein Named might at any time have Called upon your Petitioner as Surviving Administrator as aforesaid to pay to them their respective Claims that although the said Arbitrators did specify the said Sum of two thousand two hundred and Twenty Six Pagodas as due and owing by the said Estate of the said Gregorio Miguel yet they did provide for other Claims that might be Made thereon that whatever might have been the Opinion of the said Arbitrators founded upon the time which had elapsed without any Application Made by the said Creditors in the said Schedule Named yet such opinion could not alter the fact which would stand as your Petitioner had stated it to be unless the Complainant could shew that the persons in the said Schedule Named never were Creditors of the Estate of the said Gregorio Miguel or that if Creditors their several Claims had been paid and satisfied and that it was not in the power of Arbitrators to say what was or what was not due to or from an Estate as that would be setting themselves above Equity and above the Law of the land and that the Introduction of

of such Matter by the Complainant in her said Replication was impertinent and irrelevant that the Complainant in asserting that the Article of 2969 Pagodas 31 Fanams and 50 Reh Mentioned in the said Schedule to be due to Alexander de Larche was entirely false had so asserted contrary to the truth and which your Petitioner did say would appear by the Copy translation of an account settled with the said Alexander Delarche thereunto annexed — that the account between the said Alex.r D Larche and the said Estate of the said Gregorio Miguel Never was finally settled by the Administrators thereof that although he might have stated in his case to the Arbitrators as the Complainant asserted the fact to be that the Estate of the said Gregorio Miguel was indebted to the Complainant in the Sum of One thousand two hundred and Eighty Six Pagodas and Seven Eighths yet that the same depended upon the Balance of the last account of the said Estate of the said Gregorio Miguel with the Administrators delivered into the said Mayors Court in its Ecclesiastical Capacity and which your Petitioner had thereinbefore shewn to be erroneous in so much as that instead of a Balance being due to the Estate the said Estate was indebted to Sundry persons and therefore whatever might have been stated by your Petitioner to the Arbitrators it could not any way affect the question before the said Mayors Court which was whether there was or was not a balance in favor of the said Estate of the said Gregorio Miguel that although in and by the said

said award the Complainant was classed amongst the Number of Creditors who had Claims on the said Estate yet therein the Arbitrators were irregular inasmuch as that the Complainant could not have any demand upon the said Estate untill all debts due therefrom were first paid and satisfied for that she the Complainant according to her own shewing came into the said Mayors Court to receive her distribution of the said Estate as Co heiress with Magdalena Fronthellos the Widow of the said deceased and therefore whatever might have been the Award of the said Arbitrators such Award must be subject to the debts due from the said Estate that the Credit pretended to have been given to your Petitioner by the said Anna Seth Aviet for and on account of the Estate of the said Gregorio Miguel for the several Sums of money to wit the Sum of 1113 Pagodas and the Sum of 463 Pagodas 13 fs and 46 Cash making together the Sum of 1576 Pagodas 13 fs and 46 Cash was not as the Complainant would insinuate amongst the Number of the Proofs that your Petitioner had in his possession a Single fanam belonging to the said Estate the said Gregorio Miguel for the said anna Seth aviet had pretended that your Petitioner stood indebted unto her in a very considerable Sum of Money and thereon had filed her Bill against your Petitioner and although the said anna Seth aviet might hereon have given your Petitioner Credit for the said Sum of one thousand five hundred and Seventy Six Pagodas thirteen fanams and forty Cash yet she had

had in her said Bill brought forward such groundless charges against your Petitioner and refused to grant him the Justice which he was entitled to that your Petitioner in order to derive any benefit from such pretended Credit was under the Necessity of following up a Vexatious Suit and going through a length of Litigation and your Petitioner to shew his amicable disposition towards the Complainant did say that he your Petitioner as Next of kin to the deceased with the Complainant was entitled to a distribution of his Estate but which he had never yet insisted on.

And your Petitioner Sheweth unto this Honble Court that upon the above proceedings Issue did join and Rules did pass for the Examination of Witnesses and Witnesses were accordingly examined on both sides. And your Petitioner Sheweth unto this Honble Court that Aratoon Jacob produced on the part and behalf of the Complainant to the second Interrogatory did depose that he was appointed an Arbitrators between your Petitioner and Anna Seth Aviet that the Nature of their disputes was concerning some accounts they had with each other that he could not recollect how often the Arbitrators sat but that it took them several Months to investigate the merits of the said dispute before they gave their Award thereon that your Petitioner was not present at all the meetings of the Arbitrators but that he frequently attended the same. To the third Interrogatory that your Petitioner did know when the said Award was given but that he did not read the said Award in the presence of

the

the Deponent that he believed your Petitioner was satisfied with the said Award but that he never spoke to the Deponent on the Subject to the fourth Interrogatory that your Petitioner did during the course of their examination lay before them the arbitrators several Books of Accounts and other Vouchers of the Estate of the said Gregorio Miguel that the arbitrators did thereby perceive that the Estate of the said Gregorio Miguel Was transacted Jointly by both Administrators and that they did also understand that the Commission and other profits arising from the Estate of the said Gregorio Miguel were Jointly and equally devided between both Administrators that he did not recollect what the profits were that appeared to have been received by each of the Administrator and to the fifth Interrogatory that Manoah Jacob John one of the arbitrators named in the said Award was not then at Madras but that he left Madras for Batavia in January last.

And your Petitioner sheweth unto this Hon'ble Court that your John Chamier produced on the part and behalf of the Complainant to the said Second Interrogatory did depose that he Arratoon Jacob and Manoah Jacob John were appointed Arbitrators between your Petitioner and Anna Seth Aviet as Administratrix of Seth Aviet deceased that the Nature of the said dispute was Regarding some Accounts betwixt them that he did not recollect how after the arbitrators sat but that they met many times that it took them about Seven Months to investigate the said dispute before they gave their Award thereon that your Petitioner was not present at all their Meetings but that he was occasionally called before the arbitrators that your Petitioners did produce several papers before the arbitrators relative to the Estate of Gregorio Miguel to the third Interrogatory that when the said Award was given one Copy thereof signed by the arbitrators was sent to your Petitioner but that your Petitioner did not read the same in the presence of the Deponent that your Petitioner said that he was satisfied with the said Award and thanked the Deponent as one of the arbitrators for the trouble the arbitrators had taken to the fourth Interrogatory that your Petitioner did during the course of the Examination lay before the arbitrators several Books of accounts and other Vouchers of the Estate of the said Gregorio Miguel that he did thereby perceive that the Estate of the said Gregorio Miguel was transacted Jointly by both Administrators and that he did also understand that the Commission and other profits arising from the Estate of the said Gregorio Miguel were Jointly and equally devided between both the Administrators that he did not recollect what the profits were that appeared to have been received by each of the Administrators from the Estate of Gregorio Miguel and to the fifth Interrogatory that Manoah Jacob John one of the Arbitrators named in the said Award was then at Batavia and that he left Madras about one year ago

And your Petitioner sheweth unto this Hon'ble Court that Philip Jacob on the part and behalf of the Complainant to the Seath Interrogatory did depose that he was acquainted with all the Accounts and

affairs

affairs of the late Seth Aviet deceased and that he became acquain-
=ted therewith in consequence of having seen all the Papers and
Books of the said Seth Aviet that he was employed by the late Seth
Aviet as his Book keeper and accountant that the Administration
of the affairs of Gregorio Miguel deceased were carried on and
Managed by the said Seth Aviet and your Petitioner Jointly
and that the office of transacting the said affairs was kept at
the House of your Petitioner that all the Accounts Papers Vouchers
and Treasure were deposited therein that each of the Admtors
had a Key to the same that he did not know nor had a Key
to the same that he did not know nor had he heard that any
one of the said Administrators did any act in the affairs of the
said Gregorio Miguel without the knowledge or concurrence
of the other that all Commission and other profits its arising
from the Estate of the said Gregorio Miguel was Jointly
and Equally devided between them that he did not —
Recollect the amount thereof but believed it was about
Twenty thousand Pagodas he did know that there did not
remain any Sum of Money belonging to the Estate of
Gregorio Miguel in the possession of the said Seth Aviet
at the time of his death that he did know that your
Petitioner did receive about five or six days after the death
of the said Seth Aviet from his Widow a Key of the office —
wherein the Books of accounts Papers and Vouchers of the said
Gregorio Miguel were deposited that your Petitioner Recd

the

the same in order that he might have charge of the Office
that there was an Arbetration lately entered into and an Award
Made relative to the Accounts of your Petitioner and Anna
Seth Aviet that the Arbetrators were Mr. Aratoon Jacob, Manook
Jacob and John Shamier and that they sat to determine thereon
at the House of Mr. Shamier and at the House of Mr. Aratoon
Jacob — that your Petitioner was at that time in possession of
the Books of Account and other Papers of the Estate of Gregorio
Miguel. —

And your Petitioner Sheweth unto this
Honble Court that Sarguis Sateor to the second Interrogatory on
the part and behalf of your Petitioner did depose that he was well
acquainted with Seth Aviet during his life time that the
Management of the said Estate of Gregorio Miguel was assumed
by him the said Seth Aviet and that he did keep the Accounts
thereof and arrange and dispose of the same as he thought
proper without any interference or interruption on the part
of your Petitioner and that the said Seth Aviet did dispose of
the property of the said Estate according to his own Judgment
that Deponent believed that when the Accounts of the said
Estate required the Signature of your Petitioner the said
Seth Aviet did not read or Explain the same and that
your Petitioner signed the same without any Explana=
=tion that your Petitioner was not very old and inform
but that he was incapable of transacting business being

unacquainted

unacquainted with the Mode of carrying it on that the Said Seth Aviet in his life time was very active in busines that the Cash Chest wherein the Cash belongeng to the Estate of the said Gregorio Miguel was deposited was kept in a Room at the House of your Petitioner to which Room there were two Keys one kept by the said Seth aviet and one by your Petitioner that when Money was received or disbursed he your Petitioner did some time attend And was present at the opening of the said Cash Chest and depositing Money therein or issuing therefrom and that the said Seth aviet did sometimes require the Key possessed by your Petitioner and of himself make the deposets or disbursements but that the Seth aviet was not regarded as the Sole acting Administrator in the affairs of the said Gregorio Miguel — deceased — and your Petitioner Sheweth unto this Honble Court that Petruster Joannes on the part and behalf of your Petitioner to the Second Interrogatory did depose that he was well acquainted with Seth aviet in his life time and that he was acquainted with his transac- =tions and Management as Administrators of Gregorio — Miguel deceased jointly with your Petitioner that the Management of the said Estate was assumed by him the said Seth aviet and that he did keep the accounts thereof and arrange and dispose of the same as he thought proper without any interference or interruption on the part of your

Petitioner and that the said Seth aviet did dispose of the property of the said Estate according to his own Judgment And when the accounts of the said Estate required the Signature of your Petitioner that the said Seth aviet did not read or explain the same to your Petitioner and that your Petitioner did sign the same without any Explanation that your Petitioner was old and infirm And thereby incapable of transacting any business and that he had been so incapaciated About nine years that the said Seth aviet was in his life time very active in business that your Petitioner kept one Key of the Room wherein the Cash Chest containeng the Cash belongeng to the Estate of the said Gregorio Miguel was deposited And that the said Seth aviet kept another Key thereof that the said Seth aviet was considered and regarded as the acteng administrator in the affairs of the Estate of the said Gregorio Miguel deceased — and John Maddox to the Second Interrogatory did depose that he was acquainted with Seth aviet during his life time that the Management of the said Estate was assumed by him the said Seth aviet And that he did keep the accounts thereof and arrange the same that your Petitioner was very old and infirm and thereby being also unacquainted with the Nature of

Carryeng

Carrying on business incapable of transacting the Same that the
Said Seth Awat was in life time very active in business that your
Petitioner did keep one Key of the Cash Chest wherein the Cash
belonging to the Estate of the said Gregorio Miguel was deposited
And that the said Seth Awet kept another Key thereof but that
the Deponent believed the said Seth Awet was considered as the
Sole acting Administrator in the affairs of the Estate of the
Said Gregorio Miguel. —

And your Petitioner Sheweth unto this Honble
Court that thereupon Publication did pass And the said Cause was
Set downe for hearing and the same came on to be heard by and
before the said Mayors Court on the Eighteenth day of March in the
present year of our Lord One thousand Seven hundred and
Ninety four 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 full and just
Sum of One thousand four hundred And Seventy One Star
Pagodas thirty three fanams and Sixty Cash together with
all such Interest as there was or should thereafter becomes
due thereon untill full payment was made at the Rate of
Eight per Cent per annum with all Costs of Suit as by
the said Decree Copy whereof 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 your Petitioners Petition of Appeal may —

more fully and at large 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 other Reasons —

First — Because the Complainant has Sued your Petr.
for the recovery of a Sum of Money pretended to be due to her
as one of the Heiresses of the late Gregorio Miguel your Petrs.
Intestate And Neither an Heiress or Legatee has any right
to make a claim upon the Estate of a deceased person —
untill all Claims due thereon have been first paid and
Satisfied and your Petitioners in and by his said Answer
upon Oath has Shewn that the said Estate of his said
Intestate so far from having a Surplus to be paid to the
Heirs claiming thereon is considerably in debted As in and by
your Petitioners said Answer the Same is particularly —
Set forth and further your Petitioner in and by his said
Answer did Shew that he has not in his hands Custody or
possession any Assets whatever belonging to the said Estate
of his said Intestate and therefore the said Mayors Court
ought not to have decreed as aforementioned. —

Secondly — Because the Complainant has founded her
Claim upon the Balance of a third Account Current delivered
in to the said Mayors Court in its Ecclesiastical Capacity by
your Petitioner Jointly with the said Seth Awet in the

pleadings

Pleadings Named the other Administrator of your Petitioners said Intestate amounting as therein stated to the Sum of two thousand One hundred and Seventeen Pagodas Eleven fanams and forty Cash whereas your Petitioner did in and by his said Answer declare that no part of the said Sum of Two thousand One hundred and Seventeen Pagodas Eleven fanams and forty Cash did ever come into his possession but that the same was retained in the hands of and possessed by the said Seth aviet and that some time after the decease of the said Seth aviet your Petitioner had discovered an Error in the accounts of the said Estate of his said Testator made by the said Seth aviet and that thereby it appeared that the Estate did stand indebted unto Sundry persons in the Sum of Six thousand One hundred and Eighty three Pagodas thirty six fanams and thirty five Cash and although the Complainant hath combated the same she notwithstanding admits that when the same came before the Arbitrators upon whose award she grounds her Claim against your Petitioner that the said Arbitrators did admit the Sum of two thousand Pagodas and upwards of the said account to be just and that therefore according to her own shewing she had no manner of right whatever to bring her present suit against your Petitioner — And your Petitioner has also shewn in and by her said answer that by a Memorandum at the foot of the said third account Current out of which the said pretended balance of two thousand

One

One hundred and Seventeen Pagodas Eleven fanams and forty Cash was stated it appeared that a Suit had been instituted in the said Mayors Court against Messrs. Ross and Cuthbert in the prosecution of which Sums of Money had been advanced that had not been carried to the debit of the said Estate and therefore that the said Balance should remain in the hands of the Administrators untill the said Suit should have been determined and thereupon your Petitioner Submits to this Honble Court that even had the said Balance of two thousand one hundred and Seventeen Pagodas eleven fanams and forty Cash actually come into the Custody of your Petitioner yet the Sum of two thousand Pagodas and upwards recognized by the said Arbitrators in their said award and the Expences of the said Suit against the said Messieurs Ross and Cuthbert were much more than the amount thereof and of course left the Estate indebt and consequently the Complainant had not any Claim thereon on account of a pretended Moiety as an Heiress of your Petitioners said Intestate, but your Petitioner says as he has hereinbefore said that the said balance of the said third account Current never did come into his custody or power that the same was retained by the said Seth aviet and that your Petitioner has not any effects whatever belonging to the said Estate of his said Intestate and thereupon your Petitioner Submits to this Honble Court that the said Mayors Court ought to have dismissed the Complainants said Bill of Complaint —

Thirdly

Thirdly ... Because the said Mayors Court have decreed personally against your Petitioner although your Petitioner is sued in his Capacity of Administrator and no devastavit has ever been suggested by the Complainant against your Petitioner and therefore your Petitioner Submits to this Honble Court that the said Decree of the said Mayors Court is erroneous —

For all which Reasons and such others as may be offered at the hearing your Petitioner Most humbly prays that this Honble Court will Vouchsafe to reverse the Decree of the said Mayors Court and to grant unto your Petitioner such further and other Relief in the premises as to this Honble Court shall seem meet —

/Signed/ James Stuart Hall
Solicitor for appellant

Mayors

Mayors Court
at
Madraspatnam

L.S

Tuesday the 12th day of March
Anno Domini 1794

Present
Henry Chickly Mitchell Esqr Mayor
James Call, Andrew Ross, and
John Metford — Aldermen

Mayors Court

Between Jeptha Stephan of Surat Inhabitant Sister and Neast of kin of Gregorio Miguel late of Madras Armenian Merchant deceased by her Attorneys Anna Seth Aviett and Viett Seth of Madras Inhabitants Complainants and Surad Ejaz Maul of Madras Armenian Merchant Defendant —

This Cause coming on to be heard and debated this day in the presence of the attornies on both sides on reading the Complainants Bill with Copies of the Translation of an Award and of two Accounts annexed the Defendants Answer with Copy of a List Annexed The Replication with Copy of the Translation of a Letter annexed The Rejoinder with Copy of Extracts of an Account annexed the Interrogatories and Depositions on the part of the Complainant The Interrogatories and Depositions on the part of the Defendant One Exhibit on the part of the Complainant Marked A. On

Hearing

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 One Thousand four hundred and Seventy One Star Pagodas thirty three Fanams and Sixty Cash / Star Pagodas 1471. 33. 60. together with all such Interest as now is or shall hereafter become due thereon untill full Payment is made at the Rate of Eight p.Ct. p.Ct Annum as also all Costs of this Suit

Hen

/Signed/ George Taylor Regt

a true Copy

/Signed/ J. Stuart Hall

Solicitor for appellant

To the Honble Sir Charles Oakeley Baronet

President in Council

Fort St. George

In the Honble the Court of Appeals

Between Leptha Stephens Sister and next of Kin of Gregorio Miguel Deceased by her Attornies Anna Seth Aviet and Aviet Seth Complainants and Sarad Coja Maul Defendant

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

This Respondent by way of Answer to the said Petition and Appeal or unto so much thereof as concerns this Respondent to make Answer unto saith that she admits to be true that this Respondent by her said Attornies did at the time mentioned in the Petition and Appeal file a Bill of Complaint in the Mayors Court at Madraspatnam against the Appellant for the recovery of the Sum of One thousand four hundred and seventy one Pagodas, thirty three fanams and sixty Cash and this Respondent admits that she did Annex in her said Bill of Complaint, Copies of the Translation of an Award and of an Account Current between the said Anna Seth Aviet and the Appellant as also of another Account between this Respondent and the Appellant and this Respondent also admits that she did in and

by

Filed in my Office the 9th Jany 1794
Chas. H. White Clk

by her said Bill setforth that the said Gregorio Miguel died without making any Will or Testament and that thereupon the said Seth Aviet and the Appellant obtained Letters of Administration of his Estate and Effects and that Magdalina Gregorio Miguel as the Widow and this Respondent as the Sister and next of Kin of the said Gregorio Miguel did apply to the said Seth Aviet and the Appellant for the Estate of the said Gregorio Miguel and that after many Suits Controvercies and disputes between the said Administrators and the said Magdalina Gregorio Miguel and this Respondent the said Administrators agreed to divide the Estate and Effects into two Equal Shares one moiety thereof to be paid to the said Magdalina Gregorio Miguel and the other Moiety to this Respondent and that accordingly this Respondent did Receive one moiety or half part of the Balance of the first and second Accounts Current and that the said Administrators did also on the Second day of December which was in the year of our Lord One thousand Seven hundred Eight Eight deliver a third Account Current of the Estate of the said Gregorio Miguel into the said Mayors Court and did thereby confess that a Balance of Two thousand One hundred and Eleven Pagodas, Eleven fanams and forty Cash was in their hands belonging to the Estate of the said Gregorio Miguel and this Respondent also admits to have setforth in her Bill of Complaint that since the delivery of the said third Account Current in the said Mayors Court the said Seth Aviet departed this Life and the Appellant became the surviving and sole Administrator of the said Gregorio Miguel and being in posfesion of the said Balance was Bound to pay unto this Respondent one Moiety or half part thereof being one thousand fifty Eight Pagodas twenty six fanams and Sixty Cash which Sum this Respondent Admits to have Claimed as her legal and lawful property or Inheritance from the Estate of the said Gregorio Miguel. This Respondent also admits to have setforth that at the time of the Death of the said Seth Aviet several Accounts were subsisting between the said Seth Aviet and the Appellant which were after the death of the said Seth Aviet referred by the said Anna Seth Aviet and the Appellant to the decision of certain Arbitrators and that the said Arbitrators did in and by their award among other things adjudge that from the Estate of the said Gregorio Miguel the Sum of One thousand and fifty Eight Pagodas twenty six fanams and Sixty Cash the property of this Respondent remained in the hands of the said Anna Seth Aviet and the Appellant and it was therefore ordered that the said Anna Seth Aviet should pay unto the Appellant as the surviving Administrators of the said Gregorio Miguel one half part of the said Sum of one thousand and fifty Eight Pagodas twenty six fanams and sixty Cash being the share due by the said Seth Aviet as one of the Administrators of the said Gregorio Miguel unto this Respondent and this Respondent also admits to have setforth in her Bill

of

of Complaint that one half part of the said Sum of one thousand fifty Eight Pagodas twenty Six fanams and Sixty Cash was accordingly deducted from the Claims of the said Anna Seth Aviet on the Appellant as would appear by the said Award annexed to her Bill of Complaint and therefore this Respondent did charge that the Appellant did illegally hold profession of the said Sum of one thousand fifty Eight Pagodas, twenty Six fanams and sixty Cash which should have been paid to this Respondent as her legal Inheritance and that the said Arbitrators did further award that the Interest on the said Sum of One thousand fifty Eight Pagodas twenty six fanams and sixty Cash if demanded by the proprietor thereof should be paid one half by the Appellant and the other half by the said Anna Seth Aviet and that the said Arbitrators did further Award that the said Anna Seth Aviet should pay unto the Appellant in order that he might carry the same to the Credit of the Estate of the said Gregorio Miguel the Sum of Four hundred Sixty three Pagodas thirteen fanams and forty Cash being a debt due by the Father of the said Seth Aviet to the Estate of the said Gregorio Miguel and that accordingly the said Anna Seth Aviet in performance of the said Award did allow and give Credit unto the Appellant in her Account Current the said Sum of Four hundred Sixty three Pagodas, thirteen fanams and forty Cash as by the said Account Current Annexed to this Respondents said Bill might Appear and therefore this

Respondent

Respondent said that She had an indisputable Claim to one half part of the said Sum of Four hundred Sixty three Pagodas thirteen fanams and forty Cash being two hundred thirty one Pagodas, twenty seven fanams and Sixty Cash, And this Respondent Admits that after Interrogating the Appellant to the Several matters in her said Bill of Complaint contained she did pray that the Appellant might be Decreed to pay unto this Respondent the said Sum of one thousand Four hundred, seventy one Pagodas, thirty three fanams and sixty Cash together with all such Interest as then was or should thereafter became due thereon also all Costs of Suit-

To which said Bill of Complaint this Respondent Admits that the Appellant did file his Answer and therein denied to stand indebted unto this Respondent in the Sum Sued for but admitted several other matters and things as in the Petition and Appeal are Stated, This Respondent Admits that the Appellant did in and by his Answer say that the Estate of the said Gregorio Miguel was entirely managed by Seth Aviet who was the acting Administrator therein and that the whole of the monies and Effects of the Estate of the said Gregorio Miguel of every discription together with all the Accounts relative thereto were posessed by and remained in the hands of the said Seth Aviet who had the entire manage=ment and Arrangement thereof and every part thereof and that

the

the said Sum of Two thousand One hundred and seventeen Pago-das Eleven fanams and forty Cash must also have remained in the hands of the said Seth Aviet in Conformity to a memo-randum at the foot of the said third account Current and this Respondent Admits that the Appellant did in his said Answer insert the said memorandum And this Respondent Admits that the Appellant did also setforth that the Suit in the said Memorandum mentioned was still pending in the said Mayors Court and that he solemnly declared that he never received from the said Seth Aviet the said Balance of Two thousand One hundred, seventeen Pagodas, Eleven fanams and forty Cash or any part thereof or any other Sum of Money whatever on account of the Estate of the said Gregorio Miguel and therefore as he pretended in his said Answer that he would not take upon himself to say what the Amount might be that the said Seth Aviet might have laid out for or by reason of the said Suit as the Accounts thereof as he pretended were entirely kept by the said Seth Aviet and by him withheld from the Appellant during his life time and after his Decease by his Administratrix the said Anna Seth Aviet, and that the Appellant also setforth the difficulties which consequently arose in arranging the Affairs of the Estate and that the Appellant discovered debts due thereon to the said Amount of Six thousand One hundred Eighty three Pagodas, thirty Six fanams and Twenty five Cash, and that the

the Appellant pretended he had not in his Custody or posession a single fanam in Cash belonging to the Estate of the said Gregorio Miguel and that therefore he was not indebted unto this Respondent in the Sum sued for not-withstanding any thing to the Contrary in this Respondents said Bill Contained or in the Award therein setforth pretending that such Award was given on mistaken prin-ciples as stated in the Appellants said Answer and Petition and Appeal, To which said Answer this Respondent admits that she did by her said Attornies file her Replication and the said Appellant filed his Rejoinder as are fully stated in the Petition and Appeal and this Respondent also admits that upon the above proceedings Issue was joined and Witnesses Examined after which Publication passed and the Cause was set down for hearing and the same came on to be heard by and before the said Mayors Court on the Eighteenth day of March in this present year of Our Lord One thousand Seven hundred and ninety four when the said Mayors Court was pleased to Order and Decree and did accordingly Order and Decree that the Appellant should pay unto this Respondent the full and just Sum of One thousand Four hundred Seventy one Pago-das thirty three fanams and sixty Cash together with all such Interest as then was or should thereafter become due thereon until full payment was made at the rate of Eight

Per Cent

Per Cent Per Annum with all Costs of Suit From which said Decree of the said Mayors Court the said Appellant hath appealed to this Hamble Court of Appeals under pretence that he is much aggrieved thereby for certain reasons setforth by the Appellant in his said Petition and Appeal to which Reasons this Respondent answereth as follows.—

To the first Reason this Respondent for Answer saith that it appears by the proceedings in the Cause that the Sum sued for is due under and by Virtue of an Award made by Arbitrators Chosen to investigate the Accounts of the Estate of the said Gregorio Miguel and that the same was considered by such Award as a Surplus in the hands of the Appellant belonging to the Estate of the said Gregorio Miguel and devolving to this Respondent as his Sister and next of Kin.—

To the Second Reason this Respondent for Answer saith that the same is in part answered in the above Answer to the Appellants first Reason, and for further Answer this Respondent saith that the pretended Claims of Sundry persons against the Estate of the said Gregorio Miguel to the amount of the said Sum of Six Thousand One hundred and Eighty Three Pagodas thirty six fanams and thirty five Cash as well as the other matters stated in the Appellants said Reason were fully before the said Arbitrators, notwithstanding which they determined in favor of this Respondent as appears by the said Award by force whereof she established her Claim to the Sum now in suit and obtained Judgment for the same in the said Mayors Court—

To the third Reason this Respondent for Answer saith that altho' the many now sued for by this Respondent originally devolved to her as Sister and next of Kin to Gregorio Miguel whom the Appellant was an Administrator yet the same became a personal Claim against the Appellant by reason of the said Award, for the Appellant by submitting to an Arbitration Submitted also his priviledge as Administrator and as it appeared on the investigation of the Accounts of the Estate of the Deceased submitted to the said Arbitrators that the Appellant ought to pay a Certain Sum to this Respondent, the Claim thereto was so ascertained by such Arbitration and Award, as to become a personal Claim against the Appellant

For all which Reasons and such others as may be offered at the Hearing of this Cause this Respondent prays that the said Decree of the Mayors Court be confirmed and that the Appellants Petition and Appeal be dismissed with Costs to be paid by the Appellant—

/ Signed / Stephen Popham proxy & Robert Williams } Solicitors for Respondent

Court of Appeals

Court of Appeals
at
Madraspatnam } Ss

Saturday the 14th day of June
Anno Domini 1794

Between Sarad Coja Maul of Madras Armenian Merchant Appellant and Zeptha Stephan of Surat Inhabitant Sister and next of Kin of Gregorio Miguel late of Madras Armenian Merchant Deceased by her Attornies Anna Seth Aviett and Aviett Seth of Madras Inhabitants 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 18th day of March Anno Domini 1794 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 in thence dismissed with Costs-

Fiat

/Signed/ Robert Clerke
Clk

To the Honble Sir Charles Oakeley Baronet
President in Council
Fort Saint George

In the Honble the
Court of Appeals at
Madraspatnam

Between John Martin and Frances Martin Administrator and Administratrix of the Estate and Effects of Cottrell Barrett deceased Complainants and Nineapah Moodely Administrator of the Estate and Effects of John Sykes deceased unadministered by James Johnson deceased Defendant

The humble Petition and Appeal of the above named Complainants-

Sheweth

That your Petitioners Intestate did in his lifetime to Wit sometime on or about the seventh day of March which was in the year of Christ One thousand Seven hundred and eighty eight file and exhibit a Bill of Complaint in the Honble the Mayors Court of Madraspatnam against the above named Defendant Nineapah Moodely for the recovery of the Sum of Eight hundred and forty five Star Pagodas thirty two fanams and sixty Cash Current Money of Madras making in Sterling Money of Great Britain at the rate of eight Shillings for every Pagoda the Sum of three hundred and thirty eight Pounds six Shillings and

Filed in my Office
the 28th April 1794
Chas White
Clk

and five Pence or thereabouts being so much due to your Petitioners said Intestate upon an Account Current Copy whereof was to the Said Bill of Complaint annexed-

And your Petitioners shew that the said Bill of Complaint did state that sometime on or about the eighth day of January which was in the year of Our Lord One thousand seven hundred and Eighty three your Petitioners Intestate did purchase by public Outcry from James Johnson the Administrator of the late John Sykes deceased a Spot of Ground with five small Godowns thereon, situate in the High Street leading from the Explanade to the Jail Gate and in that part thereof which is opposite to Mauphus Cauns Garden measuring nearly from North to South on the East side ninety five and one Quarter feet, and on the West side ninety four and one Quarter feet, and from East to West on the North side seventy eight feet and on the South side seventy two and one Quarter feet for the price or Sum of five hundred and forty Pagodas- And your Petitioners shew that the said Bill of Complaint did state that on the eighth day of February in the said year one thousand Seven hundred and Eighty three, your Petitioners Intestate did pay unto the said James Johnson in part of the purchase Money the Sum of One hundred Pagodas as by the receipt of the said James Johnson (Copy whereof was unto the said Bill of Complaint annexed) would fully appear-

And your Petitioners shew that their said Intestate did in his said Bill of Complaint further state, that the said James Johnson did in his life time to wit, on or about the seventeenth day of April in the said year One thousand Seven hundred and eighty three, draw on your Petitioners said Intestate for the Sum of four hundred and forty four Pagodas (being the balance of the said purchase Money) in favor of John Leatham of Madras Merchant, which was immediately discharged by your Petitioners Intestate as would appear by the Copy of the said draft and the receipt thereon annexed to his said Bill of Complaint

And your Petitioners shew that their said Intestate did in his said Bill of Complaint further state that after payment of the said purchase Money he frequently applied to the said James Johnson for the delivery of the Bill of Sale of the said Ground, and was answered that he should have it as soon as the Honble Company gave Grants of Ground in lieu of the Ground taken on Bog Hill, as by a note of your Petitioners said Intestate to the said James Johnson and his Answer at the foot thereof annexed to your Petitioners said Intestates said Bill of Complaint would appear. And that altho the said James Johnson did not sign his name to the said Answer, yet that your Petitioners said Intestate was ready to prove the same to have been of the proper hand writing of the said James Johnson.-

And your Petitioners further shew that after the death of the said James Johnson, your Petitioners Intestate made frequent applications to the Defendant Ninapah Moodelly as Administrator of the said James Johnson for the Bill of Sale of the said premises or to repay your Petitioners Intestate the Amount

Amount principal and Interest which he had advanced on Account thereof but without ever being able to obtain any satisfaction from the said Nineapah Moodelly, wherefore your Petitioners Intestate did pray that the said Nineapah Moodelly as Administrators as aforesaid might be decreed to pay unto him the said Sum of eight hundred and forty five Pagodas, thirty two fanams and sixty Cash together with the Interest thereon and thereafter to become due thereon or to deliver up the said Godowns and Premises in through repair as when bought and to execute a Bill of Sale thereof, as also to pay the Interest of the aforesaid principal Sum of five hundred and forty Pagodas by way of Rent for the said premises from the time they were so purchased and paid for, as your Petitioners Intestate was never able to repair, let, or sell the same for want of a Bill of Sale or Title thereto - and that the said Nineapah Moodelly might be decreed to pay all Costs of the said Suit -

And your Petitioners shew that rules having issued thereon the said Defendant did appear to the Complainants said Bill of Complaint, and on or about the twenty seventh Day of May which was in the said year of Christ One thousand seven hundred and eighty eight did file his Answer thereto, and did therein deny to be indebted unto the Complainant in the said Sum of eight hundred and forty five Pagodas, thirty two fanams and sixty Cash, and did allege that he had reason to believe the Complainant did stand indebted unto his the said Nineapah Moodellys Intestate in the Sum of four hundred and forty Pagodas together with the Interest thereon, or of some other balance due upon the purchase of the premises mentioned in the Bill of Complaint, but which balance he could not exactly tell, as he had not been able to find any regular Journal or Account of the Estate of his said Intestates

And your Petitioners shew that the said Nineapah Moodelly did further setforth in his Answer that he believed the Complainant might have purchased the Ground as stated in the Bill of Complaint but could not pretend to say that it was for the Sum of five hundred and forty Pagodas (altho' he acknowledged to have received the Sum of One hundred Pagodas on Account thereof on the eighth February One thousand Seven hundred and eighty three as appeared by the receipt produced by the Complainant which receipt particularly described it to be subject to the terms of advertisement previous to the sale of the premises aforementioned) And your Petitioners shew that the said Nineapah Moodelly did further state in his said Answer that he was totally unacquainted with the transaction of the Bill drawn on the Complainant in favor of John Leatham for a Sum of four hundred and forty Pagodas the balance of the said purchase And that the said Money might have been on account of some other Concern between the Complainant and James Johnson, for if it was paid as the balance of the purchase the Complainant would have insisted on a Receipt in full from James Johnson as administrator of John Sykes, and that the

Complainant

Complainant could not be lawfully allowed to make a demand on the Estate of the deceased John Sykes unless he could prove that John Sykes was indebted to him in his life time - And as the Intestate James Johnson could not lawfully incumber the Estate of the said John Sykes with any fresh Debt any transaction between the Complainant and James Johnson in their private Capacities could not, nor ought to be brought to the Account of John Sykes's Estate - And that if it had any relation to the said Estate the same would have been particularly specified either in the Draft or in some receipt for it, and that the Complainant had fully complied with the terms of the advertisement -

And your Petitioners shew that the Defendant further stated in his said Answer that he was justified in this precaution by the confused state in which the affairs of the said John Sykes was left, and also from his having known from the possession of the said James Johnson's Estate to which he is also Administrator that the Complainant and James Johnson had formerly private dealings together, and did therefore conjecture that the transaction of the four hundred and forty Pagodas had no more relation to John Sykes's Estate than it appeared to have, and that it was not likely the Complainant would have paid the Money without taking a receipt, or an undertaking to deliver the Bill of Sale And the Defendant further stated in his said Answer that a Bill of Sale of part of the premises was in his possession / and that it did not therefore depend upon the Governor and Council issuing out their Grants / being a Chaultry Bill of Sale for the greatest part of the Ground, and which if the Complainant had been entitled to would have been demanded and delivered -

And your Petitioners shew that the said Nineapah Moodelly did in his said Answer state that he believed the Complainant was not entitled to the Bill of Sale or the Money he demanded because James Johnson at the same time sold two pieces of Ground the Bills of Sale of which he delivered on receiving the purchase Money, And the Defendant further stated that many Purchases and sales had taken place for which a Companys Grant was not at that time had, in like manner as part of the Ground in Question given in lieu of the Ground appropriated by the Company for the Enlargement of the Esplanade for which the seller had made over the right he had thereto in Order to give the Purchaser the right to claim the Grant and possess it when issued and the Defendant further stated that the Complainant ought to have furnished him with such proofs as would have justified him in giving up the Bill of Sale of part of the Ground, which the Complainant pretended to have paid for, and to have made an assignment of that part for which there was not a Bill of Sale or Grant from the Company -

And your Petitioners further shew that their said Intestate did file his Replication to the Defendants said Answer supporting the Charges of his said Bill of Complaint, to which

which the said Ninecapah Moodelly did on or about the twenty first day of October in the said Year of Christ One thousand Seven hundred and eighty eight file his Rejoinder, in a part of which he says that he had by chance discovered a draft of James Johnson upon Francis Jourdan in favor of the Repliant for the Sum of Six hundred and thirty five Pagodas twenty six fanams and ten Cash, Copy of which he prayed to annex thereunto as a refutation of what the Repliant had Alleged that he had never any dealings or concerns with the said James Johnson except the pretended one in question which said Draft your Petitioners beg to shew bears a date Six years Anterior to the transaction in Question

Your Petitioners further shew unto this Honble Court that upon the above proceedings Issue was joined and Witnesses were examined on the part of the Complainant, after which your Petitioners Intestate departed this life, and the Cause was laid Dormant in the Honble the Mayors Court-

And your Petitioners further shew unto this Honble Court that as Administrator and Administratrix of the said Cottrell Barrett they did file a Bill of Revivor in the Honble the Mayors Court and therein stated the Proceedings of the above Cause, and did pray the said Suit and all proceedings thereon might be revived against the said Ninecapah Moodelly as Administrator as aforesaid and be in the same plight and condition as the same were in at the time they so became abated-

And your Petitioners shew that the said Ninecapah Moodelly did by his Attorney at Law appear to the said Bill of Revivor, and Publication having passed, the said Cause came on to be heard before the said Mayors Court on Tuesday the fifteenth day of the present Month of April One thousand seven hundred and ninety four, when the said Mayors Court were pleased to order and Decree that the said Bill of Complaint do stand dismissed with Costs-

By which said Order and Decree of the said Mayors Court your Petitioners Consider themselves much aggrieved and do Appeal therefrom for the following amongst other reasons-

Because it appears by the Evidence of Damingos Johnson

First, That the said Damingos Johnson was in the Service of the said James Johnson at the time of the Sale of the Premises in Question, that he was present when the same were sold to the deceased Cottrell Barrett for the Sum of five hundred and forty Pagodas, and that the said Cottrell Barrett had no other dealings with the said James Johnson save the purchase of the Sale of the said Premises-

Second, That the Signature "James Johnson" to the Exhibit **B** (being the draft for the Sum of four hundred and forty Pagodas) is of the proper hand writing of the said James Johnson-

Third, That the Answer in the Exhibit **C** to the note of the said Cottrell Barrett to the said James Johnson, is of the proper hand writing of the said James Johnson-

Fourth

Fourth, Because the Amount of the draft for four hundred and forty Pagodas (the Exhibit B) and the fourty pagodas of Ane hundred Pagodas acknowledged by the Defendant to have been received, make the exact Amount of the purchase of the said premises—

Fifth, Because it is Evident from the Exhibit C that the whole Amount of the purchase Money must have been paid by the said Cottrell Barrett to the said James Johnson for otherwise the said Cottrell Barrett would not have written for the delivery of the Bill of Sale as soon as posible, nor would the said James Johnson have said he would send it as soon as posible, assigning as the only reason for his inability to send that the Company had not issued their Grants—

Sixth, Because it is Evident that the said Cottrell Barrett was kept in expectation of recieving the said Bill of Sale from the said James Johnson as soon as the Company should Issue their said Grants—

Seventh, Because it is a matter well known that the Company have not to this day Issued their Grants

Eighth, Because it is Evident from the said Exhibit C, that the said James Johnson was fully under the Impression that the Ground in Question was the Identical Spot Granted by the said United Company to the said John Sykes in lieu of Ground at Hog Hill taken from him the said John Sykes by the said United Company—

Ninth, Because the said Cottrell Barrett being in daily expectation of receiving the said Bill of Sale from the said James Johnson deferred to demand a receipt in full for the said purchase Money of the premises in Question until such final Arrangement should take place, which or any other Arrangement between the said Cottrell Barrett and the said James Johnson was prevented by the death of the said James Johnson—

For all which reasons and such others as may be offered at the hearing, your Petitioners most humbly pray this Honble Court will be pleased to reverse the said Order of the said Mayors Court and Grant your Petitioners such relief in the Premises as in their Wisdom shall seem meet

Signed / Robert Williams for
Stephen Popham & self
Petrs for Appellant

Mayors

Mayors Court at
Madraspatnam }

Tuesday the 15th. day of April
Anno Domini 1794

Present

Wm Chs Michell Esqr. Mayor
Andrew Ross John Mitford
& Benjn. Roebuck Aldermen

Mayors Court

Between John Martin and Frances Martin his Wife of Madras Inhabitants Administrator and Administratrix of Cottrell Barrett Deceased Complainants and Ninapah Moodeliar Administrator to the Estate & Effects of John Sykes Deceased Unadministered by James Johnson also 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 Copies of, an Account and three Exhibits annexed, the Defendants Answer, the Replication, the Rejoinder with Copy of a Droft annexed, the Interrogatories and Depositions on the part of the Complainant the Interrogatories and Depositions on the part of the Defendant with Exhibit marked A annexed, & 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 Complainants Bill do Stand Dismissed with Costs

A true Copy / Signed / George Taylor Regt

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

In the Honble the
Court of Appeals

Between John Martin and Frances Martin Administrator and Administratrix of the Estate and Effects of Cottrell Barrett Deceased Complainant and Ninapah Moodelly Administrator of the Estate and Effects of John Sykes Deceased unadministered by James Johnson deceased Defendant—

Filed in my office
the 17th May 1794—
Robert Clerk
Clk

The Answer of the said Ninapah Moodelly to the Petition and Appeal of the said John Martin and Frances Martin Administrator and Administratrix aforesaid

This Respondent for Answer unto the said Petition and Appeal or unto so much thereof, as this Respondent is advised, is material or necessary for him to make Answer unto, Answereth and Saith, that it is true, that the Petitioners Intestate on or about Seventh Day of March, which was in the year of Christ, One thousand Seven hundred and eighty eight, did file and Exhibit a Bill of Complaint in the Honble the Mayors Court at Madraspatnam, against this Respondent for the recovery of the Sum of Eight hundred and Forty five Star Pagodas, Thirty two fanams and Sixty Cash, Current Money of Madras, and making in

in Sterling Money of Great Britain, at the rate of Eight Shillings for every Pagoda, the Sum of Three hundred and thirty Eight Pounds, Six Shillings and two Pence or thereabout, which the Petitioners Intestate Stated in his said Bill of Complaint, to be due and owing to him upon an Account Current Copy whereof was annexed to the said Bill

And this Respondent doth Admit what is Stated by the Petitioners in their said Petition, that the said Bill of Complaint, did State that some time on or about the Eighth Day of January which was in the year of Christ, One thousand Seven hundred and Eighty three, that the Petitioners Intestate did Purchase by Public Outcry from James Johnson, Administrator of the Estate John Sykes Deceased, a Spot of Ground, as particularly described by the said Petitioners Intestate in his said Bill of Complaint, for the price, or Sum, of Five Hundred and Forty Pagodas, and this Respondent doth admit, that the said Bill of Complaint did further State that on the Eighth Day of February in the said Year the Petitioners Intestate did pay unto the said James Johnson in part of the Purchase Money the Sum of One Hundred Pagodas as by the receipt of the said James Johnson, annexed to the said Bill, the Petitioners Intestate did state would more fully appear.

And this Respondent doth Admit that the Petitioners Intestate, did in his said Bill of Complaint, further State, that the said James Johnson on the Seventh Day of April in the Year of Christ, One thousand Seven hundred and Eighty three did draw in the Petitioners Intestate for the Sum of Four Hundred and Forty Pagodas in favor of John Leatham of Madras Merchant, and which the said Intestate did pretend in the said Bill, was the Balance of the Purchase Money aforesaid, and which said Bill was immediately Discharged by the Petitioners Intestate.

And this Respondent doth admit that the Petitioners Intestate, in his said Bill of Complaint, did State, that after the pretended Payment of the said Purchase Money, he frequently applyed for the Delivery of the Bill of Sale of the said Grounds, and was Answered that he should have it, as soon as the Honble Company should give grants of Ground, with other matters and particulars as are Stated and Setforth in the said Bill, by the said Petitioners said Intestate.

And this Respondent doth Admit that to the said Bill of the Petitioners said Intestate, he did file his Answer in the said Mayors, Court on or about the Twenty Seventh Day of May, which was in the said Year of Christ, One thousand Seven hundred and Eighty Eight.

And this Respondent did deny therein that he was indebted unto the Petitioners Intestate in the Sum of Eight hundred and Forty five Pagodas, Thirty two Fanams and Sixty Cash, Charged against this Respondent in the said Bill of Complaint, but on the Contrary averred, that he had reason to believe that the said Cottrell Barrott did stand indebted to this Respondent, as Administrator

as

as aforesaid, in the Sum of Four hundred and Forty Pagodas, with Interest thereon, on Account of the Premises mintioned in the said Bill, and this Respondent in his said Answer further setforth, that he believed that the Amplainant might have purchased from the said James Johnson a Spot of Ground, Situated in the manner, as setforth in the said Bill of Amplaint but that he could not Acknowledge that the said Amplainant did Purchase the said Grounds for the Sum of Five hundred and Forty Pagodas; but Confessed that James Johnson had received an Account thereof, the Sum of One hundred Pagodas, as Setforth and Charged in the Petitioners Intestates said Bill.

And this Respondent did further Shew in his said Answer that he was wholly unacquainted with the Transactions, setforth, by the Petitioners Intestate, wherein the said Intestate did pretend that the said James Johnson Did Draw on the said Intestate for the Sum of Four hundred and Forty Pagodas, in favor of Latham and Mac Intosh, as the pretended balince of the said purchase, and Setforth that the said money might have been on Account of Some other Concerns or Negociations and if the said Money had been paid as the Balence of the said Purchase Money, and not on a private Account the said Cottrell Barrett would have insisted on a receipt in full from the said James Johnson as Administrator of Sykes Expressing the Consideration for which the said Money was paid, or the same

could not by Law be presumed to have been paid on Account of the said Estate, but on the Private Account of the said James Johnson, and in the like Manner as the same appeared, and would naturally be judged to be, upon an Inspection of the said Draft or Bill,-

And this Respondent further shewed in his said Answer that the said Cottrell Barrett could not lawfully be allowed to make a Demand on the Estate of the said Sykes, without he could Produce good and Sufficient proof of the said John Sykes having been indebted to him in his lifetime and that the said James Johnson could not incumber the Estate of the said John Sykes with any fresh Debt and consequently that any transactions between the said Cottrell Barrett and the said James Johnson in their private Capacities could not, nor ought to be brought to the Account of the said Estate of the said John Sykes, and this Respondent further shewed in his said Answer, that it was not likely that the said Cottrell Barrett would have paid the full purchase Money without receiving an Acknowledgement or Receipt thereof, or an undertaking (which is very usual and in Common practice) to deliver the Bill of Sale of the premises, and this Respondent shewed in his said Answer at the time of filing the same, a Bill of Sale of Part of the Premises, was at that time in his Posession, and the delivery of which did not in any wise depend on the Passing of the Companys Grant; and that the same was a Choultry Bill of Sale from Nuzagapaukum Pindapah, to

Wit

Writ, for Five Thousand Nine Hundred and Seventy Superficial Square Feet, and which said Bill of Sale would have been Demanded, by the said Cottrell Barrett, and Delivered, if the said Cottrell Barred had been intitled thereto.

And this Respondent doth admit that a Replication to the Respondents Answer was filed by the Petitioners Intestate and to which this Respondent Did thereafter file his Rejoinder and thereupon Issue did Join and Rules did pass for the Examination of Witnesses and Witnesses were Examined on both Parts and that by the Death or Demise of the Petitioners Intestate the Cause between the Intestate and this Respondent lay dormant in the Honble the Mayors Court, and that the same was afterwards revived by a Bill of Reviver at the Instance of the Petitioners as Administrator and Administratrix of John Sykes and that this Respondent did appear to the said and that publication did thereafter pass and the said Cause Came on to be heard before the Mayors Court on Tuesday the 18th. April now last past, when the said Mayors Court were pleased to Order and Decree that the said Bill of Complaint do stand Dismissed with Costs-

By which Decree of the said Mayors Court this Respondent Humbly Contends that he hath Received not any Advantage further then what he was Legally and Substantially intitled to, and that the Petitioner hath incurred no wrong or Damage thereby which would have warranted him or given him any Cause or Color to Appeal therefrom.—

The said Respondent in Answer to the first Cause or reason

reasons Assigned by the Said Petitioners saith that it might have been true, as in the said first Cause or Reason is Setforth, that Damingos Johnson, Examinid on the Part of the Petitioners in the said Cause, might have been retained in the Service of the said James Johnson and that he the said Damingos Johnson might have been present at the time when the Premises in Question were sold to the Deceased Cottrell Barrett. But this Respondent Saith if any Credit were due unto the Testimony of the said Damingos Johnson so far as it relates to the Act of the Sale of the said Premises, and of the amount of the Purchase Money offered for the same, that the said Petitioners have Voluntarily foregone the benefit and Advantage which might have resulted to them from the said Damingos Johnsons Evidence in these Particulars by the Exhibition of the very guiding and leading Interrogatories which were Exhibited to him on the behalf of the said Petitioners before the Examiner of the said Mayors Court- For the said Damingos Johnson is not Interrogated generally, as he ought to have been, "who was the highest Bidder "at the said Sale of the said Premises" but is Specifically and Particularly asked what the Petitioners were matterially to be benefited in shewing namely, wheather the Complainant Cottrell Barrett was not the highest Bidder thereat: and the said Damingos Johnson, when Questioned to the Amount of purchase Money offered for the said Premises, is directed and led by the Interrogatory Exhibited to him to the Precise Sum which the Petitioners would have wished to have established as the

amount

Amount of the Purchase— The Interrogatory Does not rest where it should in barely enquiring, "for what Sum or Sums the said Premises were Sold;" but tends ingeniously to furnish the Evidence with the Money of the Sum required to be. Deposed to, in a way not to be mistaken Namely "were or were not the said Premises Sold for Five hundred and Forty Pagodas" Now, that the fixing and Establishing the Amount of the Purchase Money at Five hundred and Forty Pagodas was Peculary Material to the Petitioners Cause, is too obvious to need any Impression from this Respondent on the Honble Court, for it was necessary for the Petitioners to prove that the whole of the Purchase Money was paid, before they could have maintained their Grounds of Action, and by the Receipt bearing Date the Eighth Day of February One thousand Seven hundred and Eighty three, for One hundred Pagodas and by the Bill of Exchange for four hundred and Forty Pagodas bearing Date the Seventeenth day of April of the said year the Petitioners were enabled to show a payment of five hundred and Forty Pagodas and which Payment they would Pretend to be in Satisfaction of the Amount of the Purchase Money for the said Premises the Testimony therefore of Domingo Johnson if it be not vitiated altogether so far as it flows from or arises out of the said Interrogatory must be received under great Caution and Suspition and there is no other Evidence — Except Certain written Vouchers Exhibited in the said Cause and which Depend for Support alone on his the said Domingos

Johnsons

Johnson's Evidence and this Respondent Saith, it is Set forth and Charged, in and by the said Cause and Reason Assigned by the said Petitioners, that the said Domingos Johnsons had Deposed that the said Cottrell Barrett had no other Dealings with the said James Johnson Save the Purchase at the said Sale of the said Premises— But the said Domingos Johnson on his Examination on the behalf of the Petitioner, as appears from his Deposition at that time taken, hath Declared not positively, but with the Qualification of "to the best of his knowledge," namely, that the Complainant during the "Deponents "Employment with the said James Johnson had no other dealings or Transactions with the said James Johnson Save and Except the "Purchase of the said Premises," And this Respondent Observes that from the Deposition of the said Domingos Johnson, it further appears, that he, the Deponent, was but for a short time in the Service of the said James Johnson Namely, from the year One Thousand Seven hundred and Eighty two till the year Anno Domini One thousand Seven hundred and Eighty three and Consiquently could not be Conceived to be either in Confidence or much versed in the knowledge of the Transactions or Concerns of his Master, and from what appears on the face of the Deposition of the said Domingos Johnson, it does not appear whether the Deponent was in the Service of James Johnson even at the time of the Sale of the Premises in Question, for he does not Set forth that Circumstance, but onely says "that he Entered into the Service of the said James Johnson in the Years One

thousand

thousant Seven hundried and Eighty two and Antinued till the year One Thousand Seven hundried and Eighty three," and if he were not in the Service of James Johnson at the time of Sale much lefs could he have been in his Service at the time of any Transaction between Leathan and Mac Intosh and Johnson with the Petitioners Intestate, and as Connected with that of the Negotiation of the Bill of Exchange, which has been brought forward by the Petitioners in Support of their Bill of Complaint. Be it, as it may it is Clear by his Own Deposition, that Domenga Johnson could have little acquaintance with the Affairs and Business of James Johnson, Nothing, therefore, that he could say with respect thereto is entitled to any sort of Credit or Attention from this Hon^ble Court and it is in proof by the Exhibit Marked **A** That this Respondents Intestate and the said Cottrell Barrett had another Money transactions to gather than the matter in Question.

To the Secand Cause or reason Assigned by the said Petitioners, this Respondent saith, that whether the Signature "James Johnson" to the Exhibit **B** be of the proper hand writing of the said James Johnson was not clearly in proof before the Hon^ble the Mayor's Court; for it was only Deposed to by a Single Witness, and he had come before the Court under the Questionable Seam as is setforth in the Answer to the preceiding reason and it was in the power of the Petitioners to have procured other and better proof than they had produced (the said James Johnson's hand writing being well known in Madras, he having

having Acted in a public Profession in the same place) and the not procuring it, would leave the Circumstance of his Subscribing to the said Bill of Exchange, open to some Doubt. But Admiting, even that the said James John did Execute and sign the said Bill of Exchange on Barrett in favor of Leathen and Mackintosh for four hundred and forty Pagodas, Yet there was no Evidence that the said Bill had any relation or Reference to the said Sale of Premises in Question: and it was incumbent on the Petitioners to have shown, that the said Sum of Four hundred and Forty Star Pagodas was on Account of the said Purchase Money, before they could make it Chargeable to that Transaction or before they could be entitled to take any Advantage thereof and nothing on the face of the Bill itself and nothing as relative to the Persons mentioned in the Bill, Namely Leathan and Mac Intosh, can be brought to infer that the same was in discharge of residue of the Purchase Money. From any thing therefore apparent on the said Bill of Exchange, it cannot but be concluded, that the same was on account of some Private transaction, known between the Parties Interested therein, and not imputable to any thing concerning the said Premises By therefore the said Sum of Four hundred and Forty Pagodas, should seem to be on Account of any Private Dealings of James Johnson with Cottrell Barrett – (and it is not shown otherwise) it Certainly cannot be set down to the Amount of Sykes's Estate; for Sykes's Estate, of which James Johnson was Administrator,) and it was in that relatation he had

Disposed

of the Premises in Question / cannot be injured or affected by any Private Dealings or Transactions of James Johnson, Distinct from his Capacity of Administrator thereto - And he does not Draw on Barrett, as Administrator of Sykes, nor is it mentioned in any ways in the Body of the Bill, that the same has reference to Sykes's Estate although a Similar Precaution is observed in the Receipt for one hundred Pagodas which is Stated to be in part Payment of the Purchase money for a Piece of Ground "belonging to the Estate of M. John Sykes Deceased" now it is fair to Presume when a man uses so great a Share of Precaution and prudence, when taking Discharge for a Small Sum, that the same foresight will not forsake him when he makes a larger Payment - yet it is not in Evidence or averred, even, that the Petitioners have any Single Document to shew, that the Payment of the said Sum of Four Hundred and forty Pagodas was on Account of the Premises in Question or that it did in any wise relate to the Estate of John Sykes, which they ought to have clearly Demonstrated, or they have failed of Making Sykes's Estate liable to their Pretended Claim. -

To the third Cause or reason assigned by the said Petitioners this Respondent Saith / not waiving however his right of Exception to the Insufficiency of Proof of the said Answer in the Exhibit C being in the hand writing of the said James Johnson and for the reasons setforth and Explained in his answer to the Second Cause or reason assigned by the said Petitioners immediately foregoing / that if the Answer to the said Note of Cottrell Barrett should appear to be of the proper hand writing of the said James Johnson, nor the note to which the said answer is stated to be in Reply, have any Inference, Importance or Relation to the Premises in Question either on the View or face of the said Paper Writings, or on any Evidence which has been offered by the said Petitioners as tending to Declare the same, all that appears to have been required by the said Cottrell Barrett in the said note Addressed to the said James Johnson, is, that he the said James Johnson should sent the Bill of Sale as soon as he possibly could - But what Bill of Sale was meant and intended in the said note is no where setforth or Declared in the same or shewn by any after Evedence thereto and the Answer of the said James Johnson goes only to the object of the Note, to wit "It shall be sent as soon as possible, but the Company have not yet issued Grants" And the said note and the said Answer bear Date of the Twentieth Day of June two months Subsequent to the Date of the Bill of Exchange for four hundred and forty Pagodas in favour of Leatham and Machintosh; and which Sum is pretended to have been in discharge of the residues of the Purchase money of the said Premises and

and in the Interval, between the Dates of the said Bill of Exchange on the Twentieth Day of April One Thousand Seven hundred and Eighty three, to the twentieth Day of June next Ensuing, there is no apparent Correspondence betwixt the said James Johnson and Cottrell Barrett, or any requisition of the said Bill of Sale, which there most Probably would have been, if the said Cottrell Barrett had fully Discharged and Acquitted himself of the Payment for the said Premises. But although the said Bill of Sale of the Premises in Question should have been meant and intended in the said Note of Cottrell Barrett of the Twentieth Day of June, yet there is nothing in that note, which could induce this Honorable Court or indeed any other Court from the view of the same, and the open and Patent meaning thereof, which could induce it to be believed, that the Purchase money was wholly Discharged by the Petitioners said Intestate Cottrell Barrett; and the said James Johnson being an Attorney of the Honorable the Mayors Court, might have been Employed in his Professional Capacity to Draw a Bill of Sale, either for the said Cottrell Barrett or some of his Constituents or Friends, to which the said note might refer, it does not however bear any Innuendo, which could make it applicable at all to the premisses in Question,

and

and befor it could be legally imputable to the said Premises it was Incumbent on the Petitioners to have brought positive Proof to shew the same. And besides, the mode of requisition would indicate, that what Cottrell Barrett was requiring of the said James Johnson in the said note was not in Right, for it is couched in the Tone of a Sollicitation - "you will oblige much Yrs &c" this Respondent, therefore, contends that nothing can be argued from the said Answer, in the exhibit **C** in favor of the said Petitioners.-

To the fourth Cause or reason, assigned by the said Petitioners this Respondent Saith that although the Amount of the Bill of Exchange for Four hundred and forty Pagodas in favor of Leathem and Mackintosh, and the one hundred Pagodas admitted to have been received of the said Cottrell Barrett on Account of the said Premises, do together form a Sum, equal to the Pretended Amount of the said Purchase money for the said Premises, yet it doth not appear, though the amount be equal, that it was paid on that Account, which ought to have been shewn by the Petitioners, but which they have failed to shew and, again, the Pretended amount of the said Purchase money is fixed only by the Evidence of Domingos Johnson who had been led to the Declaration of the said Sum by the Interrogatories administered to him and which has been Particularly alluded to in the Answer to the first Cause or reason assigned by the said Petitioners. At best, the Circumstance of Sums being alike could amount but to a Collateral kind of

Evidence

Evidence of their being on the same Account and no matter pertinent to Property can be Substantiated but by direct Testimony.—

To the fifth Cause or reason assigned by the said Petitioners this Respondent Saith, that the bare Demanding of a Bill of Sale is in no Proof of the Purchase money having been Discharged Nor is a Promise to send it, in any further proof thereof: but under the peculiar Circumstance of the Demand of the said Bill of Sale, in the reserved manner in which it is asked it should seem rather to be Petitioned as an obligation than Exacted as a matter of Course and right. —

To the Sixth and Seventh Causes and reasons assigned by the said Petitioners this Respondent Saith, that the said Cottrell Barrett might have been kept in Expectation of receiving the said Bill of Sale from the said James Johnson, so soon as the Company should have issued their said Grants; and it may be a matter well known that the Company have not to this Day issued the same; yet the said Cottrell Barrett being in Expectation of the said Bill of Sale, does not Shew in any wise that he had previously paid the whole Amount of the Purchase money Indeed, it was not likely that he would, nor was it Incumbent on him, or prudent for him to do it untill he was furnished with a Bill of Sale. and what is Supposed to be for a mans Interest to do (connected, too, with what is right and equitable) it is but a fair Presumption to take

for

for granted, that he will do the same; —

To the Eighth Cause or reason assigned by the said Petitioners, this Respondent Saith, it is no where Apparent or Deducible from the Exhibit (C.) that the said James Johnson was fully under the Impression, that the Ground in Question was the Identical Spot granted by the said united Company to the said John Sykes in lieu of Ground at Hog Hill, taken from him the said John Sykes, by the said United Company. —

To the Ninth Cause or reason assigned by the said Petitioners this Respondent Saith that the pretence for the said Cottrell Barretts not Demanding a Receipt in full for the Purchase money of the Premises in Question, is the Strongest reason which could be offered why he should have required the same, namely, that he was in Expectation only of a Title, when he had fully performed all, that was requisite to entitle him thereto: and which alone, by neglecting to take a Receipt for what he had paid on Account of the said Premises (if he had bona fide paid it) he had to rest and Depend on the humour of the Setter of the same, to give or withold, as he should deem it Convenient - The Deferring the demand of a Receipt untill the Bill of Sale should be Delivered over, would have been altogether Nugatory and futile; for if a Receipt, on Payment of money, is ever necessary, it must be most so, at the time of Payment future accidents; and Particularly as the Duty

of

of the Seller was not Completed but Depended for Completion on an after Contingency. And after the Bill of Sale should have been handed over, it would, then, have been most superfluous every End of the Purchaser being answered in such Possession If the said Cottrell Barrett discovered a Delatoriness in the said James Johnson, to perform what he ought, his Vigilance in that Proportion would have been more Sharp, instead of being Relaxed with respect to an acknowledgement for the Payment said to have been made by him If therefore the said Petitioners Intestate disbursed the whole of the Purchase money for the Premises in Question, as it is Contended, it was reasonable to Expect that he would have had some Receipt or Acknowledgement thereof, and not have delayed to require the same, under the Colourable reasonings Setforth by the said Petitioners and the said Petitioners have failed to shew any Receipt or Acknowledgement whatever—

For which reasons and such others as may be offered at the hearing, this Respondent Prays that the said Decree of the Honorable the Mayors Court on the fifteenth Day of April last passed, may be confirmed and that the Petitioners said Petition and appeal be dismissed with Costs to be paid by the appellants.—

/Signed/ Emanuel Samuel
Solicitor for Respondt

Court

Court of Appeals
at
Madraspatnam

Saturday the 14th day of June
Anno Domini 1794

Between John Martin and Frances Martin his Wife of Madras Inhabitants administrator and Administratrix of Cottrell Barrett Deceased appellants and Ninapah Moodeliar administrator to the Estate and Effects of John Sykes Deceased unadministered by James Johnson also 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 15th day of April Anno Domini 1794 Upon due Consideration had of the matters therein severally Contained and of the Pleadings and Arguments used by the Attornies on both This Court doth think fit to order and Decree and doth accordingly Order and Decree that the said Decree of the Honble the Mayors Court do stand affirmed and that the appellants Petition be hence dismissed with Costs.—

P Mr

/Signed/ Robert Clerke
Ath Sc

To the Honourable Mayor General William Meadows
President in Council
Fort St. George

In the Honourable
the Court of Appeals

Between Henry Lindsay. Complainant
and James Barter. Defendant

The humble Petition and Appeal of the above
named James Barter

Sheweth

That the said Henry Lindsay did on the
fifteenth Day of March which was in the year of our
Lord one thousand seven hundred and eighty six file
a Bill of Complaint in the Mayors Court at Madras-
patnam for the Recovery of the Sum of Two Thousand five
Hundred and ninety two Pagodas two Fanams and Twenty
one Cash charged by the said Henry Lindsay to be due to
him from your Petitioner on the Balance of an Account Copy
whereof is annexed to the said Bill of Complaint to which said
Bill your Petitioner did on the twenty seventh day of June
one Thousand Seven hundred and eighty Six file his Answer
denying to stand indebted in the said Sum of Two thousand
five hundred and ninety two Pagodas Two fanams and Twenty
one Cash but acknowledging to be indebted in the
Sum of Eighteen Pagodas twenty Fanams and fifty
two Cash and annexing to his Answer an Account
Current

Filed in my Office
the 8th Apr. 1790.
Chs N. White
Cpr

Current with the said Henry Lindsay setting forth all
the Particulars of their Dealings as far as was at that time
within your Petitioners Recollection and Power and
deducing therefrom the Balance above stated which
your Petitioner by his said Answer tendered to pay
to the said Henry Lindsay your Petitioner sheweth
that previous to his filing his said Answer he had
prayed that the said Henry Lindsay should
produce the Particulars of six several Gross Sums
charged in the said Account annexed to his Bill of
Complaint which were produced accordingly and make
Part of the Procedings in the Cause and therefrom your
Petitioner received Part of that Information which
enabled him to state the Account annexed to his
Answer your Petitioner sheweth that the said Henry
Lindsay filed his Replication on the third Day of
October which was in the said year of Our Lord one
thousand Seven hundred and eighty Six and therein
endeavoured to controvert the several Articles composing
the Account annexed to your Petitioners said Answer
under various Pretences which shall be hereafter explained
as far as may be necessary towards shewing the Futility
thereof or towards establishing the several Items which
your Petitioner will setforth to prove the Injustice done
to him by the said Decree of the Mayors Court your
Petitioner sheweth that he filed his Rejoinder to the said

Replication

Replication on the Sixth Day of March one thousand seven hundred and eighty seven and that thereupon Issue was joined Rules passed for the Examination of Witnesses Publication passed and the Cause was set down for Hearing and the same came on to be heard on Friday the Twenty Sixth Day of March last past when the said Court were pleased to order and decree and did accordingly order and Decree that your Petitioner should pay unto the said Henry Lindsay the full and just Sum of Pagodas Two thousand five Hundred and ninety two Two fanams and twenty one Cash together with such Interest as now is or should hereafter become due thereon until full Payment is made deducting therefrom the Sum of Two Hundred and Eighty five Pagodas together with such Interest as now is or shall hereafter become due thereon until full Payment is made being the Sum sworn to in Mr Casins Depositions as having been paid to the Complainant and it was further Ordered and decreed that your Petitioner should pay all Costs of the Suit as by the said Decree herewith left for the Inspection of this Honble Court may appear—

By which Decree your Petitioner conceives himself much aggrieved for your Petitioner Sheweth that in the Month of November which was in the Year of our Lord one thousand Seven hundred and Eighty four the said Henry Lindsay and your Petitioner entered into a mutual Dealing or Partnership principally verbally for the Supply of Europe Goods and the said Henry Lindsay being then at Arcot where the Army belonging to the Presidency of Fort St George was in Contonment your Petitioner did supply the said Henry Lindsay with sundry Europe Articles and in order to enable the said Henry Lindsay to make a proper Charge thereon such Goods were accompanied with an Invoice of the Prices at which your Petitioner purchased them. That about the same Time the said Henry Lindsay made Remittances in Bills and otherwise to your Petitioner and the said Dealings continued for about twelve months when your Petitioner desired the said Henry Lindsay to settle Accounts and as they appeared complicated an Arbitration was set on foot and the Arbitrators had several meetings at which certain Out Lines were proposed and in part agreed to by the Parties but as the Arbitrators required some Vouchers which it was not in the Power of your Petitioners to produce within the time limitted for such Arbitration the same broke off and the said Henry Lindsay being unwilling to renew the same had Recourse to Law for the Recovery of his Claims against your Petitioner—

Your Petitioner further sheweth that from the extended and irregular manner in which the said Concerns between your Petitioner and the said Henry Lindsay had

had been carried on and in part also from your Petitioner not having been acquainted with the nature of Accounts he was not sufficiently in Possession of his Accounts and Vouchers even at the time of filing his Answer in the Mayors Court so as to be precisely exact as to the State thereof insomuch that your Petitioner was enabled to prove in the Proceedings in the Cause Sundry Items which were not stated in his Accounts annexed to his Answer nor was the said Henry Lindsay more exact in the Account he annexed to his Bill of Complaint to the truth of which he has sworn for he therein omitted two Items which he acknowledged in his Replication and it appears by a Letter from the said Henry Lindsay to your Petitioner dated the fourteenth Day of november which was in the year of our Lord one thousand Seven hundred and eighty five after their Concerns had been closed Copy of which marked **A** No 1 is annexed to your Petitioners Rejoinder that the said Henry Lindsay considered himself rather a Debtor to than a Creditor of your Petitioner for the said Henry Lindsay there says as follows If a Mr. Barter will take the Trouble to examine the Amount of Goods sent to Arcot Drafts and Chits received from thence he will find but a very trifling Balance in his Favor notwithstanding which the said Henry Lindsay had the Audacity in a few Months afterwards and without any Dealings whatever in the meantime to bring his Suit and Swear to a Balance of two thousand five hundred and ninety

ninety two Pagodas two fanams and Twenty one Cash in his favor which your Petitioner charges he was induced to do from the total Ignorance of Accounts and from his not being prepared with Vouchers to support his Accounts—

your Petitioner sheweth that altho it is proved in the Cause by the Evidences of Henry Barris and Thomas Ledsham as well as by the Letter of the said Henry Lindsay above quoted that there was a Partnership between the Parties and altho it appears by the Proceedings that the said Henry Lindsay got from thirty to One Hundred Per Cent by the several articles and the said Henry Lindsay hath in one of his letters acknowledged his having at that time made about Seven Hundred and thirty Pagodas Profit in the Course of four months tho your Petitioner has never had Possession of the Books of account of the said Henry Lindsay so as to draw therefrom an adequate statement of a Partnership Account your Petitioner doth on the present occasion as he did before the said Arbitrators wave all Claim to a Partnership and also for Interest of Money on the Sums mutually paid and received by the Parties Save and Except the Interest which he hath charged on the Sum of Seven hundred and fifty nine Pagodas being so much paid by your Petitioner to the said Henry Lindsay so far back as the Month of May in the said year One thousand Seven hundred and eighty four which was above Six Months before the mutual Dealings in Question took place and which is expressly according to the Tenor of the Letter above quoted except that your Petitioner hath charged at the Rate of twelve Per Cent only instead of Twenty four Per Cent as offered by the said Henry Lindsay in his said Letter. —

Your

Your Petitioner sheweth that by the Interrogatories filed in this Cause it appears as the fact is that your Petitioner had left on the Hands of Edward Ellis his former Attorney certain Vouchers relative to his said Dealings which after the Death of the said Edward Ellis he has not been able to recover back as they have been lost or mislaid your Petitioner therefore is obliged to state to this Honble Court the best Account he can make from such Vouchers as he has been able to collect together and has only to lament that while by his own Conviction as well as by the Acknowledgement of the said Henry Lindsay in his said Letter as above quoted your Petitioner ought to have a Claim on the said Henry Lindsay he shall appear a Debtor to a very serious Amount considering the present Situation of your Petitioner who therefore submits his Case to the Mercy and Judgment of this Honble Court from the General Circumstances above stated as well as from the Special Proofs hereinafter set forth.—

Your Petitioner sheweth that in order to relieve this Honble Court from the trouble of exploring the Merits of the Cause from the voluminous mass of Pleadings in which it is involved your Petitioner has drawn out an Account of the Several Items on which the said Henry Lindsay has filed his Bill of Complaint as well the Debit as the Credit Side thereof and has thereon made his several Remarks as supported by the Pleadings or otherwise and your Petitioner has added such Items thereto on his own favor as he has been able to provide by the several Witnesses adduced in support thereof respectively.

Your Petitioner sheweth that by the Balance of the said Accounts your Petitioner doth [illegible] to the said Henry Lindsay in the Sum of Two hundred and Twenty Six Pagodas Fourteen Fanams and fifty Seven Cash which Sum exceeding the Sum tendered by your Petitioner to be paid to the Defendant by his Answer your Petitioner cannot presume to pray that the said Henry Lindsay should pay all Costs of this Suit but your Petitioner sheweth that as the said Henry Lindsay hath by his Replication acknowledged two several Sums to have been due by him to your Petitioner for which he hath not given Credit in his Bill of Complaint and as it appears by the Evidence of Peter Massey Cafsin that he paid the Sum of two hundred and Eighty five Pagodas in the Month of March or April which was in the year of Our Lord One thousand Seven hundred and Eighty Six being about the very Period at which the said Henry Lindsay filed his Bill of Complaint for which no Credit is given either in the Bill of Complaint or in the Replication your Petitioner humbly hopes that your Petitioner shall not be decreed to pay Costs to the said Henry Lindsay further than the said Henry Lindsay hath prevailed in the Suit and that your Petitioner may have such further and other Relief in the Premises as to this Honble Court he may appear to deserve.—

/Signed/ Stephen Popham
Solr for Appellant

D°

Dr. James Barton in Account Current with Henry Lindsay Cr.

To Account of Goods and Notes of hand as charged in Henry Lindsays Account annexed to his Bill of Complaint - the particulars whereof are stated in an Exhibit No 5 delivered into Court by Henry Lindsay at my instance		1697	
Deduct 8 Pagodas being the difference between the 28 Pagodas charged in the said Exhibit and the 20 Pagodas which by Henry Lindsay's receipt now of Record in this Cause marked Z. No 2 appears to be the sum I received from Edward Jones	8		1689
To Debts as Charged by Henry Lindsay to be recovered since the particulars whereof are stated in an Exhibit No 3 delivered into Court		1391 6 76	
Deduct therefrom the following Sums which are erroneously charged and proved by me in the Proceedings in this Cause to wit.			
Captain Young is charged at	161.35.		
My Ledger B No 2 fol. 78 proves	151.18.10		
difference	10.16.10		
Mr Lascelles is charged at	15		
H. Lindsay's Letter No 1 proves	12.23.20		
difference	2.1260		
Lieutenant Sibbald is charged at	28		
received as appears by a List in H. Lindsay's writing No 4	26.12		
difference	1.28		
Lieutenant Rose is charged at	32.14		
List in H. Lindsays own hand No 5	27.30.20		
difference	4.25.60		
Lieutenant Rowan is charged at	60.6		
My Ledger B No 2 fol 82 proves	38.30.10		
difference	21.17.70		
Mr Richard Johnson is charged at	7.5		
List in Henry Lindsay's own Hand No 5	6.5		
difference	1		
Lieutenant Maddan is charged at	35.12		
H. Lindsay's Letter No 2	29		
difference	6.12		
Mr Campbell is charged at	25		
H. Lindsay's Letter No 3 he acknowledges to have received	5		
Doctor Kincaid is charged at	12		
My Ledger B No 2 fol 24	5.12.10		
difference	6.15.10		
Henry Harris is charged at	141		
His Evidence proves that he paid Henry Lindsay (not me) by three different instalments the whole sum	141		
Deduct total difference		200.36.10	
Balance due to Henry Lindsay on the		1190.12.60	

By Amount of Goods sent to Arrot as credited by Henry Lindsay, being the price at which I bought them		2443.4.40	
By Advance thereon at the rate of about 17 p.c't being less than half what Henry Lindsay acknowledges to have profited by the sale thereof, and as it is sufficiently in proof in the proceedings in the Cause that we were in partnership and that therefore I had a right to an equal share of the profits, it is hoped that while I waive all Claim to the partnership I shall appear entitled to this advance on the said purchases being	421.13.60	2864.18.20	
By Sundry Sums advanced to Henry Lindsay from December 1783 to May 1784 as appears from my Memorandum Book A fol. 6 exhibited in this Cause	759		
Interest on Do from 6th May 1784 to 6th May 1786	200	959	
N.B. Henry Lindsay acknowledges 730 Pags and 18 fanams in his Bill of Complaint and Replication - the Vouchers of those Sums as entered in the Memorandum Book I had given to my former Attorney Edward Ellis but they were mislaid and not returned - the memorandum Book it is hoped will be considered as sufficient proof - as to the Interest to which Henry Lindsay objects in his Replication I conceive my Right thereto it being for money advanced previous to our mutual dealings in November 1784		74	
By Cash paid Bettimen acknowledged by Henry Lindsay		71.17.	
By Cash paid Narrain Dubash as proved by Narrain		105.11.	
By Henry Crawford's Bill on Europe acknowledged by Henry Lindsay		477.33.	
By Account of sundries in the hands of Mr Bartholomew as acknowledged by Henry Lindsay			
N.B. Henry Lindsay pretends in his Replication that this sum total comprises the separate charges in my Account Current annexed to my Answer namely the 6th 7th 8th 10th 11th 16th 17th 19th and 20th and that therefore I ought not to debit both - I have taken Credit for the Item as allowed by him in his Bill of Complaint for Sundries in the hands of Mr Bartholomew and have denied explanation of the matter in my rejoinder - he has not supported his assertion nor does it appear why Cash from Mr Murray at Arrot Do from Mr Pinglas &c &c should be in the hands of Mr Bartholomew besides the Items in question make 60 Pags 30 fans and 28 Cash instead of Pags 477.33.			
Carried Over Pagodas		4551.37.20	

Dr. James Baxter in Account Current with Henry Lindsay Cr.

Brought Over Pagodas		2279 12 66
a Shop Account		240 22
Articles returned from Arcot		215 29 60
Old Chits remitted	1175 31 60	
Deduct Discount 30 ⅌ Cent	352 22 65	823 8 79
Pay and Batta Chits		552 6 20
Drafts on Sundry Gentlemen	1277 29 60	
Exhibit X. Henry Lindsays Letter proves payment of 50 Pagodas by Dighton, being in part of the 110 Pagodas charged for Capt. Affleks order on the Paymaster as one of the Items in List No 2. composing the above total of Pags 1277.. 29. 60	50 --	
Ramah proves	40 --	90 --
Balance on this head		1187 29 60

N. B. In my Answer I credit Henry Lindsay for Pags 1244. 29. 60 which was owing to my not having at that time Henry Lindsays Letter stating the Payment of the 50 Pags by Dighton, and having thought he paid Ramah only 90 instead of the 40 above stated.

3 Chits of Ensign Mr Elwaths	30 32 68

N. B. These are now in my profession and having in my Rejoinder offered to return them to Henry Lindsay and being now ready to do so, I conceive I ought not to be charged therewith.

Balance due Cr Whiteford	268 36 6

In my Answer on Oath I state that Henry Lindsay has no right to settle my Concerns with Whiteford and it appears by Exhibit C that I have paid Whiteford in full, besides Henry Lindsay has not attempted any proof in support of this Item —

Carried Over Pagodas 5892 2545

Brought Over Pagodas		4551 3720
By Cash from Mr Murray at Arcot as Charged in my Answer	131. 30. 60	
Deduct what Henry Lindsay states in his Replication to be overcharged	6 22.	125 8. 60

N. B. Henry Lindsay gives no Credit whatever for this Item in his Account Current annexed to his Bill of Complaint —

By Cash received by Henry Lindsay from Michael Finglas for goods I sent him. and Henry Lindsays undertaking to be responsible for him, proved by the Exhibits D. No 1. Containing 3 Letters viz No 4. No 5 & No 6. and D. No 2. Containing 3 Letters No 1. No 2 & No 3 and a Promissary Note — 159. 8. 68

N. B. Henry Lindsay acknowledges in his Replication the Receipt of 131. 27. tho he has not given Credit for any part in his Account Current annexed to his Bill of Complaint —

By Cash paid Andrew Ross according to Henry Lindsay's order which appears by his Letter marked E and proved in the proceedings in this Cause — 10 -- --

N. B. I have charged this Sum in my Account Current annexed to my Answer and Henry Lindsay did not object thereto in his Replication —

By Cash paid Henry Lindsay's Draft in favor of Doctor Mayne who endorsed the Draft to Mr Lee as appears by the said Draft and Henry Lindsays Letter of advice marked G. No 1 & No 2. and proved in the proceedings — 100 -- --

By Cash paid Mr Caplin according to Lindsays Draft in his favor marked H and proved in the proceedings — 8 22 -

By Lindsays Letter in favor of Ensign Rose marked I proves this Charge — 30 -- --

By Mr Caplins note to Ensign Wright given to Henry Lindsay the 27th March 1786 and allowed by the Mayors Court — 335 -- -- 335 -- --

Interest thereon as Charged in my Account Current annexed to my Answer — 8 -- -- 293 -- --

By Cash sent to Lindsay by his Letter marked M and proved in the Proceedings — 4 -- --

By Cash Credited Mr Dell in his Accounts with me as appears by Lindsays Letter marked N and proved in the Proceedings — 17 -- --

Carried Over Pagodas 5592 26 68

Dr. James Barter in Account Current with Henry Lindsay Cr.

Brought Over Pagodas	5898-25-15
Pagodas	5898-25-15

Brought Over Pagodas	5598-36-68
By Cash paid by Henry Lindsay's Verbal request to Mr Spencer for a Bill of Costs and the Bill was returned to Lindsay	12--
By Cash received by Henry Lindsay from Cuthbert Darnton	8 6
By Ditto Ditto from Ensign Noble	3 11
	5622-11-68
NB. The above three Sums are Charged in my Account Current annexed to my Answer and as Henry Lindsay did not deny them in his Replication I have not therefore proved them in the Proceedings. —	
By Balance due by James Barter to Henry Lindsay	276-1357
Pagodas	5898-25-15

Madras April 8th 1790
Errors Excepted
Signed James Barter
Attest City Signed Stephen Popham
Secr for Appt

Mayors

Mayors Court at Madraspatnam

Friday the 26th day of March Anno Domini 1790

(L)

Present

Vincentio Corbett Esqr. Mayor
James Call Edward Garrow
William Webb Josias Dupre Porcher
Andrew Ross James Landon
John Mitford & Wm Chy Michell
Aldermen

Between Henry Lindsay of Fort St. George Merchant Complainant and James Barter of the same place Merchant Defendant

This Cause Coming on to be Heard and Debated this Day in the Presence of the Attornies on both sides on Reading the Complainants Bill with Copy of an Account Current annexed. The Defendants Answer with Copies of two Exhibits annexed. The Amended Replication with Copies of twelve Exhibits marked ABCDEEFGHIK&L annexed The Amended Rejoinder with Copies of six Exhibits annexed marked A No1 B No2 C No3 D No4 E No 5. & F No 6. The Interrogatories and Depositions on the part of the Complainant With an Exhibit marked A annexed. The Interrogatories and Depositions on the part of the Defendant with Seventeen Exhibits annexed Six Exhibits 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 shall pay unto the Complainant the full and Just Sum of Two thousand five Hundred and Ninety two Pagodas Two fanams and twenty one Cash / Pags 2592: 2: 21 / together with all such Interest as now is or shall hereafter become due thereon untill full payment is made deducting therefrom the Sum of Two hundred and Eighty five Pagodas / Pags 285 / together with all such Interest as now is or shall hereafter become due thereon untill full payment is made being the Sum Sworn to in Mr Peter Nasey Cassins Deposition as having been paid to the Complainant and It is further Ordered and Decreed that the Defendant do pay all Costs of this Suit

Pr fur
/ Signed / George Taylor Regr.

Lo

To the Honble Morgan Williams Esqure
President in Council
Fort St. George

In the Honble
Court of Appeals

Between Henry Lindsay Complainant
and James Barter Defendant —

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

The Respondent Admits that he did on the
fifteenth day of March which was in the year of our Lord One thou-
sand Seven hundred and Eighty Six file a Bill of Complaint
in the Honble the Mayors Court for the recovery of the Sum of
Two Thousand five hundred and ninety two Pagodas two fanams and
twenty one Cash being the Ballance of an Account Current annexed to
the Bill of Complaint this Respondent als admits that to this his Bill
of Complaint the Defendant did file an Answer at the time and in
the manner stated in his Appeal to which Answer this Respondent
very fully replied disproving many of the allegations of the Answer
by the Statement of the Accounts themselves and alledging and
afterwards proving other Facts by which he clearly demonstrated the
justness of the Ballance of his Account as stated in his Bill
of Complaint to this Replication he Admits a Rejoinder was put
in and issue joined thereon publication passed and other
proceedings were had thereon as is stated in the Petition of Appeal
the Sum of two hundred and Eighty five Pagodas mentioned in

the

Filed in my Office
the 10th Sept. 1790
Chas. L. White
Clk

the Decree to be deducted from the Sum Sued for being Money
that had been paid after the Suit was commenced and admitted
to be so by the Complainants attorney at the hearing of the Cause
but this Respondent can by no means admit that the
Appellant has been thereby aggrieved nor does he thinth
himself bound to Answer the several facts Suggested
in the Defendants appeal which cannot have any weight
as they are not taken from the Proceedings had in the Mayors
Court from which Proceedings alone the Petitioner professes
to appeal it is a quite New Statement totally Foreign to the
Proceedings before this Honble Court and therefore totally
irregular and which your Petitioner prays May be expunged
Agreeably to the practice of this Honble Court on the like occasions
And the same composing the only grounds of appeal which the
appellant has thought proper to set up this advised it is
Not Necessary to make any other Answer to the present
Appeal It appears from the Proceedings that this Respond
ded annex to his Bill of Complaint an Account Current
Made up of different Items as well on the Debit as
on the Credit side and Stating a Balance due to him of
two Thousand five hundred and Ninety two Pagodas
two fanams and twenty one Cash — That the first of these
Items on the debit Side being for the Amount of Goods
and Notes of hand as for the Sum of One thousand Six hundred
and Ninety Seven Pagodas which was the Defendant —
acknowledges in his Answer except eight Pagodas but gives

No

No Reason for deducting this Sum and this Respondent having given in the particulars at the time they were going to Settle by Arbitration which the Arbitrators Approved of and having also Confirmed it by his Affidavit it was incumbent on the Appellant in some Manner to Shew how this difference Arose and not having done so his mere Assertion cannot be considered as any disproving of it.— The Second Item being for the Amount of debts recovered one thousand three hundred And Ninety One Pagodas Six fanams and Seventy Six Cash is Acknowledged in the Defendants Answer except the Sum of One ~~thousand~~ hundred and fifty Eight Pagodas Twenty four fanams and Thirty five Cash which in his Rejoinder he Alledges he had deducted on Account of some debts that were Still Remaining uncollected from Doctor Harris Major Young and Mr Campbell however these Gentlemen upon being examined prove that they had paid the Appellant their respective debts so that this Objection is Clearly done Away and this Second Item fully proved the Third Item being a Shop Account for two hundred and forty Pagodas and Twenty Two fanams is Admitted by the Defendant— The fourth Item being for Articles Returned from Arcot Two hundred and fifteen Pagodas Twenty Nine fanams and Sixty Cash is also Admitted— The fifth Article being for Chits remitted Eight hundred and Twenty three Pagodas Eight fanams and Seventy Nine Cash is also admitted and the Sixth Article for pay Batta Chits Seven hundred and fifty Two Pagodas Six fanams and

Twenty,

Twenty Cash is equally admitted— The Seventh Item for drafts on different Gentlemen One thousand Two hundred and Seventy Seven Pagodas Twenty Nine fanams and Sixty Cash is also Admitted except a Small difference of Thirty three Pagodas for which no reason whatever is given and as the same was particularly Specified and Approved of before the Arbitrators and confirmed by this Respondents Affidavit it was as in the former Article under the like circumstances incumbent on the Appellant to Shew in some Manner how it arose The eighth Item is Ensign Macraths Chits Twenty Two Pagodas and Twenty Six fanams it appears from the Proceedings that the defendant Received them eight Months before the Bill was filed and never returned them to this Respondent so that it is but Reasonable the Appellant should be charged with them as it cannot be expected this Respondent can now Receive them back though he would readily have done so had they been tendered in any Reasonable time— The Ninth Item being a Balance due by Cornet Whiteford Two hundred and Sixty eight Pagodas thirty Six fanams and Six Cash is fully explained in this Respondents Replication from whence there cannot remain a doubt of the Propriety and fairness of the Charge and therefore this Respondent has clearly established the debit Side of his Account in the manner he has Stated it in his Bill of Complaint and will now proceed to Shew that the Several Sums for which the Appellant is Credited on the Credit Side of the Account Annexed to the Bill of Complaint are all that the Appellant is entitled to Receive a

Credit

Credit for The first Item being Goods sent to Arcot Two thousand four hundred and forty three Pagodas four fanams and forty Cash is indeed charged by the Defendant to amount to Two thousand Eight hundred and Sixty four Pagodas Eighteen fanams and Twenty Cash but this difference is acknowledged by the defendant in his Rejoinder to arise from the difference of the Prime Cost of the several articles at Madras and the selling price at Arcot and it is proved by Mr Erskine Nimmo And Mr John Robson that it was agreed by both parties that they should be charged at the Prime Cost at Madras as will appear by their Depositions so that the correctness of this first Item on the Credit side is sufficiently ascertained — The Second Item for Cash advanced as per Receipts Seven hundred and thirty Pagodas and Eighteen fanams is also increased by the Appellant to Nine hundred and fifty Nine Pagodas but this difference is admitted to arise from a Charge of Interest and it is proved by the same Witnesses as will appear by their depositions that it was agreed by both parties that no Interest should be charged so that the correctness of this Second Item seems equally clear — The third Item being Money paid a Bottle Man Seventy four Pagodas is admitted by the Appellant the fourth Item being Money paid Narrain Dubash Sixty Six Pagodas and Seventeen fanams is Charged by the Appellant Seventy one Pagodas and Seventeen fanams but this difference is disproved by Narrains Account and Mr DuPrey's Bill of Costs annexed to the Replication so that the accuracy of this Fourth Item

Appears

appears also sufficiently clear the fifth Item is agreed by the Appellant to be right as is also the Sixth so that the several Items on the Credit side are clearly ascertained in the manner they are stated and therefore this Respondent insists that he has clearly proved every particular stated in the account annexed to his Bill of Complaint and that he is justly entitled to the Balance he has sued for he does not however deny but that the Appellant has charged him with several Items not Credited in his account but these it is necessary the Appellant should prove before this Respondent can be charged with them and that he is certain he cannot do as they are altogether groundless But to be more particular he begs leave to specify the particular Objections to them as charged in his Replication and which the Appellant has in no manner whatever disproved he therefore Now proceed to speak to those Items which are Charged in the Appellants account and not in this Respondents of these the first is in the Appellants Account The Sixth Item being Cash received from Mr Murray at Arcot this is included in the Sundry Accounts delivered to Mr Bartholemew except Six Pagodas and Twenty two fanams which the Certificate of Mr Murray Annexed to the Complainants Replication proves to be overcharged — The Seventh Item being Cash received from Mr Fenglas three hundred and Twenty One Pagodas forty two fanams and forty Eight Cash is overcharged One hundred and Eighty Nine Pagodas Sixteen fanams and forty Eight Cash all the Money this Respondent ever received being no more than One hundred and Thirty One

Pags

Pagodas and Twenty Seven fanams as is particularly stated in this Respondents Replication and the Sum of One hundred and thirty one Pagodas and Twenty Seven fanams is fully Credited in this Respondents Account under the head of Sundries in the hands of Mr. Bartholemew the Eighth Item a Bill paid Mr. Andrew Ross ten Pagodas is included and Credited under the same head — The Ninth Item three hundred and forty Pagodas paid to Sir John Burgoynee is fully explained in the Replication and Clearly disproved by a Copy of the Appellants Letter annexed to this Respondents Replication — The tenth Item Money paid Mr. Lees One hundred Pagodas is included and Credited under the head of Sundries in the Hands of Mr. Bartholemew the Eleventh Item paid Mr. Ogsein Eight Pagodas and Twenty four fanams is also included and Credited under the same head — The Twelfth Item paid Ensign Rose Thirty Pagodas is fully Refuted in this Respondents Replication — The Thirteenth Item being for a Bengal Bill Returned One hundred and forty Eight Pagodas is totally groundless the Appellant having Never been Debited with the Amount and of course he ought not to be Credited — The Fourteenth Item being Sundries in the hands of Mr. Bartholemew four hundred and Seventy Seven Pagodas and thirty Three fanams is admitted the fifteenth Item being Mr. Ogsins Note Two hundred and Ninety three Pagodas this Sum is acknowledged to have been Received except Eight Pagodas which may possibly arise from the Interest as Mr. Ogsein proves he only

only paid Two hundred And Eighty five Pagodas and this Sum is deducted acct of the decree and would have been Credited in the account had it at that time been received — The Sixteenth Item being for Cash lent four Pagodas The Seventeenth Item Cash Credited Mr. Dale Seventeen Pagodas — The Eighteenth Item Cash paid Mr. Spencer Twelve Pagodas — The Nineteenth Item being Mr. Darntons account Eight Pagodas and Six fanams and the Twentieth Item being Ensign Nobbs account three Pagodas and eleven fanams are all included and Credited under the head of Sundries in the hands of Mr. Bartholemew and therefore this Respondent has as he humbly conceives fully refuted every possible Objection that can be raised to the Decree — This Respondent says that he has upon every occasion shewn the utmost desires to settle matters amicably and when they had agreed to leave it to Arbetration it would have been settled had not the Appellant refused to attend the Arbitrators when they were going to make the Award as is proved by their Depositions this Respondent says that he Verily believes that had there been an Award it Would have been nearly the same if not exactly as the present Decree as he really in his conscience believes that the Balance decreed him is no more than what was really and justly due this Respondent as he has before said again repeats that as the Account and Statement annexed to the appeal does

does not arise from the Proceedings it would be totally irregular for him to attempt to discuss it though he could very easily Shew the erroneous and perverted Manner it has been made out the Respondent insists that the appellant has no reason to Complain of any hardship he has Suffered whereas this Respondent it is well known has been absolutely ruined by the cruel and vexatious Behaviour of the appellant having been confined in the Common Goal for these Two years past for a Debt which less than a fourth part of what it owing him from the appellant would have been Sufficient to Satisfy the Cruelty and hardship of which he humbly Submits to this Honble Court —

And for the above reasons and for Such others as may be offered at the hearing this Respondent humbly pray is that the decree of the Honble the Mayors Court may be affirmed with Costs —

/Signed/ Peter Walker
Solicitor for Respondent —

Court —

Court of Appeals
at
Madraspatnam } Sat Saturday the 15th day of June
Anno Domini 1799.

Between James Barter
of Fort St George Merchant
Appellant and Henry Lindsay
of the same place Merchant
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 26th day of March Anno Domini 1799 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 Honble the Mayors Court do stand affirmed and that the appellants Petition be hence dismissed with Costs, —

Heer,

/Signed/ Robert Clerk
Clk

Saturday

[illegible]

[illegible] Damages or Things [illegible]

[illegible] shall not exceed the Value of 1000 Pagodas but in case

[illegible] Value of 1000 Pagodas any person or persons

[illegible] selves aggrieved by such [illegible]

Saturday

Saturday the 24th. Day of May 1794

Present

Sir Charles Oakeley Baronet

Ernst William Fallofield and George Westcott

Court of Appeals
at
Madraspatnam } ss.

Between John Balfour Nathaniel Edward Kindersley
and Sir John Menzies Baronet Executors of James Wooley
deceased appellants - and Charles Darke Respondent -

The Attorney for the Respondent prays that the Petition of Appeal to the King in Council in the above Cause be taken off the file the Original sum sued for being under One thousand Pagodas the Court to enable them to form a Judgment on the question before them in this Case thought it Necessary to refer to the Charter of 8th January in the 26th. Year of Geo: 2d. and finding therein that the determination President en Council en all Cases of Appeal is ordained to be final "if damages or things directed to be paid done or delivered or Matt shall not exceed the Value of 1000 Pagodas but in Case the Value of 1000 Pagodas any person or persons aggrieved by such

Referring to the Sum directed and Decreed by this Court to be paid and d. therefore
conceive, of the Decree of this Court do direct the Sum Dued for to be paid with
Interest that the aggregate Sum is the Sum decreed and that if such
aggregate Sum exceed 1000 Pagodas the person thinking himself agrain
is by the Words of the Charter fully and Clearly entitled to his app
This Court doth therefore Order that the prayer of the attorney for th
Respondent be Over Ruled - and that the Appellants Petition of appe
to the King in Council do Remain on the file —

Hur

Saturday