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Block 7

Rack No.

Shelf No.

Serial No. 26

General No.

High Court Series VI

Appeals against Magistrates Convictions

Vol ~~25~~ 26

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188

Saturday the 5th day of July 1794

Present

Sir Charles Oakeley Baronet

Earnest William Fallofield and George Westcott

To the Honorable Sir Charles Oakeley Baronet

President in Council of

Fort Saint George

In the Court of Appeals at Madraspatnam

Between Palavy Gopaidoo Moodeliar of Madras Inhabitant but at present at Pondicherry by his Attorney Palavy Terovengadam Moodaliar of Madras Inhabitant, Complainant, and Bauboorow Latchooman of Madras aforesaid Inhabitant Defendant—

The Humble Petition and Appeal

of the above named Defendant

Sheweth

That on the Twenty fourth day of October in the year of Christ, One Thousand Seven Hundred and ninety three, the above named Complainant, by his Attorney Palavy Terovengadom Moodeliar, did file a Bill of Compla in the Honorable the Mayor's Court of Madraspatnam,

Filed in my Office the 22d Dec. 1793 Chas. N. Whites Clk

against

against your Petitioner for the recovery of the Sum of Eight Hundred and Eighty Star Pagodas, Twenty Seven fanams, and Sixty Cash Charged to be due and owing unto him the said Complainant on a Bond or Specially Executed by your Petitioner and on an Account Current, Copies of which were annexed to the Complainants said Bill of Complaint, and your Petitioner further Sheweth, that a Summons did issue thereon from the said Mayors Court, directing your Petitioner to appear thereto and further to put in, within the Ordinary time, his Answer to the said Bill of Complaint and accordingly your Petitioner did appear by his Attorney at Law — and the usual Rules having passed for your Petitioner to Answer and your Petitioner not being prepared with his Answer in due time, the said Mayors Court on the Tenth Day of December last past, at the Instance of the Attorney of the Complainant, did pass a Decree that your Petitioner should pay unto the Complainant the full and Just Sum of Eight hundred and Eighty Star Pagodas and Twenty Seven fanams Pagodas 880. 27-/ together with such Interest as then was or might thereafter become due thereon, with the 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, and which your Petitioner prays may be Admitted as part of this his Petition.—

From which said Extract, Order and Decree of the said Mayors Court, your Petitioner doth appeal to this Honorable Court, as he Conceives himself injured and aggrieved thereby, for the following amongst other reasons.—

First. Because, it is not unusual with the said Mayors Court to enlarge the Rules for answering, on a Prayer from the Defendants Attorney to that End on his assigning good and Sufficient reasons for the same: and altho your Petitioner did prefer a Prayer by his Attorney, Praying of the said Mayors Court to allow him further time to answer to the Complainants said Bill of Complaint as he was at the time of the Expiration of the said Rules unprepared to answer fully to the Particulars contained in the said Bill of Complaint, yet did not your Petitioner obtain an enlargement of the said Rules granted on Similar Applications to other Suitors of the Court, and your Petitioner, as a Mortgager, was peculiarly under the Protection of the said Mayors Court, it being the Practice of all Courts to shew to Mortgagers every Countenance consistent with Justice for the Redemption of their Property—

Secondly Because the said Mayors Court have passed a Decree General against your Petitioner, when, if it had been guided by the Rules, which Govern in Similar Cases, in all other of His Majesty's Courts of Record, the said Court would have

have decreed Specially, and against that particular Propirty, Subject to the Mortgage, under the Mortgage Bond Acknowledged in the Account Current of the Complainant to be holden by him against your Petitioner, and by Virtue of which the said Complainant had brought his action in the said Mayors Court—

Your Petitioner, therefore prays that this Honorable Court, will be pleased to set aside the Decree of the said Mayors Court, and Order that the said Mayors Court do allow a further time for your Petitioner to file his Answer to the said Bill of Complaint of the Complainant, and grant such other Relief as in their Wisdom may seem meet.—

/Signed/ Emanuel Samuel
Solicitor for Appellant—

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

Present

John Mitford Esqr. Mayor
Andrew Ross and
William Abbott
Aldermen

Palay Gopaloo Moodeliar by his Attorny Palavy Teroo.—
vangadom Moodeliar
Vers
Bauboorow Latchooman

It Appearing by the Records of this Court that 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 Eight Hundred and Eighty Star Pagodas and Twenty Seven fanams (Pagodas 880. 27.—) to-gether with all such Interest as now or shall thereafter become due thereon until full payment is made; also all Costs of this Suit.

By Cur /Signed/ George Taylor Regr.
Attorney
/Signed/ Emanuel Samuel
Solicitor for Appellant—

To the Honble Sir Charles Oakeley Baronet

President in Council of

Fort Saint George

In the Court of Appeals at Madraspatnam

Between Palavy Gopauloo Moodeliar of Madras Inhabitant but at present at Pondicherry by his Attorney Palavy Teroovengadom Moodeliar of Madras Inhabitant Complainant and Baubo-row Latchooman of Madras aforesaid Inhabitant Defendant.

Filed in my Office
the 13th March 1795
Chas N. White Clk

The Answer of Palavy Gopauloo Moodeliar by his Attorney Palavay Teroovengadom Moodeliar the above named Coplainant to the Petition and Appeal of the above named Defendant-

This Respondent admits that sometime on or about the Twenty fourth day of October in the year of Christ one thousand seven hundred and Ninety three, he did Exhibit and file his Bill of Complaint in the Honble the Mayors Court of Madraspatnam against the said Appellant for the recovery of the sum of Eight hundred and Eighty Star Pagodas Twenty seven fanams and sixty Cash justly due and Owing unto this Respondent on a Mortgage Bond or written Obligation duly executed by the Appellant to this Respondent and on an Account Current arising thereon, a Copy of which said Account Current was annexed to the Complainants said Bill of Complaint; And this Respondent admits that a Summon did issue thereon from the said Honble the Mayors Court whereby the said Appellant was required and Commanded to be and appear before the said Honble Court, and to answer unto this Respondents said Bill of Complaint, and that in Consequence thereof the said Appellant did appear by means of his Attorney at Law and pray that the original Mortgage Bond upon which this Respondent Commenced the present Suit against him the said Appellant might be delivered into the Registry of the said Honble Mayors Court, which said Mortgage Bond and translate thereof this Respondent by means of his Attorney at Law was produced on the fifth day of November in the aforesaid year one thousand seven hundred and ninety three- And this Respondent further sheweth that the Usual Rules having expired for the said Appellant to Answer this Respondents said Bill of Complaint, but being unprepared with an Answer, he the said Appellant did through and by the Means of his said Attorney Crave the Indulgence of one Week from the said Honble Mayors Court to prepare and file the same

same, which this Respondent's Attorney not objecting to a further Peremptory rule of one Week, was granted unto him; And this Respondent sheweth that after the Expiration of the Second Peremptory Rule the said Appellant being Still unprepared with his Answer, this Respondent's Attorney did produce a Certificate from under the hand of the Register of the said Honble Court Certifying the rules that had issued, and did thereon pray that a Decree might Pass, and this Respondent says that the said Appellant in Order to prevent a Decree passing, and thereby to deprive this Respondent from obtaining that justice which he was well entitled to, did through and by the Means of his said Attorney Crave a further time to file his Answer, but the said Honble the Mayors Court Conside= =ring the said Prayer as words without support tending Solely to procrastinate the payment of a just and lawful debt did think fit to order and Decree and did Accordingly order and Decree the said Appellant to pay unto this Respondent the full and just Sum of Eight hundred and Eighty Star Pagodas and Twenty seven fanams together with all such Interest as then was or should thereafter become due thereon untill full payment was made also all Costs of this Suit as does more fully and at large appear by a Copy of the said Decree annexed to the Appellant's Petition of Appeal for the inspection of this Honble Court, and to which this Respondent begs leave to refer— And this Respondent further sheweth that Notwithstanding the great Indulgence which the said Defendant the now Appellant had met with, he did on the Twenty third day of December in the said year of Christ one thousand seven hundred and ninety three Appeal from the Decree of the said Mayor's Court as Erranious and that he was aggrieved thereby, which this Respondent denies, and this Respondent contends that according to Law the Appellant has no just right of Appeal in the present Matter, nor any Claim to the attention of this Honble Court— Because his having neglected to Answer this Respondent the then Complainant's Bill tho' summoned so to do, acknowledging the Receipt of the said summons by the appearance of his Attorney, suffered himself thereby to be non Suited and ousted himself of the Protection of this Honble Court, For this Honble Court can only judge when appealed to on Suits which have been regularly litigated and when Special matter has been brought forward— and points of Law in the Course of the pleadings disputed, then and in such Cases only are appeals Warrantable and the decision of the said Mayors Court thereon - Submitted to the better Judgment of this Honble Court, This Respondent admits that it is not Unusual for the Mayor's Court to enlarge the rules for answering the Complainant's Bill on

on a prayer from the Defendants Attorney to that end on assigning good and Sufficient reasons for the same; but it is also not Unusual, but on the Contrary Coinsonant with the practise of the Mayors Court and a practise from which the said Court never deviates not to grant further time unless Sufficient reasons be given by the Defendants Attorney to induce the Court so to do a Decree therefore having been granted by the said Court in favor of this Respondent is an evident proof, and that by the Appellants own shewing that neither sufficient nor good reason were offered by the Appellants Attorney to lead the Court to grant further time; but otherwise evidently shewed to the Court that delay and procrastination of the suit was alone the end of the Appellants attorney in preferring the said prayer; To the second reason Urgid by the appellant to Support his right of Appeal to this Honble Court; this Respondent says that on Simple Bills filed in the Honble the Mayors Court which Contain no Special matter, and pray but a General relief and a Decree for the sum Sued for, the said Court never does give Special Decrees Whether the action be brought on Mortgage or Simple Bonds and it is Consistent with reason that a Court of Justice Cannot do greater equity or better satisfy the suitors that come before it than in granting the prayer of their Bills, and the Justice they themselves implore If

is

is also Clear that the appellant the then Defendant Could not have had any legal defence to set up against the demand made by this Respondent for had he had just Grounds to Support the same, he had time Sufficient to instruct his Attorney at Law respecting the matter that was to Compose the same.

From all which reasons and such others as may be offered at the hearing, this Respondent humbly prays this Honble Court will be pleased to affirm the said Decree of the said Mayors Court granted in favor of this Respondent and dismiss the Appellants said Petition of Appeal with excessive Costs for the very Shamless timerity and litigious Spirit the said Appellant has in exhibiting his said Petition made manifest 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/ J. Pasley
Solicitor for Respondent

Court

Court of Appeals at Madraspatnam } To Saturday the 5th day of July Anno Domini 1794

Between Bauboorow Latchooman of Madras Inhabitant Appellant and Palavy Gopauloo Moodeliar of the same place Inhabitant but at present at Pondicherry by his Attorney Palavy Teerovengadam Moodeliar of Madras Inhabitant Respondent

The Attorny for the Appellant moves for leave to withdraw his Appeal on payment of Costs and the Attorny for the Respondent having Consented thereto—

Ordred Accordingly

Per

/Signed/ Robert Clerke
Clk

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

In the Honble the Court of Appeals }

Between William Boggie one of the Executors named in the last will and Testament of John Hall late of Madraspatnam Fort Saint George Merchant Deceased Complainant And James Maddle and Alexander Stewart of the same place Merchants Defendants—

The Humble Petition and Appeal of the said Complainant—

Sheweth

That your Petitioner did on or about the first Day of October in the present year of our Lord One Thousand Seven hundred and Ninety three file his Bill of Complaint in the Honble the Mayors Court at Madraspatnam against the above named Defendants James Maddle and Alexander Stewart for recovery of a Sum of one Thousand and Sixty four Pagodas and Thirty five fanams or thereabouts due unto your Petitioner as the Sole Executor in India of the said Deceased John Hall in which

Filed in my Office the 6th Nov 1793 Chas K. White Clk

To

which Bill of Complaint your Petitioner did state and
setforth That your Petitioner having duly taken out
Probate of the Last Will and Testament of his said Testator
and taken upon himself the charge and management of his
said Testator's Estate in India to which intent your Petitioner
was by the said Will appointed he did give Public Notice to
all Persons being indebted to his Testator in his life time to
pay the Amount of their Debts to your Petitioner as Executor
aforesaid and also to all Persons having Claims upon the
said Testator at the time of his Death to send an Account
thereof to your Petitioner - And your Petitioner did in and
by his said Bill of Complaint setforth that being so possessed
of his Testators Estate and particularly of a certain Shop
or warehouse situate in the Street known or called by
the name of Saint Thomé Street in Fort Saint George
aforesaid containing various Goods wares and Merchandises
part of the Personal Estate of your Petitioner's said
Testator he your Petitioner did authorise Empower and
Commission a certain Person of the name of Anthony
Frederick Frank which Anthony Frederick Frank had
been in the Employ of your Petitioner's said Testator for
many years before his death and in the like Employ of
your Petitioners said Testator at the time of his death in
the management of the said Shop and concerns of Merchan

dise

Merchandise to carry on and manage the same for your
Petitioner by selling the said Stock in Trade under such
directions as your Petitioner should thereafter give him
the said Anthony Frederick Frank for the sale and
disposed of the same Goods and Merchandise in order
to realize in Cash to pay off and discharge debts due from
the Estate And your Petitioner in his said Bill of
Complaint did further setforth and shew unto the said
Honble the Mayors Court That on the Twenty fourth
Day of September in the present year of our Lord One thousand
Seven hundred and Ninety three that various Goods Wares
and Merchandises were sold at the said Shop and that
amongst other Purchasers of such Goods Wares and
merchandises on that Day that the above named Defen-
dants James Waddle and Alexander Stewart became
purchasers to the amount in value of the said Sum of one
thousand and Sixty four Star Pagodas and thirty five
fanams and that upon such purchase so made by them
the said James Waddle and Alexander Stewart the
particular Goods wares and Merchandises were delivered
them - And your Petitioner did therefore in and by his
said Bill Charge that the said James Waddle and Alex-
ander Stewart had become Indebted and then did stand
Indebted unto your Petitioner in the said Sum of One

thousand

thousand and sixty four Pagodas and thirty five fanams Current Money of Madras making into Sterling Money of Great Britain at the rate of Eight Shillings for every Pagoda a Sum of Four hundred and twenty five Pounds Eighteen Shillings and two Pence or thereabouts and did pray the said Honble the Mayors Court that the said Defendants James Waddle and Alexander Stewart might be Summoned to answer such your Petitioners Bill on Oath and that they the said James Waddle and Alexander Stewart might by the said Honble the Mayors Court be Decreed to pay unto your Petitioner the said Sum of one Thousand and Sixty four Pagodas and thirty five fanams as by the Records of the said Honble the Mayors Court an reference will fully and at large appear — And your Petitioner sheweth that the said Honble the Mayors Court having received such your Petitioners Bill of Complaint against the said Defendants James Waddle and Alexander Stewart did cause the Process thereby prayed for to wit a Summons to Issue against the said Defendants and which Process being served or Executed was on the Eighth Day of the said Month of October duly returned into the said Court when and whereupon the Defendants appeared to your Petitioners said Suit by their Attorney at Law George Pilkinton Cook when your Petitioner prayed that the said Defendants should be

be directed to give Bail on the usual terms of your Petitioners verifying his Demand on Oath — And your Petitioner sheweth that the said George Pilkinton Cook did then on the behalf of his said Clients pray the said Honble the Mayors Court that he might be allowed time untill the next following regular Court or fifteenth day of the said Month of October to file a Plea or Demurrer to such Bill which prayer was granted him when the said George Pilkinton Cook did make a further prayer to wit that your Petitioner should be obliged to bring into Court the Probate he had received of his Testators Will which Prayer being argued before the said Honble the Mayors Court they were pleased to over rule the same — your Petitioner having satisfied them of the irregularity of such a Proceeding in a Defendant Debtor to the Estate of your Petitioners Testator and satisfied in their own knowledge of your Petitioners right to sue the said Defendants in the manner and form he had brought his said Suit — And your Petitioner sheweth that notwithstanding his said Suit had been as aforesaid received in the said Honble the Mayors Court and though an appearance had been duly Entered for the Defendants therein and though on the fifteenth day of the said Month of October no Demurrer or Plea having been come into your Petitioners said Bill and that the

usual

usual Rule of Court was made on the Defendants to Answer and which Rule of Court is in the following words and figures- "William Boggie Executor of John Hall Deceased "~~Vers~~ James Maddle and Alexander Stewart- Day is given "the Defendants till the 22nd. Instant to answer the Complainants "Bill J. Fur (Signed) J. C. Askin Dy Regr. Town Hall "15th. October 1793"- yet the said Honble the Mayors Court on a motion of Mr. Alderman Roebucks that the Bill filed by your Petitioner as Executor of the said John Hall against the said Defendants during a certain Litigation depending in the Ecclesiastical Side of the Court should be taken off the file did on the Twenty second Day of the said Month of October order that your Petitioners said Bill of Complaint should be taken off the file as by Copies of the said motion of the said Alderman and of the Decision of the said Honble the Mayors Court on the said Twenty second Day of October hereunto annexed and which are prayed to be received and taken as parts of this Appeal may more fully appear- And your Petitioner shweth that to such order of the said Honble the Mayors Court on the said Twenty second Day of October Andrew Ross Esquire one of the Aldermen of the said Honble the Mayors Court did dissent as may also appear from the Copy of the Minute by him then entered on the Record of such resolution and hereunto annexed for the inspection

inspection of this Honble Court and thereby prayed to be received as further part of this his Appeal-

By which said order of the said Honble the Mayors Court on the said Twenty second Day of October whereby your Petitioners said Bill against the said James Maddle and Alexander Stewart was taken off the file your Petitioner doth conceive himself to be greatly agrieved- And your Petitioner doth therefore Appeal therefrom unto this Honble Court and for cause of Appeal your Petitioner sheweth-

First- Because- That on the Twenty Eighth Day of May in the present Year of our Lord one thousand Seven hundred and Ninety three your Petitioner did produce and deliver into the said Honble the Mayors Court in its Ecclesiastical Capacity the last Will and Testament of his said Testator John Hall when the same was proved in Solemn form of Law by the oath of one of the subscribing Witnesses thereto namely P. Loobroy who then Deposed "That he did see the said Paper Writing Signed Sealed published and Declared by the said John Hall the Testator as and for his last Will and Testament- That the said John Hall was at that time to all outward appearance of sound mind memory and understanding That he the Witness subscribed his name to the said Will and Testament

as

as a Witness in the presence of the said Testator and in the presence of the other subscribing Witness thereto—

Secondly Because— That after such Proof of the Will of the said John Hall— to wit— on the same day the Twenty Eighth Day of October in the year One thousand Seven hundred and Ninety Three aforesaid certain Creditors and agents of Creditors of the Estate of the said John Hall did file a Caveat against a Probate of the Will being granted to your Petitioner and which Caveat the said Parties afterwards— to wit— on the fourth Day of June following did pray leave to withdraw and on such permission which was then Granted to them they did withdraw their said obstacle to your Petitioners obtaining a Probate of his Testators said Will—

Thirdly— Because— That your Petitioner was on the Caveat aforesaid being withdrawn Sworn in Executor of the Estate of his said Testator and took the usual Oath prescribed for an Executor and had a Probate granted him of the Will of his Testator after which your Petitioner did possess himself of the Estate of his Testator and did enter fully on the Rights and duties of an Executor — agreable to the Oath he had to that End taken and did receive payments of Debts due to the Estate and did make many and very large payments to Bonds Creditors of the Estate—

Fourthly Because your Petitioner obtained such Probate by the free will and approbation and by the Earnest Entreaty and request of the Deceased's Widow and Residuary Legatee who the said Caveat being withdrawn and a Probate passed in your Petitioner's favor is therefore the only Person who can be concerned for the well administering of the Estate but which Widow is no ways concerned or pretended to be made a Party in the vexatious and illegal litigation now pursuing by the said Creditors and agents of Creditors against your Petitioner to disturb him in his duties of an Executor—

Lastly Because— That on the said Twenty Second Day of October as well as on this Day your Petitioner was and is the Executor of the Deceased John Hall his Testator nor has any legal Power, or disability in himself created a Bar wherefore he should not be and Continue to be the Executor of his said Testator Wherefore and for as much as your Petitioner is manifestly aggrieved in the Premises and prevented from the due Execution of the trust of an Executor as aforesaid which he had by the said Honble the Mayors Court be sworn to fulfill—

your Petitioner prays this Honble Court will be pleased to reverse the said order of the said Honble the Mayors Court for taking your Petitioner's said Bill against the said

said James Waddle and Alexander Stewart off the file of the Causes of the said Court and that the said Court may be directed by the order of this Honble Court to replace and restore the same Bill and that the Rules for the said Parties Defendants may go for answering the same so that the merits of the said Cause may come forward for a final decision in the said Court and that this Honble Court will grant your Petitioner such further and other relief in the Premises as to this Honble Court shall seem meet—

/Signed/ John Wilkinson
attorney for appellant

Extract

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 15th Day of October Anno Domini 1793

Present
John Mitford Esqr. Mayor
William Webb and James Daly
Aldermen

Messrs. Aldermen Call Rofs Roebuck and Abbott take their Seats upon the Bench and Mr. Alderman Daly being interested goes off the Bench—

Mr. Alderman Roebuck on looking over the Records of this Court and from hearing the Pleadings on the Demurrer to the Suit brought by Messrs. Michell and Porcher as Administrators Pendente Lite of the Estate of John Hall Deceased has perceived that a Bill was filed on the 1st. Instant under the Title of William Boggie Executor of John Hall Deceased against James Waddle and Alexander Stuart for the same amount as the above mentioned Suit This Court have already called in the Probate of William Boggie have suspended his authority and granted administration Pendente Lite, It therefore follows that the admitting of his Bill on the file is inconsistent with the orders of the Court which granted Administration Pendente Lite and the these Letters

were

were granted during the Rotation Court. Mr. Roebuck declares that ever since he has had the honor of setting in this Court he has never known the orders or Decrees of the Rotation Court revoked except by a full Court he therefore Proposes that a full Court be Summoned next Tuesday to consider whether it would not be proper to take it off the File, He also proposes, that all the members be Summoned to Consider of the following motion— Whether it shall not be made a standing Rule of this Court that no orders or Decree of a Rotation Court be reversed except by a Full Court—

Order that a Copy of the above motion be sent round for the perusal of the several members and that a full Court be Summoned on Tuesday next at 11 oClock in the forenoon to take the same into consideration—

Mr. Alderman Ross Dessents to the first Part of the above motion and saing it proper to do so he dessents also to the latter part of it concerning it in the Present Instance unnecessary for which he will give his Reasons hereafter—

A true Extract
/Signed/ G. E. Atkins Dy Regr

Attorney
/Signed/ John Wilkinson
attorney for Appellant

Extract

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 22d. Day of October Anno Domini 1793

Present
John Mitford Esqr. Mayor
Hy Jy Michell and Benjn. Roebuck
Aldermen

Messrs. Aldermen Call Webb Ross and Abbott take their Seats upon the Bench and Alderman Michell being Interested goes off the Bench

Minutes of last Court Day read Containing Mr. Alderman Roebucks motion that the Bill filed by William Boggie as Executor of John Hall Deceased against Waddle and Stewart during the Litigation shall be taken off the File and the Court having taken the same into Consideration— It is ordered that the Bill of Complaint filed by William Boggie as Executor of John Hall Deceased against Waddle and Stewart be taken off the file—

A true Extract
/Signed/ George Taylor Regr

A True Copy
/Signed/ John Wilkinson
attorney for appellant

Extract

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 22nd. day of October Anno Domini 1793-

Present

John Mitford Esqr. Mayor
Hy Shj. Michell and Benjn. Roebuck
Aldermen

Messrs. Aldermen Call Hebb Ross and Abbott take their seats upon the Bench and Mr. Alderman Michell being interested goes of the Bench-

Mr. Alderman Ross dissents to the Resolution of the Court and will send in his reasons at a future day Mr. Alderman Ross at the same time begs to remark that he expressed a wish that the matter which has now been determined should have been first taken into Consideration-

A true Extract
/Signed/ George Taylor Regt.

A true Copy
/Signed/ John Wilkinson
attorney for Appellt.

Court

Court of Appeals
at
Madraspatnam

Saturday the 5th day of July
Anno Domini 1794

Between William Boggie of Fort St. George Merchant one of the Executors named in the last will and Testament of John Hall late of the same place Merchant Deceased Appellant and James Waddle and Alexander Stewart of Fort St. George Merchants Respondents-

The Attorney for the Appellant having moved for leave to withdraw his appeal-

Ordered Accordingly

A true
/Signed/ Robert Clerk
Clk

To

To the Honble Sir Charles Oakeley Baronet

President and Governor &c Council of

Fort St. George

In the Honble
Court of Appeals }

Between Rajastry Letchamana Royer Petitioner and Thomas Parry Respondent In the Cause wherein Thomas Parry is Complainant and Ram Row Defendant-

The humble Petition and Appeal of the above named Petitioner-

Sheweth

That your Petitioner did on or about the tenth day of april in the present year of Christ One thousand Seven hundred and Ninety three Exhibit and file his Petition in the above Cause in the Mayors Court at Madraspatnam therein and thereby setting forth that some time in the month of September and year of Christ One thousand Seven hundred and ninety two the Complainant above named did Exhibit and file his Bill of Complaint in the said Mayors Court against the Defendant above named for the recovery of the Sum of twenty Eight thousand three hundred and fifty five Pagodas forty fanams and Eight Cash Current Money of Madras that a Summons

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

Summons did thereon Issue requiring the said Defendant to appear to, and Answer the said Bill of Complaint, to which Summons no appearance having been made a Warrant of Sequestration was prayed for by the Complainant upon the usual Oath having been made to the debts, that thereupon the said Mayors Court was pleased to order that a Writ of Sequestration should issue, and the same did on or about the Sixteenth day of October One thousand Seven hundred and ninety two issue accordingly directed to the Sheriff of Fort Saint George Town of Madraspatnam and the districts thereof requiring and Commanding him to seize and Sequester the Estate and Effects of the said Defendant as by the records of the said Mayors Court reference being thereunto had your Petitioner did say would appear And your Petitioner did in and by his said petition further state that by Virtue of the said Writ of Sequestration the said Sheriff instead of seizing the Goods and Chattels of the Defendant above named did Seize and Sequester a Garden situate lying and being at Nuera Saibs pettah South to the avenue of Lord Pigot north to the Ground of mursamsen West to the Garden of Mungapely Naiker and East to the Garden of the late Major Maule the property of your Petitioner as by Copy of the Bill of Sale to your Petitioners said Petition annexed

Answer further state that the Defendant and your Petitioner were the Surviving Sons of their father deceased, who left a considerable Estate to his Children, which Estate was still held and enjoyed in Common between the Defendant and your Petitioner and that there was no Separation thereof, that your Petitioner was the Younger Brother and lived in the House of the Defendant with whom he eat and participated in the family Ceremonies agreeable to the Custom of the Natives whilst they continue an undivided family and no longer and this Respondent did in and by his said Answer as a further reason beyond the usual Custom of natives to take Bills of sale of Estates in the name of the Younger Branches of their families why the said Defendant, had taken one in the name of the Younger Brother, your Petitioner was, that the said Defendant held an office of high Responcibility under its Highness the Nabob Wallajaw and therefore and from a very Common motive of ministers situated as he was to wit unwilling to expose to his master the extent of his Estate and acquisitions in such his Employ, had in the present instance as in many others which the Respondent did pretend he could, if needful shew Covered such his Estate and new purchase by the sumin[illegible] possession of your Petitioner and the Respondent did lastly insinuate that if the said Defendant and your Petitioner held a distinct and separate Estate that then and in such Case Deeds of Partition, Release and mutual Acquittance would have been Executed between them, such being as the Respondent did pretend a Custom and from not only usual, but indispensably necessary in cases of Devision of the Estates in native families in order to avoid the inconveniencies that might otherwise affect the whole from the Separation imprudence or mal practices of either of them.

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 Examined accordingly both on the part of your Petitioner and Respondent—

And your Petitioner Sheweth that to Establish on the part and behalf of your Petitioner his sole unequivocal Right and Title to the premises in question under Sequestration as aforesaid your Petitioner did produce Poonah Pillah and Tremaul achary two Witnesses, the former of whom did to the second Interrogatory depose that the paper Writing purporting to be the Bill of Sale and shewn to him at the

the time of his Examination, was delivered in his presence, that when he Witnessed the same, Mannaroo Moodely declared the signature thereto was his proper signature and that deponent did subscribe his name as a Witness — that with respect to the other subscribing Witness he could not declare to the hoand Writing as no other subscribing Witness was present at the time the Deponent did subscribe his name as aforesaid — That in Regard to the Money mentioned in the Bill of Sale he did not see it paid — but that on speaking to the said Mannaroo on the subject, the said Mannaroo did acknowledge that he had received the same through the means of a Souchar — and the Deponent did say that he did not know whether the Petitioner had applied on account of the purchase of the premisses described in the said Bill of Sale — And your Petitioners shweth that the said Tremal achary to the same Interrogatory depose that he had looked at the paper Writing produced and shewn to him at the time of his Examination purporting to be a Bill of Sale, that he the Deponent was sent for by Mannaroo Modely who told him that the name at the bottom of the Bill of Sale was his the said Mannaroo's name and in his proper hand Writing and as such

requested

requested the Deponent to attest the same, that this happened about three or four years ago at the time specified in the Bill of Sale, that when the Deponent Witnessed the said Bill of Sale the said Mannaroo Moodelly and Letchamana Row were present and the Deponent did further say that he was not present when the other Witness subscribed his name that he did not see the Consideration Money mentioned in the said Bill of Sale paid, but that Mannaroo Moodelly informed him that he had received the same by the means of a Merchant and the Deponent did further say that the Petition did apply for the purchase of the premisses and that he knew he did so, because he the Deponent was himself instructed by the Petitioner to look out for a Garden —

And your Petitioner Shweth that Kistna Row Bramin Vencata Rungayah Braminy Bauboo Row Braminy Adanarain Iah, Moonapah Chitty and Rungatchery Braminy Examined to the third Interrogatory did generally depose that they had known Achary Pundith (meaning the father of your Petitioner) for a number of years before his death, that he died about ten years ago, that the said achary Pendith was in indigent Circumstances for a considerable number of years before his death, that they

knew

knew him always to have been in indigent Circumstances, that he was not able to pay his just debts and that he died insolvent And your Petitioner Sheweth that the same Witnesses Examined to the fourth Interrogatory did depose that they were well acquainted with Ram Row the defendant above named and with your Petitioner, that the said Defendant and your Petitioner did not enjoy their property together, but that they did Keep distinct and separate accounts of their respective Expences and disbursements, that they lived independant of each other and did Enjoy separately their respective property and that no part of their property did devolve to them, or either of them from their deceased father — And your Petitioner Sheweth that the same Witnesses Examined to the fifth Interrogatory did depose that till within these five years past the said Defendant and your Petitioner had lived separate and apart from each other, but that since that period they had lived in the same House, but distinct from each other — And your Petitioner sheweth that the same Witnesses Examined to the Sixth Interrogatory did depose that your Petitioner did then hold an office of high Responsibility under his Highness the Nabob to wit the office of accountant General, and that he had so held that office for five or six years —

And

And your Petitioner Sheweth unto this Hon'ble Court that to the second Interrogatory on the part of the Respondent John Mitford did depose that he had heard the late Mannaroo Moodelly did sell the Garden in question to one Ram Row, but did Know that the original Bill of Sale of the said Garden was mortgaged to the late Henry Alexander Craig Esquire deceased and had not been redeemed, he had also heard that a Sum of Money which to the best of his recollection was about six hundred and fifty Pagodas was lodged in the hands of a native whose name he did not recollect for the purpose of Munnaroo Moodelly's receiving the Interest thereon the foregoing he considered as an Answer to the next question — That he had not as Administrator to the Estate of Mannaroo Moodelly to his Knowledge any — written Agreement or document Executed by Permal Kistnamah Naick, the Depanent having assisted in balancing the Books of the late Mannaroo Moodelly did Know that there was a Head in the said Books of Doddy Tamboo naick in and under which Head the Sum of Sixty Eight Pagodas — appeared to have been received for Interest between the month of November One thousand Seven hundred and ninety and October One thousand Seven hundred

and

and Ninety one both inclusive, which the Deponent believed from what he had heard, was Interest for the Sum above alluded to and the Deponent declared that he had not received one fanam on Account of Interest since he had become administrator as above stated —

And your Petitioner Shweth that to the third Interrogatory on the part of the Respondent — Sawmy nada Moodeliar did say that he was Conicopoly to the late Mannaroo Moodelly and that he did so serve him as Conicoply for the space of twelve years or thereabouts that the said Mannaroo Moodelly told him he had sold the Garden in question to Ram Row about Two years ago, or the time that — Mannaroo Moodelly was in the Custody with the Poligar, that Mannaroo Moodelly did demand the price of the said Garden from Ram Row, who refused payment of the Same, as Mannaroo Moodelly could not give him the Bill of Sale which had been and still was mortgaged to Chinniah Moodelly but that Ram Row agreed to deposite the money in the Hands of Permaul Kistnamah Naick who was to pay the Interest of the same to Munnauroo Moodelly as a consideration for the said Garden — did know that the said Permaul Kistnamah Naick did Execute a written Agreement in favor of the said — Munnaroo Moodelly acknowledging to have received

the

the above Sum on Account of Munnauroo Moodelly, and which he would pay to Munnaroo Moodelly when he could deliver the Bill of Sale of the Garden in question to Ram Row, but that Permaul Kistnamah Naick was to pay the Interest arising from the above Sum to Munnaroo Moodelly until the Bill of Sale should be delived to Ram Row that he had received for Interest at the rate of Six and a half pagodas a Month the Sum of Sixty pagodas and upwards from the said Permaul Kistnamah Naick and your Petitioner Shweth that to the fourth Interrogatory on the part of the Respondent James Sedney did say that he had received a Warrant of Sequestration in the Cause and that by Vertue of the said Warrant he did seize a Garden which he imagined to be the Garden specified in the Interrogatory That two Servants of the Respondent Mr Parry pointed out the Garden to the Deponent as the Garden of Ram Row that he was refused Entrance by a Sepoy centinel and a Bramin who appeared to belong to the Garden and he was also informed by the said Sepoy Centil and Bramin that the Garden belonged to Ram Row, but that on representing to him the Centinel that he the Deponent was in the Execution of the Kings Warrant he was permitted to pass and put the Seal on the premises — that nothing further passed on the occasion — And your Petitioner Shweth that to the fifth Interrogatory

on

on the part of the Respondent Parmanjer did say that he was present on or about the month of october when James Sedney a Bailiff put in Execution the Sequestration on the Garden of Ram Row that he was purposely sent by the Respondent for the purpose of shewing to the Bailiff the property of Ram Row that he did point out the property seized in Meer Sails Pillah at the property of Ram Row that he Knew himself the property so pointed out was the property of Ram Row, that he did see a Sepoy and a Bramin at the Entrance of the said Garden and that he had personal Conversation with them and was informed by them that the said Garden did belong to Ram Row, and that they the said Bramin and Sepoy were in the Service of Ram Row — and your Petitioner sheweth that to the same Interrogatory — Soobiah differs in one particular from the said Parmanjer inasmuch as he says that he had no personal Conversation with the Braminy or Sepoy, but that the Bailiff had, and was informed by them that the property was the property of Ram Row and your Petitioner sheweth that to the Eighth Interrogatory on the part of the Respondent Vencatarow did depose that he Knew Achary Pundeth the father of Ram Row, Conary Row, and Letchomana Row that he left an Estate to his three Sons but he did not Know the Amount of the Estate so left that he did Know that Conary Row the second Son died that he left Issue a Son named Tremul Row that

he

he did Know that Ram Row Letchamana Row and Tremul Row the son of Conary Row deceased have lived together from their several births in one and the same House Excepting when they were absent on their mutual busines. It is customary among the natives that when the Estate was devided among many Relations to give each other mutual acquittances and not afterwards customary for them to live together in the same dwelling House, that in a case where many Brothers are Entitled to a like dividend of an Estate left them if one of the Brothers shoud die without dividing such Estate or leaving any Issue the share of the deceased went to the surviving Brothers and his widow was only Entitled to food and Raiment and your Petitioner sheweth that to the Baboo Row to the same Interrogatory on the part of the Respondent did depose that he had heard of Achary Pundeth the father of Ram Row, Conary Row and Letchomana Row that he had heard that achary Pundit left one Lack of Pagodas to his three Sons that he did Know Conary Row was dead and had left a Son named Tremul Row, that Ram Row Letchomana Row and Tremul Row lived together Excepting upon particular occasions when their Business called them to other places, and that they did so reside together at the then present time conformably to the Custom of the natives, when an Estate was devided they give to each other mutual acquittances, and it was not afterwards Customary for them to live together that in such cases where there were three or

more

more Brothers they are Equally Entitled to the same dividend of an Estate where one Brother died. his share of the Estate devolved to his surviving Brothers and the widow of the deceased Brother was only Entitled to food and Raiment And your Petitioner sheweth that to the second additional Interrogatory on the part of the Respondent Trichinopoly Vencatarow did say that he Knew Achara Pundith the father of Ram Row Conary Row and Letchamana Row that Achary Pundith left among his three Sons an Estate to the Amount of one Lack of pagodas that he knew Conary Row was dead and had left Issue a Son named Tremul Row, that he knew Ram Row Letchumana Row and Tremul Row Son of Conary Row had from the time of their Several Births lived and still continued to live in the same House that Among the Natives when an Estate was divided it was Customary to give acquittals and that after giving such acquittal the parties never did live in the same House that when there were three or more Brothers they were Entitled to alike Dividend of an Estate left them by their father that he did Know Ram Row purchased from the late Munnaroo Moodelly the Garden described in the Interrogatory that Division of the said Estate did not take place during the life time of Conary Row, nor since in the time of his Son Tremul Row, that if one of the Brothers should die without dividing such Estate and leaving no Issue the share of the deceased Brother did go to the surviving Brothers and not to the widow who was only Entitled to

to food and Raiment And your Petitioner sheweth that to the third additional Interrogatory on the part of the Respondent Baboo Row deposed that he did Know that Ram Row purchased from the late Munnaroo Moodelly a Garden in Mew Saibs pettah as described in the Interrogatory that he did know no division of the family Estate took place Between Conary Row Ram Row and Letchamana Row, nor since the death of Conary Row, between Tremul Row the Son of Conary Row, and his two Uncles Ram Row and Letchamana Row And your Petitioner Sheweth that Vencatarow to the same additional Interrogatory on the part of the Respondent did depose that he had heard that Ram Row Purchased from the late Munnaroo Moodelly the Garden in Mew Saibs pettah as described in the Interrogatory That no division of the family Estate had taken place between Conary Row Ram Row and Letchamana Row, nor since the death of Conary Row had any division of it been made by his son Tremul Row, and his Uncles Ram Row and Letchamana Row—

And your Petitioner Sheweth unto this Honble Court of the Witnesses so Examined on the part of the Respondent several of them did depose to Interrogatories that did not arise out of the pleadings or that went to matter of hearsay and Opinion or to points otherwise impertinent and irrelevant or such as by the Law of Evidence was inadmissible And your Petitioner Sheweth that he

did

did take Exceptions to such Interrogatories and to the depositions taken thereon And your Petitioner Sheweth unto this Honble Court that he did Except to that part of the second Interrogatory Exhibited by the Respondent to John Mitford beginning with the words "Do you Know that Ram Row or any other person "on his behalf and who did give the Sum of Six hundred and "fifty Pagodas or any other and what Sum or Security and what Security "and to whom for such Garden to the said Munnaroo Moodelly" and ending with the words "If so how have you credited the "same in your Account with the said Estate" because your petitioner did say that the several matters therein and thereby interrogated unto were not in issue by the said Matter of petition and Answer, and that thereupon your Petitioner did Except to the said Interrogatory and to the deposition of the said John Mitford taken thereon and your Petitioner did further Except to the said deposition of the said John Mitford insomuch as the said John Mitford was the Administrator of Mannaroo Moodelly in the proceedings named, and further because the deposition of the said John Mitford was Chiefly matter of hearsay, and that the other matters not to hearsay were irrelevant to the matter at issue—

And your Petitioner Sheweth that he did also Except to that part of the third Interrogatory Exhibited to Sawmynada Moodeliar a Witness produced on the part of the Respondent beginning with the words "Do you Know that Ram "Row or any other person on his behalf and who did give the Sum

"Sum of Six hundred and fifty Pagodas or any other and what "Sum or Security for money and what Security and to whom for "such Garden to the said Munnaroo Modelly" and Ending with the words "If yea have you or have you not received from the "said Permaul Kistnamah Naick any and what Monthly Interest "on such written Agreement for and on Account of the said "Mannaroo Moodelly and for what period did you receive the "same" because your Petitioner did say that the Several matters therein and thereby interrogated unto, were not in issue by the said matter of petition and Answer and your Petitioner did therefore Except to the said third Interrogatory and to the deposition of the said Sawmynada Moodeliar taken thereon and your Petitioner did further Except to the deposition of the said Sawmynada Moodeliar and not hereinbefore Excepted unto, wherein the said Sawmynada Moodeliar did say that the said Mannaroo told him he had sold the Garden in question to Ram Row about two years ago at the time that Mannaroo Moodeliar was in custody with the Poligars because your Petitioner did say that the same was mere matter of hearsay— And your Petitioner Sheweth he did also Except to that part of the fourth Interrogatory Exhibited to James Sidney beginning with the words "If yea what passed thereon and whose property was the "same as you were then informed, did you see any "Sepoys or Bramins on the said Ground" and Ending with the words "or did they give you any information regarding

themselves

"themselves on the premises you had seized" because your
Petitioner did say that the several matters and things therein
and thereby interrogated unto were not in issue by the said
matter of petition and Answer and your Petitioner did
therefore Except to the said fourth Interrogatory and to
the deposition of the said James Sidney taken thereon and
further because the said deposition was mere Matter of hear
-say— And your Petitioner Sheweth he did also Except to
that part of the fifth Interrogatory Exhibited to Soobiah
and Damanjee beginning with the words "Did you see
"contigious to the said Garden a Sepoy or Bramin" and
Ending with the words "in whose Service or Employ were
the said Bramin and Sepoy as you know or do believe,
because your Petitioner did say that the Several matters
and things therein and thereby interrogatid unto were
not in issue in the said matter of petition and Answer
and your Petitioner did therefore Except to the said fourth
Interrogatory and to the deposition of the said Soobiah
and Damanjee taken thereon, and further because the
same was mere matter of hearsay—

And your Petitioner Sheweth to this Honble
Court that to your Petitioners said Exceptions the Respon=
=dent did file and Exhibit his Answer in the said Mayors
Court and in Answer to the first Exception did say that
his Second Interrogatory was good Effectual and unexcep=
=tionable in the Law and did pursue the substance of the
matter in Issue by the Petition and Answer and that the
Deposition thereto of John Mitford Esquire was good
sufficient and effectual to be given in Evidence and that
the same ought to be received deemed and taken and
thereon the Respondent did rely— And your Petitioner
Sheweth that in Answer to the second Exception the
Respondent did say that the part of his third Interrogatory
Excepted to was good Effectual and unexceptionable in the
Law, and pursued the substance of the matter in Issue by
the Petition and Answer and that the deposition thereto of
Sawmynada Moodelly was good sufficient and Effectual
to be given in Evidence and so ought to be received deemed
and taken and thereon the Respondent did rely—

And your Petitioner Sheweth that in Answer to the
third Exception the Respondent replied that the part of
his fourth Interrogatory Excepted to was good Effectual
and unexceptionable in the Law and pursued the substance
of the matter in issue by the Petition and Answer and that
the deposition of James Sidney taken thereon was good suffi=
=cient and Effectual to be given in Evidence and so ought to
be received dumed and taken and thereon the Respondent
relied— and your Petitioner Sheweth that to the fourth
Exception the Respondent replied that the part of the fifth
Interrogatory Excepted to was good Effectual and unexcepti
=onable in the Law and pursued the substance of the matter in
Issue by the Petition and Answer and that the depositions

of

of Goobiah and Parmaurayo taken thereto were good sufficient and Effectual to be given in Evidence and ought to be so received, deemed and taken and thereon and each of the same the Respondent relied —

And your Petitioner Sheweth unto this Honble Court that upon the proceedings had, the matter was set down to be heard and did accordingly come on to be heard on Tuesday the twenty ninth day of October now last past, when the said Mayors Court were pleased to throw out the Exceptions taken by your Petitioner to the Evidence of the Respondent and to order that your Petitioners said Petition should be dismissed with Costs as will more fully and at large appear by a Copy of the said order of the said Mayors Court 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, the original whereof is in your Petitioners possession and ready to be produced at the Hearing —

By Which said Order of the said Mayors Court your Petitioner doth think himself aggrieved and doth therefore appeal therefrom to this Honble Court for the following amongst other Reasons —

First — Because the said Mayors Court have admitted hearsay evidence on the part of the Respondent, in opposition to positive Evidence adduced by your Petitioner, and thereupon your Petitioner humbly submits to this Honble Court that the said Mayors Court in Ordering your Petitioners said Petition to be dismissed, have given a decision Contrary to the Law, and that therefore your Petitioner has a Just Cause of appeal therefrom —

Secondly — Because your Petitioner did shew in and by his said Petition that the premises which had been sequestered as the premises of the Defendant Ram Row, were the premises of your Petitioner, and in proof thereof your Petitioner did to his said Petition annex a Copy of the Bill of Sale of the said premises executed by Mannaroo above named, to your Petitioner and did afterwards deliver into the said Mayors Court the Original of the said Bill of Sale, the Execution whereof the Respondent did admit in and by his said Answer but then he did insinuate that the same was so Executed to your Petitioner in trust for the Defendant Ram Row, and that the purchase Money was the Defendant Ram Rows property and in support of such his insinuation the Respondent did Examine the above named Baberow, Trichinopoly Vencata Row and Sawmynada Moodeliar, the two former of whom did assert that they did know that the Defendant Ram Row did purchase the said premises from Mannaroo Modelly but they did not shew how they come by such their pretended Knowledge, nor did they speak to the said Bill of Sale to your Petitioners said Petition annexed and the two latter say that they had heard the Defendant Ram Row had purchased the said premises from the said Mannaroo Modely, one of them

Sawmy

Sawmy Naidoo did further say that Mannaroo had told him that he had sold the premises in question to the Defendant Ram Row two years ago which your Petitioner begs to observe cannot have reference to the premises in question because the Bill of Sale the Execution of which is admitted by the Respondent in his Answer is dated the Eleventh of July one thousand Seven hundred and Eighty nine and the Witness Sawmy Naidoo was Examined on the twelfth day of the Month of June and present Year of our Lord One thousand Seven hundred and Ninety three, which Embraces a period of four Years within a very few days. and the said Sawmy Naidoo did further say that Mannaroo did afterwards demand the price of the premises from Ram Row who refused payment of the same as the said Mannaroo could not give him the Bill of Sale which was mortgaged to Chinniah Moodeliar which your Petitioner shews is a contradiction in terms if meant or intended to refer to the premises in question insomuch as your Petitioner has produced a Bill of Sale Executed by the said Munnaroo to your Petitioner and which as above mentioned the Proponent has admitted in his said Answer And the said Sawmy Naidoo did further say that the Defendant Ram Row did however Agree to deposit the purchase Money in the Hands of Permaul Kistnamiah Naick, who was to pay the Interest of the same as the Witness did pretend to Mannaroo Moodelly as in Consideration for the said premises, and that the said

said Permaul Kistnamah Naick did Execute a written Agreement in favor of the said Mannaroo Moodelly. whereupon your Petitioner prays leave to Observe that the said Permaul Kistnama Naick being the best Evidence ought to have been produced and it was also incumbent on the Respondent to have produced the said pretended Instrument if he had in his power so to do, but as he has not Examined the said Permaul Kistnamah Naick, nor produced the said pretended Instrument it is Conclusive Evidence that the deposition of the said Sawmy Naidoo is a fiction and calculated to serve the fraudulent purposes of the Respondent upon the fortunes of your Petitioner — And your Petitioner further shews that John Mitford also Examined in further support of the said insinuation of the Petitioner did depose that he had heard that the said Mannaroo had sold the premises to the Defendant Ram Row but he does not take upon him to say that he believed the fact so to be, he also said that he had heard that a Sum of Money about six hundred and fifty pagodas was lodged in the hands of a Native but did not Know for what purpose, that although the Administration of the said Mannaroo he had not to his Knowledge any Agreement Executed by the said Permaul Kistnamah Naick, that there was in the Books of the said Mannaroo Moodelly a Head of Doddy Tamby Naick and that a Sum of Money had appeared to have been received and which deponent believed was an account of Interest for the said Sum of Six

hundred

hundred and fifty pagodas From which Testimony so brought forward by the Respondent to shew that your Petitioner was no more than a trustee in the premisses for the Defendant Ram Row your Petitioner trusts this Honble Court will consider as altogether irrelevant impertinent and nugatory and that even had not your Petitioner Examined on single Witness that the Respondent had not made out a Case for himself sufficient to invalidate the case of your petitioner but your Petitioner aware of the Exertions that might be made by the Respondent to aid his unjust pretensions did Examine Witnesses and Poonapilly one of the subscribing Witnesses to the said Bill of Sale after proving the Execution thereof did depose that Mannaroo had informed him that he had received the purchase Money on Account thereof and Tremelcherry the other subscribing Witness did say that he had signed his name to the said Bill of Sale at the instance of the said Mannaroo who did inform him that he had received the purchase Money from Mannaroo, and he further shews that your Petitioner did apply to the said Mannaroo for the purchase of the premisses and he shews how he derived his Knowledge of the fact And your Petitioner Submits to this Honble Court the very dangerous Consequences that would arise were the solemn acts of a party to be liable to be set aside upon Oral testimony and that testimony matter of hearsay to which the Witness had not Judged it convenient to give the slight authenticity of their belief and

and as the Law does not allow of mere hearsay Evidence and as your Petitioner had clearly proved by the testimony of unexceptionable Evidence his right to the premisses a right conveyed by the solemn act and Deed of the party possessing full power and authority to make such conveyance the said Mayors Court had no foundation whatever whereon to dismiss your Petitioners said petition and your Petitioner doubts not it will fully appear to this Honble Court that he is greatly aggrieved by the said order of the said Mayors Court thereon

Thirdly — Because the Collateral Matter set forth in the Respondents said Answer in order the more effectually to shew as it should seem that the premisses in question were the property of the Defendant Ram Row and held in trust only by your Petitioner for his use, so far from having been Established does fully appear to be without foundation in truth for your Petitioner sheweth that the Respondent in his Answer did say that the Defendant Ram Row, and your Petitioner had survived their father, that their said father left them a considerable Estate that the same was undivided and Enjoyed in common between them and that they eat together and partook of all family Ceremonies for the Witness deposing thereto do by their own shewing demonstrate that they are in fact strangers to the matters to which they have deposed Vencatrow to the Eighth Interrogatory deposed, that the father of your

Petitioner

Petitioner left an Estate but did not Know the Amount that your Petitioner and the Defendant Ram Row lived together in the same house from their respective Births — Babarow had heard that your Petitioners father had left a Lock of Pagodas and knew that your Petitioner and the Defendant Ram Row lived together in the same house — Trichinopoly Vencat row to the second Additional Interrogatory deposed as of his own knowledge to the facts deposed to by Babarow and Vencat Row and Baba row to the third additional Interrogatory deposed that no devission of the family Estate had taken place, but no one of them shewed how they had became acquainted with the matters to which they had deposed and your Petitioner begs leave to observe that the Witnesses Examined to the Eighth Interrogatory have also been Examined to the third additional Interrogatory so that in reality there were only three persons instead of five who deposed to the above point which your Petitioner submits to this Honble Court was an unjustifiable attempt on the part of the Respondent to shew that a greater support had been given to it than had actually Existed — on the part of your Petitioner the Testimony adduced in Opposition to the testimony so brought forward by the Respondent is positive clear and definitive Kistnah Row to the third fourth and fifth Interrogatories deposed that he knew the father of your Petitioner and defendant Ram Row twenty years before his death, that he died ten years ago in very endigent

Circumstances

Circumstances and that he had been so many years before his death; that your Petitioner and the Defendant Ram Row did not enjoy their property Jointly but that they keep separate and distinct accounts of their Expinces receipts and disbursements that they lived independant of each other and that no part of their property did descend to them or either of them from their deceased father that til within these five years they have lived separate and apart from each other, that lately they have lived together in the same house but that they still continue separate as to their Expinces and Vencaty Rangiah Braminy, Baboo row Braminy, Raganacherry and Moonapa Chitty deposing to the same Interiogatories support the same facts which your Petitioner submits to this Honble Court is an additional reason why the said Mayors Court ought not to have dismissed your Petitioners said Petition —

Lastly Your Petitioner says that the Respondent to order to give some color to his insinuations that your Petitioner did hold the premises in question merely as a trustee for the Defendant Ram Row, did assert in and by his said Answer that the Defendant Ram Row was a person in an office of High responsibility under His Highness the Nabob of the Carnatic and unwilling that his Master should know of the Extent of his Estate had in the present instance Covered his new purchas by the securing posession of your Petitioner the fallacy of which assertion your Petitioner trusts is so Evident that it does not require any illustration as your

Petitioner

Petitioner has shewn by the testimony of several Witnesses that he does himself hold an office of high trust and importance under his said Highness the Nabob he your Petitioner being the Accountant General of his said Highness — and your Petitioner submits to this Honble Court that the matters setforth in the Respondents said Answer regarding the Laws of the Natives respecting the division of paternal Estates could not nor ought to have had any weight with the said Mayors Court in their determination upon the matters at issue for that as your Petitioner had shewn that neither he, nor the Defendant Ram Row had arrived any property from their deceased father, the Laws of the natives as to the division of paternal property did not apply — And your Petitioner also submits to this Honble Court that as the Interrogatories Exhibited on the part of the Respondent and the depositions taken thereon as Excepted to by your Petitioner were either not at Issue by the matter of Petition and Answer or were matters of hearsay, and as the Law does not admit of hearsay Testimony unless it goes to Corroborate matters of fact positively deposed to, the said Mayors Court ought to have allowed your Petitioners said Exceptions — And your Petitioner trusting that he has fully supported his Case and clearly shewn that the Premises in question are his property, and not the property of the Defendant Ram Row, and that the Respondent had Sequestred the property of your Petitioner to promote his designs against the said Ram Row and thereby regardless of right and Justice to injure your Petitioner

Your Petitioner humbly prays that the Order of the said Mayors Court may be Reversed, that your Petitioner may be quieted in the possession of his said premises and that this Honble Court will be pleased to grant unto him such further and other Relief in the premises as in the Wisdom of this Honble Court shall seem meet —

/ Signed / James Stuart Hall
Solicitor for Appellant

Extract

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 29th. day of October Anno Domini 1793

Present

John Mitford Esqr. Mayor
James Call and Alexander Cockburn
Aldermen

Mr. Alderman Ross takes his Seat upon the Bench The Mayor being interested goes off the Bench and the Maces are taken away and Mr. Alderman Call takes the Chair

Tomas Parry
Vers
Ram Row

Petition of Ryestry Latchoomana Royer Read—
Answer Read—
Interrogatories on the part of the Petitioner with one Exhibit annexed Read—
Eight Depositions taken thereunto Read—
First Exception on the part of the Petitioner to the Second Interrogatory and the Deposition of John Mitford Read—
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 on Hearing the Arguments made use of by the Attornies and on due Consideration had thereon The Court are of opinion that the first Exception is insufficient it is therefore Ordered that the first Exception be thrown out with Costs—

Second Exception to the third Interrogatory and the Deposition of Sawmy Nada Moodeliar Read—
Answer thereto Read—

The Second Exception and the Answer thereto 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 second Exception is insufficient it is therefore Ordered that the Second Exception be thrown out with Costs Third Exception to the fourth Interrogatory and the Deposition of James Sidny taken thereon Read—
Answer thereto Read—

The third Exception and the Answer thereto 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 third Exception is insufficient it is therefore Ordered that the third Exception be thrown out with Costs Fourth Exception to the fifth Interrogatory and the Depositions

Depositions of Soobiah and Damarauzee taken thereto Read
Answer thereto Read—

The fourth Exception and the Answer thereto Coming on to be Argued and Determined this day in the presence of the Attorneis 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 fourth Exception is insufficient it is therefore Ordered that the fourth Exception be thrown out with Costs. —

Interrogatories on the part of the Respondent Read.—
Seven Depositions taken thereunto Read.—
Additional Interrogatories on the part of the Respondent Read—
Three Depositions taken thereunto Read.—

The Matter in dispute between the Petitioner Rajestry Latchoomana Rozer, and the Respondent Thomas Parry, 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, This Court doth think fit to order, and doth Accordingly order, that the Petitioners Petition be dismissed with Costs—

A true Extract
/Signed/ George Taylor
Regt

A true Copy
/Signed/ James Stuart Hall
Attorney for Appellant

In

In the Honorable the Court of Appeals at Madras-patnam

The Answer of Thomas Parry to the Petition and Appeal of Rajestry Latchamana Royer in the matter between the said Rajestry Latchamana Royer Petitioner and the said Thomas Parry Respondent in the Cause of Thomas Parry Complainant and Ram Row Defendant—

Filed in my Office the 16th January 1796
Chas N. White Clk

This Respondent admits that the said Appellant did on or about the Tenth day of April in the Year One thousand Seven hundred and Ninety three Exhibit and file in the Honorable the Mayors Court his Petition in the above Cause therein and thereby setting forth that some time in the month of September One thousand Seven hundred and ninety two this Respondent had Exhibited and filed in the said Mayors Court his Bill of Complaint against Ram Row for the recovery of a Sum of Twenty Eight thousand three hundred and fifty five Star Pagodas forty fanams and Eight Cash Current money of Madras and that a Summons did issue thereon requiring the said Defendants appearance to answer such Bill but to which Summons no appearance having been made a Warrant of

Sequestration

Sequestration was by this Respondent Prayed for on the
Usual affidavit whereupon the said Mayors Court were
pleased to Order a Writ of Sequestration which did accordingly
ifsue on or about the Sixteenth Day of October of the said
year one thousand Seven hundred and ninety two Directed
to the then Sheriff of Madraspatnam requiring and Command-
ing him the said Sheriff to Seize and Sequester the Estate
and Effects of the said Defendant. And this Respondent doth
Admit that the said Petitioner did further in his said
Petition state that by Virtue of the said Writ of Sequestra-
tion that the said Sheriff instead of Seizing the Goods
and Chattles of the Defendant did Seize and Sequester
a Garden Situate lying and being at Mera[illegible]
South to the Avenue of Lord Pigot North to the Ground
of Merasamsen, West to the Garden of Mungapetty —
Naicks, and East to the Garden of the late Major
Maule and which Garden the said Petitioner did state
in his said Petition to be his property and as he charged
would appear to the said Honorable the Mayors Court
from the Copy of a Bill of Sale for the same which he
Annexed to his said Petition for the inspection of the
said Court the Original being in his Posfesion, and
the said Petitioner did therefore Pray the said Hon^ble
the Mayors Court that they would be pleasid to Order
their said Sheriff to take off his Seals from the said

Premises

Premises and that this Respondent should pay the Costs of the
Petitioners said Petition — And this Respondent Admits that to
such the Petitioners said Petition this Respondent did Reply
on or about the Seventh Day of May One thousand Seven
hundred and Ninety three and thereby did Admit that some
time in the month of September in the year of Christ One
thousand Seven hundred and Ninety two that he had so filed
his Bill of Complaint against Ram Row for Recovery of the
said Sum of Money — That a Summons had thereon duly
ifsued and that no appearance having been put in that the
Writ of Sequestration aforesaid had ifsued and that the
Property Charged by the Petitioner to be his had been justly
and rightfully Seized and Sequestered at this Respondents
Suit as being the Property of the Defendant Ram Row and
not his the Petitioners as he had in his said Petition
unjustly asserted it to be and which this Respondent did in
his said Answer Say that he would in due time prove to
the Satisfaction of the said Mayors Court and this Respon-
dent Admits that he did in his said Answer further Say
that it might be true that Conjaveram Mannaroo Moodelly
Late Dubash of John Mitford might have Executed to the
Petitioner a Bill of Sale such as the said Petitioner had
annexed a Copy of to his said Petition but then this Respon-
dent did say that in that Event such Bill of Sale was
only Executed to the Petitioner in trust for and on behalf

of

of the Defendant Ram Row who was his the Petitioners Elder Brother and that the Consideration Money of such Bill of Sale was the proper Money of the said Defendant and this Respondent Admits that he did in his said Answer further say that the said Defendant Ram Row and the Petitioner were the Surviving Sons of their Deceased Father who left a Considerable Estate to his Children and which Estate they held and Enjoyed in Common between the said Defendant and Petitioner and that there was no Seperation of the same and that the Petitioner Lived in the House with his said Elder Brother with whom he, Eat and participated in all family Ceremonies, agreeable to the Custom of the Natives whilst they Continued an undivided family but no longer: and this Respondent did in his said Answer further Shew as a Reason beyond the Usual Custom of Natives of India to take Bills of Sales in the names of the younger Branches of their families why the said Ram Row had on this Occasion taken one in the name of his younger Brother that the said Defendant held an Office of High Responsibility under His Highness the Nabob Wallajah and therefore from a Motive very Common to Ministers situated as he was, to wit, unwilling to Expose to their Masters the Extent of their Estate, and Acquisitions in such Employ, that the Defendant had therefore in this Instance as in many others Covered such his new Purchase by the

Seeming

Seeming Possession of his Brother the Petitioner — And this Respondent in his said Answer did then say that if the said Defendant and the Petitioner did hold Distinct and seperate Estates, that Deeds of Partition, Release, and Mutual Acquittance would have been Executed between them; such being, as this Respondent did Charge, a Custom and forms not only usual but indispensibly necessary in Cases of Division of Families and Estates in Order to avoid Inconveniences that must otherwise affect the whole from the Seperation, Imprudence or Mal-practices of either of them — And this Respondent did so Conclude his said Answer, Praying the benefit of his said Sequestration, under the proof he would, in due time, bring to the Establishment of his said Answer to the Petitioners said Petition.

And this Respondent Admits, that in the above Proceedings, issue did join, and Rules did Pass for Examination of Witnesses, and that Witnesses were respectively Examined by the Petitioner and your Respondent

And this Respondent Sheweth, notwithstanding what the Petitioner hath alledged to the Contrary, and hath endeavored to establish by Evidence, that he, this Respondent, hath clearly proved and made known by a Variety of Substantial and respectable Evidence his Right and Title to the Premises under Sequestration And although the said Petitioner hath pretended to Title in

the

The same, and Contendeth therefore from the Testimonies of Poonah Pillah, and Tremaul Acharey, two of the Witnesses Examined on the Part of the said Petitioner, and from whose Depositions he hath taken particular Extracts, wishing to make it appear that the same tended to Manifest and setforth such his pretended Title as aforesaid, Yet doth this Respondent humbly insist, that the said Petitioner hath failed altogether of Establishing, from the Several Testimonies of the said Poonah Pillah and Tremaul Acharey a Right and Title to the Premises in Question. For the former of these Witnesses hath Deposed alone to the Execution of the Bill of Sale Exhibited in this Cause, but hath not Answered to those material Parts of the Interrogatories put to him by the said Petitioner respecting the time when the said Transaction is pretended to have taken Place, and the Discharge of the Purchase money; except by saying indefinitely, that Mannaroo had acknowledged to have received the same through the means of a Soucar; but from whom commissioned to have been so paid by the said Soucar, to the said Mannaroo, or on whose account the said Mannaroo Acknowledged to have received it. Poonah Pillah hath been wholly Silent. and Tremaul Acharey who hath been Interrogated to the same Points with Poonah Pillah, hath been deficient in Establishing the Payment of the Purchase money, for the Premises in Question, by the said Petitioner and hath returned as Vague Answers, as Poonah

Pillah,

Pillah, in desenting the pretended Payment of the same; mentioning that the Purchase Money had been received by Mannaroo through the medium of a Merchant, but whose name he hath not given, nor in any wise explained, on whose account and on whose behalf the said Merchant had been authorized to Pay the same And in contradiction of this Pretended right on the part of the Petitioner, and so weakly Supported by the Evidence called to that End, this Respondent Examined Several Witnesses, whose Depositions Clearly Substantiate the right in the said Premisses to be in Ram Row, and, as his, to have been duly Sequestered under the Decree of the said Mayors Court to this Respondent, And this Respondent in further Maintenance and Support of this Assertion, doth beg leave to refer to the Depositions of Trichinopoly Vencatarow, Baboorow, Darmanger, John Mitford, Saumynada Moodelly, Soobia, and James Sydney, and Prays that the Same may be taken as part of this his Answer, and that he may have as full Advantage and benefit thereof as if he had Specifically and Particularly Setforth the same.

And this Respondent Sheweth although it hath been Attempted to be Shewn by the said Petitioner, that Acharry Pundith, the Father of the said Ram Raw, in the Title of the said Petition named, and of the said Petitioner, had demised insolvent, and in indigent Circumstances

and

and that the Petitioner and his said Brother Ram Row did not enjoy their Property together, but kept Seperate and distinct Accounts, that herthis Respondent hath proved by the Evidence of Bauboorow and Trichinopoly Vencatarow, that the said Acharey Pundith was Possessed of one Lack of Pagodas at the time of his Death, and which, after that Event, had bein Devided amongst his Sons. and also this Respondent trusts that he hath Satisfactorily Shewn on the Testimonies of Vencata Row, Trichinopoly Vencata Row, and Baboo Row, that no Division of the Family Estate had ever taken place, but that the Petitioner and his Brother Ram Row had lived together, and in the same House, uninterruptedly, from their Infancies And this Respondent further Saith, that from all the Evidence taken in this matter, as well on the part of the Petitioner as of this Respondent, that it is manifest throughout, that the said Petitioner and his Brother Ram Row, lived in the same House, at the time of the Execution of the said Bill of Sale; and it were fair and reasonable to Presume therefrom, that they were an undivided family, even had there not been produced any Positive Evidence to that Circumstance on the part of this Respondent

And this Respondent sheweth unto this Honorable Court, in Answer to what has been imputed to him by the said Petitionir that his this Respondents Witnesses had been examined to Points and matters that did not arise out of the Pleadings, and that went merely to hearsay and opinion, or to Objects impertinent and irrelevant, or such as by the Law of Evidence were inadmissable. that he this Respondent did Examine to such Points only as were materially connected with and had arisen out of the Pleadings; not to matters of hearsay and opinion, but of Fact, extremly pertenent and relevant to the thing in Issue, and Admissable by the Rule and Law of Evidence — And this Respondent Shweth that although the said Petitioner did take Exceptions to several of the Interrogatories and of the Depositions arising out of them an and under the Pleas above set forth, yet were the said Exceptions not allowed by the said Mayors Court but thrown out with Costs which were ordered by the said Court to be borne and defrayed out of his the said Petitioners Pocket —

And this Respondent begs leave to refer to the Extract from the Minutes of the said Mayors Court of the Twenty ninth Day of October last past when the said Exceptions came on to be argued and which said Extract is attached to the Petitioners said Petition and Prays that the same may be taken as part and in aid of this Respondents Answer. And this Respondent doth not advert to such Evidence as is objected to by the said Petitioner and to which the said Petitioner had excepted to in the said

said Mayors Court, and had argued when the said matter in Dispute between the said Petitioner and this Respondent Came on to be heard, as this Respondent doth hold that this Honorable Court will see the frivolity of the said Exception placed even in the light, in which the said Petitioner hath pleased to Shew them But this Respondent doth not waive his Right of Answer to the said Exceptions if he may hereafter feel it necessary to make Replication to the same

And this Respondent doth admit, that Publication having passed in the said Matter, the same was Set down for hearing and Accordingly came on to be heard on Tuesday the Twenty ninth Day of October last past, and at which time the said Mayors Court did throw out the Exceptions taken by the said Petitioner and did further Order thereupon that the Petition of the said Petitioner should be dismissed with Costs as will more fully and at large appear by the said Order and Decree of the said Mayors Court to which as well as to all other Proceedings had in this matter, this Respondent begs leave to refer, and to have such ample Benefit thereof as if the same were herein at large Setforth and Shewn. —

By which said Decree of the said Mayors Court this Respondent humbly insists that he hath received no more benefit than what he was Strictly and legally entitled to and that the said Petitioner hath not received thereby any

any Detriment or Injury which could have Sanctioned the Appeal which he hath preferred and offered to this Honble Court.

And the said Respondent, in Answer to the first Cause or reason Assigned by the said Petitioner, Saith, that the said Mayors Court hath not admitted any Evidence but what they were bound both by Law and Equity to admit. And this Respondent affirms it is not apparent from any thing Shewn by the said Petitioner, that the said Court have permitted matters of hearsay to operate on their Judgement and Decree, in behalf of this Respondent in opposition to any Positive Evidence produced by the said Petitioner. And this Respondent Cannot answer more Particularly to the general Charge alledged by the said Petitioner of hearsay Evidence having been Admitted by the said Mayors Court in opposition to positive Evidence than by Saying that is a Rule of Evidence, that the best Testimony the nature of the Case will admit of shall be required, if possible to be had but, if not possible, then the best Evidence that can be had, shall be allowed. And this Respondent Contends that before the said Petitioner could be allowed to take any Advantage from an Exception of the nature of that Setforth in the first Reason by the said Petitioner, it was incumbent on him to have Shewn that it was in the Power of this Respondent to have procured better Evidence, than that which he had

produced

produced. But the Petitioner hath not shewn or insinuated that this Respondent could have Obtained better Testimony. and this Respondent therefore, humbly insists that the Evidence he hath produced was the best possible Evidence that the Nature of his Case would Admit, and what the Petitioner hath alledged, by way of Impeachment of it, is vague and unsupported Asertion, and cannot, he is well persuaded, be permitted to have any weight against what this Respondent hath shewn and proven according to his best means of Proof.

To the Second Cause or reason, assigned by the said Petitioner, this Respondent Saith, that he hath shewn, and he trusts satisfactorily, that the Premisses which had been sequestered were the Premisses of Ram Row notwithstanding the Bill of Sale be made out in the name of the said Petitioner, and which had been Delivered in the Course of the Cause into the said Mayor's Court, For this Respondent hath clearly established that the said Premisses were Purchased and retained in trust for the said Ram Row, the Defendant in the original Cause and that the Consideration for the said Premisses, was also defrayed by him - And this Respondent saith, that the Evidence of Baberow and Vencataraw is full and comprehensive, as to the Establishment of the Circumstances which they were called to prove; namely, the Purchase of the said Premisses - And they have Deposed unequivocally, that the same were purchased by the

Defendant

Defendant Ram Row from Mannarroo Moodelly. And this Respondent further saith that as nothing has been advanced against the Competency or Credibility of these Witnesses, that what they have said, with respect to the Transaction of the Purchase of the Premisses in Question, had, and ought to have had, in the said Decree of the said Mayors Court as much Consideration, as any fact which had been Deposed to by the Witnesses of the said Petitioner - And it is not a matter of disparagement to the Testimonies of the said Witnesses, that they have Answered only to such Interrogatories that had been put to them, and no further: and if the said Petitioner had been desirous to know, how these Evidences had arrived at their knowledge of the said Transaction, he might have Cross-Examined to the same; and there is no reason to Doubt but that he would have received Satisfactory Answers to his Interrogatories And although it hath been asserted, by the said Petitioner, that the Evidence of Sawmy Naidoo hath no reference to the Premisses in Question, in so much as that he hath Deposed to the time, at which the Purchase was made, to have been Two years ago, whereas as it is stated by the said Petitioner, it appeared to have happened nearly two years previous to that time: yet doth this Respondent aver and maintain that the said Evidence hath a reference to the said Transaction, and to no other. And this Respondent humbly observeth, that the said Sawmy Naidoo hath not Deposed positively to the purchase having been

Concluded

Concluded two years ago, but hath said that the said Mannaroo Moodelly told him, that he had Sold the Garden about Two years ago, and, with further hesitation as to the Period, when the same was Sold- he hath said, or at the time when Mannaroo Moodelly was in Custody with the Polygar. And this Respondent considers that it is not necessary for him to remark on this Evidence further, than by stating, that natives have at all times but Confused Ideas of time, agreeable to the mode of Reckoning of more Civilised Countries- and that in this Instance there can be no Doubt entertained but that Sawmy Naidoo was speaking to the Sale of the Premisses in Question; as it is not Disputed on the part of this Respondent or of the Petitioner that the Sale took Place, on the Eleventh Day of July, one thousand Seven hundred and Eighty nine nor is it Contended by one or the other of the Parties, that any other Sale of the Premisses happened Posterior to that Date and this Respondent further saith to what has been objected to the Deposition of Sawmy Naidoo, as far as it goes to the Demand of the Purchase money for the said Premisses of Ram Row by the said Mannaroo Moodelly, that the Evidence of that Deponent is clear and Satisfactory, and not, as the said Petitioner would make it appear, in any sort Contradictory or foreign to the Premises in Question- For the said Sawmy Naidoo hath Deposed "that Mannaroo Moodelly did Demand the

Price

"Price of the said Garden from Ram Row, who refused Payment of "the same, as Mannaroo Moodelly could not give him the Bill of "Sale, which was and is still Mortgaged to Chinniah Moodeliar, "but that Ram Row had agreed to Deposit the Money in the hands "of Permaul Kistnamah Naick, who was to pay the Interest for the "same to Mannaroo Moodelly &c &c &c"

And although it must be Evident that the Bill of Sale, holden by the said Petitioner, could not be at one and the same time in the Posession of Chinniah Moodelly- yet it is by no means evident that Ram Row could have hinted to such a Bill of Sale as that produced by the said Petitioner, as a Bill of Sale, of that Nature, it was in the Power of Mannaroo Moodelly, or indeed of any other not Interested in the Premisses, to have furnished him with at all times; if such could at any time have proved Satisfactory to a Person of Ram Row's Capacity or to a man barely posessed of prudence or common sense. And this Respondent humbly Contends that the Bill of Sale itself Contains Sufficient Evidence of the want of Title in the said Petitioner to the Premisses in Question as it cannot be presumed that the Petitioner would have been Content to have paid the Purchase money for the Premisses to Mannaroo Moodelly, who has not shewn in the Bill of Sale, or on any other Document established, how and in what manner he became entitled to the same. and this Respondent Saith, it is but reasonable to Suppose that Ram Row would have

Expected

Excepted to have been put in Posfesion of a fair and just Title before he had paid the Purchase Money for the said Premisses to Mannaroo Moodelly, who on his part might have Demanded some Security of the said Ram Row for his abiding by his Purchase — and hence this Respondent affirms, it may be concluded, that the Deposit arose, which is Deposed to have been lodged in the hands of Permaul Kistnamah Naick. And although the said Petitioner hath Drawn certain unfavorable Conclusions from this Respondents not having produced the said Permaul Kistnamah Naick as an Evidence in this Cause; nor an agreement in favor of Mannaroo Moodelly, said by the said Sawmy Naidoo to have been passed from Permaul Kistnama Naick to the said Mannaroo Moodelly; this Respondent saith that he was advised that he could not Examine the said Permaul Kistnama Naick to the matter in Question, he having an Interest in the said matter and might therefore have had an inducement to Conceal the money so received for the purposes before mentioned and Declared, nor could he have produced, however willing he might have been, the Agreement alluded to in the Deposition of the said Sawmy Naidoo the same having never been in his Posfesion; and therefore not in his power to bring forward in Evidence.

And this Respondent would have replied if he had deemed it necessary to the insinuation of the Petitioner, that he, this Respondent, had some fraudulent Purposes

Purposes in the Prosecution of this Suit, he will only say that he had one Purpose, namely to avail himself of his Right, and by what he considered, the only legal Mode in his Power to pursue under the Existent Circumstances of his Case — and this Respondent affirms, that the Testimony of John Mitford gives an Additional Strength and Support to the Evidence of Sawmy Naidoo, if it wanted any Collatroal kind of Credibility, which this Respondent contendeth it doth not. For after first stating that he had heard Mannaroo Moodelly Say, that he had Sold the Premises to the Defendant Ram Row, he Deposeth to the fact, the most Material for the Consideration of this Honorable Court that six hundred and fifty Pagodas, answering to the Sum paid for the said Premises, had been lodged in the behalf of Mannaroo Moodaliar in the hands of a native; and although he had not, he said, in his Posfesion, as administrator to Mannaroo Moodelly, any Agreement Executed by Permaul Kistnamah Naick, yet in the Books of the said Mannaroo Moodelly, there was a Head of Daddy Tomboo Naick, and it appeared, that under the same, the said Mannaroo Moodelly had received a Sum of Money, which he, the Deponent, believed was on account of Interest for the said Sum of Six hundred and fifty Pagodas: And this Respondent Contends, that the Evidence of Poona Pillah and Tirmaul Achary, although brought forward by the said Petitioner, and Advantage be attempted

to

to be taken thereof in his said Petition, doth on a great Decree tend to Confirm the Evidence produced by this Respondent. For the said Poonah Pillah and Tremaul Achary after having Stated that they were Subscribing Witnesses to the Bill of Sale of the said Premisses have Deposed that they did not See the Purchase Many paid, but that the one, on having asked Mannaroo Moodelly whether he had received the same; Mannaroo acknowledged to him that he had received it through the means of a Soucar, and the other had Confirmed what the first had said, or at least with very little Difference, that Mannaroo Moodelly had received it through the medium of a Merchant.

And the Evidence, this Respondent avers, both on the Part of the Petitioner and this Respondent, concurs as to the Purchase money, and that it was not paid at the time of Sale, and that it had been conveyed to Mannaroo Moodally or, that it had been lodged for his use, in the hands of a third Person and from these Accounts, it is contended, concurrent in the leading features, which were meant to be established by this Respondent, doth this Respondent trust that he hath made out, as far as it was in his Power to Shew that the Premisses were the Premisses of Ram Row and not of the said Petitioner And one Circumstance this Respondent humbly Prays that this Honorable Court will advert to, that it is not Shewn or insinuated, in the said Petition, that he, the said Petitioner, did pay or Cause to be paid the Purchase money for the said Premisses to the said Mannaroo Moodeliar. But it is evident, that a Direct Answer to this Point is purposely waded throughout, in the Evidence offered on the part of the said Petitioner, it being generally Deposed by such, who had been called to Substentiate this very Material fact, Namely, that Mannaroo Moodelly had said, that he had received the Purchase Money, through the means of a Merchant or Soucar, and the name of the said Petitioner is no where mentioned, by the Witnesses so called, as a Party in any wise Interested in the said Payment.

The said Respondent in Answer to the third Cause of Reason Assigned by the said Petitioner, Saith, notwithstanding the said Petitioner hath Attempted by insinuation to Detract from the Testimony of Several of the Witnesses Examined on his behalf, that the same have not Deposed to any Matter but what were immediately within the Scope of their own knowledge. And this Respondent, unwilling to trespass on the Patience of this Honble Court, Answers thus generally, to the general Imputation, glancing at the Evidence produced on and in behalf of this Respondent: that he this Respondent is desirous to abide by the same Rules, with respect to the evidence exhibited by him, with that which appears to have been offered

offered on the Part of the Petitioner, and with that, which the said Petitioner hath himself laid down and by which he himself of course ought and must be Governed.

And this Respondent to the last Cause or reason assigned by the said Petitioner, this Respondent answereth and saith that it may be true that the said Petitioner doth hold an office under his Highness the Nabob of the Carnatic as Deposed to by certain of the Witnesses Examined on behalf of the said Petitioner; yet doth not that circumstance remove and do away the force of the observation offered in this Respondents Answer to the Original Petition filed in the said Mayors Court, that he, the Defendant Ram Row, instigated by a motive, very Common with those in his Situation, unwilling to Discover to his master the Extent of his Estate and Acquirements, had in the present Instance as in many others, covered his new Purchase by the Seeming Possession of his Brother. For although the said Petitioner might have held an office, yet by his own shewing it was not of equal Responsibility with that, held by the said Defendant Ram Row; and on that Account, not an Object of so much jealousy or observation; and under such Consideration a Purchase of like Nature with the Premisses in Question might have been effected with more privity and Safety by the said Petitioner than the Defendant Ram Row- And this Respondent further Saith that although it had appeared that the said Petitioner and the Defendant Ram Row had not derived any Paternal Property, in Common, from their Deceased Father, and this Respondent doth aver and insist from Respectable Testimony Exhibited on his behalf that the said Achany Pundit did leave a Considerable Patrimony to the said Petitioner and the Defendant Ram Row, yet as he hath before Declared, if the said Petitioner and Original Defendant Ram Row had been left wholly unprovided in this Respect, that the Property which might have been Acquired, thereafter, and while the said Petitioner and the Defendant Ram Row did Continue together and Participate in the same Ceremonies and under the same Roof, that such Property would be considered, in common, and as a joint Stock, agreeable to the Laws and Customs of their Cast, which, as far as they correspond with the British Laws, must be held as binding on their Conduct and Dealings-

For which reasons and such others as may be offered at the hearing, this Respondent Prays, that the said Decree of the said Mayors Court on the Twenty ninth day of October last past, may be Confirmed and that the Petitioner said Petition and Appeal be Dismissed with Costs, to be paid by the Appellant-

/ Signed / John Wilkinson
Emanuel Samuel
Solicitors for Respondt

Court

Court of Appeals
at
Madraspatnam

Saturday the 5th Day of July
Anno Domini 1794

Between Rajestry Latchoomana Row
Appellant and Thomas Parry 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 Order of the said Court given in this Cause on Tuesday the 29th day of October 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 Honble the Mayors Court dated the 29th day of October Anno Domini 1793 be reversed with Costs.

By Cur
/Signed/ Robert Clerk
Clk

To

The Honble Sir Charles Oakeley Barronet
President and Governor &c in Council
Fort St. George

In the Honble the
Court of Appeals

Between Anna Seth Aviet Administratrix of Seth Aviet Deciased Complainant and Sarad Coja Maul Defendant-

The humble Petition and Appeal of the above named Defendant-

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 of Complaint in the Mayors Court at Madraspatnam against your Petitioner for the recovery of the Sum of four thousand Seven hundred and Seventy one Star pagodas thirty Eight fanams and forty Cash Current Money of Madras and which she did say would more fully and at large appear by the Copies translation of an award, and an Account Current to her said Bill of Complaint annexed, and your Petitioner Sheweth unto this Honble Court that the Complainant did in and by her said Bill further set forth that in the life time of the said Seth Aviet he and your Petitioner had several dealings and

transactions

Filed in my Office
the 12th May 1794
Chas N. White
Clk

transactions, and the said Seth Aviet departed this life Intestate and at the time of his death your Petitioner, was indebted to him in a considerable Sum of Money — that after she had obtained from the said Mayors Court Letters of Administration to the Estate and Effects of her said Husband and took upon herself the whole burthen and Execution thereof she made out the Accounts of your Petitioner from the Books of the said Seth aviet and produced the same to your Petitioner, and demanded of him the balance thereof but that your Petitioner refused to pay the same under pretence that he had several Claims on the Estate of the said Seth Aviet — That the Complainant finding it impossible to bring your Petitioner to any amicable settlement with her, she did on the ninth day of February last past file a Bill in the said Mayors Court against your Petitioner that your Petitioner on the receipt of the Summons proposed to leave the matter to Arbitration and to abide by their award, to which the Complainant consented and accordingly your Petitioner and the Complainant did choose three several persons in the Complainants said Bill particularly named as Arbitrators to Arbitrate and settle the said accounts, and for the due performance of whose Award the Complainant and your Petitioner did Enter into Penalty Bonds that she and your Petitioner did thereupon lay their respective Claims before the said Arbitrators who

sat

sat several days and took up Several Months to investigate their several Books accounts and Vouchers and made their Award in Writing under date the twenty Eighth day of September in the year of our Lord One thousand Seven hundred and ninety one and that they did thereby adjudge that your Petitioner should within fifteen days from the date of the said Award pay unto the Complainant the Sum of Five thousand two hundred and twenty two Pagodas and three fanams and that they did further order your Petitioner should pay unto the Complainant a further Sum of thirteen Pagodas being the half of the Charges incurred by your Complainant for filing her Bill of Complaint in the said Mayors Court and that the said Arbitrators did in and by their said Award further adjudge that the Complainant should pay unto your Petitioner as the Surviving Administrator of the said Gregorio Miguel the Sum of four hundred and sixty three pagodas Six fanams and forty Cash being the Amount of a certain debt due by the father of the said Seth Aviet to the Estate of the said Gregorio Miguel and the said Arbitrators did also award that on the Complainants paying the said Sum of four hundred and sixty three pagodas Six fanams and forty Cash to your Petitioner that your Petitioner should pass a receipt and Indemnification for the same, that the Complainant did accordingly in performance of the said Award give Credit for the said

Sum

Sum of four hundred and Sixty three Pagodas Six fanams and forty Cash in her account Current to her said Bill of Complaint annexed and that she did frequently request payment of the balance of the said account Current but that your Petitioner did refuse to pay the same — And the Complainant did in and by her said Bill thereon pray that your Petitioner might be Decreed to pay unto her as Administratrix aforesaid the said Sum of four thousand four hundred and Seventy one Pagodas thirty eight fanams and forty Cash with all such Interest as then was, or should thereafter become due thereon also all Costs of Suit the Complainant paying at the same time unto your Petitioner the Sum of nine hundred and fifty one Pagodas Seven fanams and three quarters the property of Catchick Eminas as was adjudged by the said Arbitrators and receiving at the same time an Indemnification with two Creditable Securities from your Petitioner as also a proper discharge for the said Sum of four hundred and sixty three Pagodas Six fanams and forty Cash for which She had given Credit in the account to her said Bill annexed —

And your Petitioner Sheweth unto this Honble Court that to the Complainants said Bill of Complaint she did Exhibit and file his Plea and answer and for Plea did say that the scope and End of the Complainants Bill was to Compel your Petitioner to fulfil and perform a certain Award made in writing under date the twenty Eighth day of December which was in the Year of Our Lord one thousand Seven hundred and Ninety one, wherein and whereby it was awarded that your Petitioner should within fifteen days from the date of the said award pay unto the Complainant the Sum of five thousand two hundred and twenty two pagodas three fanams and that your Petitioner should also pay unto the Complainant a further Sum of thirteen pagodas being the half of certain charges said to have been incurred by the Complainant for filing a certain Bill of Complaint against your Petitioner in the said Mayors Court And that the said Arbitrators did in and by their said award further adjudge that the Complainant should pay unto your Petitioner as the Surviving Administrator of Gregorio Miguel in the said Award named the Sum of three hundred and Sixty three Pagodas, six fanams, and forty Cash being the Amount of a certain debt due by the father of the Complainants said Intestate to the Estate of the said Gregorio Miguel And further your Petitioner did shew that the Complainant should have fulfilled and performed certain Acts left undone and unperformed by her said Intestate in his life time and which was in the said award stated in the words and figures following that was to say "The late Seth and Soras tir aviet in their life time have taken out of the Estate of Gregorio Miguel deceased

deceased in the year One thousand Seven hundred and Seventy Eight the Sum of Seventeen thousand and Sixty Six Pagodas being as well the property of the Shermans as that of their factors which Money had been under the management of the said Gregorio Miguel deceased — Concerning which Ter Avuit the father of the said Seth Teros in his life time in the year One thousand Seven hundred and fifty one retained the said Money in the hands of Miguel Gregorio by a Protest by reason his death by Shermans which matter was on the tenth of August in the year One thousand Seven hundred and Seventy nine referred to arbitration by the Administrators and the Heirs of the said Gregorio Miguel deceased and the Arbitrators Ordered that the said late Seth and Toros besides the Indemnification passed by them they are to give further two Creditable Securities indirectly to the Kins of the said Gregorio Miguel in order to secure them from time to time the said Money belonging to the Proprietors Now it has appeared that neither the receipt, nor Indemnification or any Security whatever was given, nor any Cause Shewn why that the said matter remained unperformed, and it was insisted on, by the Opponent to put an End to the said matter as it is usual from an ancient Custom to be a Work of righteousness that every person who becomes possessed of any Estate belonging to any deceased person should sign a Receipt and Indemnification wherefore it seemed good unto us that the orders of the said Judges Arbitrators given to the aforesaid Seth and Toros deceased in the year 1779 might be performed further more the Proponent is to sign a Receipt concerning the said Sum of 17066 Pagodas with a legal Indemnification and give to Opponent" And your Petitioner did state that the Complainant had refused and did still continue to refuse to perform and fulfil such acts by her said Intestate left undone in his life time; and had refused and did still continue to refuse to abide by perform and keep the said award of the said Arbitrators insomuch as she had refused and did still continue to refuse to give the indemnification and Securities awarded and adjudged as aforesaid for and on Account of the said Sum of Seventeen thousand and Sixty Six Pagodas so taken as aforesaid out of the Estate of the said Gregorio Miguel deceased by the Complainants said Intestate by which to save and keep harmless your Petitioner as the surviving administrator of the said Miguel Gregorio, and that it appeared by the Complainants own shewing in and by her said Bill of Complaint that your Petitioner had declared himself ready and willing to abide by perform and keep the said Award of the said Arbitrators and in pursuance thereof

thereof to pay unto the Complainant the Claims adjudged by the said Arbitrators provided the Complainant would abide by perform and Keep the said Award of the said Arbitrators on her part and which your Petitioner did shew it further appeared by the Complainants own shewing in and by her said Bill of Complaint she obsolutely refused to do and that for as much as were there were certain Acts and things by an award adjudged mutually to be done performed by the parties arbitrating and by and between whom the said award was made that each party was Equally bound to do and perform the same, and for as much as the Complainant did on her part refuse to abide by and perform the award aforesaid, and for as much as your Petitioner did aver that he had always been and that he then was ready and willing to abide by perform and keep his part of the said Award as far as he was required so to do provided the Complainant would abide by perform and keep her part of the said Award in manner and form as She was therein and thereby required to do, and forasmuch as that he who would have Equity, should do Equity, Your Petitioner did state and thereon insist that the Complainant had no reason or right whereby to call your Petitioner in question before the said Mayors Court for or by reason of the said Award and your Petitioner did plead such non performance of the said

said Award on the part of the Complainant in Bar to the Complainants said Bill and humbly prayed the Judgment of the said Mayors Court whether he should be compelled to make any further or other answer thereto And your Petitioner Sheweth unto this Honble Court that not waiving his said Plea, he did for answer to the Residue of the Complainants said Bill say that he did admit he had several dealings and transactions with Seth Avist the Complainants said Intestate during his Lifetime and that he might in the course thereof have become indebted unto him the Complainants said Intestate in Considerable Sums of Money, that ought your Petitioner knows to the contrary the said Seth Avist might have died intestate and that the Complainant as his Widow did obtain Letters of administration to his Estate and Effects and take upon herself the burthen and Execution thereof that the Complainant did make out an account which she pretended was taken from the Books of her said Intestate against your Petitioner and that your Petitioner did refuse to pay the same, but your Petitioner denied he did refuse to come to any amicable Settlement with the Complainant on the contrary your Petitioner did say he Ever was willing to settle amicably all matters in dispute between him and the Complainant as Administrator as aforesaid, and the more particularly as he

he was deeply interested in such settlement for that the deceased had in his life time taken unfair advantages of the peaceable temper and easy credulity of your Petitioner, and had placed him in a very disagreeable and alarming predicament such as endangered the Fortune of your Petitioner and might terminate in his your Petitioners Ruin because your Petitioner was not then relieved therefrom that the Complainant did file a Bill against him in the said Mayors Court and that your Petitioner did propose to leave the matter in dispute to Arbitration, and to abide by whatever Award such Arbitrators should make thereon and that the Complainant and your Petitioner did mutually Execute Bonds for the performance of such Award or determination as the said Arbitrators or a Majority of them should make thereon, and that the parties in the Complainants Bill named were indifferently chosen by and between the Complainant and your Petitioner — That the Arbitrators might have taken up several days in the investigation of the several Accounts Books and Vouchers both of the deceased Seth Aviet and your Petitioner and did afterwards make their award and that your Petitioner believed a Copy translation thereof to the Complainants said Bill annexed might be a true translation — that the said Arbitrators might amongst other things have awarded as in the Complainants said Bill was for that purpose setforth and that the Complainant might have demanded from your Petitioner the sum of four thousand Seven hundred and Seventy one Pagodas forty two Fanams and forty Cash and that your Petitioner did refuse to pay the same because he was not indebted unto the Complainant in that amount that your Petitioner did not admit the Complainant had made any amicable applications to your Petitioner in the premises, but that her Conduct therein had indicated an inveteracy of disposition towards him and his Interests and a determined resolution to injure him by every means in her power contrary to Equity and good Conscience —

And Your Petitioner Sheweth unto this Honble Court that to your Petitioners said second Plea and Answer the Complainant did Exhibit and file her Replication and therein and thereby did setforth that she had not by any means or manner whatever deviated from the Award Copy whereof was to her Bill of Complaint annexed on the Contrary she had performed and fulfilled all and every part thereof that the last Sentence of the Paragraph of the said Award quoted by your Petitioner in his Answer was worded as follows to wit "That Proponent is to sign a Receipt concerning the said Sum of 17,066 Pagodas with a legal indemnification and give to Appr — all which the Complainant said she had duly fulfilled by Executing a full and legal Indemnification to your

Petitioner

Petitioner and delivered by the Complainants Attorney at Law unto your Petitioners own hands previous to the Commencement of the present Suit as mentioned in the Complainants Bill of Complaint and which the Complainant did pretend your Petitioner not having acknowledged in his answer she did annex a Copy thereof to her said Petition and which paper Writing the Complainant did insinuate was the only act required and adjudged by the said Arbitrators to be done by the Complainant and the Complainant did say that it did not appear by the said last Sentence of the Paragraph of the said Award nor was it intended by the said Arbitrators that any Securities should have been joined in the said Indemnification given by her to your Petitioner and therefore that your Petitioner could not have any right whatever to expect or demand the same from the Complainant which demand of your Petitioner the Complainant did pretend was contrary to the tenor and meaning of the said Award — that she did admit by an Award which was done in the year of our Lord One thousand Seven hundred and Seventy nine and which was partly recited in the present Award the Arbitrators therein named did adjudge that Seth Aviet and Toros ter Aviet should give two Creditable Securities to the heirs of Gregorio Miguel but not to your Petitioner and the Complainant said that the heirs of Gregorio Miguel were mag dalena Gregorio Miguel the Widow and Jeptha Stephan the sister of the

said

said Gregorio Miguels who were the persons and not your Petitioner who should have demanded from the said Seth Aviet and Toros ter Aviet in their life time to give the said two Securities And the Complainant further said that even the heirs of the said Gregorio Miguel to whom it was adjudged to give the said two Securities could not then call for any Because all matters of Controversies and disputes then subsisting between them and the administrators of the said Gregorio Miguel, and which was, as the Complainant did pretend, the only reason for which the said Arbitrators adjudged to give the said Securities were then finally settled and one of the said Heiresses to wit. Magdalena Gregorio Miguel had received her full share or proportion which became due to her by the Estate of the said Gregorio Miguel, and granted a release and discharge to the administrators in full of all demands on the Estate of the said Gregorio Miguel and that the other to wit, the said Jeptha Stephan had also in the like manner received the principal part of her share Except a Sum of One thousand four hundred and Seventy one Pagodas and thirteen fanams for which she had filed her Bill in the said Mayors Court that under such Circumstances and as she the Complainant had fulfilled Every part of the Award on which she grounded her action

especially

especially that part where it directed the Complainant to pass a Receipt and Indemnification to your Petitioner she conceived that your Petitioner in demanding the Securities from the Complainant acted contrary to the principles of Justice and the Complainant did say she made many overtures for a friendly Accommodation by herself and friends and as proof thereof she had entered into Arbitration and was willing to abide thereby, that your Petitioner had resisted every effort of the Complainant to settle amicably which the Complainant did say was manifest by his refusing to comply with the Arbitration made by the Arbitrators chosen by the Complainant 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 amongst other things did state that his Plea was well founded and sufficient to bar the Complainants right of action for your Petitioner said that the Complainant had not performed her part of the Award upon which she had commenced her Suit against your Petitioner and therefore had no right to call your Petitioner in question before the said Mayors Court upon the Maxim that he who would have equity should do Equity and your Petitioner said that an Award was not to be explained by intent and meaning but by the words and conditions thereof for otherwise the intentions of the Arbitrators would be guessed at, not expressed and be thereby contrary to the Constructions of Awards by which they should be certain and sufficient so as not to admit of a doubt that notwithstanding any thing to the Contrary in the Complainants Replication Contained that he had ever wished to settle amicably all matters in difference between them and that so far from your Petitioner being able to take an Advantage of the Complainant she the Complainant had from her Knowledge of the affairs of the Estate of Gregorio Miguel in the Pleadings named and artfully and unfairly withholding from your Petitioner all accounts documents and Vouchers belonging thereto taken a very unjustifiable advantage of your Petitioner to his great wrong and injury for your Petitioner said that the Complainants Intestate in his life time did as Joint administrator with your Petitioner of the Estate and Effects of the said Gregorio Miguel assume the entire management thereof and did thereby and by reason thereof hold the possession of all Papers Books of account Documents and Vouchers relative to the said Estate or connected therewith, and of which Papers Books of account,

Documents

Documents and Voucher the Complainant did posses herself on obtaining Letters of Administration as aforesaid and did as aforesaid withhold and conceal the same from your Petitioner until she had prevailed upon him to enter into the Arbitration in the pleadings setforth, so that until your Petitioner had actually Executed the arbitration Bond or submission in the Pleadings mentioned he had no opportunity of Examining the Accounts Books and Papers of the said Gregorio Miguel and therefore was wholly ignorant thereof otherwise he never would have submitted in such manner as to admit the supposition that he had in his hands afsets belonging to the Estate of the said Gregorio Miguel for which the Arbitrators had been misguided and imagining your Petitioner to be posfesied of afsets did in consequence award that your Petitioner should pay to the Complainant as in the said Award the same was setforth whereas your Petitioner said he had shewn in and by his said Answers to the Complainants said Bill, and so he averred the fact to be, that he had not remaining any afsets belonging to the said Estate of the said Gregorio Miguel And your Petitioner did say that the Complainant had partially stated the Award aforesaid relative to the Sum of Seventeen thousand and Sixty Six Pagodas therein mentioned,

for

for your Petitioner said that the Arbitrators had not only awarded that the Complainant should give to your Petitioner a receipt and indemnification on Account thereof but that she would also give two credible Securities to the Heirs of the said Gregorio Miguel and had such Securities been offered by the Complainant and accepted by the said Heirs of the said Gregorio Miguel, then and in that case your Petitioner would have considered himself somewhat relieved in the premises although your Petitioner was advised that even in that case he would not have been altogether secure, but that he would as he then was as Administrator of the said Gregorio Miguel be accountable for the said Sum of Seventeen thousand and Sixty Six Pagodas to the Heirs of Mrs. Sherman in the pleadings named, that the Complainant had not, as in your Petitioners said Answer was setforth offered the Securities, and that Mag dalora Gregorio Miguel the Widow of the said Gregorio Miguel, and one of his Kins, had since the commencement of the present Suit Served your Petitioner with a paper Writing in the nature of a protest therein and thereby directing and Enjoining him not to come to any manner of Settlement with the Complainant until she the Complainant should first have performed her part of the said Award by giving the Securities aforesaid or otherwise by paying into the Treasury of the Honble Company

through

through the Accountant General of the said Mayors Court the said Sum of Seventeen thousand and Sixty Six Pagodas so received as in the pleadings in the Cause was setforth and as by the Copy translate of the said paper Writing so served upon your Petitioner by the said Magdalena Gregorio Miguel one of the Heiress of the said Gregorio Miguel to your Petitioners said Rejoinder annexed, your Petitioner did say would morefully appear and your Petitioner did say that upon the receipt of the said paper Writing or protest he did communicate the contents to the Complainant and in the most friendly manner did solicit and entreat her to comply therewith in either way therein prescribed as should be most convenient to her, but that the Complainant instead of so doing did absolutely and positively refuse so to do, observing that she would give nothing more than her own private Indemnification which she did pretend was all she was required to do, by the said Award although in and by the said Award the Complainant was directed to give over and above the said Indemnification to your Petitioner two creditable Securities to the Heirs of the said Gregorio Miguel in order to secure thereon from time to time the money belonging to the proprietors, and which your Petitioner said the Complainant well knew the fact to be, as in her own mind throughly convinced thereof but which from evil intentions, and a litigious Spirit towards

towards your Petitioner she refused to acknowledge and your Petitioner shewed that his only object in desiring to obtain the Securities so awarded to be given by the Complainant as aforesaid was solely to secure your Petitioner against the consequences of future claims that should be made against him as administrator as aforesaid either by the heirs of the said Gregorio Miguel, or any person or persons interested in the said Sum of Seventeen thousand, and Sixty six Pagodas which your Petitioner said was in no wise shut up in the hands of the Complainant as she would insinuate, and that notwithstanding the assertion in the Complainant said Replication contained, that even the heirs of the said Gregorio Miguel could not thin call for the said Securities for the reason in her said Replication setforth, that the said Heirs of the said Gregorio Miguel had an Equal right to claim the said Securities so awarded to be granted by the Complainant as aforesaid them, as they had at any other time, and notwithstanding the said Magdalina Gregorio Miguel might have granted a release and discharge to the administrators of the said Gregorio Miguel in full of all demands on the said Estate of the said Gregorio Miguel because your Petitioner said it might so happen that the said Heirs might be obliged to refund the Monies they had received from and out of the Assets of the said Estate and further that although they

they should not be obliged to refund the Monies received as aforesaid, and although the said Magdalena Gregorio Miguel might have given a release and discharge yet that your Petitioner was not indemnified in the premises, that he might be called upon as administrator as aforesaid to Account with the persons entitled to receive the said Sum of Seventeen thousand and Sixty Six Pagodas and upon being charged with a devastavit in the Amount thereof be obliged to pay the same out of his own Estate, or terminate his Existence in a Jail and that the very release of the said Magdalena Gregorio Miguel would Operate against him to that end, that the means used by the Complainants said Intestate and the said Torres Aviet to possess themselves of the said Sum of Seventeen thousand and Sixty Six Pagodas was unfair and that in doing so, the Complainants said Intestate did avail himself of his situation as Joint Administrator with your Petitioner of the Estate and Effects of the said Gregorio Miguel, and of having taken the lead in the management thereof and that since the death of the Complainants said Intestate your Petitioner as surviving Administrator as aforesaid was accountable to your Petitioner therefor and for the Interest that had arisen and grown due thereon And your Petitioner did say that notwithstanding any thing to the contrary in the Complainants said

Replication

Replication contained that he never had resisted any friendly offers of the Complainant either by herself or her friends of an amicable accommodation but that he had ever been ready and willing to revert thereto, and would then chearfully meet the Complainant upon those terms provided he be indemnified in the premises and kept harmless therein, which your Petitioner said was the intention of the arbitrators in their said Award as beforesaid expressly declared and that the Arbitrators could not award any thing that was contrary to the known laws of the land— that the Award of the Arbitrators in the year of Christ one thousand Seven hundred and Seventy Nine, as alluded to by the Complainant could not have sanctioned the conduct of the Complainants said Intestate, and the said Torres Aviet in appropriating the Estate of the said Gregorio Miguel to their own private purposes for that would have been in the first instance to sanction a fraud, and in the second instance force your Petitioner as one of the Administrators as aforesaid to commit a Devastavit and both which was contrary to Law, and to common Justice, and Lastly that the Complainant in annexing the Copy of a paper Writing to her said Replication was actuated by no other motive than that of heaping Expence and encreasing the difficulties and distresses of your Petitioner inasmuch as the same was impertinent and irrelevant, for unless the Complainant had thereby shewn

That

that she had given the two Creditable Securities to the Heirs of the said Gregorio Miguel Enjoined by the Award, — the granting of the pretended indemnification to your Petitioner was of no avail to shew that she had performed her part of the said Award which your Petitioner denied she the Complainant had ever done, or had ever offered to do.

And your Petitioner Sheweth unto this Honble Court that upon the proceedings had as aforesaid in the said Cause issue did Join and rules did pass for the Examination of Witnesses, and Witnesses were Examined accordingly on both sides, And your Petitioner Sheweth that on the part and behalf of the Complainant Aratoon Jacob to the second Interrogatory did depose that he was appointed an arbitrator Jointly with John Shamier and Manook Jacob John sometime in the year one thousand Seven hundred and Ninety One between the Complainant and your Petitioner that the nature of their dispute was regarding some account betwixt them, that he did not recollect how often the Arbitrators sat to investigate the said dispute, but that it took them many months to give their Award thereon that avist Seth the Son of the Complainant did on her behalf frequently attend the meetings of the said Arbitrators, and that your Petitioner did likewise attend, but that he did not recollect how often they did attend the said meetings that the Complainant and your

Petitioner

Petitioner did lay before the said Arbitrators their Causes, and that they did Enter into a full investigation of the matter in dispute betwixt the Complainant and your Petitioner and that they did hear the Complaints of both parties, that the arbitrators did during their investigation of the said dispute give the Complainant and your Petitioner a full opportunity to bring and lay before them their respective Claims and Vouchers in support thereof and that your Petitioner did lay before them all his Claims Vouchers and Account against the Complainant — that they the arbitrators did after a mature Investigation of the whole give an Award under their hands and Seals, that your Petitioner did know when the said Award was given, but that he did not after he had read the same, return thanks to the Deponent for the trouble he had taken but that Deponent had heard your Petitioner was perfectly satisfied with the tenor of the said award, that he did not recollect whether the Arbitrators did or did not among other things in their said Award mentioned, order as follows "The Proponent is "to Sign a receipt concerning the said Sum of Seventeen "thousand and Sixty Six Pagodas with a legal Indemnifica "tion and give opponent" And your Petitioner Sheweth that John Shamier on the part and behalf of the Complainant to the said second Interrogatory did depose that he was appointed an Arbitrator with Aratoon Jacob and Manook

Jacob

Jacob John between the Complainant and your Petitioner some time in about the Month of February one thousand Seven hundred and ninety one, that the nature of their dispute was regarding account of the Estate of Gregorio Miguel, and other Accounts betwixt the Complainant, and your Petitioner - that the Arbitrators met several times, he did not recollect how often upon the said business but that it took them about Seven Months to give their said Award - that Ouvet Seth the son of the Complainant and Philip Jacob did often attend the arbi= trators on the part of the Complainant at the desire of the Arbitrators and that your Petitioner did likewise attend the meetings of the Arbitrators when called upon to do so - that the Complainant and your Petitioner did lay before the Arbitrators their Cases, and that they the arbitrators did enter into a full investigation of the matter in dispute betwixt them the Complainant and your Petitioner, that the said Arbitrators did hear the Com= plaints of both parties, and that the Arbitrators did during their investigation of the said dispute give your Petitioner and the Complainant a full opportunity to bring and lay before the Arbitrators their respective Claims and Vouchers in support thereof that your Petitioner did lay before the said Arbitrators all his Claims Vouchers and Accounts against the Complainant and that they the

Arbitrators

Arbitrators did after a mature investigation of the whole give an Award under their hands and Seals that the Arbitra= tors did send their Award to your Petitioner and that he your Petitioner did afterwards return thanks to the Deponent for the trouble he had taken and secured satisfied with the said Award - that he did not at that time recollect whether the Arbitrators did or did not among other things in the said Award mentioned Order as follows "the proponent is to sign a receipt concerning the said Sum of Seventeen thousand and Sixty Six Pagodas with a Legal Indemnifica= tion and give to Opponent And your Petitioner Sheweth that Philip Jacob to the third Interrogatory did depose that he was fully acquainted with all the transactions of Seth Ouvet deceased, and of his Widow the present Complainant - that he became acquainted therewith by being in the Management of their Concerns - that there was an arbitration entered into, and an award made relative to the Accounts of the Complainant and your Petitioner that your Petitioner did receive a Key from the Complainant about five or Six days after the death of her husband Seth Ouvet of the office where the Books Papers and Accounts of Gregorio Miguel were kept, that your Petitioner was in posseſsion of the said Books Papers and Accounts at the time of the arbi= =tration between the Complainant and your Petitioner that he did not know of a Sum of Seventeen thousand and Sixty

Six

Six Pagodas or any other and what Sum which Seth Aviet and Saros Aviet received from the Estate of Gregorio Miguel as the property of Sherimans — that he did find by the Books and Accounts of the said Seth Aviet that the said Sherimans were considerably indebted to the Estate of the said Seth Aviet and that the Amount thereof was about three Lacks of Pagodas — that he did not know, nor had he ever heard that your Petitioner after the death of the said Seth Aviet ever demanded from the Complainant any Securities for the said Sum of Seven-teen Thousand Sixty Six Pagodas that your Petitioner did often declare that the Complainant would never have occasion to give any Securities for the said Sum because he had settled all the accounts of the Estate of Gregorio Miguel and that his Widow had given a full discharge — that the Complainant did always manifest a wish to bring your Petitioner to a friendly accomodation but that your Petitioner would not agree thereto — that your Petitioner did in many instances try to take an unfair advantage of the Complainant and to deceive her, and that your Petitioner did shew a litigious disposition towards the Complainant in the premises, and in several other matters And your Petitioner Sheweth that Miguel Johannes on the part and behalf of the Complainant to the fourth Interogatory did depose that he believed he did witness a certain Paper Writing in the Armenian Language under date the twenty Sixth day of November one thousand Seven

Seven hundred and ninety one purporting to be a letter by way of a Protest from Magdalena Ponthieus to your Petitio-ner and that he was one of the Subscribing Witnesses thereto, that he did not recollect whether the same was or was not Signed and Witnessed on the day of the date thereof

And your Petitioner sheweth unto this Honble Court that on the part and behalf of your Petitioner Sarquis Saloor to the second Interrogatory did depose that he was acquainted with Seth Aviet in the title of these Interrogatories named during his life time, that he was not acquainted with the said Seth Aviets management and transactions as Admi-nistrator of Gregorio Miguel deceased Jointly with your Petitioner — that the management of the said Estate was assumed by the said Seth Aviet and that he did keep the accounts thereof and arrange and dispose of the same as he thought proper but he did not know whether the same was or was not done without any interference or interruption on the part of your Petitioner that the said Seth Aviet did dispose of the property of the said Estate according to his own Judgment that he did not know whether the said Seth Aviet did or did not read or explain the accounts of the said Estate to your Petitioner when the same required the Signature of your Petitioner, or whether your Petitioner did or did not sign the same without any Explanation that your Petitioner was not old and inform

but

but that he was unacquainted with the mode of transacting business according to the Custom of Europeans, that the said Seth Aviet was very active in business in his life time that your Petitioner did keep one Key of the office wherein, the Chest that contained the Cash belonging to the Estate of the said Gregorio Miguel was deposited and that the said Seth Aviet Kept another Key thereof that he did not Know whether your Petitioner did or did not attend or was or was not always present at the opening of the said Cash Chest when Money was received or disbursed or dis=posited therein or issuing therefrom or whether the said Seth Aviet did or did not require the Key possessed by your Petitioner and of himself to make the deposits and disbursements, that the said Seth Aviet was not considered as the Sole acting Administrator in the affairs of the Estate of the said Gregorio Miguel deceased— And your Petitioner Shweth that Petrus te Johannes to the second Interrogatory did depose that he was acquainted with Seth Aviet deceased during his life time, that he was acquainted with the transactions and management of the said Seth Aviet as Administrators of Gregorio Miguel deceased Jointly with your Petitioner, that the management of the said Estate was assumed by the said Seth Aviet and that he did keep the accounts thereof and arrange and dispose of the same as he thought proper

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 when the said accounts of the said Estate required the Signature of your Petitioner the said Seth Aviet did not read or Explain the same but signed them without any Explanation that your Petitioner was old and infirm and thereby incapable of transacting business, and that he had been so for the space of nine years, that the said Seth Aviet was in his life time very active in business, that he did not Know whether your Petitioner did or did not Keep a Key of the Cash Chest wherein the Cash belong=ing to the Estate of the said Gregorio Miguel was depo=sited, or whether the said Seth Aviet did or did not Keep another Key thereof that he did not recollect whether when=ever Money was received or disbursed your Petitioner did or did not attend or was or was not present at the Opening of the said Cash Chest, and depositing Money or issuing therefrom, or whether the said Seth Aviet did or did not require the Key possessed by your Petitioner and of himself make the deposits and disbursements that the said Seth Aviet was considered and regarded as the Sole acting Administrator in the affairs of the said Gregorio Miguel deceased— and your Petitioner Shweth that John Maddox to the second Interrogatory did

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 Petitio:
=ner was very old and infirm and thereby being also unacquain
ted with the nature of carrying on business incapable of —
transacting the same that the said Seth Aviet was in his 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 Aviet Kept another Key thereof and that he believed the
said Seth Aviet was considered as the sole acting Admini:
=strator in the affairs of the Estate of the said Gregorio —
Miguel — And your Petitioner Sheweth that Dorries
Philipus Calendar to the fourth Interrogatory on the part
and behalf of your Petitioner did prove the translation of
the Exhibit to your Petitioners said Rejoinder annexed —

And your Petitioner Sheweth unto this Honble Court
that publication did thereon pass and the said Cause was
set down to be heard and the same coming on to be heard
by and before the said Mayors Court on the Eighteenth day
of March last past when the said Mayors Court was pleased
to Order and Decree, and did accordingly order and Decree
that the Complainants said Bill of Complaint should stand
dismissed with Costs, as by a Copy of the said Decree hereunto

annexed

annexed for the inspection of this Honble Court to which
your Petitioner begs leave to refer and prays the same
may be taken as part of this his Petition and appeal the
Original being ready to be produced when required
may appear —

And your Petitioner Sheweth unto this Honble
Court that on the twenty fifth day of the said Month of March
the Complainant did Exhibit and file a Petition in the said
Cause, therein and thereby amongst other things stating that she
humbly conceived her Bill should not have been dismissed
because your Petitioner himself had in the procedings aforesaid
declared himself willing to abide by perform and Keep the said
award and in pursuance thereof to pay unto the Complainant
her Claims which were adjudged by the said Arbitrators
provided the Complainant would perform and keep her
part of the said Award the Complainant therefore did
submit to the said Mayors Court that she ought to have
had a Decree to the Amount of the Sum sued for and that
the only point for consideration was whether such Decree
should be unqualified, or whether the said Mayors Court
should the Consider the meaning of the said Award to be,
that the giving the Securities was to be the Condition on which
the Money was to be paid to the Complainant And the
Complainant did thereon pray that the said Cause may be
reheard, and if it should be the Judgment of the said

Mayors

Mayors Court that the Complainant should give the said Securities previous to her receiving the Sum so sued for under and by Virtue of the said Award the Complainant said that she was ready and willing to give such Securities in such manner as might be ordered by the said Mayors Court

And your Petitioner Sheweth unto this Hon^ble Court that the rehearing prayed for by the Complainant as aforesaid being granted by the said Mayors Court the said Cause was thereupon set down to be reheard, and the same coming on to be reheard on the twenty ninth day of April last past the said Mayors Court was pleased to order and Decree, and did accordingly order and Decree that the Decree of the said Mayors Court of the Eighteenth March, be reversed that your Petitioner should pay unto the Complainant the full and just Sum of four thousand Seven hundred and Seventy one Pagodas thirty Eight fanams and forty Cash being the principal Sum sued for upon her Executing to your Petitioner the Indemnification with two Securities according to the award and further that the Complainant should pay all Costs of the Suit as by a Copy of the said Decree hereunto annexed for the inspection of this Hon^ble Court to which

your Petitioner begs leave to refer and prays the same may be taken as part of this his Petition of appeal the Original being ready to be produced at the hearing may appear

By which said last 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 your Petitioner did plead in Bar to the Complainants said Bill of Complaint to, which the Complainant did reply and did therefore admit the same to be good in Law and by refusing to comply with the terms of the Award unto her said Bill of Complaint annexed and upon which your Petitioners said Plea was grounded, she did also admit the truth thereof and the said Mayors Court in dismissing the Complainants said Bill of Complaint on the said Eighteenth day of March did hold your Petitioner said Plea to be good and therefore your Petitioner humble submits to this Honble Court that the Decree of the said Mayors Court of the said twenty ninth day of April is contrary to Law, and is a great grievance to your Petitioner

Secondly Because the said Decree of the said twenty ninth day of april is founded upon the Petition filed by the Complainant for a rehearing of the Decree of the said Eighteenth

day

day of March and which said Petition doth not shew any Error in the said Decree or any Evidence that the Court had omitted when the said Decree was granted; but taking advantage of her own wrong the Complainant prays she might be permitted to do what she ought to have done before she brought her said Suit against your Petitioner which your Petitioner shews is a confirmation that his said Plea is well founded, and that therefore the said Mayors Court ought to have confirmed their said Decree of the said Eighteenth day of March for that were a Defendants Plea is allowed the Complainants Bill is dismissed of course which is according to the Established practice of the said Mayors Court, and the said Decree of the said Mayors Court is a further proof that your Petitioners said Plea is well founded, in somuch as that the said Decree doth direct the Complainant to do that which by non performance on her part founds the grounds of your Petitioners said Plea—

Lastly Your Petitioner Sheweth unto this Honble Court that had he not been advised that his Plea was well founded and that the Complainants Bill of Complaint would be dismissed thereon, he would have set up a very different defence than he did, but relying upon his said Plea, he did not Enter so fully into the merits of the Award, as it appears by his said Plea he might have done, and have shewn that the Complainant was not entitled to the Sum for which she has brought her Suit against your Petitioner. that the arbitrators were mistaken both in law, and in fact, and that the said Award was therefore not binding And your Petitioner says that in and by his Answer he no where admits the Justness of the Complainants debt but says that he was always ready to perform his part of the said award so far as he was compellable to do, provided the Complainant would perform and Keep that part of the award binding upon her And your Petitioner further sheweth unto this Honble Court that taking the Award as good and binding it does not appear thereby, that your Petitioner is indebted unto the Complainant in the Sum sued for and which your Petitioner relying upon his said Plea did omit to state particularly—

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 of the said twenty ninth day of April may be reversed, and that the Decree of the said Eighteenth day of March may be affirmed, and that your Petitioner may have such other Relief in the premises as to this Honble Court shall seem meet

/ signed / James Stuart Thell
Appellants Solicitor

Mayors

Mayors Court at
Madraspatnam

Tuesday 18th day of March
Anno Domini 1794

Present

Wm Thickley Michell Esqr. Mayor
James Call Andrew Ross and
John Mitford Aldermen

Between Anna Seth Aviet of Madras
Inhabitant Administratrix of all and
Singular the Goods and Chattles rights and
Credits of Seth Aviet late of Madras Armeni
-an Merchant deceased Complainant and
Sarad Coja Maul of Madras Armenian
Merchant Defendant—

This Cause Coming on to be heard and determined 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 an Account
Current Annexed, The Defendants Plea and Answer, the Replication
with Copy of an Indemnification annexed, the Rejoinder with Copy of an
Exhibit Marked A annexed, the Interrogatories and depositions
on the part of the Complainant the Interrogatories and depositions
on the part of the Defendant with two Exhibits Marked A and B
annexed An Hearing the pleadings made use of by the Attornies, and
an due Consideration had thereon this Court doth think fit to Order
and Decree, and doth accordingly Order and Decree that the Complai-
-nants Bill do stand dismissed with Costs

A true Copy Pr. Cur. Signed George Taylor Regr.
Signed J. Stuart Thos
Asst. Secy.

Mayors Court

Mayors Court at
Madraspatnam

Tuesday the 29th day of April
Anno Domini 1794

Present

Wm Thickley Michell Esqr. Mayor
James Call William Webb
Jos: Dupre Porcher Andrew Ross
John Mitford Benjn. Roebuck
James Daly William Abbott &
Alexr. Cockburn Aldermen—

Between Anna Seth Aviett of
Madras Inhabitant Administratrix
of all and Singular the Goods and
Chattles Rights and Credits of Seth Aviet
late of Madras Armenian Merchant
deceased Complainant and Sarad
Coja Maul of Madras Armenian
Merchant Defendant

This Cause Coming on to be Reheard and debated
this day in the presence of the Attornies on both sides on
Reading the Complainants Bill with Copies of the Transla-
tion of an Award, annexed, The Defendants Plea and Answer,
The Replication with Copy of an Indemnification annexed,
The Rejoinder with Copy of an Exhibit marked A annexed,
The Interrogatories and depositions on the part of the Complainant

The

The Interrogatories and depositions on the part of the Defendant with Exhibits Marked **A** and **B** annexed the Petition for Rehearing 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 Decree of this Court of the 18th. Ultimo be Reversed, and that the Defendant do pay unto the Complainant the full and Just Sum of Four thousand Seven hundred and Seventy One Pagodas, thirty Eight Fanams and forty Cash being the principal Sum Sued for, upon her Executing to the Defendant the Indemnification with two Securities according to the Award and it is further Ordered and Decreed that the Complainant do have all the Costs of this Suit

Per Cur

Attest Sd/ P. E. Aykin Sec.y

Sd/ James Stuart Hall
Appellants Solicitor

To

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

In the Honble the
Court of Appeals

Between Anna Seth Aviet Administratrix of Seth Aviet Deceased Complainant And Sarad Coja Maul Defendant—

The Answer of the above named Complainant 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 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 Madrass patnam against the Appellant for the recovery of the Sum of four thousand seven hundred and Seventy one Pagodas thirty eight Fanams and forty Cash— And this Respondent admits that She did annex to her said Bill of Complaint Copies of the Translation of an Award and of an Account Current— And this Respondent also admits that She did in and by her said Bill of Complaint set forth that in the life time of the said Seth Aviet he and the Appellant had Several dealings and transactions; and that the said

Filed in my Office the 11th June 1794
Robert Clerk Clk

said Seth Aviet departed this life Intestate, and that at the time of his death the Appellant was indebted to him in a considerable Sum of Money; that after she had obtained from the said Mayors Court Letters of Administration to the Estate and Effects of Her said Husband she made out the Accounts of the Appellant from the Books of the said Seth Aviet and produced the same to the Appellant and demanded of him the balance thereof but that the Appellant refused to pay the same under pretence that he had several Claims on the Estate of the said Seth Aviet;- and this Respondent further admits that finding it impossible to bring the Appellant to any amicable settlement with her she did at the time mentioned in the Petition and Appeal file a Bill in the said Mayors Court against the Appellant, who, on the receipt of the Summons proposed to leave the Matter to Arbitration and to abide by their award, to which this Respondent consented, and Accordingly the Appellant and this Respondent did choose three several Persons in this Respondents said Bill particularly named as Arbitrators to Arbitrate and settle the said Accounts and for the due performance of whose Award this Respondent and the Appellant did enter into Penalty Bonds- This Respondent also admits to have set forth in her said Bill of Complaint that the said Arbitrators after a mature investigation of the whole did make their Award in writing and did thereby adjudge in manner and form as are stated in the Appellants Petition and Appeal- This Respondent also admits to have set forth in her said Bill of Complaint that she did fulfil and perform every part of the said Award as it was ordered therein, and therefore prayed that the Appellant might be decreed to pay unto her as Administratrix aforesaid the said Sum of four thousand four hundred and Seventy one Star Pagodas, thirty eight fanams and forty Cash with all such Interest as there was or should thereafter become due thereon also all Costs of Suit- this Respondent paying at the same time unto the Appellant the Sum of nine hundred and fifty one Pagodas seven fanams and three quarters the property of Catchick Emnias as was Adjudged by the said Arbitrators and receiving at the same time an Indemnification with two Creditable Securities from the Appellant as also a proper discharge for the said Sum of four hundred and sixty three Pagodas, Sixteen fanams and forty Cash for which she had given Credit in the Account to her said Bill annexed-

To which said Bill of Complaint this Respondent admits that the Appellant did file his Plea and Answer and for Plea did among other things set forth that this Respondent did refuse to abide by perform and

and Keep the Award aforesaid, and that the Appellant had always been, and was then ready and willing to abide by, perform and keep his part of the said Award as far as he was required so to do provided this Respondent would abide by, perform and keep her part of the said Award in manner and form as she was therein and thereby required to do and for as much as that she who would have Equity should do Equity the Appellant did state, and thereon insisted that this Respondent had no manner of right whereby to call the Appellant in question before the said Mayors Court for or by reason of the said Award; and the Appellant did plead such non performance of the said Award on the part of this Respondent in Bar to the said Bill and humbly prayed the Judgment of the said Mayors Court whether he should be compelled to make any further or other Answer thereto - and this Respondent also admits that the Appellant for Answer to the residue of this Respondents said Bill did admit that he had several dealings and transactions with Seth Ariet during his life time, and that he might in the course thereof have become indebted unto him this Respondents said Intestate in considerable Sums of Money - This Respondent also admits that the said Appellant did set forth several other matters and things which the Appellant hath stated in the Petition and Appeal -

To

To which said Answer this Respondent admits that she did by her said Attorney file her Replication; and the said Appellant filed his Rejoinder as are stated in the Petition and Appeal - that upon the above Proceedings Issue was joined and Witnesses Examined -

And this Respondent admits that the several Witnesses produced on the part and behalf of this Respondent and the Appellant respectively did depose the several matters and things which are stated in the Appellants Petition and Appeal - This Respondent also admits that publication did thereon pass, and the said Cause was set down to be heard, and that the same came on to be heard by and before the said Mayors Court on the eighteenth day of March last past, when the said Mayors Court thought proper to Order and Decree, and did accordingly Order and Decree that this Respondents said Bill of Complaint should stand dismissed with Costs -

This Respondent also admits that at the time mentioned in the Appellants Petition and Appeal this Respondent did file a Petition in the said Cause, and did therein and thereby amongst other things set forth the several matters and things which are

stated

stated in the Appellants Petition and Appeal- and she further Admits that the rehearing prayed for by this Respondent as aforesaid being granted by the said Mayors Court the said Cause was thereupon set down to be reheard, and the same came on to be reheard at the time mentioned in the Petition and Appeal before the said Mayors Court, who were pleased to order and Decree and did accordingly Order and Decree that the Decree of the said Mayors Court of the eighteenth March be reversed, and that the Appellant should pay unto this Respondent the full and just Sum of four thousand seven hundred and seventy one Pagodas, thirty eight fanams and forty Cash being the principal Sum sued for upon her Executing to the Appellant the Indemnification with two Securities according to the Award, and further that this Respondent should pay all Costs of the Suit-

From which said Decree of the said Mayors Court the said Appellant hath appealed to this Honble Court of Appeals under pretence that he is much aggrieved thereby for certain reasons set forth by the Appellant in his said Petition and Appeal, to which reasons this Respondent Answereth as follows-

To the first Reasons this Respondent for Answer saith that the Appellant having in the Pleadings admitted the justice of this Respondents Claim as awarded by the Arbitrators the only matter left to the consideration of the Mayors Court was whether this Respondent was bound by the tenor of the Award to execute any Indemnification with Sureties to the Appellant, wherefore the said Decree, as far as it went to adjudge the Appellant to pay the money was just and followed necessarily as well from the confession of the Appellant, as from the Award of the Arbitrators, but as far as the same requires this Respondent to sign the Indemnification with Two Securities, this Respondent submits that the said Decree may be erroneous, and if erroneous therein, She submits that it should be reversed as to that part, and, if so, of course in the final part thereof whereby this Respondent is adjudged to pay all Costs of Suit-

To the second Reason this Respondent for Answer saith that the same is in part answered by the reasoning adduced in the foregoing Answer to the first Reason or Cause of Appeal, and for further Answer this Respondent saith that under the conviction She had that She was not bound to give any Securities she prefsed for an unconditional Decree against the Appellant, whereupon the said Mayors Court from a consideration that this Respondent was not entitled to such unconditional Decree dismissed Her Bill of Complaint, not adverting at that time to the confession of the

the Debt by the Appellant as awarded by the Arbitrators, and which confession and Award being urged by this Respondent as Cause for rehearing induced the Mayors Court at such Rehearing to reverse their former Decree, and to give the said Conditional Decree in favor of this Respondent—

To the last Reason this Respondent for Answer saith that the Arbitrators having awarded that the Appellant was to pay this Respondent the Sum therein mentioned that fact is conclusive in this Respondents favor, and the Law will always enforce the performance of an Award unless strong circumstances of Fraud, improper inducements Grofs deceit are proved against the Arbitrators or to have been practised on them by the Witnesses adduced by either Party, no part of which has been even urged to apply to the present Case— And as to that part of the Appellants said last reason wherein he says that "in and "by his Answer he no where admits the justness of the Complainants "Debt" this Respondent saith that in the Answer of the Appellant are the following Words— "That he had always been and that "he now is ready and willing to abide by, perform and keep "this part of the said Award as far as required so to do, provi- "ded the Complainant would abide by, perform and keep her "part of the said Award in manner and form as she is "therein and thereby required to do" by which Award your Petitioner is entitled to the Sum of five thousand two hundred and twenty two Star Pagodas and three fanams and to the further Sum of thirteen Pagodas— and She is to pay to the Appellant the Sum of four hundred and sixty three Pagodas, six fanams and forty Cash, which Sum being deducted from the former, leave a balance in favor of your Petitioner to the Amount of four thousand Seven hundred and seventy one Pagodas, thirty eight fanams and forty Cash, being the very Sum for the recovery whereof your Petitioner has commenced his present Suit—

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 as far as the same goes to order the Appellant to pay to this Respondent the Sum Sued for may be Confirmed, and as the former part of that Sentence in the award whence the pretended right to an Indemnification with Two Securities is barely a recital of a former Award, and as the only part thereof which relates to the parties in this Cause is in the words following to wit— "furthermore the Proponent is to sign a Receipt concerning "the said Sum of 17,066 Pagodas with a Legal Indemnifi- "cation and give to Opponent" and as the same appears to require an Indemnification only without any Securities, and as your Petitioner duly executed and cause to be delivered

to

to the Appellant such Indemnification before she commenced her Present Suit as appears by this Respondents Replication and by the Copy of such Indemnification annexed thereto and acknowledged by the Appellant in his Rejoinder, this Respondent humbly hopes this Honble Court will Decree that the latter part of the said Decree of the Mayors Court which requires that this Respondent should execute to the Appellant an Indemnification with two Securities, and that this Respondent should pay all Costs of Suit be reversed, and that the Decree be absolute and unconditional for the Appellant to pay to this Respondent the Sum Sued for with Interest and Costs of Suit—

/Signed/ Robert Williams for Stephen Popham
Sol. Solicitor for Respondent

Court

Court of Appeals
at
Madraspatnam

Saturday the 5th day of July
Anno Domini 1794

Between Sarad Cojamaul of Madras Armenian Merchant Appellant and Anna Seth Aviet of Madras Inhabitant Administratrix of all and Singular the Goods Chattles rights and Credits of Seth Aviet late of Madras Armenian Merchant Deceased Respondent—

This Cause coming on this day to be heard and debated before this Court by the Attornies on both sides upon hearing the Petition of Appeal and Answer and the several Exhibits of the Honble the Mayors Court together with the Decree of the said Court given in this Cause on Tuesday the 29th day of April Anno Domini 1794 upon due Consideration had of the matters therein severally Cantained 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 Respondent do pay the Costs in this Court—

P.r Cur /Signed/ Robert Clerk Clk
To

To the Honble Sir Charles Oakeley Baronet

President in Council

Fort Saint George

In the Court of Appeals
at Madraspatnam

Between Samuel Johnson and Richard Parks Executors of the late John Douglas by their Attornies Josias DuPre Porcher Henry Readhead and Thomas Readhead Complainants and Vencentio Corbett and Hugh Boyd Defendants-

The humble Petition and Appeal of Hugh Boyd one of the above named Defendants-

Sheweth

That Alexander Davidson late a Senior Merchant in the service of the united Company of Merchants of England trading to the East Indies under their Presidency of Fort Saint George aforesaid deceased did in his life time, that is to say on or about the ninth day of February which was in the year of our Lord One thousand seven hundred and Ninety one as one of the Executors of the said John Douglas deceased by his Attornies Thomas Chase, Thomas Parry and Henry Lewis of Fort Saint George aforesaid Merchants Exhibit and file his Bill of Complaint in the Hon̄ble the Mayors Court at Madraspatnam against Vencentio Corbett and your Petitioner

Filed in my Office the 24th February 1794
Chs A. Wilde Clk

also of Fort Saint George Merchants thereby setting forth that the said John Douglas did depart this life same time in the year of our Lord One thousand seven hundred and Eighty three having first duly made and published his last Will and Testament and that he thereby nominated and appointed Charles Smith Richard Leatham, Benjamin Wentrop and the said Alexander Davidson Executors thereof that the said Charles Smith, Richard Leatham and Benjamin Wentrop not appearing to prove the said Will and take out Probate thereof he the said Alexander Davidson did duly prove the same in the said Hon̄ble Court in its Capacity of Kings Ordinary and on the ninth day of December which was in the year of our Lord One thousand seven hundred and Eighty three obtained probate thereof and took upon himself the sole burthen of an Executor thereof and that he the said Alexander Davidson being obliged to leave Fort Saint George aforesaid did nominate Constitute and appoint the said Vencentio Corbett and your Petitioner his Attornies Jointly to Act in the Management of the said Estate and further Charging that the said Vencentio Corbett and your Petitioner in Consequence of such the nomination and appointment of the said Alexander Davidson as aforesaid did enter upon the Management of the affairs of the said Estate of the said John Douglas deceased and did receive and pay sundry sums of Money on Account thereof and did do and perform

other

other acts therein as the Attornies of the said Alexander David
-son and further Charging that same time afterwards the said
Alexander Davidson did revoke the powers to the said
Vencentio Corbett and your Petitioner Charged to be granted as
aforesaid, and in their place and stead did nominate, constitute
and appoint the said Thomas Chase, Thomas Parry and Henry
Sewel his Attornies for the management of the affairs of the said
Estate of the said John Douglas deceased and charging that
he the said Alexander Davidson did by his attornies the said
Thomas Chase Thomas Parry and Henry Sewel demand from the
said Vencentio Corbett and your Petitioner the Property belong
-ing to the said Estate of John Douglas deceased and which had
come into the Custody and Posseßion of the said Vencentio
Corbett and your Petitioner as attornies aforesaid and to give
an Account of all Receipts and Disbursements and how and in
whatmanner the same had been made and applied and what
balance remained in their hands and further Charging that
the said Vencentio Corbett and your Petition did thereupon
deliver unto the said Alexander Davidson's said Attornies the
said Thomas Chase Thomas Parry and Henry Sewel an Account
Current with the said Estate of the said John Douglas deceased
a Copy whereof he the said Alexander Davidson did as he
alledged annex to his said Bill, and that in and by the said
Account Current there appeared a balance of Cash in the hands
of the said Vencentio Corbett and of your Petitioner Amounting to

the Sum of four thousand nine hundred and thirty three Pago-
-das forty two fanams and Eight Cash and that the same being
due with Interest thereon from the thirtieth day of October
one thousand Seven hundred and ninety the said Alexander
Davidson did charge the said Vencentio Corbett and your
Petitioner to stand indebted unto him as Executor in the full
and Just Sum of five thousand and Eighty one Pagodas forty
two fanams and fifty three Cash as appeared by the Copy of
the said Account Current to his said Bill of Complaint annexed
and by him referred to, and your Petitioner sheweth unto
this Honble Court that the said Alexander Davidson did
in and by his said Bill further setforth that he had
frequently and in a Friendly manner applied to the said
Vencentio Corbett and to your Petitioner to pay unto him
the said Sum of Five thousand and Eighty one Pagodas
forty two fanams and fifty three Cash and further and other-
-wise to account with him for all and every such other Sum
or Sums of Money as they might have in their / the said Vencen
-tio Corbett's and your Petitioners / Power, Custody or posseßion
and which might have so come to their Power custody or
posseßion as the Attornies of him the said Alexander Davidson
and also that the said Vencentio Corbett and your Petitioner
should deliver unto him all Bonds, Bills, notes, Books and
Papers of every discription and denomination as the said Vencentio
Corbett and your Petitioner might at any time have become

posseßed

possessed of as attornies aforesaid and your Petitioner further sheweth unto this Honble Court that he did appear to the Complainants said Bill of Complaint and on or about the fifth day of April which was in the said year of Our Lord one thousand Seven hundred and Ninety one did file his seperate answer thereto and did therein admit the said Complainant was named an Executor of the last Will and Testament of the said Deceased and did also admit that the said Complainant on leaving Madras did appoint the said Vencentio Corbett and your Petitioner his Joint attornies and did also therein practicarly state that the said Vencentio Corbett had in fact the whole Management of the Concerns of the said Estate

And your Petitioner sheweth that he did in and by his said answer deny to be indebted in the Sum sued for, and did therein state that he had paid at different times for the maintenance and Education of a Child of the deceased and other small articles the sum of three hundred and Sixty five Pagodas as by the account annexed to your Petitioners said Answer will more fully appear, and which with the Interest thereon did amount to the sum of three hundred and Seventy Six Pagodas forty four fanams and Sixty Cash which your Petitioner did hope would have been deducted from the demand of the said Complainant as aforesaid and did also in his said Answer state that all Books notes Bills and Papers had been delivered to the Complainants said Attornies the said Thomas Chase Thomas Parry and Henry Lewel and that he did not withhold the said Books notes Bills and Papers but that If any should thereafter come to the knowledge of your Petitioner the same should be delivered over to the Complainant or the Attornies of the said Complainant or such Person or Persons as might be duly authorized to receive the same and your Petitioner further sheweth that the said Alexander Davidson by his said Attornies did on or about the Tenth day of May in the said year of our Lord One thousand Seven hundred and Ninety one file his Replication to your Petitioners said Answer generally tending to support the Charges of his said Bill of Complaint to which your Petitioner did on or about the seventh day of June then following file his general Rejoinder and your Petitioner further sheweth unto this Honble Court that upon these Proceedings Issue did Join thereon as by the said several Proceedings now of record in the said Honble the Mayors Court reference being thereunto had may more fully and at large appear and your Petitioner sheweth unto this Honble Court that afterwards to wit on or about the fourth day of September in the year of Our Lord One thousand Seven hundred and ninety two the said Samuel Johnson and Richard Parks did as the Executors of the last Will of the said John Douglas deceased by their Attornies the said

Josias

Josias DuPre Porcher Henry Readhead and Thomas Readhead Exhibit and file their Bill of Complaint against the said Vencentio Corbett and your Petitioner stating the several matters and things herein before setforth and that they the said Samuel Johnson Richard Parks the other Executors named in the last Will and Testament of the said John Douglas deceased by reason of their being in England as they allidged at the time of the decease of the said John Douglas and thereby then unable to come in and appear with the said Alexander Davidson and take out Probate thereof did not act in conjunction with the said Alexander Davidson Deceased or take upon themselves the burthen and Execution of the will of the said John Douglas Deceased and that upon Proving of the said Will of the said John Douglas deceased by the said Alexander Davidson aforesaid he the said Alexander Davidson did procure the said Will to be sent to the Complainants who did thereupon duly Exhibit the same in the Prerogative Court of Canterbury and on or about the Twenty first day of March which was in the year of our Lord one thousand Seven hundred and ninety two obtained an Exemplification thereof under the Seal of the said Court and further Charging that thereby and by reason thereof the Administration of all and Singular the Goods and Chattles of the said John Douglas deceased being Committed unto them they were by reason thereof will and truely entitled to administer the same, and that by reason of the death of the said Alexander Davidson the late acting Executor of their said Testator the said Suit had become abated as aforesaid and your Petitioner Sheweth that the said Complainants did by their said Bill of Revivor therefore pray that the said Suit and all Proceedings thereon might be revived against the said Vencentio Corbett and your Petitioner and that the same might be put in the like state and Condition as the same were in at the time they so became abated and that the said Vencentio Corbett and your Petitioner might answer the Premises- and your Petitioner sheweth unto this Honble Court that he accordingly by his attorney at Law appeared to the said Bill of Revivor and no Witnesses having been examined on behalf of the said Complainant or of your Petitioner the said Cause came on to be heard on Tuesday the Eleventh day of the present month of February by and before the said Honble the Mayors Court when the said Mayors Court were pleased to order and Decree that your Petitioner should Pay unto the Complainant the full and Just Sum of Five Thousand and Eighty one Pagodas forty two fanams and fifty three

Cash

Cash together with Interest at the rate of Twelve per Cent per Annum and all Costs of the said Suit By which said order and Decree of the said Mayors Court your Petitioner considers himself much aggrieved and does therefore appeal therefrom for the following among other reasons.

First ---- Because the said Mayors Court have ordered and Decreed that your Petitioner do pay unto the Complainant the full and Just sum of Five Thousand and Eighty one Pagodas forty two fanams and fifty three Cash together with all Interest at the rate of twelve per Cent per Annum and all Costs of the said Suit whereas your Petitioner doth humbly Conceive that the said Decree should have been equally against the said Vincentio Corbett as against your Petitioner for the due performance of the Prayer of the Complainants said Bill of Complaint or so much thereof as the said Mayors Court were pleased to order and Decree the more especially as your Petitioner hath in and by his said Answer stated that the said Vincentio Corbett and your Petitioner were jointly constituted as the attornies of the said Complainant and the Genral arrangement of the affairs was under the management and Controul of the said Vincentio Corbett who hath not given any answer to the Bill of Complaint of the said Complainant.

Secondly Because your Petitioner hath in his said Answer and the Account Current thereunto annexed stated that he had paid at different times for the maintenance and Education of a Child of the said Deceased and for other small articles the Sum of three hundred and Sixty four Pagodas which together with the Interest thereon made a Sum of three Hundred and Seventy six Pagodas forty four fanams and Sixty Cash which your Petitioner Considers ought in Justice to have been allowed him as a Sett off against the Balance claimed by the said Complainant as due to him by the said Vincentio Corbett and your Petitioner -

For all which reasons and such others as may be offered at the hearing your Petitioner humbly Prays -- this Honble Court will be pleased to Reverse the said Order of the said Mayors Court and Grant your Petitioner such relief in the Premises as in their wisdom may seem meet -

/Signed/ Robert Williams
for Stephen Popham & Self
Sols. for Appellant -

Mayors Court

Mayors Court at
Madraspatnam }

Tuesday the 15th. day of February
Anno Domini 1794

Present

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

Between Samuel Johnson of Upper Harley Street Cavendish Square in the County of Middlesex Esqr. and Richard Parks of Leadenhall Street in the City of London Merchant the only Acting Executors of the Last Will and Testament of John Douglas Deceased late of Fort St. George Deceased by their Attornies Josias Dupre Porcher Henry Readhead and Thomas Readhead of Fort Saint George Merchants and Copartners Complainants and Vencentio Corbett and Hugh Boyd also of Fort St. George Merchants Defendants—

This Cause Coming on to be Heard and debated this day in the Presence of the Attornies on both sides on Reading the Complainants Bill with Copies of two Accounts Current annexed, The Seperate Answer of the Defendant Hugh Boyd, The Replication, The Bill of Reviver 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 that Accordingly Order and Decree that the Defendant Hugh Boyd do pay unto the Complainants the full and Just Sum of Five thousand and Eighty one Pagodas forty two fanams and fifty three Cash / Pagodas 5081. 4. 2. 53 / together with all such Interest as now is or shall hereafter become due thereon at the rate of twelve P Cent P Annum untill full Payment is made also all Costs of this Suit—

/Signed/ George Taylor
Regr.

Mayors Court

Court

Court of Appeals
at
Madraspatnam } To

Saturday the 8th. day of July
Anno Dominí 1794

Between Hugh Boyd of Fort St. George Mer-
chant appellant and Samuel Johnson of Upper Harley
Street Cavendish Square in the County of Middlesex
Esqr. and Richard Parks of Leadenhall Street in the
City of London Merchant the only acting Executors of
the last will and Testament of John Douglas late of
Fort St. George Deceased by their Attornies Josias Dupre
Porcher Henry Readhead and Thomas Readhead of
Fort St. George Merchants Respondents—

This Cause coming on this day to be heard and debated before
this Court by the Attornies on both sides Upon hearing the Petition of Appeal
and 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
February Anno Domini 1794 Upon due Consideration had of
the matters therein severally Contained and of the Pleadings Argu-
ments used by the Attornies on both sides This Court doth think fit
to Order and Decree and doth accordingly Order and Decree that the
said Decree of the Honble the Mayors Court do stand affirmed except
in the Charge of Interest at 12 ℘ Cent ℘ annum which This Court
doth think fit to Order and Decree shall be at and after the rate
of 8 ℘ Cent ℘ Annum and that the Appellants Petition be hence
dismissed with Costs

℘ Curr / Signed / Robert Clerk

Saturday

Saturday the 15th. day of November 1794—

Present,

The Right Honble Lord Hobart,
Edward Saunders & E. W. Fallofield.—

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

In the Honble the
Court of Appeals—

Between Charles Joseph Douglas
of Madras Merchant Complainant and
Munnaroo of Madras Dubash Defendant.

The Humble Petition and Appeal of the above named Defendant
Sheweth

That on the Fourteenth day of December One Thousand
Seven hundred and Eighty nine the Complainant above named did
exhibit and File his Bill of Complaint in the Mayors Court of Madras-
patnam against your Petitioner for the Recovery of the Sum of One
thousand three hundred and Fourty one Pagodas and thirty nine Fanams
Current Money of Madras pretending that the same would more fully
Appear by the Copy of an Account Current to his said Bill of Complaint
Annexed and did pray that your Petitioner might be decreed to pay the

Said

Filed in my Office
the 10th day 1792
Jas N. White
Clk

said Sum of one thousand Three hundred and Fourty One Pagodas and
Thirty nine Fanams with all interest due and to become due thereon and
your Petitioner sheweth unto this Honble Court that upon the Complainant
Said Bill of Complaint a Summons did Issue requiring your Petitioner
to Appear thereto And your Petitioner Sheweth unto this Honble Court that
he did thereupon Appear to and answer the Complainants said Bill of
Complaint And for Answer your Petitioner did say that he did not
Stand Indebted unto the Complainant in the sum of One thousand three
hundred and Forty one Pagodas and thirty nine Fanams as unjustly
Charged in his said Bill of Complaint and the Account Current thereunto
annexed but did admit that he did stand indebted to the Complainant in
the Sum of six hundred and Eighty Pagodas thirty two Fanams and Seventy
three Cash as your Petitioner did say would morefully Appear by the Copy of
an account Current to his said answer annexed for the inspection of the said
Mayors Court and in Order to illucidate the same to the Satisfaction of
the said Mayors Court your Petitioner did beg leave to state that having
Sometime in the year of Christ one thousand seven hundred and Eighty
nine received from the Complainant the Several Articles charged to him
in the Account Current annexed to his said Bill of Complaint to be
disposed of for his benefit and advantage with a Promise as a recompense
for your Petitioners trouble therein that he should be allowed to receive the
Customary Commission of Five per Cent thereon that having accordingly

Sold

Sold and disposed of the same to the Amount stated in the Complainants
Account Current he Conceived himself Fully Entitled thereto and which did
Amount to the sum of one hundred and ninety Pagodas which added to
the Two Sums thereafter Severally following one of one hundred and twenty
Eight Pagodas Twenty four Fanams and Seventy Six Cash due by the
Complainant to your Petitioner on account of Interest for one year and twenty
Five days on Pagodas one thousand three hundred ninety one and twenty
Seven Fanams being the Amount of Piece Goods sold by your Petitioner to
the Complainant and the Sum of one hundred and seventy one Pagodas
twenty three Fanams and Twenty Five Cash the discount allowed Mr. John
Rall at the desire of the Complainant for prompt Payment of the Sum of
Two thousand Eight hundred and Fifty nine Pagodas and twenty three
Fanams the Amount of Goods to him sold at Six months Credit and deducted
from the said sum of three thousand Eight hundred and Seventeen Pagodas
and Four Fanams would leave the said Ballance of Six hundred and Eighty
Pagodas thirty two Fanams and Seventy three Cash which your Petitioner
did say he was then and had been at all times ready and willing to
Account for with the Complainant and therefore tendered the same to this
Honble Court and your Petitioner did say that the Complainant had no
manner of Occasion to call his name in question in the said Mayors
Court as your Petitioner was averse to Litigation and would have been
Ever ready to have adopted any mode of accomodations that might have

been

been pointed out by the Complainant but the Complainant instead of pointing out such mode of Accomodation had not ever mentioned to your Petitioner that he required a settlement of Account nor was your Petitioner Acquainted with the intentions of the Complainant to bring the present Action until he was required by Summons to Appear before the said Mayors Court to Answer the Complainants said Bill of Complaint and your Petitioner sheweth unto this Honble Court that to Such the Answer of your Petitioner the Complainant did Exhibit and file his Replication in the Said mayors Court and did therein and thereby Say that he did aver and would prove to the Satisfaction of the said Mayors Court that your Petitioner was Justly and truly indebted to him the Compl.t in the Sum of One thousand three hundred and Forty one Pagodas and thirty nine Fanams as Stated in his Bill of Complaint and in order to prove that the said Sum was really due to him and that the deductions Claimed by your Petitioner were not due to him nor ought to be allowed that they consisted of Three Articles to wit Custom or Commission for Selling the Goods at Five per Cent Amounting to One hundred and ninety Pagodas the charge of Interest to one hundred and Seventy eight Pagodas Twenty four Fanams and Seventy Six Cash and another Charge of Interest of One hundred and Seventy one Pagodas Twenty three fanams and Seventy five Cash and the Compl.t did say that with regard to the First deduction he never did agree to allow it nor did he employ your Petitioner in the disposal of the Goods but that your Petitioner had come himself to request he might Sell them and did in Fact Sell them without his the Compl.t Knowledge or Consent and at a price less than what the Compl.t would himself have got for them which he did say your Petitioner did well Know and that he long refused to deliver the Goods According to the bargain your Petitioner had made and was at length alone prevailed on to Consent to it by the earnest and repeated Intreaties of your Petitioner who represented to the Compl.t that that as he had made the Bargain it would be his ruin and disgrace if he did not perform it at the same time Solemnly Promising the Complainant that whatever loss there might be he the Complainant would make it fully up to him in Some other way to that the Complainant did say he could not under Such Circumstances in any manner conceive that your Petitioner was Intitled to his five per Cent and he was advised that even if the Circumstances had not been so the said Mayors Court had not hitherto by any Solemn desision determined that a Dubash was Intitled to Custom and no doubt they would be very Cautious in giving such a desicision which would Immediately impose a very heavy Tax upon every Article that might in Future be sold and brought in the Settlement and the Complainant did say that in regard to the Interest he could fully prove that no Interest was to be Charged on the Goods but they were to be paid for upon the Complainants return from China which was done accordingly

And

and therefore the Sum of One hundred and Seventy eight Pagodas Twenty four Fanams and seventy Six cash was also a mistaken charge and without any Foundation - and in Regard to the third charge of a Discount of five Per cent for prompt Payment from Mr. Hall the Complainants did say that no Such thing was ever mentioned to him at the Time he Consented to let the wine be delivered in the manner above mentioned nor should he ever have agreed to Sell the wine on such Terms had they been proposed as he was offered much better and therefore that Charge the Complainant did says did also Fall to the Ground that there was in the Different Items of the account a Charge of One hundred Pagodas said to have been paid by your Petitioner to the Complainant in a Bank Note the complainant did not in any manner recollect any such payment nor did it appear in his Books and therefore he did by no means admit it That Such was a fair statement of all matters between the Complainant And your Petitioner and as the Complainant pretended your Petitioner Acknowledged the Different Items of the Account and had only set up Groundless Charges in deduction of it which the Complainant did say had no Foundation nor ought to be charged against him the Complainant the Complainant hoped the said Mayors Court would be pleased to decree him the Sum prayed for in his Bill of Complaint with Costs of Suit and your Petitioner sheweth unto this Honble Court that he did rejoin Replication to the Complainants said Petitions and did in and by his said rejoinder shew that he denied to stand indebted unto the Complainant in the Sum of One thousand three hundred and Forty one Pagodas and thirty nine Fanams but admited as in and by his answer to the Complainants Bill he had already admitted to stand Indebted to the Complainant in the Sum of Six hundred and Eighty Five Pagodas Thirty two fanams and Seventy three cash the Ballance of the Account current to his Defendants said answer annexed and your Petitioner for Further Rejoinder did say that the Complainant in asserting he never did agree to employ your Petitioner in the disposal of the Goods setforth in the Account Current to his said Bill annexed and that your Petitioner had Sold them without his the Complainants Knowledge had so asserted contrary to the Fact and your Petitioner did says the same would Fully appear by the written Testimony of the Complainant for your Petitioner did say that when about to dispose of a part of the said Goods to John Hall of Fort Saint George merchant for the purchaser thereof he the said John Hall did make some difficulty did urge some doubts relative thereto and in consequence thereof the Complainant did give to your Petr. a certain paper writing in the words and Figures Following to wit -

" I Promise to deliver to the order of Munnaroo Moodiliar on Demand Eighty
" Five and one half pipes of Cape wine and Nineteen Hogshead of Claret
" sold by him for our Joint concern at Madras sixth August One thousand
" Seven hundred and Eighty nine / Signed / C. J. Douglas" the Original

whereof

whereof your Petitioner did say was or ought to be in the Posesion of the said John Hall to whom it was delivered by your Petitioner who did says that the Complai=nant never did refuse to deliver the said Goods as was Falsly asserted in and by his said Replication and so your Petitioner did say the same would appear by the said paper writing of the Complainant before= mentioned and also by letters from the Complainant to your Petitioner whereof Copies N.o 1 and 2 were to your Petitioner said Rejaunder annexed for the Inspection of the said Mayors Court and the Originals being in your Petitioner posesion and ready to be produced when required for your Petitioner did say it appeared by the said letters or one of them that the said Goods were not purchased until the Fourth day of August and the said paper writing was dated on the sixth day of the same month and your Petitioner did say it Further appeared by the said letters or One of them that the purchase of the said Goods by the Complainant= depended upon the Funds of your Petitioner that the Goods alluded to in and by one of the said letters consisted of Various Articles contained in a Schedule thereof by the Complainant given to your Petitioner Copy whereof wants to his said Rejainder annexed for the Inspection of the said Mayors Court the Original being in your Petitioners posesion and ready to be produced when required and your Petitioner did say that he did get the same ready: and that they were ready on the return from China of Captain Cambro in the said letters named from whom the

Goods

Goods in the Account Current to the Complainant said Bill setforth were= purchased and who as aserted in and by the Complainant said letters or One of them had Consented to Receive the said Articles in the said schedule setforth in payment there of but who did afterwards refuse so to do and your Petitioner denys ever to have made use of the Intreaties or Representation in the Complainant said Replication setforth or any Entreaties or Repre=sentations whatever relative to the Bargain by him made as aforesaid and so your Petitioner did say the same would fully appear from the several matters and before setforth and your Petitioner did say that he did not act as Dubash but as agent and Broker to the Complainant in the Premisses and that thereby and in account thereof he your Petitioner was Justly and Truly Intitled to the Commission of five Per Cent as in his said answer and the Account Current thereunto annexed was Expresed and Setforth and your Petitioner did say that had he acted in the Capecity of a Debash to the Complainant but which he denied he ever did and to the same would appear by the said paper writing and the said letter of the Complainant that ever then as the Labourer was worthy of his hire he would have been Intitled to Commission as a quantum meruit and might also have setforth the Custom and usage of the place in support thereof And your Petitioner for Rejoinder did Say he denied that Interest was to be Charged on the Complainants return from China and not before as by the Complainant in his said Replication

was

was untruly asserted but that the same was to take place upon the
delivering of the Goods as in your Petitioner said Answer and
the Account Current thereunto Annexed was Expressed and Setforth
and which your Petitioner did say was according to the usage and
Custom of Merchants in like Cases and your Petitioner for Further
Rejoinder did say that he had already Shewn the Complainant
had Consented to the Sale as aforesaid to the said John Hall and
that notwithstanding the Assertion to the Contrary in the
Complainant said Replication Contained that he the Complai-
nant did also agree to or rather that he did absolutely direct the
deduction as in your Petitioners said Answer and the Account Current
thereunto annexed was Expressed and Setforth agreable to the
Established Custom of Merchants and was Just and reasonable
according to the nature of the thing and Further that as in Bills of
Exchange drawn at a long sight so it was with Goods sold upon
Credit for a Certain time the Acceptor of the One as the Purchaser of
the other had a right to discount and draw back for prompt
Payment and your Petitioner for Further Rejoinder did say
that he did pay to the Repliant one hundred Pagodas by a Bank
Note as in your Petitioner said answer and the Account Current
thereunto annexed was expressed and setforth notwithstanding the
Protest in the Complainant said Replication Contained of want of

recollection

recollection thereof or that the same did not appear in his Books and
your Petitioner Sheweth unto this Honble Court that thereupon
Issue did Join and rules did pass for the Examination of witnesses
and that witnesses were Examined on both sides and that Publi-
cation did pass and your Petitioner Sheweth unto this Honble Court
that the Complainant did examine Two witnesses whose depositions
Are neither pertinent or relevent to the matter in question and
your Petitioner Sheweth unto this Honble Court that he did Examine
One witness who deposes that the Complainant did solicit your
Petitioner to undertake the disposal of Certain Goods for him and
did offer him your Petitioner half the profits that might arise
thereform and further that your Petitioner did supply the Complai-
nant with quantity Piece Goods to the Amount of One thousand
three hundred Pagodas and upwards upon Credit And your Petitioner
Sheweth unto this Honble Court that the said Cause did come
on to be heard before the said Mayors Court On the Twenty
Seventh day of April new last past when the said mayors Court
were pleased to order and Decree and did Accordingly order and
decree that your Petitioner should pay unto the Complainant
the sum of One thousand three hundred and forty one Pagodas
and thirty nine fanams together with all Costs of Suit as by
the said Decree of the said Mayors Court whereof a Copy is hereunto

annexed

annexed for the Inspection of this Honble Court to which your Petr begs leave to refer and prays the same may be taken as part of this his Petition and appeal by which said order and Decree of the said Mayors Court your Petitioner does Conceive himself much aggrieved and doth therefore Appeal therefrom to this Honble Court for the Following amongst other Reasons—

First..... Because the said Mayors Court have Decreed as aforesaid contrary to Evidence for your Petitioner is advised that unless in Particular Cases and under particular Circumstances it is the Course of his Majesty's high Court of Chancery that if the Charges in a Bill of Complaint are denied by the Answer of the Defendant being upon Oath Two Witnesses are required to Controvert the said Answer and Establish the Charges in the Complainants said Bill or that otherwise the Court will not give a decree thereon And thereupon your Petitioner Sheweth unto this Honble Court that your Petitioner did in and by his said Answer upon Oath deny the Charges in the Complainant said Bill of Complaint Contained And the Account Current thereunto annexed and did shew how and in what manner the same was Erroneous and unjust and as the Complainant did not Examine any witnesses in Opposition thereto the Only Evidence before the said Mayors Court was the Answer of your Petitioner and therefore the said Mayors Court in decreeing as aforesaid have so Decreed Contrary to Evidence—

Secondly..... Because although the said Answer of your Petitioner was Sufficient without any proof in Support thereof yet your Petitioner Sheweth unto this Honble Court that he did produce one witness who deposes to the 2d Exist Ground Item in your Petitioner said Answer contained and Shews this Connection between your Petitioner and the Complainant and your Petitioner Submits that such Transaction is ascertained by the letters of the Complainant addressed to your Petr and to his your Petitioner said Rejoinder annexed and which Letters throw a Considerable light on and aid the Several matters and things in your Petitioner said Answer Contained and therefore and for other Reasons deducible from the Readings your Petitioner Submits that the said Mayors Court ought not to have decreed as aforesaid—

For all which Reasons and such other as may be offered at the Hearing your Petitioner prays that this Honble Court will be pleased to reverse the said Decree of the said Mayors Court and Grant unto your Petitioner such Further and other relief in the Premises as to the Wisdom of this Honble Court shall seem most meet—

/Signed/ James Stuart Hall for himself &c.
John Hamilton
Solr for Respdt

Mayors

Mayors Court at Madraspatnam } Friday the 27th day of April Anno Domini 1792.

L.S.

Mayors Court

Present

Andrew Ross Esqr. Mayor —

James Daly and William Abbott

Aldermen

Between Charles Joseph Douglas of Madras Merchant Complainant and Munnaroo Moodelly of the same place Dubash 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 with Copy of an account Current annexed The Replication The Rejoinder with Copies of three Exhibits No. 1. 2 & 3. annexed The Interrogatories and Depositions on the part of the Complainant. The Interrogatories and Deposition on the part of the Defendant On Hearing the Pleadings made use of by the attornies and on due consideration had thereon This Court doth think fit to order and Decree and doth accordingly order and Decree that the Defendant do pay unto the Complainant the full and Just Sum of One Thousand

Thousand three hundred and Forty one Star Pagodas and thirty Nine fanams /Star Pagodas 1341-39/ together with Interest thereon from the first day of September One thousand Seven hundred and Eighty Nine untill full Payment is made also all Costs of this Suit

Test /Signed/ George Taylor Regr.

A true Copy /Signed/ J. Stuart Hall for himself &c. } Sols. for Pltf.
J. Hamilton

In

In the Honble the Court of Appeals at Madraspatnam

The answer of Charles Joseph Douglas Respondent to the Petition and appeal of Munnarvo Moodelly of Madras Dubash Appellant

This Respondent admits that he did file such Bill of Complaint in the Honble the Mayors Court against the Petitioner and at or about the time as in the said Petition is stated and that to such Bill the Petitioner did put in his Answer in the said Court in manner and to the Effect as in the said Petition is likewise setforth and that to such Answer this Respondent did reply in manner as is also in the said Petition represented And that to such Replication the said Petitioner did rejoin to the Effect stated in his said Petition But this Respondent utterly denies the truth of the Petitioners said several Pleadings and particularly certain matters stated in the said Petitioners said Rejoinder for this Respondent says that the said Petitioner did actually on the Seventh day of August One thousand Seven hundred and Eighty Nine sell to John Hall Eighty five and an half Pipes of Cape Wine on a Credit of Six months at Thirty one Pagodas per Pipe without the Knowledge or consent of this Respondent which will be evident to this Honble Court from the circumstance of this Respondents having sold Jacob Simon prior thereto a pipe of the same Wine for thirty two or thirty three Pagodas as appears from

Filed in my Office the 28th June 1792
Chas N. Whitby Clk

from the Depositions of the said Jacob Simon who deposes that he did apply to this Respondent to purchase two or three pipes more of the same Wine at a similar price therefore this Respondent saith that it cannot be credited that this Respondent would consent to sell such a Quantity of Wine as Eighty five Pipes and an half to John Hall not only at a loss of Two Pagodas in the Pipe but also a deduction of Interest for six months on the sum of Two thousand Eight hundred and fifty Nine Pagodas and Twenty three Fanams to receive the same in ready Cash from the said John Hall as charged in the Petitioners Account Current to the debit of this Respondent This Respondent does therefore say that the Petitioner sold the said Eighty five and an half Pipes of Wine to the said John Hall without his knowledge and that the written Testimony pretended to be setforth in the Petitioners Rejoinder filed in the Cause is a fabrication of the Petitioners and what was never written by this Respondent and this Respondent saith that if he had given such a Writing as the Petitioner has setforth in his said Rejoinder to wit a promise to deliver to the order of Munnarvo Mordaliar on demand the said Eighty five and an half Pipes of Cape Wine such order must of Course have been returned to this Respondent endorsed with the order of the said Munnarvo Moodiliar as the voucher to this Respondent for the delivery of such wine and therefore such order

ought

ought not to be in posfession of the said John Hall to whom the Petitioner says he delivered it And this Respondent saith that the fraudulent intention of the Petitioner as relates to the foregoing transaction will more fully Appear from the following circumstance to wit That the moment the Petitioner received from the said John Hall payment of the said Eighty five and an half Pipes of wine he absconded from madras and went to reside at Pondicherry nor ever after communicated with this Respon= =dent till the time of bringing this present suit against him But this Respondent saith that even supposing for a moment but utterly denying the fact to be so that this Respondent consented to the said sale and delivery of the Wines to the said John Hall at the price and on the Terms aforesaid yet as this Respondent did not receive the Amount Sales but as the same was kept by the Petitioner who Absconds thereupon to Pondicherry as aforesaid and of course had all the benefit of posfessing such ready money surely this Discount is at his own best and to be by him solely sustained. And this Respondent sheweth that in the Account Current annexed to the Petitioners Answer filed in the Cause this Respondent is not only debetted with the Amount of such discount being Pagodas One hundred and Seventy one Pagodas Twenty three fanams and Seventy five Cash but also with a Commis= of Five per Cent for his trouble in selling the said Wines to the said John Hall being a like Commission as charged by the Petitioner on the

the other sales by him made on Account of this Respondent as on reference to the said Account and to which this Respondent craves to refer will fully appear. This Respondent further Answering saith that he never did agree to pay the Petitioner Interest on the Amount of piece Goods by him sold to this Respondent and as debetted in the Petitioners said Account Current Amounting to a Sum of One hundred and Seventy Eight Pagodas twenty four fanams and Seventy six Cash on the Contrary this Respondent saith that it was the agreement between the Petitioner and this Respon= dent that such piece goods were not to be paid for untill this Respondent should Return from a Voyage he was then about to under take and did perform to China. And this Respondent further Answering saith that he never did receive from the said Petitioner the Bank Note of One hundred Pagodas by him debitted to this Respondent in his said Account Current annexed to his said Answer. For this Respondent saith he hath kept a true and faith full Account his money concerns and transactions with the Said Petitioner and which Account is annexed to this Respon= =dents Bill of Complaint filed in the Cause And this Respondent saith that if the Petitioner had paid to this Respondent such a Sum of Money it was his duty to have demanded a receipt or Voucher for such payment for if a Debtor were allowed to advance

an

an unsupported claim of a payment made to his Creditor by an
Open Account Current such as the Petitioners such defences would
be daily set up in bar of a fair Creditors just demands and to
the distruction of all credit and therefore this Respondent saith
the Honble the Mayors Court on the trial of this Cause did object
to the Petitioners said pretended claim of one hundred Pagodas and
this Respondent saith that upon such the Pleadings had in the
Honble the Mayors Court in this Cause Issue was Joined and
witnesses Examined on both sides to wit Two witnesses on the part
of this Respondent and one witness on the part of the Petitioner
And this Respondent saith that he did Examine John Hunter
to the Custom of Dubashes employed in Madras to sell goods for
a Merchant And the said John Hunter deposed that he was well
acquainted with mercantile Transactions and Dealings between
merchants and others at madras and that if a Dubash was Employed
to sell Goods for a Merchant his profit was usually an allowance
of two fanams for every Pagoda for so doing and that such allowance
is paid by the Person who buys the same goods and the Deponent
further said that in his Opinion such allowance is an Established
Custom of the Country and not considered as gratuitous hence then
this Respondent humbly submits to the Judgment of this Honble
Court that the Commission of one hundred and Ninety Pagodas

Thirty five fanams and fifty six Cash Charged to the debit of this Respondent
in the said Petitioners account Current annexed to his said Answer does
fall to the Ground as being illegal and unwarrented by the Custom of
Madras And this Respondent doth further say that the charge of Interest
on Pagodas One Thousand Three hundred and Ninety one Twenty
Seven fanams the price of Piece goods debitted to this Respondent in
the said Petitioners herein before mentioned Account Current Amounting
to a Sum of One hundred and Seventy Eight Pagodas Twenty four fanams
and Seventy Six Cash as aforesaid is also an illegal and unwarranted
charge in as much as on reference to the said Account Current so as aforesaid
annexed to the Petitioners said Answer it will appear from the Petitioners
own shewing that he has retained in his hands to the
the credit of this of this Respondent being a Sum of Three Thousand
Eight Hundred and Seventeen Pagodas and four fanams the amount
monies by him received for the sale of this Respondents property in
his hands for which he has given no credit of Interest tho he presumes
to charge Interest on the inferior sum of One Thousand Three hundred
and Ninety one Pagodas and Twenty Seven fanams the price of his piece goods sold
to this Respondent on credit as aforesaid untill this Respondent returns from
China therefore this Respondent saith that if the Honble the Mayors Court
on the trial of this Cause did not think it Equitable to allow the Petitioner
his said Charge of Interest he this Respondent hopes and herein humbly

submits

submits that such Opinion of the said Mayors Court will meet the Judgment of this Honble Court or that in the event of this Honble Court considering the Petitioner entitled to his said charge of Interest that then it will also be their opinion that this Respondent has an equal claim to the Interest of his monies so retained to a far greater amount in his the Petrs hands as he had always wherewith to pay himself and should therefore had he been an honest Man have done so and credited this Respondent with the Balance allowing therefore Interest whereby this Respondent would be a considerable gainer. This Respondent craves leave to state to this Honble Court that the Witness who deposed on the behalf of the Petitioner to wit Sawny Nauthen woodelly was the Comicopoly and servant of the Petitioner and from his Testimony this Respondent humbly submits nothing is to be collected or inferred in favor of the Petitioner that can militate against the external Evidence on the face of the Petitioners own account Current and shewing therein and by his answer sworn in the cause for the this Witness to the second Interrogatory deposes that he was present some time in the year one thousand Seven hundred and Eighty nine when he swears this Respondent solicited the Petitioner to undertake the sale of certain goods in his possession and which goods consisted of Liquors and Iron and that the terms proposed by this Respondent to the Petitioner for undertaking to sell the same was that the Petitioner should receive one half of the profits arising therefrom as a recompence for his trouble

for

for disposing of the same This Respondent sheweth that it is evident that either the said Witness or the Petitioner has deposed to an untruth for this Respondent sheweth that the Petitioner in his said answer sworn and of Record in the cause uses the following Words to wit That he the Defendant having some time in the year of our Lord One thousand Seven hundred and Eighty Nine received from the Complainant the Several articles charged to him in the account Current annexed to his said Bill of Complaint to be disposed of for his benefit with a promise as a recompence for the Defendants trouble therein that he should be Allowed and receive the customary commission of five per cent thereon Hence then it follows if the Witness Sawny Nauthen is to be believed the Petitioner is to have the half profits of his Sales made on account of this Respondent but if the Petitioner has sworn true he is entitled only to his five per cent on such Sales and in either case should one of them have deposed truly which this Respondent says they have not the other must be perjured - and hence this Respondent sheweth in answer to the Two Several objections stated by the Petitioner to the Decree of the said Honble the Mayors Court in favor of this Respondent as being contrary to Evidence and the course of Practice in his majestys high Court of Chancery and that Sawny Nauthen proved that this Respondent was to give his Bond bearing Interest for the Piece Goods that the said Honble the Mayors Court on the trial of this

Cause

cause were so thick and inprossed with the Continued marks and Evidences of fraud every where manifest in the whole of the said Petitioners defence that they declared they could give no manner of credit to the answer the on oath nor yet to the Witness produced by the Petitioner to support it but on the contrary did observe to the pleadings and arguments then offered on the Petitioners behalf that an answer so manifestly fabricated and Endeavored to be supported and by such an Evidence lost all degree of Title to belief bearing on its very face internal Evidence of Gross injustice and want of Equity taking all and giving nothing and therefore that the circumstance of its being put in on oath made the Party but the more culpable and so much the less Entitled to any relief thereunder And this Respondent sheweth that upon the foregoing Grounds and the manifest fairness of this Respondents case and account annexed to his said Bill of Complaint the said Honble the Mayors Court were pleased to grant their Decree in favor of this Respondent for the entire Sums mentioned and Set forth and by him claimed as the Balance of his said account thereof together with Interest thereon from the date of the account to wit the first Day of November in the said year One thousand Seven hundred and Eighty Nine with all Costs of Suit as will more fully and particularly appear by the Copy of such Decree annexed to the said Petitioners Petition of appeal to this Honble Court to which this Respondent prays to refer and prays the same may be taken as part of this his Answer with all benefit of the same and the Several Pleadings and Depositions in the Cause

From all which reasons and such others as may be offered at the hearing this Respondent humbly prays that this Honble Court will be pleased to affirm the said Decree of the said Honble the Mayors Court in favor of this Respondent and that the Petitioners said Petition of Appeal to this Honble Court may be dismissed with Exemplary Costs for his shameless temerity in appealing to this Honble Court after the Decree of the said Mayors Court on the Grounds aforesaid given against him

/ Signed / John Wilkinson
Solicitor for the Respondt

Court

Court of Appeals
Madraspatnam Ss

Saturday the 15th day of November
Anno Domini 1794

Between John Milford of Fort St George Esqr
administrator of the Estate and Effects of Munnaro
Moodelly of Madras Inhabitant Deceased Appellant
and Chas Joseph Douglas 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 Decree of the said Court given in this Cause on Friday the 27th day of April Anno Domini 1792 upon due Consideration had of the matters therein Severally Contained and of the Pleadings and arguments used by the attornies on both sides This Court doth think fit to Order and Decree and doth Accordingly order and Decree that the said Decree of the Honourable the Mayors Court do stand Affirmed and that the Decreed Sum of Pags 1341. 39 - together with Interest from the first day of September 1789 and Costs in both Courts be paid to the Respondent out of the Estate of the Appellant—

By Order
/Signed/ Robert Clerk
Clk

To

To the Honorable Sir Charles Oakely Bart.
President and Governor &ca in Council
Fort St. George

Between James Daly and Suncoo
Peddah Ristnamah Chitty administrators
of Chinna Ristnamah Naick Deceased
Complainant and Emanuel Samuel one
of the attorneys of this Honble Mayors Court
at Madraspatnam Defendant—

The Humble Petition and appeal of the Abovenamed Defendant—

Sheweth

That on or about the Twenty Seventh day of April in the year of our Lord One thousand Seven hundred and ninety three the Complainants above named as administrators aforesaid did Exhibit and file their Bill of Complaint in the mayors Court against your Petitioner and did therein and thereby Setforth that your Petitioner in and by his certain Bond or writing Obligatory by him duly Executed by the Name and Discription of Emanuel Samuel assistant Surgeon in the Honble Companys Service and bearing date the Twelfth day of June in the year of our Lord One thousand Seven hundred and ninety two become held and firmly bound unto the Complainants said Intestate in the Sum of three thousand Star Pagodas with Condition thereunder written to be void

Filed in my Office
the 12th May 1794
Chas N. White
Clk

void upon payment of the Sum of Fifteen hundred Star Pagodas unto the Complainants Intestate his Executors administrators or assigns within two months from the day of the date of the said Bond together with interest for the same at the rate of Twelve per Cent per annum as by the said Bond Copy thereof to their said Bill annexed the Complainants did say would more fully appear that they had frequently since the death of their said Intestate as administrators aforesaid and particularly on the Twelfth day of November which was in the year of our Lord One thousand Seven hundred and ninety two applied to your Petitioner by letter and requested him to pay off and discharge the said Sum of Fifteen hundred Star Pagodas and the interest which should be due thereon and which your Petitioner had promised faithfully to do that your Petitioner then was and stood justly and truly indebted to the Complainant as administrators aforesaid in the Sum of One thousand Six hundred and thirty four Star Pagodas Twenty one fanams and Eleven Cash as the the Complainants did say would more particularly appear by the Copy of an account Current to their said Bill annexed and the Complainants did in and by their said Bill pray that your Petitioner might be decreed to pay the the aforesaid Sum of One Thousand Six hundred and thirty four Star Pags one fanams and Eleven Cash together with all such Costs and Expences as the Complainants should sustain and be put to in the recovery thereof

and

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 state that although he might admit to have executed the Bond Copy whereof was to the Complainants said Bill annexed yet he denied that thereby or by reason thereof he did stand indebted unto the Complainants as administrators as aforesaid in the Sum of Sixteen hundred and thirty Pagodas twenty one fanams Eleven Cash but did admit to stand indebted unto the Complainants as administrators as aforesaid in the Sum of Two hundred and thirty five Pagodas forty four fanams and no more as would more fully and at large appear by the Copy an account Current to his said answer annexed that in order to explain the Setoff thereby made your Petitioner did state that at the time of executing the said Bond and for some time subsequent thereto he your Petitioner acted as agent to several Gentlemen to the Southward and by that means had the Command of considerable Sums of money and which he was allowed the use of so that he should answer demands thereon by his Constituents at Ten days notice thereof that being this in the Command of money under the Conditions above mentioned and being at that time in habits of dealings and transactions with the Complainants Intestate he the Complainants said Intestate did represent to your Petitioner the advantages that would arise to your Petitioner in lending out the said monies of his said Constituents and the impropriety of keeping Cash Locked up arguing upon the fairness and justness of the mode he so Recommended to

Your

your Petitioner informing him at the same time that he the Complainants said Intestate had frequently occasion to take up samall Sums and that he would as circumstances might require it take up such Sums from your Petitioner as he might conveniently be enabled to advance Observing to your Petitioner that he would allow him an Interest of Twelve per Cent and that any Sum he might so receive from your Petitioner should be forthcoming at Eight days notice by which means your Petitioner would have two clear days to answer any Drafts of his Constituents that such the Representations and Arguments of the Complainant said Intestate appearing to your Petitioner to be altogether eligible and just and relying upon the Credit honour and probity of the Complainants said Intestate he your Petitioner did agree thereto and in consequence thereof your Petitioner did frequently lend and advance to the Complainants said Intestate Several Sums of money at different times anterior and Subsequent to the Execution of the Bond upon which the Complainants had Commenced their present Suit against your Petitioner that the Complainants said Intestate did some time on or about the seventh day of the Month of May and year of our Lord One thousand Seven hundred and ninety two apply to your Petitioner to advance him a certain Sum of money and your Petitioner being desirous of Complying with such the application of the Complainants said Intestate and not having cash immediately by him but being in possession of a Bill of Exchange drawn by George Hoar then Paymaster of the Army upon Benjamin Roebuck the Military Pay master General in favor of your Petitioner for the Sum of Six hundred and ninety nine Pagodas seven fanams dated on the twenty ninth day of April in the year One thousand Seven hundred and ninety two and payable at fifteen days sight he your Petitioner did endorse the said Bill of Exchange and deliver the same to the Complainants said Intestate who did receive the Amount thereof either himself or some one for him and by his order and directions at the Office of the said Military Pay master General that the amount of the said Bill of Exchange so received by the Complainants said Intestate was received to his own use and applied to his own purposes that some time after the Complainants said Intestate had received the said Sum of Six hundred and ninety nine Pagodas seven fanams as above set forth he did again apply to your Petitioner for a further loan and your Petitioner did endorse over to him a Bill of Exchange also drawn by George Hoar upon the said Benjamin Roebuck in favor of your Petitioner for the Sum of Four hundred Pagodas dated the thirtieth of April in the said year of our Lord One thousand Seven hundred and ninety two and payable at fifteen days sight and which said Sum of Four hundred Pagodas the Complainants said Intestate did either himself or some one for him by his order and under his directions receive at the Office of the said Benjamin Roebuck and that the said sum of four hundred Pagodas

&c

so received by the Complainants said Intestate was received to his own use and applied to his own purposes and your Petitioner did say that not having any demand made upon him by his Constituents that required his calling upon the Complainants said Intestate he allowed the said two Several Sums of Six hundred and ninety nine Pagodas seven fanams and Four hundred Pagodas to remain in his hands until his decease which took place some time in the month of August following and that the Complainants said Intestate never did repay to your Petitioner the Said Sums of Six hundred and ninety nine Pagodas seven fanams and Four hundred Pagodas nor any part thereof that your Petitioner lend and advanced unto the Complainants said Intestate the said Sum of Six hundred and ninety nine Pagodas seven fanams and Four hundred Pagodas he conceived himself entitled to Interest thereon from their respective dates and had therefore charged it accordingly and which forms the two several Sums of Seventy Six Pagodas thirty eight fanams and forty three Pagodas one fanam and your Petitioner in support of the Premises had annexed Copies of the said Bills of Exchange to his said answer and one of which was endorsed by the Complainants said Intestate that during the last illness of the Complainants said Intestate he was requisted by his friends and relations to attend him in your Petitioners then professional capacity as a medical man and he did in consequence thereof attend the Complainants said Intestate for

for a Considerable number of days and for several hours during each day to which the progress of his Complaint and administrator such medicines as he your Petitioner should think proper and that your Petitioner did therefore conceive himself fully entitled to and had accordingly charged for medicine and attendance the Sum of Two hundred Pagodas and your Petitioner did say he trusted he had made out a Just and equitable case for himself and shewn that the transaction by which your Petitioner become bound to the Complainants said Intestate was seperate and distinct from the monies in manner and from therein before set forth lend and advanced to the Complainants said Intestate and that the charge of Two hundred Pagodas for medicines and medical attendance was fair and reasonable and therefore that the set off offered by him against the sum sued for by the Complainants as administrator as aforesaid ought to be allowed to him your Petitioner and your Petitioner Sheweth unto this Honble Court that to your Petrs said answer the Complainants did Exhibit and file their Replication and amongst other things did therein and thereby state that they were total Strangers to the several transactions and agreements in your Petitioners answer set forth to have existed between your Petitioner and his constituents but that they did not believe that your Petitioner had the Command of Money or that Complainants Intestate did in his life time make such representations to your Petitioner

respecting

respecting advantages which might have arisen to him by lending out the
monies of his your Petitioner said Constituents or of the impropriety
of keeping Cash Locked up as in your Petitioners said Answer was
Setforth in the contrary did verily believe that your Petitioner had no
such redundancy of Cash and that so far from lending he your Petit.r
was a Constant borrower and as such had frequent recourse to the
Complainants Intestate for occasional loans with which he constantly
Supplied your Petitioner that they did not believe that their said
Intestate ever did inform your Petitioner that he had frequent
Occasion for samall sums or that he would take up such sums
from your Petitioner as he might conviencently be enabled to
Advance for that their said Intestate was at the time when such
transactions were said to have taken place a man of very extinsive
credit and would not as the Complainants pretended have expressed
himself in any manner that could have induced your Petitioner
to have imagined that he the said Intestate required temporary
loans of Small Sums that they know not nor could they setforth
whether their said Intestate did or not receive the sum of Six hundred
and Sixty Nine Pagodas and Seven fanams and the further Sum of
four hundred Pagodas upon accounts of the two drafts in your
Petitioners answer mentioned But for the reasons therein after
mentioned did say and submit to the said mayors Court that

if

if their said Intestate so received the same or any part thereof either as the
against of your Petitioner or otherwise your Petitioner should afterwards
have taken credit for the same in the life time of the said Intestate
for that they had recourse to the Malabar Book of accounts of their said
Intestate and they did therein find your Petitioner charged with the
following sums of Money as so much Received by him from the
said Intestate that was to say the Sums of four hundred Pagodas
on or about the first day of may in the year of our Lord One thousand
Seven hundred and Ninety two the further Sum of One Thousand
Eight hundred Pagodas on the Seventh day of June in the Same
year. and the further Sum of Eight hundred and fifty Seven
Pagodas and Six fanams on the Eighteenth day of July in the same
year and that in the same Book your Petitioner was charged with
the further Sum of two hundred and Sixty five Pagodas and thirty
five fanams being the price of One hundred and four Dozens of
Claret Sold and delivered by the said Intestate to your Petitioner on
or about the fourth day of June in the said year one thousand Seven
hundred and Ninety two But that they believed that for the Sums
of One thousand five hundred Pagodas part of the said sum of One
thousand Eight hundred Pagodas your Petitioner executed the Bond
now in suit and that for the said sum of Eight hundred and fifty
Seven Pagodas and six fanams your Petitioner on the day with

which

which he was charged with the same to wit the said Eighteenth day of July one Thousand Seven hundred and Ninety two passed his Bond to the said Intestate therefor and afterwards on the Twentieth day of the same Month of July paid him a Sum of two hundred and Ninety one Pagodas thirty two fanams and sixty two cash on account thereof which appeared to have been the last transaction that had taken place between the said Intestate and your Petitioner that in further confutation of your Petitioners demand on account of the said two drafts the Complainants did say that your Petitioner being after the decease of their said Intestate indebted to the Complainants as Administrators aforesaid upon the foot of the said Bond of Eight hundred and Fifty Seven Pagodas and having Neglected to pay off the balance by him then owing upon that Account the complai=nant James Daley did as Administrator aforesaid on or about the Nineteenth day of November One thousand Seven hundred and Ninety two apply to your Petitioner by letter for Payment of such balance that in answer to which your Petitioner wrote and addressed a letter to the Complainant James Daly which was in words and figures following to wit (Sir) I have this Moment received your Note desiring payment of a Bond for Eight hundred and= fifty Seven Star Pagodas passed to the late Chinna Ristnar and I have to request if it be attended by no great inconvenience that you will

allow

Allow Eight or ten days more for the Satisfaction of the same as it will be more agreable to me to cancil it at that period then at present I shall be glad of your answer and if it grant the latitude requested I shall consider= myself your Obliged as well as obedient / C. Samuel that your Petitioner did afterward on the Eleventh day of December in the year of our Lord One thousand Seven hundred and ninety two pay unto the Complainants the Sum of Five hundred and Ninety two Pagodas fifteen fanams and seven cash in full Satisfaction of the said Bond and also the Sum of Nineteen Pagodas and twenty Six fanams and Seventy three cash upon account of the Bond which was letigating without Making or even claiming any set off against the same Bonds either upon account of the said two drafts or upon any other account whatever and that Suncoo Peddah Ristnamah Chitty for himself for himself said that he did frequently after your Petitioner had discharged his said before mentioned Bond apply personally to your Petitioner for Payment of the Bond now in suit and that your Petitioner did as frequently promise to discharge the same But having failed to pay off his said Bond the Complainant James Daly did on or about the Twenty Eighth day of January now last past apply to your Petitioner for payment thereof in answer to which your Petitioner did on the Same day write and address a letter which was in the words and figures= following to wit. Dear Sir although I requested of Suncoo Pedda

Ristnamah

Kistnamah Chitty who has since informed me that he conformed with my request
in acquainting you I was not immediately prepared to liquidate the Bond now
in your hands and to beg that you would be kind enough to allow me a certain
time further for that purpose yet I cannot remain Satisfied without
apprising you that I am not insensible of the Indulgence granted and
assuring you at the same time how much I conceive myself your
Obliged E. Samuel that instead of the sum of the Sum of two hundred
and thirty five Pagodas and forty four fanams acknowledged by your
Petitioners Answer to be by him owing to the Complainants that
your Petitioner was indebted to the Complainants in the Principal
Sum of Nine hundred and Forty six Pagodas Fourteen fanams
and Seven cash exclusive and over and above the said Sum of One
Thousand Six hundred and thirty four Pagodas twenty one fanams
and Eleven cash for recovery whereof they had filed their present
Bill of Complaint and which the Complainant did say would
appear by an account Current thereunto annexed and that relative
to the Sum of two hundred Pagodas charged by your Petitioner in
his said amended Answer as for Medical Advice and attendances
alledged by your Petitioner to have been by him given to the said
Intestate in his last illness the Complainants said that the said
Intestates illness was of very short duration for that he was
seized with a Paralytick stroke on the Twenty second day

of

of august One thousand Seven hundred and Ninety two and died on the
Then next following and was attended in his illness by Doctor Baily
that if your Petitioner was at all at the House of their said Intestate
during his indisposition he was there merely as a Person who had an
anxiety and Solicitude for the Situation of a man from whom your
Petitioner had experienced Many Obligations and that if your Petitioner
had given the Medical advice and attendance in his answer by him
alledged to have been given to the said Intestate that they were Never
the less advised and believed that the fees of a Physician were
honorary and not demandable of right and consequently did not come
within the Act for setting of mutual debts one against the other
and thereupon did say that such the sett off of your Petitioner had
no foundation in fact or in Law and your Petitioner Sheweth
unto this Honble Court that to the Complainants said Replication
your Petitioner did Exhibits and file his Rejoinder and did
therein and thereby Amongst other things did say that he did
not stand indebted unto the Complainants as administrators as
aforesaid in the Sum of One thousand Six hundred and
Thirty five Pagodas Twenty one fanams and Eleven Cash as
charged in and by their said Bill of Complaint and insisted on
in and by their said Replication but did admitt as in and by his
said answer he had already admitted that he did stand indebted

to

to them in the Sum of Two hundred and thirty Five Pagodas and thirty four fanams being the Balance of an account current to your Petitioners answer annexed and submitting to the said mayors Court the strange inconsistency and evident contradiction in Terms in the Complainants said Replication contained did aver as in and by his said answer he had already averred that he was imployed at the Periods in his said answer setforth and for some time Antecedent thereto as the agent of several Persons and that he was thereby and by Reason thereof intrusted with large sums of money and which inabled him to supply and that he did Accordingly supply the Complainants said Intestate with different Sums of money at different times as he had Occasion therefor as more particularly setforth in your Petitioners said answer and that notwithstanding the assertion in the Complainants said Replication contained your Petitioner did say that he was not a constant Borrower from but that he did frequently lend and advance unto the Complainants said Intestate Several Sums of money upon the conditions in your Petitioners said answer particularly specified and that he was so enabled to lend and advance the said sums of money unto the Complainants said Intestate by reason of the mode Observed between your Petitioners and his said Constituents as in his said answer the same was Especially setforth and which your Petitioner did say the Complainants said Intestate did Represent to him as a favorable and honest advantage to be derived on account thereof and your Petitioner did say that in pursuance thereof the Complainants Intestate did himself propose to take up and he did Accordingly take up from your Petitioner small Sums of money as in your Petitioners said answer were distinctly Enumerated and Setforth and that the assertions in the Complainants said Replication contained that their Intestate was at the time when the Transactions inquestion were said to have taken place a Man of very extensive credit did not in the smallest degree tend to invalidate such Transactions nor could any Conclusion be therefrom drawn to prove that by reason thereof their said Intestate could not have required temporary Loans of Small Sums for your Petitioner did say that they were Men of Credit who generally borrowed money, and although the Credit of the Complainants Intestate was as they had asserted the fact to be in their said Replication very extensive yet that he was indigent in his circumstances and had died insolvent and that he was actually insolvent at the time that the Transactions in question took place and in Rejoinder to that part of their said Replication wherein they did say did not know whether their Intestate did or did not receive the Sum of Six hundred and Sixty nine Pags and Seven fanams and the further Sum of Four hundred Pagodas upon the account of the Two Drafts in your Petitioners said answer mentioned

mentioned your Petitioner did say that the fact was as he had stated it to be in his said answer that he did give the said two Drafts to the Complainants said Intestate who did thereon receive the said two Severab sums of money of six hundred and Sixty nine Pagodas and Seven fanams and of Four hundred Pagodas and your Petr did deny notwithstanding the suggestions of the Complainants to the Contrary that their said Intestate did ever given credit to or did otherwise account with your Petitioner for the same that the said sums of Six hundred and Sixty nine Pagodas and Seven fanams and four hundred Pagodas were justly due and owing to your Petitioner from the Estate of the Complainants said Intestate for so much money lent to him in his life time And therefore humbly insisted that your Petitioner had a Right to set off the same against the said Bond and your Petitioner for further Rejoinder did say that he was advised that the new matters introduced in and by the Respliants said Replication was altogether inadmissable and ought to have been expunged from the Record and therefore did except thereto and to the Account Current to which it had Reference and did pray that the same might be expunged And your Petitioner did beg leave to Observe that the first Item in the said account was unknown to your Petitioner as the Complainants had not setforth the Particulars comprizing the same and that at the time your Petr did execute unto the Complainants Intestate the Bonds in Question he did not stand indebted unto him in any other Sum or Sums of money whatever and as to the Charge of One Thousand four hundred Pagodas your Petitioner did say that he did on Account thereof execute unto the Complainants said Intestate the Bond in Suit and as to the Charge on account of Claret the Complainants said Intestate did bargain with your Petitioner for ready money on account thereof And that your Petitioner did on delivery of the said Claret accordingly pay unto the Complainants said Intestate ready money for the same and the Reason given by the Complainants said Intestate for demanding prompt payment was that it belonged to the Complainant James Daley and your Petitioner did humbly submit to the said Mayors Court that the Several Charges in the Complainants account Current to their said Replication annexed was fallacious irregular and improper and did therefore pray as he had before prayed and your Petitioner did further say that the Letters introduced by the Complainants and forming part of the said new matter was irrelevant for that the Sum of Eight hundred and Fifty Seven Pagodas to which the letter under Date the nineteenth Day of November in the year of our Lord One thousand Seven hundred and ninety two referred had been paid off and discharged by your Petitioner and so the fact was admitted by them in and by their said Replication and your

Petitioner

Petitioner did admit the second Letter but did deny the construction which the Complainants endeavoured to draw therefrom because your Petitioner did say that although he had prayed indulgence to liquidate the amount of the Bond in and by the said Letter referred to and although he had expressed himself much obliged to the Complainants for Indulgence on account thereof yet he did submit to the said Mayors Court that he had not by reason thereof admitted the full Amount of the said Bond to be due and owing, nor in Any wise relinquished his Right to a Set off thereto and your Petitioner did say that he never did pay any Sum of money whatever on account of the Bond in Question in manner and form as asserted by the Complainants in and by their said Replication but that on paying the said Bond for Eight hundred and fifty Seven Pagodas he did send by his Servant under a mistake a Sum of nineteen Pagodas Twenty Six fanams and Seventy three Cash over and above what was due thereon and which Sum the Complainant James Daly did hold over towards the liquidation of the Bond in Question without making any application to your Petitioner on account thereof or for his previous concurrence thereto and your Petitioner did therefore say and humbly insist that his Set off was fair and just and that although the Complainants said Intestate was ill but for a short time yet that during that period your Petitioner did Attend him constantly, a fact with which

Your

your Petitioner did say the Complainants were well Acquainted And your Petitioner was required to give his Assistance as a Surgeon to the Complainants Intestate and that the Complainants Suncoo Peddah Ristnamah Chitty was frequently present and could himself speak to the repeated Visits unremitting Attendance that your Petitioner had given to the Complainants said Intestate and your Petitioner Sheweth unto this Honble Court that upon the proceedings had issue did join and Rules did pass for the examination of Witnesses and that witnesses were Examined on both Sides and your Petitioner Sheweth unto this Honble Court that the Witness on the part of your Petitioner did prove in support of your Petitioners said Answer and in apposition to the Complainants Replication that your Petitioner was Agent for many persons to the southward and that as such he received in the Course of five months that is to say, from the month of January One thousand Seven hundred and ninety two to the month of June following upward of Seventeen thousand and that your Petitioner was in the habits of lending money to the Complainants Intestate and your Petitioner sheweth unto this Honble Court that the Witness examined on the part of the Complainants instead of supporting their said Bill of Complaint and Replication did make out the clearest possible Case for your Petitioner for Vencatarayaloo deposing to the Second Interrogatory says that he did keep the

books

Books of Accounts of the deceased in his life time for about five years that he doth know of several dealings and many Transactions that passed between the deceased in his life time hath looked upon the Malabar Book of Accounts now shewn to him at this the time of his Examination purporting to be a Book of Accounts between the said deceased and divers Persons therein named that the said Book does contain entries of Transactions or dealings between the said deceased in his life time and the said Defendant and of monies by the said deceased in his life time paid or advanced to and received from the said Defendant that in the said Book of Accounts the Defendant is debted under date the Twenty second day of April One thousand Seven hundred and ninety two for twenty Six Pagodas eleven fanams and Twenty cash paid to a Carpender for a Palanken under date the thirtieth of the same Month and year for four hundred Pagodas paid in Cash under date the fourteenth May of the same year for one hundred Pagodas and under the same date for Two hundred and Sixty Pagodas for one hundred and four dozen of Blanct at two Pagodas and an half p dozen with five Pagodas and thirty five fanams for Custom thereon under date the Sixteenth day of June of the said year One thousand eight hundred Pagodas paid in Cash and under date the Twenty second day of the same Month for one hundred and thirty two Pagodas also

paid

paid in Cash making together the sum of Two thousand Seven hundred and Twenty four Pagodas one fanam and twenty cash and this Deponent Saith that the Defendant is credited in the said Books under date the Twenty third day of May One thousand Seven hundred and ninety two Six hundred and ninety nine Pagodas and Seven fanams for Cash received from the Company under date the Twenty ninth day of May of the same year One thousand four hundred and Sixty Rupees at three hundred and Sixty five Rupees for One hundred Pagodas making four hundred Pagodas also for Cash received from the Company and under date the fourteenth day of June of the same year for one hundred and thirty two Pagodas for Cash received making together the Sum of One thousand two hundred and thirty One Pagodas and Seven fanams this Deponent Saith that he made the said Entries by order of the said deceased Chinnakistnamah Naick and that he believes such entries to be just and true and to the third Interrogatory the said Vancatarayalu says that he knows from the deceased that the Defendant did endorse over to the said deceased in his life time two Certain Drafts or bills of Exchange drawn by George Hoar Esqr. on Benjamin Roebuck in favor of the said Defendant the one of the said Drafts bearing date the Twenty ninth day of April One thousand Seven hundred and ninety two for the Sum of Six hundred and ninety nine Pagodas and Seven

fanams

fanams and payable at fifteen days sight and the other bearing date the thirtieth day of the same month and drawn by the said George Hoor on the said Benyamin Roebuck in favor of the said Defendant for four hundred Pagodas payable at fifteen days sight and by him also endorsed over to the said deceased in his life this Deponent Saith that the said deceased did in his life time receive the full amount of the said Bills and that the Defendant received credit for the amount from the deceased and your Petitioner Sheweth unto this Honble Court that the Said Cause was set down for hearing and did Accordingly come on to be heard on the Twenty Ninth day of April now last past when the said mayors Court did think fit to order and decree and did Accordingly order and decree three of the members desenting therefrom that your Petitioner do pay unto the Complainants the full and Just Sum of One thousand Six hundred and thirty four Pagodas Twenty One fanams and Eleven Cash to gether with all such Interest as then was or should thereafter become due thereon untill full payment made also all costs of Suit as will more fully and at large appear by the Copy of the said decree and of an extract of the Minutes of the said Mayors Court hereunto annexed for the inspection of this Honble Court reference being thereunto had may more fully and at large appear the Originals being in your Petitioners possession and ready to be produced at the hearing By which said Decree of the said Mayors Court your Petitioner doth conceive himself much Aggrived and doth therefore appeal therefrom to this Honble Court for the following Amongst other Reasons-

First..... Because the said Decree of the Mayors Court is contrary to Evidence and therefore a departure from the law in so much as that all Courts are bound by the evidence before them and your Petitioners Answer being upon Oath uncontroverted and strengthened and supported by the only witness examined on the part of the Complainants the said mayors Court ought as your Petitioner is advised to have decreed for the balance confessed to be due by your Petitioner in and by his said answer to wit the Sum of Two hundred and Thirty five Pagodas and forty five fanams and no more-

Secondly... Because your Petitioner is advised that a set off Against a bond is allowable and it has been the invariable practice of the said mayors Court to admit thereof and the same is sanctioned by an act of Parliament and your Petitioner Submits to this Honble Court that it is in evidence first by the answer of your Petitioner upon Oath and secondly by the Testimony of the said Vancatarayaloo that the set off made by your Petitioner is evile founded and ought to have had due wright with the said Mayors Court when giving their Judgment in the Cause-

Thirdly.... Because the Complainants did fail of proof on every point and that

that the most material parts of their Replication were repeted by Witness and partly by their own for in their said Replication they say they do not believe that your Petitioner had the command of Nancy whereas three Witnesses examined on the part of your Petitioner shew that as agent for different persons he received in the course of a few months only Seventeen thousand Pagodas and Vancataroyaloo a Witness examined on part of the Complainants Shews that your Petitioner did lend unto their Intestate various Sums of money for he Shews that on the Twenty ninth day of May the Complainants Intestate had ballance in his hands due to your Petitioner Amounting to three hundred Pagodas and upwards and the Complainants in and by their said Replication further say they do not know that their Intestate received the Sums of Six hundred and Seventy nine Pagodas and four hundred Pagodas as setforth in your Petitioners said answer but the said Vancataroyaloo proves the fact in his answer to the third Interrogatory and then in order to shew that your Petr. was ever indebted unto their Intestate in a larger Sum than the Amount of the Bond in question the Complainants state debits as follows. On the 1st May 1792 Cash Lent 400. on the 15th June following for wine Sold 262 Pagodas on the 17th of the same month Cash lent 1800 and on the 18th of July following Cash lent 357

without

without giving your Petitioner credit for any Sum of money whatever Whereas the said Vancataroyaloo who Shews he was the Book keeper of the Complainants Intestate proves that your Petitioner ought to have had credit for the sum of One thousand two hundred and thirty one Pagodas Seven fanams and it does not Appear that one of the Items that is to say the sum of Eight hundred and fifty Seven Pagodas is any where to be met with in the Accounts of the Complainants Intestate for the said Vancataroyaloo although deposing to the said Books of the Complainants said Intestate states every other Sum as setforth in the Complainants said Replication except the said Sum of Eight hundred and fifty Seven Pagodas and therefore your Petitioner submits that by the Complainants Own shewing the said charge of Eight hundred and fifty Pagodas as a distinct and Separate Sum is unfounded and they confess in and by their said Replications that fifteen thousand Pagodas of the said sum of One thousand Eight hundred Pagodas is the sum for which your Petitioner executed the Bond in question and yet they do not shew why the remaining Sum of three hundred Pagodas was not included in the said Bond and although they state the said sum of One thousand Eight hundred Pagodas to have been advanced on Seventh of June yet it appears by the books of the Deceased deposed to by the

said

said Vancalaroyaloo that it was not advanced until the Sixteenth and the Bond in question bears date on the Twelfth day of the said month and your Petitioner therefore submits to this Honble Court that the Statement in the Complainants said Replication contained is altogether irregular and unjust and your Petitioner Submits to this Honble Court that the Letters brought forward by the Complainants in and by their said Replications do not in the least tend to deprive your Petitioner of the set off he has made against the Amount of the Bond in question your Petitioner admits that he did request the Complainants to liquisdate the sum due from him to the Complainants as administrators as aforesaid but your Petitioner never did say that he stood indebted unto the Complainants in the full Amount thereof on the Contrary your Petitioner did Often tell the Complainant Sunkopedahutmamah Chitty that he had a set off to make against the Bond in question and your Petitioner Submits to this Honble Court that the new matters introduced in the said Replications is a variance from the Bill of Complaint and is in fact a new issue and therefore that the Same ought to be expunged because if the same was Just the Complainants should have brought a supplimental Bill an Account thereof or have Amended their Original Bill in order that your Petitioner might

And Lastly ... might have had the benefit of his answer upon Oath thereto your Petitioner Sheweth unto this Honble Court that in order to simplify the Several matters and things brought forward by the Complainants in support of their Suit it will be necessary to take the Evidence of the said Vancataroyaloo a Witness as before Shewn produced by themselves and to compare the same with your Petitioners said Answer by which he trusts it will be evident that the balance admitted by your Petitioners to be due to the Complainants is accurate and well founded and that he does not stand indebted unto them in any other Sum of money whatever And therefore that the said Decree of the said Mayors Court is both contrary to Justice and to the Law and your Petitioner Sheweth unto this Honble Court that the Abstract taken from the deposition of the said Vancataroyaloo stands as follows—

On the 2 April 1792 your Petr is debeted for Cash advanced				26	11 20
30th	do	do	do	400	" "
12th May	do	do	do	100	" "
	do		for Blanket	260	" "
	do		for Custom ond	5	35 "
16th June	do		for Cash advanced	1800	" "
22	do		do	132	" "
			making together	2724	1 20
On the 23 May your Petr is indebted for the Sum of				699	7 "
29th do	do		do	400	" "
6th June	do		do	132	" "
			making together	1231	7 "

Which your Petitioner Sheweth unto this Honble Court is according to the Statement of the said vancataroyaloo taken from the Books of the Complainants

Complainants said Intestate the whole of the dealings and transactions between your Petitioner and the Complainants said Intestate and your Petitioner Sheweth unto this Honble Court that Substracting the Amount for which he is credited as aforesaid from the Amount for which he is debited there remains the Sum of One thousand four hundred and ninety three Pagodas One fanam and Twenty Cash due to the Complainants and your Petitioner Sheweth that your Petitioner did exclusive of the Bond in question grant unto the Complainants Intestate one Bond on or about the Eighteenth day of July One thousand Seven hundred and ninety two for the Sum of Eight hundred and fifty Seven Pagodas which the Complainants in and by their said Replication Admit your Petitioner has fully discharged and which must therefore be deducted from the said Sum of One thousand four hundred and ninety three Pagodas One fanam and Twenty Cash and there then remains a balance due to the Complainants Amounting to the Sum of Six hundred and thirty Six Pagodas One fanam and Twenty Cash and your Petitioner Submits to this Honble Court that as the Complainants have debited him with an Interest at the rate of Twelve per Cent per annum he has a right to charge Interest on the Amount of the Sum of Six hundred and ninety nine Pagodas Seven fanams and four hundred Pagodas which accounts to the Sum of One hundred And Eleven Pagodas and added to the Sum of Nineteen Pagodas Twenty Six fanams and Seventy three Cash which the Complainants admit to have Recived from your Petitioner as they unjustly state in part payment of the Bond in question make together the sum of One hundred and thirty Pagodas Twenty Six fanams and Seventy three Cash which deducted from the said Sum of Six hundred and thirty Six Pagodas One fanam and Twenty Cash leaves a balance due to the Complainants Amounting to the Sum of Five hundred and five Pagodas Nineteen fanams and Twenty Seven Cash - so that according to their own Shewing by their Own witness deposing to the Books of their Intestate the Complainants are not entitled to receive from your Petitioner the said Sum of five hundred And five Pagodas Nineteen fanams and Twenty Seven Cash and your Petitioner submits to this Honble Court that the best evidence against a Complainants is the Evidence produced by himself as taken from his Own Books which your Petitioner has shewn to be the case in the present Instance and your Petitioner further humbly submits unto this Honble Court that as he did in his then professional Capacity of a Surgeon attend on the Complainants Intestate during

during his last Illness which your Petitioner has Stated in his Rejoinder and upon which the Complainants have joined issue was well known to the Complainants Sunka peda Kistnamah Chitty that your Petitioner is entitled to the Sum he has charged to wit the Sum of Two hundred Pagodas which deducted from the said Sum of Five hundred and five Pagodas Nineteen fanams and Twenty Seven Cash leaves a balance due to the Complai= =nants amounting to the Sum of Three hundred and five Pagodas Nineteen fanams and Twenty Seven Cash and upon the whole it appears from the Complainants Own Shewing Admitting the Sum of Two hundred Pagodas, that your Petitioner Owes them only Seventy Pagodas more than Stated in the Account Current to his said Answer annexed But your Petitioner humbly Submits to this Honble Court that supported as his Answer is, and in so much as that there is no witness produced on the part of the Complainants to refute the same And that as the same is upon Oath it is good Evidence - his said answer ought to have been Received by the said Mayors Court in its full extent, and that the said Mayors Court in decreeing as aforesaid have decreed contrary to Law and to Evidence - and therefore that your Petitioner is greatly Aggrieved thereby -

For all which Reasons and such others as may be urged at the hearing, your Petitioner prays that the said decree of the said Mayors Court may be reversed and that your Petitioner may have such other General relief as to this Honble Court may seem meet -

Signed James Stewart Hall
Solicitor for Appellant

Mayors Court

Mayors Court at Madraspatnam } Tuesday the 29th day of April Anno Domini 1794.

Present

Hz Chz Michell Esqre Mayor
James Call William Webb
Jos: dupreporcher Andrew Ross
John Mitford Benjn Roebuck
William Abbott & Alexr Cockburn
Aldermen

L.L

Mayors Court

Between James Daly of Madras Esqre and Suncoo Peddah Kistnamah Chitty Administrators to the Estate & Effects of Chinna Kistnamah Naick Deceased Complainants and Emanuel Samuel of Fort St. George One of the Attornies of this Honble Court Defendants—

This Cause coming on to be heard and debated this day in the presence of the Attornies on both sides on reading the Complainants Bill with Copies of a Bond & an Account Current annexed the Defendants amended Answer with Copy of an Account Current annexed the Amended Replication with Copy of an Account Current annexed, the Amended Rejoinder the Interrogatories and Depositions on the part of the Complainant with one Exhibit annexed, 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 therein 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 Six hundred and thirty four Pagodas and Twenty one Fanams And Eleven Cash / Pagodas 1634. 21. 11. / 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—

Hur
/Signed/ G. E. Atkin
Dy Regr

A True Copy
/Signed/ James Stuart Hall
Solicitor for Appellant

Extract

Extract from the Menutes of a Court Held at the Town Hall on Tuesday the 29th day of April Anno Domini 1794

Present

Hz Chz Michell Esqr Mayor

James Call William Webb

Jos: dupre porcher Andrew Ross

John Mitford Benjr Roebuck

William Abbott & Alexr Cockburn

Alderman

James Daly & Suncoo peddakistnama Chitty administrators of Chinnakistnamah Naick Deceased

Vers

Emanuel Samuel

Messrs Aldermen Roebuck Abbott & Cockburn dissent to the Resolution of the Court

A true Extract

(Signed) George Taylor Regr

a True Copy

(Signed) J. S. Hall Secrys

To

To the Honourable Sir Charles Oakeley Baronet

President and Governor in Council &c

Fort St George

In the Court of appeals at Madraspatnam

Between James Daly and Suncoo Peddah Kistnamah Chitty Administrators of the goods Chattles and Credits of Chinna Kistnamah Naick deceased Complainants and Emanuel Samuel one of the attornies of the Mayors Court at Madraspatnam Defendant

The answer of the above named Complainants to the Petition and appeal of the above named Defendant

Filed in my office the 7th July 1794 Robert Clerk Ck

These Respondents admit that they did on or about the time in the said appellants Petition and appeal particularly setforth and mentioned as administrators aforesaid file their Bill of Complaint against the said appellant in the said Mayors Court for the Recovery of the Sum of One thousand Six hundred and thirty four Pagodas twenty one fanams and Eleven cash to these Respondents administrators aforesaid owing upon

the

the foot of the said Appellants Bond and Charging the Several matters and things in the said Petition, and appeal setforth and mentioned. And these Respondents say that the said appellant did on the Eighteenth day of June in the year of our Lord One thousand Seven hundred and ninety three file his answer to the said Bill of Complaint and thereby admitted the execution of the said Bond but denied to stand indebted to these Respondents upon the foot thereof in the said Sum of one thousand Six hundred and thirty four Pagodas twenty One fanams and Eleven Cash but admitted to stand indebted to these Respondents as administrators aforesaid in the Sum of two hundred and thirty six Pagodas and forty four fanams and which the said Appellant alledged would appear by an Account Current to the said appellants answer annexed and to which Answer and account Current these Respondents humbly refer. That these Respondents admit that they did reply to the Appellants said Answer and that these Respondents by their said Replication did insist that the said appellant notwithstanding his Assertion to the Contrary in his said answer contained was and stood indebted to these Respliants as administrators aforesaid in the full sum of one thousand Six hundred and thirty four Pagodas twenty One fanams and Eleven Cash upon the foot of his said Bond. and these Respondents admit that the said Appellant did rejoin to the said Replication and that issue was thereupon Joined in the said Cause and that Witnesses were accordingly examined therein but these Respondents say that the witness for the said appellant proved nothing material to the matter in issue and that Vencataroyaloo a Witness examined on the part of these Respondents did clearly prove that the said Appellant had been credited by the said Intestate for the Amount of the said two Bills of exchange and which the said appellant by his said answer was endeavouring to carry to account a Second time, and these Respondents Admit that the said cause was set down for hearing and that the same come on to be heard Accordingly on the twenty ninth day of April now Last, when the said Mayors Court was pleased to Order and Decree that the said Appellant should pay unto these Respondents the Sum of one thousand Six hundred and thirty four Pagodas twenty one fanams and Eleven Cash together with the interest and all costs of Suit as by the said Decree will more fully appear.

These Respondents in answer to the first cause or Reason by the said Appellant assigned in the first place say that

that the Appellant by his Answer alledges that the Amount of the Bills of exchange for which the said Defendant now claims credit accrued to him on the Twenty Second and twenty ninth days of May one thousand Seven hundred and ninety two and that the Bond in suit was not executed untill the twelfth day of June following, and these Respondents thereupon submit to this Honble Court that it is not to be believed that if these Respondents said intestate had been at the time of the execution of the said Bond indebted to the said Defendant in the Amount of the said Bill of Exchange that the said Appellant would have passed his Bond to these Respondents said intestate, but on the contrary the said Bond is of itself conclusive evidence, that the said appellant had not at the time of the execution thereof any bonafide existing demand against the said intestate upon account of the said two Bills of Exchange and that the execution of the said Bond should operate as a settlement of Accounts to that period and these Respondents say it appears by these Respondents Replication and is so admitted by the said Appellants Rejoinder that on the Eighteenth day of July One thousand Seven hundred and ninety two, the said appellant executed unto these Respondents said intestate one other Bond for Eight

hundred

hundred and fifty Seven Pagodas and six fanams and that the said Appellant afterwards on the twentieth day of the same month of July paid the said intestate a Sum of two hundred and ninety one Pagodas thirty two fanams and Sixty two Cash on account thereof and these Respondents do humbly submit to this Honble Court that it is not to be presumed or believed that if the said Intestate had at the time of executing the Bond last mentioned to wit on the Eighteenth day of July One thousand Seven hundred and ninety two, and for a Considerable time anterior thereto, stood Actually indebted to the said appellant in the Amount of the said Bills of Exchange that the said Appellant would have granted a Bond to the said Intestate for the Sum of Eight hundred and fifty Seven Pagodas bearing an interest of twelve per Cent per Annum and have afterwards made the aforesaid payment to the said intestate upon account of the same Bond and have left the Amount of the said Bills of Exchange all the while Outstanding and unsettled And furthermore these Respondents say it appears upon the face of the pleadings and is in no wise controverted or denied by the said Appellant That after these Respondents had obtained Letters of Administration of the Estate and Effects of their said Intestate the Respondent

James

James Daly on the nineteenth day of November One Thousand Seven hundred and ninety two applied to the Appellant by letter to pay off the balance by him then owing upon account of the said last mentioned Bond to which the said appellant on the same day wrote and addressed a letter to this Respondent James Daly which is in the words following to wit "Sir/ I have this moment Received your" note desiring payment of a Bond for eight hundred and " fifty Seven Star Pagodas passed to the late Chinna Ristnar and " I have to request if it be attended by no great inconvenience that " you will allow eight or ten days more for the Satisfaction of the " same, as it will be more agreable to me, to cancel it at that " period, than at present. I shall be glad of your answer and if " it grant the latitude requested, I shall consider myself your " Obliged as well as Obedient E. Samuel" and which balance the said appellant afterwards to wit on the Eleventh day of December following not only discharged but also made a payment of nineteen Pagodas twenty Six fanams and Seventy three Cash upon account of the Bond now in suit without claiming any set off against the same either upon account of the said two Bills of Exchange or upon any other account whatever. And these Respondents by their said Replication did further

assert

assert that the Respondent Suncoo Peddah Ristnamah Chitty after the said appellant had made the said payment of nineteen Pagodas twenty Six fanams and Seventy three Cash upon account of the Bond in question applied personally to the Appellant to discharge the Residue of the monies thereupon owing and that the said appellant promised so to do. The truth of which assertion is fully manifest by another letter written by the said Appellant to the Respondent James Daly on or about the twenty eighth day of January One Thousand Seven hundred and ninety three wherein the said Appellant mention his having requested of the Respondent Suncoo Peddah Ristnamah Chitty to inform the Respondent James Daly that he the Appellant was not then prepared to discharge the said Bonds and to Solicit the Respondent James Daly to allow the appellant a further time for that purpose at the same time assuring the Respondent James Daly that he the Appellant was not insensible of the indulgence granted him and these Respondents say that notwithstanding the frequent applications so by these Respondents made to the said appellant for satisfaction of their said demands And the Letters so written by the said appellant in Consequence thereof the said Appellant made no mention whatever of

the

the said two Bills of Exchange but after a period of Seven months had elapsed, to wit from the nineteenth day of November One — thousand Seven hundred and ninety two the day on which the Respondent James Daly first writ to the said appellant for payment of the Bond first mentioned. to the eighteenth day of — June One thousand Seven hundred and ninety three the day on which the said appellant filed his answer to these Respondents Bill of Complaint/ the said appellant in the dernier resort — resolved at length to set up the said two Bills of Exchange which the said Appellant must have known in his conscience had been Already allowed him in account with these Respondents entestate But these Respondents humbly submits to this Honble Court that the payment by the said Appellant as aforesaid made to these Respondents said Intestate in his life time. on account of the said Bond for Eight hundred and fifty Seven Pagodas and six fanams and the said payments promisses and assurances to these Respondents as administrators aforesaid by the said Appellant made and written doth fully evince the justice of these Respondents demand and the unfair conduct of the appellant in the premisses and that the said Decree of the mayors Court was not Contrary to Evidence —

The said Respondents in answer to the second Cause or reason

by

by the said appellant assigned saith that although a sett off against a Bond is admissible where there are mutual bona fide existing — Demands it does not follow from hence that the Appellant should have been allowed to set off against his said Bond a demand which did not exist at the time when the same was brought — forward and which was evident as well from the said appellants own letters as from other evidence in the said Cause —

The said Respondents further say that although the said Appellants Witnesses may have proved a Sum of Seventeen — thousand Pagodas to have been Received by the said appellants yet the said appellant hath in no wise proved that any part thereof hath been appropriated to the discharge of the said debt so by him to these Respondents owing and which was material for him to have done had the fact warranted it and these Respondents say that the Sum of eight hundred and fifty Pag.s for which the said appellant granted his Bond on the Eighteenth day of July One thousand Seven hundred and ninety two should not be deducted from the sum of One thousand four — hundred and ninety three Pagodas one fanam and twenty Cash in the said Petition and appeal mentioned for that the same is not included therein and these Respondents say

that

that the charge for medical advice and attendance in the said Appellants answer contained is not warranted or allowable in as much as the fees of a Physician if the Defendant was a Physician are merely honorary and are not demandable of Right and as to the several other matters and things in the said Appellants Petition and appeal setforth these Respondents say they are advised that the same are irrelevent and unnecessary to be further or otherwise by these Respondents answered unto

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

/ Signed / John White for self &
Gilbt. Ricketts
Solrs. for Respondt

Court of Appeals

Court of appeals at
Madraspatnam

Saturday the 15th day of November
Anno Domini 1794

Between Emanuel Samuel
of Fort Saint George One of the
Attornies of this Honble Court
appellant and James Daly of
Madras Esqre and Suncoo Reddia
Ristnamah Chitty administrators of
Chinna Ristnamah Naick 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 Twenty ninth 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 sides This Court doth think fit to Order and Decree and doth

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—

Hbur

/Signed/ Robert Clerk
Clk

To

To the King's Most Excellent Majesty in Council

Between James Daly of Madras Esquire and Suncoo Reddah Ritnamah Chitty of the same place merchant Administrators of the Goods and Chattels of China Ritnamah Naick late of the same place Dubash — Deceased Complainants—

and

Emanuel Samuel one of the Attornies of the Honble the Mayors Court — Defendant—

The humble Petition and appeal of the above named — Defendant—

Sheweth That on or about the twenty Seventh day of — April and year of our Lord One thousand and Seven hundred and ninety three the Complainants above named as administrators aforesaid did Exhibit and file their Bill of Complaint in the Mayors Court of Madraspatnam against your Petitioner and did thereon and thereby setforth that your Petitioner in and

Filed in my Office the 28th Novr 1794
Robert Clerk
Clk

by

by his certain Bond or writing Obligatory by him duly Executed bearing date the twelfth day of June in the year of our Lord One thousand Seven hundred and ninety two became held and firmly bound unto the Complainants said Intestate in the Sum of Three thousand Star Pagodas with Condition thereunder written to be Void upon payment of the Sum of Fifteen hundred Star Pagodas unto the Complainants Intestate his Executors administrators or Assigns within two months from the day of the date of the said Bond together with Interest for the same as the rate of Twelve perbent per annum that they had frequently since the death of their said Intestate as administrators aforesaid and particularly on the twelfth day of November which was in the year of Our Lord One thousand Seven hundred and ninety two — applied to your Petitioner by letter and required him to pay off and discharge the same and which your Petitioner had promised faithfully to do that your Petitioner then was and stood Justly and truly indebted to the Complainants as administrators aforesaid in the sum of One thousand Six hundred and thirty four Star Pagodas Twenty One fanams and Eleven cash And the Complainants did in and by their said Bill pray that your Petitioner might be Decreed to pay the aforesaid sum of One thousand Six hundred and thirty four Star Pagodas twenty one fanams and Eleven cash together with Such Costs and Expences as the Complainants should sustain and be put to in the recovery thereof 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 state that although he might admit to have Executed the Bond copy whereof was to the Complainants said Bill annexed yet he denied that thereby or by reason thereof he did stand — indebted unto the Complainants as administrators as aforesaid in the Sum of Sixteen hundred and thirty Pagodas twenty One fanams Eleven cash but did admit to stand indebted unto the Complainants as Administrators as aforesaid in the Sum of two hundred and thirty five Pagodas and forty four fanams and no more, as would morefully and at large appear by the Copy of an Account Current to his said answer annexed that in order to Explain the set off thereby made your Petitioner did state that at the time of Executing the said Bond and for some time subsequent thereto your Petitioner Acted as agent to — Several Gentleman to the Southward and by that means had the Command of Considerable Sums of money and which he

he was allowed the use of- so that he should Answer Demands thereon by his Constituents at Ten days notice thereof that being thus in the Command of money under the Conditions above mentioned- and being at that time in habits of dealings and transactions with the Complainants Intestate he the Complainants Intestate did represent to your Petitioner the Advantages that would Arise to your Petitioner in lending out the said monies and the impropriety of Keeping Cash Locked up Arguing upon the fairness and Justness of the mode he so recommended to your Petitioner informing him at the same time that he the Complainants Intestate had frequently occasion to take up small Sums- and that he would as circumstances might require it take up such sums from your Petitioner- as he might conveniently be enabled to advance- Observing to your Petitioner that he would allow him an Interest of twelve per cent- and that any sum he might so receive from your Petitioner should be forth coming at Eight days notice / by which means your Petitioner would have two clear Days to Answer any drafts of his Constituents that such the representations and Arguments of the Complainants said Intestate appearing to your Petitioner to be Eligible and Just and replying upon the

the credit honor and probity of the Complainants said Intestate he your Petitioner did agree thereto / and in consequence thereof your Petitioner did frequently lend and Advance to the Complainants said Intestate Several Sums of money at different times anterior and subsequent to the Execution of the Bond upon which the Complainants had commenced their present suit against your Petitioner- That the Complainants said Intestate did some time on or about the Seventh day of the month of may and year of our Lord one thousand Seven hundred and ninety two apply to your Petitioner to advance him a certain Sum of money And your Petitioner being desirous of complying with such the application of the Complainants said Intestate and not having cash immediately by him- but being in posession of a Bill of Exchange drawn by George Hoar then Paymaster of the army upon Benjamin Roebuck the military Pay master General in favor of your Petitioner for the Sum of Six hundred and ninety nine pagodas and Seven fanams dated on the twenty ninth day of April in the year one thousand Seven hundred and ninety two and payable at fifteen days sight- he your Petitioner did Endorse the said Bill of Exchange and deliver the same to the Complainants

Said

said Intestate who did receive the amount thereof either himself or some one for him and by his order and directions at the Office of the said Military Pay master General That the Amount of the said Bill of Exchange so received by the Complainants said Intestate was received to his own use and applied to his own purposes- That some time after the Complainants said Testator had Received the said Sum of Six hundred and ninety nine Pagodas Seven fanams as above setforth- he did again apply to your Petitioner for a further Loan- and your Petitioner did Endorse Over to him a Bill of Exchange also drawn by George Hoar upon the said Benjamin Roebuck in favor of this Defendant for the sum of Four hundred pagodas dated the thirtieth of April in the said year of our Lord One thousand Seven hundred and ninety two- and payable at fifteen days sight- and which said sum of Four hundred Pagodas the Complainants said Intestate did either himself or some one for him by his order and under his directions receive at the Office of the said Benjamin Roebuck- and that the said sum of Four hundred pagodas so Received by the Complainants said Intestate was Received to his own use and applied to his own purposes and your Petitioner did say that not having any demand made upon him by his Complainants that required his calling upon the Complainants said Intestate he allowed the said two Several Sums of Six hundred and ninety nine Pagodas Seven fanams and four hundred pagodas to remain in his hands until his decease which took place some time in the month of august following and that the Complainants said Intestate never did repay to your Petitioner the said sums of Six hundred and ninety nine pagodas Seven fanams and four hundred pagodas nor any part thereof- that your Petitioner having lent and advanced unto this Complainants said Intestate the said Sums of Six hundred and ninety nine pagodas Seven fanams and four hundred Pagodas he conceived himself Entitled to Intestate thereon from their respective dates and had therefore charged it accordingly- and which forms the two several Sums of Seventy Six Pagodas thirty Eight fanams and forty three Pagodas one fanam and your Petetioner in support of the premises annexed Copies of the said Bills of Exchange to his said answer one of which was Endorsed by the Complainants said Intestate- that during the last illness of the Complainants said Intestate your Petetioner was Requested by the friends and Relations of the Complainants said Intestate

to

to attend him in your Petitioners then professional capacity as a medical man - and he did in Consequence thereof attend the Complainants said Intestate for a Considerable number of days - and for Several times during each day to watch the progress of his Complaint and administer such medicines as he your Petitioner should think proper - and that your Petitioner did therefore conceive himself fully Entitled to. and had accordingly charged for medicine and attendance the Sum of Two hundred pagodas and your Petitioner did say he trusted he had made out a just and Equitable case for himself and shewn that the transaction by which your Petitioner became bound to the Complainants said Intestate was separate and distinct from the monies in manner and form therein before setforth lent and advanced to the Complainants said Intestate - and that the Charge of two hundred Pagodas for medicines and medical attendance was fair and reasonable and therefore that the set off offered by him Against the Sum sued for by the Complainants as administrators as aforesaid Ought to be allowed to him your Petitioner -

And your Petitioner Sheweth unto this Honble Court that to your Petitioners said Answer the Complainants

did

did Exhibit and file their Replication - and amongst other things did therein and thereby state that they were total strangers to the several transactions and arguments in your Petitioners answer setforth to have Existed between your Petitioner and his Constituents. but that they did not believe that your Petitioner had the Command of money or that their Intestate did in his life time make such representations to your Petitioner respecting advantage which might have arisen to him by lending out the monies of his your Petitioners said Constituents as in your Petitioners said answer was setforth on the Contrary did Verily believe that your Petitioners had no such redundancy of Cash - and that so from lending your Petitioner was a Constant borrower - and as such had frequent recourse to their Intestate for Occasional loans with which he constantly supplied your Petitioner - that they did not believe that their said Intestate Ever did inform your Petitioner that he had frequent occasions for small sums - or that he would take up such sums from your Petitioner - as he might conveniently be Enabled to advance for that their said Intestate was at the time when such transactions were said to have taken place a man of very Extensive Credit and would not have Expressed himself

in

in any manner that could have induced your Petitioner to have imagined that he the said Intestate required temporary loans of small sums- that they know not- nor could they set forth whether their said Intestate did or did not receive the Sum of Six hundred and sixty nine pagodas and Seven fanams- and the further sum of four hundred pagodas upon account of the two drafts in your Petitioners Answer mentioned but for the reasons after mentioned did say and submit to the said mayors Court that if their said Intestate so Received the same or any part thereof either as the agent of your Petitioner or otherwise your Petitioner should afterwards have taken Credit for the same in the life time of their said Intestate- that they had recourse to the malabar Book of Accounts of the said Intestate and they did therein find your Petitioner charged with the following sums of money as so much received by him from their said Intestate that was to say the sum of four hundred pagodas on or about the first day of may in the year of Our Lord One thousand Seven hundred and ninety two- the further sums of One thousand Eight hundred Pagodas on the Seventh day of June in the same year and the further sum of Eight

hundred

hundred and fifty Seven Pagodas and Six fanams on the Eighteenth day of July in the same year- and that in the same Book your Petitioner was charged with the further Sum of two hundred and Sixty five pagodas and thirty five fanams being the price of one hundred and four dozens of Claret sold and delivered by the said Intestate to your Petr. on or about the fourth day of June in the said year One thousand Seven hundred and ninety two- but that they believed that for the sum of One thousand five hundred pagodas part of the said sum of one thousand Eight hundred pagodas your Petitioner Executed the Bond in suit- and that for the said Sum of Eight hundred and fifty Seven pagodas and six fanams your Petitioner on the day with which he was charged with the same wit- the said Eighteenth day of July one thousand Seven hundred and ninety two passed his Bond to their said Intestate therefor- And afterwards- on the twentieth day of the same month of July paid him a sum of two hundred and ninety one pagodas thirty two fanams and sixty two Cash- on account thereof which appeared to have been the last transaction that had taken place between the said Intestate and your Petitioner that in further confutation of your

Petitioners

in any manner that could have induced your Petitioner to have imagined that he the said Intestate required temporary loans of small sums- that they know not- nor could they set forth whether their said Intestate did or did not receive the Sum of Six hundred and sixty nine pagodas and Seven fanams- and the further sum of four hundred pagodas upon account of the two drafts in your Petitioners Answer mentioned but for the reasons after mentioned did say and submit to the said mayors Court that if their said Intestate so Received the same or any part thereof either as the agent of your Petitioner or otherwise your Petitioner should afterwards have taken Credit for the same in the life time of their said Intestate- that they had recourse to the malabar Book of Accounts of the said Intestate and they did therein find your Petitioner charged with the following sums of money As so much received by him from their said Intestate that was to say the sum of four hundred pagodas on or about the first day of may in the year of Our Lord One thousand Seven hundred and ninety two- the further sums of One thousand Eight hundred Pagodas on the Seventh day of June in the same year and the further sum of Eight hundred

hundred and fifty Seven Pagodas and Six fanams on the Eighteenth day of July in the same year- and that in the same Book your Petitioner was charged with the further Sum of two hundred and Sixty five pagodas and thirty five fanams being the price of one hundred and four dozens of Claret sold and delivered by the said Intestate to your Petr. on or about the fourth day of June in the said year One thousand Seven hundred and ninety two- but that they believed that for the sum of One thousand five hundred pagodas part of the said sum of One thousand Eight hundred pagodas your Petitioner Executed the Bond in suit- and that for the said Sum of Eight hundred and fifty Seven pagodas and six fanams your Petitioner on the day with which he was charged with the same viz- the said Eighteenth day of July one thousand Seven hundred and ninety two passed his Bond to their said Intestate therefor- And afterwards- on the twentieth day of the same month of July paid him a sum of two hundred and ninety one pagodas thirty two fanams and sixty two Cash- on account thereof which appeared to have been the last transaction that had taken place between the said Intestate and your Petitioner that in further confutation of your

Petitioners

Petitioners demand on account of the said two drafts the Complainants did say that your Petitioner being after the decease of their said Intestate indebted to the Complainants as Administrators as aforesaid upon the foot of the said Bond of Eight hundred and fifty Seven Pagodas and having neglected to pay off the balance by him then owing upon that Account the Complainant James Daly did as administrator aforesaid on the nineteenth day of november One thousand Seven hundred and ninety two apply two your Petitioner by letter for Payment of such balance that in answer to which your Petitioner wrote and addressed a Letter to the Repliant James Daly which was in the words and figures following to wit "Sir I have this moment received your "note desiring payment of a Bond for Eight hundred and "fifty Seven Star Pagodas passed to the late Chinakistnah "and I have to request if it be attended by no great inconvenience "that you will allow Eight or ten days more for the Satisfaction "of the same as it will be more agreable to me to cancel it "at that period than at present I shall be glad of your answer "and if you grant the latitude requested I shall consider "myself your Obliged as well as Obedient &c. Samuel" That your Petitioner did afterwards on the Eleventh day of December in the year of our Lord one thousand Seven hundred and ninety two pay unto the Complainants the sum of Five hundred and ninety two pagodas fifteen fanams and seven Cash in full Satisfaction of the said Bond. and also the sum of nineteen pagodas twenty Six fanams and Seventy three Cash upon account of the Bond which was litigating without making or even claiming any set off against the said Bonds either upon Account of the said two Drafts or upon any other Account whatever That Suncoo Peddah Kistnamah Chitty for himself said that he did frequently after your Petitioner had discharged his said before mentioned Bond apply personally to your Petitioner for payment of the Bond in Suit and that your Petitioner did as frequently promise to discharge the same but having failed to pay off this said Bond the Complainant James Daly did on the twenty Eighth day of January then last past apply for payment thereof in answer to which your Petr. did on the same day write a letter which was in the Words and figures following to wit. Dear Sir. although I requested of Suncoo Peddah Kistnamah Chitty who has since informed me that he conformed with my request in acquainting you I was not immediately prepared to liquidate the Bond in your hands and

and to by that you would be kind Enough to allow me a certain time further for that purpose- yet I cannot Remain satisfied without apprising you that I am not insensible of the indulgence granted- and assuring you at the same time how much I conceive myself Your Obliged. E. Samuel. That instead of the sum of two hundred and thirty five pagodas and forty four fanams acknawledged by your Petitioners answer to be by him owing to the Complainants that your Petitioner was indebted to the Complainants in the principal sum of nine hundred and forty six Pagodas fourteen fanams and seven Cash Exclusive and over and above the said sum of One thousand Seven hundred and thirty four pagodas twenty one fanams and Eleven Cash for Recovery whereof they had filed their Bill of Complaint and which the Complainants did say would Appear by an account current thereto annexed. That relative to the sum of two hundred Pagodas charged by your Petitioner in his said amended Answer as for medical advice and attendances alledged by your Petitioner to have been by him given to their said Intestate in his last illness the Complainants said that their said Intestates illness was of very short duration for that he was seized with a Paralytic Stroke on Wednesday the twenty second day of august One thousand Seven hundred and ninety two- and died on the Saturday then next following- and was attended in his illness by Doctor Bailey That of your Petitioner was at all at the house of their said Intestate during his indisposition he was there merely as a person who had an anxiety and solicitude for the situation of a man from whom your Petitioner had Experienced many Obligations and that if your Petitioner had given the medical advice and attendance in his Answer by him alleaged to have been given to the said Intestate that they are the nevertheless advised and believed that the fees of a Physician were honorary and not demandable of right- and consequently that the said demand did not come within the Act for setting off mutual debts one against the other and thereupon did say that such the set off of your Petitioner had no foundation in fact or in Law

And your Petitioner sheweth unto this Honble Court that to the Complainants said Replication your Petitioner did Exhibit and file his Rejoender and did therein and thereby support the several matters and things setforth in his said Answer in opposition to the matters and things stated in the Complainants said Replication and your Petitioner did

Shew

Shew that although the Credit of the Complainants Intestate was as they have asserted the fact to be in their said Replication very Extensive - and that he was to all outward appearance a man of Credit and property yet that he was in fact indigent Circumstances and had died insolvent - and that he was actually insolvent of the time that the transactions in question took place and your Petitioner did deny notwithstanding the suggestions of the Complainant to the Contrary that their said Intestate did Ever give Credit to or did otherwise Account with your Petitioner for the same - that the said sums of Six hundred pagodas were justly due and owing to your Petitioner from the Estate of the Complainants said Intestate and therefore humbly insisted that your Petitioner had a Right to set off the same against the said Bond - and your Petitioner for further Rejoinder did say that he was advised that the new matters introduced in and by the Complainants said Replication was altogether inadmissible - and ought to have been Expunged from the Record and did therefore Except thereto - and to the Account Current to which it had reference and did pray that the same might be Expunged Accordingly and your

Petitioner

Petitioner did beg leave to observe that the first Item to the said Account was unknown to your Petitioner as the Complainants had not setforth the particulars Comprising the same and that at the time your Petitioner did Execute unto the Complainants Intestate the Bonds in question - he did not stand indebted unto him in any other sum or sums of money whatever and as to the charge of One thousand four hundred pagodas your Petitioner did say that he did - on Account thereof Execute unto the Repliants Intestate the Bond in suit and as to the charge on account of Claret the Complainants said Intestate did bargain with your Petitioner for ready money on account thereof and that your Petitioner did on delivery of the said Claret - accordingly pay unto the Complainants said Intestate ready money for the same - and the reason given by the Complainants said Intestate for demanding prompt payment was that it belonged to the Complainant James Daly And your Petitioner did humbly submit to the said mayors Court that the Several Charges in the Complainants account Current to their said Replication annexed was fallacious irregular and improper - and did therefore pray as he had before prayed and your Petitioner did further say that the Letters introduced by the Complainants and forming part of the said new matter were irrelevant

for

for that the sum of Eight hundred and fifty seven pagodas- to which letter under date the nineteenth day of november in the year of our Lord one thousand Seven hundred and ninety two referred had been paid off and discharged by your Petitioner And so the fact was admitted by them in and by their said Replication- and your Petitioner did admit the second letter but did deny the Construction which the Complainants Endeavoured to draw therefrom- because your Petitioner did say that although he had prayed indulgence to liquidate the Amount of the Bond in the said letter referred to- and although he had Expressed himself much Obliged to the Complainants for Indulgence on account thereof- yet he did submit to the said mayors Court that he had not by reason thereof admitted the full amount of the said Bond to be due and owing- nor in Any wise relinquished his Right to a set off thereto And your Petitioner did say that he never did pay any sum of money whatever on account of the Bond in question in manner and form as asserted by the Complainants in and by their said Replication but that on paying the said Bond for Eight hundred and fifty Seven pagodas- he did send by his servant under a mistake a Sum of nineteen Pagodas twenty six fanams and seventy three

Cash

Cash over and above what was due thereon- and which sum the Complainants James Daly did hold over towards the liquidation of the Bond in question without making any application to your Petitioner on account thereof or for his previous concurrence thereto and your Petitioner did thereupon say and humbly insist that his set off was fair and Just and that although the Complainants said Intestate was ill but for a short time- yet that your Petitioner did during that period attend him Constantly, a fact with which your Petitioner did say the Complainants were well acquainted- and your Petitioner was required to give his Assistance- as a surgeon- to the Complainants Intestate and that the Complainant Suncoo Seddah Rustnamah Chetty was frequently present- and would himself speak to the repeated Visits- and unremitting attendance that your Petitioner had given to the Complainants Intestate- And your Petitioner Sheweth unto your most Excellent majesty in Council that upon the proceedings had- issue did Join and rules did pass for the Examination of Witnesses- and that Witnesses were Examined on both sides and your Petitioner sheweth unto your most Excellent majesty in Council that the Witnesses ~~on the~~ on the part of your Petitioner did prove in support of your Petitioners said Answer- and in Opposition to the Complainants said Replication- that your

Petitioner

Petitioner was agent for many persons to the southward and that as such he received in the course of Five months that was to say from the month of January One thousand seven hundred and ninety two to the month of June following upwards of seventeen thousand Pagodas and that your Petitioner was in the habits of lending money to the Complainants Intestate and your Petitioner sheweth unto your most Excellent majesty in Council that the Witnesses Examined on the part of the Complainant instead of supporting their said Bill of Complaint and Replication did make out clearest possible case for your Petitioner for Vencataroyaloo deposing to the second Interrogatory did say that he did keep the Books of Accounts of the deceased in his life time for about five years that he doth known of Several dealinings and money transactions that passed between the deceased in his life time had looked upon the malabar Book of Accounts then Shewn to him at the time of his Examination purporting to be a Book of Accounts between the said deceased and divers persons therein named that the said Book did contain Entries of Transactions or dealings between the deceased in his life time and your Petitioner and of monies by the said deceased in his life time paid or advanced to and received from your Petitioner.

that

that in the said Book of Accounts the Defendant was debitted under date the twenty second day of april one thousand Seven hundred and ninety two for Twenty six Pagodas Eleven fanams and twenty Cash paid to a Carpenter for a Palankeen under date the thirtieth of the same month and year for four hundred pagodas paid in Cash under date the fourteenth may of the same year for one hundred pagodas and under the same date for two hundred and sixty Pagodas for one hundred and four dozens of Claret at two pagodas and an half per Dozen with five Pagodas and thirty five fanams for Custom thereon under Date the sixteenth Day of June of the said year one thousand Eight hundred pagodas paid in Cash and under date the twenty second day of the same month for one hundred and thirty two Pagodas also paid in Cash making together the sum of Two thousand seven hundred and twenty four pagodas One fanam and twenty Cash. That your Petitioner was credited in the said Books under date the twenty third day of may one thousand Seven hundred and ninety two. Six hundred and ninety nine pagodas and seven fanams for Cash Received from the Company under date the twenty ninth day of may of the same year for one thousand four hundred and sixty Rupees at three hundred and sixty five Rupees per one

hundred

hundred pagodas making four hundred pagodas- also for Cash received from the Company and under date the fourteenth day of June of the same year for one hundred and thirty two Pagodas for Cash received making together the sum of One thousand two hundred and thirty one pagodas and seven fanams- that he made the said Entries by order of the said deceased Chinahistnamah naick and that he believed such Entries to be Just and true-

And to the third Interrogatory the said Vencatarayalo did say that he heard from the deceased that your Petitioner had Endorsed over to the said deceased in his life time two certain Drafts or Bills of Exchange drawn by George Hoar Esq.re on Benjamin Roebuck in favor of your Petitioner the one of the said Drafts bearing date the twenty ninth day of april One thousand seven hundred and ninety two- for the Sum of Six hundred and ninety nine Pagodas and Seven fanams and payable at fifteen days Sight and the other bearing date the thirtieth day of the same month and drawn by the said George Hoar on the said Benjamin Roebuck in favor of your Petitioner for four hundred pagodas payable at fifteen days sight and by him also Endorsed over to the said deceased in his life time- that the said deceased did in his life time receive the full amount of the said Bills

and

and that your Petitioner received Credit for the Amount from the deceased-

And your Petitioner Sheweth unto your most Excellent majesty in Council that the said Cause was set down for hearing and did accordingly come on to be heard before the said mayors Court on the twenty ninth day of April now last past when the said mayors Court did think fit to order and Decree and did accordingly Order and Decree thereof the member defending therefrom that your Petitioner do pay unto the Complainants the full and just sum of one thousand six hundred and thirty four Pagodas- twenty one fanams and Eleven Cash together with all such Interest as then was or should thereafter become due thereon until full payment be made- also all Costs of suit as your Petitioner did say would appear by Copy of the said Decree and of an Extract of the minutes of the said mayors Court to your Petitioners Petition of appeal annexed-

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 for the following amongst other Reasons-

First ..... Because the said Decree of the said mayors Court was Contrary to Evidence and to the law insomuch as that all Courts

were

were bound by the Evidence before them And your Petitioners answer being upon oath uncontroverted but on the contrary strengthened and supported by the only witness Examined on the part of the Complainants the said mayors Court ought as your Petitioner was advised to have decreed for the balance confessed to be due by your Petitioner in and by his said answer to wit the sum of two hundred and thirty five Pagodas and forty five fanams and no more - Secondly Because your Petitioner was advised that a set off against a Bond was allowable - and that it had been the invariable practice of the said mayors Court to admit thereof and that it was in Evidence first by the answer of your Petitioner upon oath and Secondly by the testimony of the said Vencataroyaloo that the set off made by your Petitioner was well founded it ought therefore to have had due weight with the said mayors Court when giving their Judgment in the Cause -

Thirdly Because the Complainants did fail of proof on every point and most material parts of their Replication were refuted by Witness And partly by their own shewing for in their said Replication they did say that they did not believe that your Petitioner had the Command of money whereas there Witnesses Examined on the part of your Petitioner did shew that your Petitioner did lend unto their Intestate Various sums of money, that on the twenty

ninth

Ninth day of may the Complainants Intestate had a balance in his hands due to your Petitioner amounting to three hundred pagodas, and upwards, that the Complainants Intestate actually received the sums of Six hundred and seventy nine - and four hundred pagodas as setforth in your Petitioners said answer And as to that part of the Complainants Replication wherein they say that your Petitioner was indebted unto their Intestate in a larger sum than the amount of the Bond in the following manner "On the first of may one thousand Seven hundred and ninety two cash lent four hundred pagodas On the forth of June following for wine sold two hundred and sixty two Pagodas on the Seventh of the same month cash lent one thousand Eight hundred pagodas and on the Eighteenth of July following cash lent Eight hundred and fifty seven Pagodas" without giving your Petitioner credit for any sum of money whatever the said Vencataroyaloo did shew that he was the Book keeper of the Complainants Intestate, proved that your Petitioner ought to have had credit for the sum of One thousand two hundred and thirty one Pagodas, Seven fanams and that it did not appear that one of the Items to

wit

wit. the sum of Eight hundred and fifty seven Pagodas was any where to be met with in the accounts of the Complainants Intestate - for that the said Vencatarayloo although deposing to the said Books of the Complainants said Intestate did state Every other sum as setforth in the Complainants said Replication Except the said sum of Eight hundred and fifty seven pagodas and therefore your Petitioner did submit that the same was unfounded That the Complainants had in and by their said Replication admitted that one thousand five hundred pagodas of the said sum of one thousand Eight hundred pagodas was the sum for which your Petitioner had Executed the Bond in Question and yet they did not shew why the remaining sum of Three hundred pagodas was not included in the said Bond and although they had stated the said sum of One thousand Eight hundred pagodas to have been advanced on the seventh of June yet it appeared by the Books of the deceased deposed to by the said Vencatarayloo that it was not advanced until the sixteenth, and the Bond in Question bore date on the Twelfth day of the said month of June - and your Petitioner did therefore submit that the statement in the Complainants said Replication contained was altogether irregular and unjust and your Petitioner did also

also submits that the letters brought forward by the Complainants in and by their said Replication did not in the least tend to deprive your Petitioner of the set off he had made against the amount of the Bond in question your Petitioner did admit that he did request time to liquidate the sum due to the Complainants as administrators as aforesaid but your Petitioner never did say that he stood endebted unto the Complainants in the full amount thereof on the Contrary your Petitioner had often told the Complainants sooncoo Pedda Kistnamah Chitty that your Petitioner had a set off to make against it and your Petr. did further submit that the new matter introduced in the said Replication was a departure from the Bill of Complaint and was in fact a new issue and therefore that the same ought to be Expunged because if the same had been deemed Essential the Complainants should have brought a supplemental Bill on account thereof or have amended their original Bill in Order that your Petitioner might have had the benefit of his answer upon oath thereto

And Lastly your Petitioner did shew that in order to simplify the several matters and things brought forward by the Complainants in support of their suit it would be

be necessary to take the Evidence of the said Vencatarayloo a Witness as before shewn produced by themselves and to compare the same with your Petitioners said answer by which he did hope it would be Evident that the balance admitted by him to be due to the Complainants was accurate and Just. and that he did not stand indebted unto them in any other sum of money whatever - and your Petitioner did thereupon shew that the abstract taken from the depasition of the said Vencatarayloo did stand as follows -

On 2. april 1792 your Petitioner is debited for Cash -

30th	do	advanced	26	15 20
16th may	do		400	" "
"	do for blanet		100	" "
"	do for custom		5	35 "
16th June	do for Cash Advanced		800	" "
22	do		132	" "
		making together	2724.	1 20

On the 23d may your Petitioner is credited for the sum of -

29th	do	697.	7 "
14 June	do	100	" "
		132	" "
	making together	1235.	7 "

which your Petitioner did shew from the statement of the said Vancatarayloo had been taken from the Books of the Complainants said Intestate - the whole of the dealings and transactions between your Petitioner and the Complainants Intestate and your Petitioner sheweth unto this Honble Court that substracting the Amount for which he was credited as aforesaid from the Amount - for which he was debited there remained the sum of one thousand four hundred and ninety three pagodas one fanam and twenty Cash due to the Complainants That your Petitioner had Executed on or about the Eighteenth day of July one thousand Seven hundred and ninety two one other Bond to the Complainants Intestate for the sum of Eight hundred and fifty seven pagodas which the Complainants in and by their said Replication did admit had been fully discharged and which was therefore to be deducted from the said sum of one thousand four hundred and ninety three Pagodas, one fanam and two Cash and there would then remain a balance due to the Complainants Amounting to the sum of six hundred and thirty six pagodas one fanam and twenty Cash and as the Complainant had debited your Petitioner with on Interest at the rate of twelve perbent per annum he had a right to Charge Interest on the Amount of the sums of six hundred and ninety nine Pagodas seven fanams and four hundred pagodas which amounted to the sum of one hundred and Eleven pagodas and added to the sum of nineteen pagodas twenty Six fanams and seventy three Cash which the Complainants did admit to have received from your Petitioners as they unjustly stated in part of payment of the Bond in question - make together the sum of one hundred and thirty pagodas twenty six fanams and seventy three Cash - which deducted from the said sum of six hundred and thirty six pagodas One fanam and two Cash did leave a balance due to the Complainants

Amounting

amounting to the sum of Five hundred and Five Pagodas nineteen Fanams and twenty seven Cash so that according to their own shewing and the shewing of their own Witness deposing to the Books of their Intestate the Complainants were not Entitled to receive from your Petitioners more than the said sum of Five hundred and Five pagodas- nineteen fanams and twenty seven cash and your Petitioner did submit that the best Evidence against a Complainant was the Evidence produced by himself as taken from his own Books and your Petitioner further submits that as he did in his then professional capacity of a Surgeon attend on the Complainants Intestate during his last illness which your Petitioner had stated in his Rejoinder upon which the Complainants had Joined issue was well known to the Complainant Sunkoo Pedda Kistnamah Chitty- that your Petitioner was Entitled to the Sum he had charged to wit the sum of two hundred pagodas which deducted from the said sum of Five hundred and five Pagodas nineteen fanams and twenty seven cash did leave a balance due to the Complainants amounting to the sum of three hundred and five pagodas nineteen fanams and twenty seven cash and that upon the whole it did appear that your Petitioner did on to the Complainants only seventy Pagodas more than stated in the account current to his said answer annexed but your Petitioner did submit that supported as his answer was and insomuch as that there was no Witness produced on the part of the Complainants to refute the same it was good Evidence and ought to have been received as such by the said mayors Court For all which Reasons and such others as might be offered at the Hearing your Petitioners did pray that the said Decree of the said mayors Court might be Reversed- and that your Petitioner have such other relief in the premises as to the said Court of Appeals should seem meet

And your Petitioner Sheweth unto your most Excellent Majesty in Council that to your Petitioners said Petition of appeal the Complainants did Exhibit and file their answer and thereein and thereby did in opposition to the Reasons or Causes of appeal by your Petitioner setforth did amongst otherthings say that the Bills for which your Petitioner did claim credit were dated on the twenty second and twenty ninth day of may one thousand seven hundred and ninety two and that the Bond in question was not Executed until the twelfth day of June following and that therfore the said Bond was of it self conclusive Evidence that your Petitioner had not at the time of the Execution thereof any bonafide

bonafide Existing demand against their said Intestate on account
of the said Bills of Exchange and that the Execution of the said Bond
should operate as a settlement of accounts to that period - and the Complai-
nants did further say that on the Eighteenth day of July one thousand
Seven hundred and ninety two your Petitioner did Execute one other
Bond for Eight hundred and fifty seven pagodas and six fanams
and that your Petitioner afterwards on the said month of July paid
their Intestate the sum of Two hundred and ninety one Pagodas
thirty six fanams and sixty two Cash on account thereof and did
thereupon submit that if their said Intestate had at the time of
Executing the said Bond last mentioned and for a considerable
time anterior thereto stood actually indebted to your Petitioner in the
Amount of the said Bills of Exchange that your Petitioner would
have granted a Bond to their said Intestate for the sum of Eight
hundred and fifty Seven Pagodas bearing an Interest of twelve
per Cent per annum and have afterwards made the aforesaid
payment upon account of the said Bond and left the amount
of the Bill of Exchange outstanding and unsettled and the
Complainants did further state that after they had obtained Letters
of administration they did apply to your Petitioner for payment
of the Balance due on the last mentioned Bond and that your

Petitioner

Petitioner did by letter an Extract therefrom was inserted state the
inconvenience of immediate payment and pray an indulgence of
time and that your Petitioner did on the Eleventh day of December
following not only discharge the said balance but paid the sum
of Nineteen pagodas twenty six fanams and Seventy Cash in
part discharge of the Bond in suit without claiming any set
off against the same and the Complainants did also state that
after the payments aforesaid the Complainant Juncoo Pedda
Kistnamah Chitty did apply to your Petitioner for payment of the
residue owing by him and that your Petitioner promised so to do
and in order to Establish the fact the Complainants say that
your Petitioner did on the twentieth day of January and
year of our Lord One thousand Seven hundred and ninety three
write a letter to the Complainant James Daly stating that he
was not then prepared to discharge the said Bond and praying
an indulgence of time and the Complainants did further state
that notwithstanding the frequent applications by them made
for payments and the Letters written by your Petitioner he
your Petitioner made no mention of the said Bills of Exchange
but that after a period of seven months had Elapsed to
wit on the day your Petitioner filed his answer to their

Bill

Bill your Petitioner as a denier resort- resolved at length to set up the said Bills of Exchange which they did say your Petitioner must in his conscience have known had been already allowed to him in account with their Intestate and the Complainants did then submit that the payments and promises made by your Petitioner did fully Evidence the Justice of their demand and the unfair Conduct of your Petitioner in the premises— And the Complainants in answer to the second Reason or Cause of appeal of your Petitioner did state that the set of made by your Petitioner did not Exist at the time when the same was brought forward which they did further state was Evident from your Petitioners own letters- as from other Evidence in the said Cause— And the Complainants did further say that although your Petitioners Witnesses might have proved a sum of seventeen thousand Pagodas to have been received by your Petitioner yet that they had not proved that any part thereof had been appropriated to the discharge of the said debts by him due and owing to the Complainants and which they did say was material to have done- had the fact been warranted and the Complainants did also say that the sum of Eight hundred and fifty Pagodas for which your Petitioner granted his Bond on the Eighteenth day of July one thousand seven hundred and ninety two should not be deducted from the sum of one thousand four hundred and ninety three pagodas one fanam and Twenty Cash in

in the said Petition of appeal mentioned for that the same was not included therein and the Complainants did further say that the charge by your Petitioner made for medicine and attendances was not warranted or allowable- insomuch as the fees of a Physician if your Petitioner was a Physcian were merely honorary- and not demandable of right and the Complainants did further say that as to the several other matters and things in your Petitioners said Petition of appeal setforth they were advised that the same were irrelevant and unnecessary to be further or otherwise by them answered- and did pray that your Petitioners said Petition of appeal might be dismissed and the said Decree of the said mayors Court affirmed with Costs—

And your Petitioner humbly shews unto your most Excellent majesty in Council that your Petitioners said Petition of appeal and the Complainants said answer did come on to be heard on the fifteenth day of the present Instant november And year of our Lord One thousand seven hundred and ninety four before the said Court of appeals when the said Court of appeals were 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 Petitioners said

Petition

Petition of appeal be dismissed with costs as by copy of the said order and Decree hereunto annexed for the inspection of your most Excellent majesty in Council to which your Petitioner humbly craves leave to refer and prays the same may be taken as part of this his Petition of appeal may appear

By which said Decrees of the said mayors Court and Court of appeals your Petitioner doth conceive himself much aggrieved and doth therefore appeal therefrom to your most Excellent majesty in Council For the several Reasons in your Petitioners said Petn to the said Court of appeals setforth - which your Petitioner humbly submits to your most Excellent majesty in Council do clearly shew that the said mayors Court in decreeing as aforesaid and the said Court of appeals in affirming the same have so Decreed Contrary to Evidence and to the Law - for your Petitioner further submits to your most Excellent majesty in Council that the Witness produced on the part of the Complainants having deposed to the Books of account kept by himself containing all the money transactions and dealings of the Complainants Intestate with your Petitioner - has demanstrated that the account Current to your Petitioners said answer - annexed - so far as his Evidence goes to the Items therein setforth is well founded - that the Complainants in and by their said Replication

Replication do Establish the remainder Except the sum of two hundred Pagodas by your Petitioner charged for medicines and attendance on their Intestate and which your Petitioner humbly conceives he is Entitled unto - not as a Physician which he never stated himself to be but as a Surgeon which Profession your Petitioner then pursued -

For all which Reasons and such others as may be offered at the Hearing your Petitioner most 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 in the Wisdom of your most Excellent Majesty in Council shall seem meet -

/Signed/ James Stuart Hall
Solicitor for Appellant

Court of Appeals

Court of Appeals
at
Madraspatnam

Saturday the 15th day of November
Anno Domini 1794-

Between Emanuel Samuel of Fort St. George
one of the attornies of this Honble Court —
appellant and James Daly of Madras Esqr.
and Sunceo Pedda Ratnamah Chitty —
administrators of Bheinna Ratnamah —
Naick 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 & the Honble the mayors Court together with the Decree of the said Court given in this cause on Tuesday the Twenty ninth 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 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

O Hue /signed/ Robert Clerk Clk

a true Copy
/signed/ James Stuart Hall
Solicitor for appellant

Tos

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

In the Honble the
Court of appeals

Between Martinus Michorn by his attorney Jacob Eilbracht by his attorney Dederich Christiane Complainant and William Balfour and Oliver Colt Josias Dupre Porcher Thomas Redhead and Henry Redhead Robert Woolf Benjamin Roebuck and William Abbott Daniel Ince George Chalmer George Garrow Jacob Aratoon Samuel Movcartish Movrat Adrian De Fries John de Fries Junior Thomas de Fries and Francis Latour Defendants

The Humble Petition and Appeal of the above named Martinus Michorn by his attorney Jacob Eilbracht by his attorney Dederichs Christiane.

Sheweth

That on or about the Twentieth day of march which was in the year of our Lord one thousand Seven hundred and ninety three your Petitioner did file his Bill of Complaint in the Mayors

Filed in my Office
the 2d. June 1794
Robert Clerk Clk

Court at Madraspatnam against the above named Defendants being the persons composing the Madras Insurance Company heretofore represented by Edward Garrow James Landon and Robert Clerk acting as a Committee for the said Madras Insurance Company for the recovery of the sum of Eleven thousand four hundred and Eighty Six Star Pagodas fourteen fanams and thirty Five Cash Current money of madras and your Petitioner did annex to his said Bill of Complaint Copies of a policy of Insurance signed by the said Edward Garrow James Landon and Robert Clerk and of an account Current which account Current was made up as follows to wit on the Debit side thereof the Amount insured and the Charges of saving and selling a certain Quantity of the said Chanks were charged and Interest thereon Respectively - and on the credit side thereof were placed the Amount Sales of the said Chank so saved and the Interest thereon and of the Balance thereof amounted to the said sum of Eleven Thousand four hundred and Eighty six Star Pagodas fourteen fanams and Thirty Five Cash for the Recovery whereof your Petitioner filed his said Bill and your Petitioner did state that having occasion to send to Chensarah one of the Dutch Factories at Bengal in the month of march which was in the year of our Lord One thousand Seven hundred and ninety a Certain Quantity of Chank he agreed with John Elliot owner and Commander of the Snow Crofts who was then at Colombo to sail from Colombo to Tuticorin and there to take a Cargo on Freight in the said Snow Crofts on account of your Petitioner Consisting of three Sacks of Chanks and after Completing the said Cargo to come back to Colombo to Receive Letters on board and thence to proceed to Bengal and deliver the said three Sacks of Chanks to Isad Fitzsingh Esquire Chief of Chensarah and your Petitioner did further state that the said John Elliot accordingly sailed from Colombo to Tuticorin and Received on board the said snow Crofts the said Quantity of three Sacks of Chanks from your petitioner and signed Bills of Lading for the same under date the fourth day of the said month of march and Your Petitioner did further setforth that he get the said Chanks Insured at madras for the sum of Nine Thousand Seven hundred and Forty one Pagodas being the Value of the said Chanks in the name of your Petitioner as by the said policy may Appear and your petitioner did also state that the said Snow sailed from Colombo with the said Cargo of Chank on board with intention as your Petitioner supposed to proceed directly to Bengal which was not the case but instead thereof she stopped at several places on the Coast and was last near Coringa of which notice was in due time given to the Secretary of the said Madras Insurance Company but previous thereto the said Vessel touched at Madras where part of the said Chanks was removed to

to another Vessel then at Anchor in the Roads of madras and the same having arrived safe at Bengal was sold for the account and benefit of the said Insurance Company and Credit was accordingly given for the same in the said Account annexed to the said Bill of Complaint as your Petitioner hath above stated your petitioner then charged that the said Madras Insurance Company were bound to make good their Insurance and therefore liable to the said balance charged to be due on the said account made out as above stated and whereof Copy was annexed to your Petitioners said Bill of Complaint for which sum your Petitioner prayed a Decree with Costs and that the Above Defendants might be Summoned your Petitioner sheweth that they were summoned accordingly and appeared by their attorney after which they filed their answer and thereby admitted that they were the Members composing the madras Insurance Company heretofore represented by Edward Garrow James Landon And Robert Clerk and that the said Edward Garrow James Landon and Robert Clerk in the Capacity of a Committee to the said Company did execute the Original policy of Insurance Copy whereof was annexed to your petitioners said Bill of Complaint and therein and thereby Referred to. But the said

Defendants

Defendants denied that they did thereupon stand indebted unto your Petitioner in the sum of Eleven thousand Four hundred and Eighty six pagodas fourteen fanams and thirty Five Cash as charged in the said Bill of Complaint and account Current thereunto annexed or in any other sum or sums whatever They did however admit it to be true as is stated in the Bill that your Petitioner had occasion to send a quantity of Chank to Chensurah one of the Dutch Factories situated in the River Houghley in Bengal in the month of March which was in the year of our Lord One thousand seven hundred and ninety and that for such purpose your Petitioner did agree with John Elliot owner and Commander of the Snow Crofts who was then at Columbo to sail from thence to Tutocorin and there and there to take a Cargo of Chank on board but whether the same amounted to three Lacks or not the said Defendants said they could not pretend to say further than they were informed in and by the said Bill the said Defendants did further admit that it was agreed upon between your Petitioner and the said John Elliot that after compleating the Cargo the said Snow Crofts was to Return to Columbo for letters but that they did not believe or admit that it was expressly stipulated between your Petitioner and the said John Elliot (as is stated in the Bill) that he

was

was from the said port of Columbo to proceed direct to Bengal because as they stated the said snow Crofts did actually receive a Cargo on Board at the said Island of Ceylon Calculated for the markets on the Court of Coromandel - and with such Cargo did trade and touch at Different Ports on the said Coast and the said Defendants did further admit that your Petitioner through the means of his then attorney Nathaniel Edward Kindersley late of Fort St. George Esquire did apply to the madras Insurance Company whereof the Defendants are the members for an Insurance to be made on the Cargo Laden on the said snow Crofts - and that for and in Consideration of the Premium of Four hundred and Eighty seven Pagodas they did insure the sum of Nine thousand Seven hundred and forty one Pagodas Current money of madras upon the Cargo of the said snow out from Tutocorin - to the Port of Delivery in Bengal with Liberty to proceed to Columbo to take letters on Board - and Defendants did further answer and say that the said Snow Crofts left Columbo but instead of pursuing a direct Course of her destined Port according to the Specific Voyage Insured she did without necessity or any Just and Reasonable Cause by Stress of weather or otherwise But actually and avowedly for the purpose of trading - touch - put in - and anchor at Various ports and places on the Coast of Coromandel - To wit Nagapatam Pondichary Tranquebar and Madras as the Defendants pretended they have heard and did believe - at which last place the said snow became leaky and being driven from her anchors was afterwards lost - your Petitioner further sheweth that George Chalmer one of the Defendants in proof of the deviation in the Voyage of the said snow Crofts as above set forth did pray leave to state that in his Capacity of Notary Public being at a time before he became a member of the said Madras Insurance Company and Consequently when he had no interest in or any wise Concerned with the present Cause of action Daniel Kennedy Freighter of the said snow Crofts appeared before him to declare and Protest on account of the said Snow Crofts and amongst other things he the said Daniel Kennedy declared that he had purchased in the Course of the said Voyage at the said Island of Ceylon a Cargo intended to answer the purpose of a trading Voyage with which Cargo he left the Island of Ceylon in the said snow Crofts touching and trading at Different Ports on the Coast of Coromandel in his way to Madras where he arrived and anchored on the Twenty ninth day of April in the said year one thousand seven hundred and Ninety and the Defendants did pretend and say that from such unwarrantable Deviation on the part of the assured the Defendants were and are as the Insurers discharged from any Responsibility the Policy being by means thereof Vacated and

and that your Petitioner had no claim upon the Defendants for any loss which he might have sustained by reason of the ship wreck of the said Snow Crofts in as much as in all cases of Insurance it is a condition to be performed on the part of the insured - that the ship shall pursue the most direct Course which the nature of things will admit to arrive at her destined port agreeably to the Tenor of the Policy - which place of destination as well as the place of the Ships Departure is always pointed out and the Voyage as clearly delineated as Possible in order that the under writers or Insurers may be liable to no risk which they do not expressly subject themselves to. and hence the Law is that if a Vessel insured Warns from the direct Course without absolute necessity or if she calls or touches at any Port or Ports which are not expressly Specified in the Policy then the Insurers Obligation is at an end. The Defendants did further Answer and say that in the present Case if the members then forming the Committee of the madras Insurance Company had known that the said snow Crofts was to touch at the Different Ports on the Coast of Coromandel they might have thought proper to Right the risk altogether or if they had agreed to accept it they would in such case have Required a higher Premium than what was paid on your Petitioners Policy the Risk being much greater in prosecuting such a Voyage than it would have been in following a direct Course from Columbo to Bengal River - For at the time of the arrival of the said Snow Crofts on the Coast of Coromandel - the petty monsoon had set in and in that season blowing weather is generally expected accompanied with a turbulent Sea - which occasions the Vessels at anchor on the said Coast to labour - and strain excessively which heavy straining the Defendants conceived was or might have been the Cause of the leak and Subsequent loss of the said Snow Crofts whereas if she had pursued a direct Course to Bengal River as she was bound to do without Touching on the Coast it is Probable she would have had no such weather to contend with - and would in all likely hood and as the Defendants verily believed have arrived in safety at her distined Port in Bengal and the Defendants in proof of the bad weather which then existed prayed Leave to annex in their Answer for the inspection of the said mayors Court the Copy of a Second Protest made before the said George Chalmer in his Capacity of Notary Public on account of the said Daniel Kennedy which Protest the Defendants said was duly Registered in his notarial Book and ready to be proved by the subscribing Witnesses if required and the Defendants prayed Leave to observe that if the loss sustained by your Petitioner had happened in the regular course of the Voyage without any deviation from the Policy that even then your Petitioner could not recover the balance stated in the Account Current annexed to the Bill of Complaint - which Account Current the Defendants pretended was in many respects highly

highly erroneous being made out Contrary to the principles of adjustment as settled by the Laws of Insurance on total or partial Losses that the Defendants were advised and verily believed that Insurers have nothing to do with the Rise & fall of markets the nature of their Contract with the Insured being simply that the Goods should come safe to the Port of delivery or if they do not that the amount of the Value stated in the Policy shall be paid when a total loss therefore happens upon a valued Policy the Insured has only to prove that the Goods were actually on Board to entitle him to recover and so when a partial loss has been sustained on Goods The Insurer is bound to pay it but not according to the Value for which these Goods would sell but by the value stated in the Policy and hence (they stated) that it is established that the prime Cost of the Commodity (which is independent of the rise or fall of the Markets or the speculation of the Merchants) is what the Insurers engage to become responsible for and the Defendants said that upon these principles your Petitioner ought to have given Credit for the Chanks saved from the said Snow Crafts not for what it sold at Calcutta but in the proportion to what Seventy Seven thousand eight hundred and fourteen Pieces of Chanks bore to three hundred thousand according to the following rule—

If 300.000 pieces of Chanks Costs Pagodas 9746. what will 77.814 pieces Cost the Answer to which is 2526, 27/40 27/40 or thereabouts and the Defendants said that according to this mode of adjustment and which they pretended to be the only proper way of Stating it your Petitioner

ought

ought to have Credited the said Sum of two thousand five hundred and twenty Six Pagodas twenty Seven fanams and twenty Seven Cash in the account Current annexed to the Bill of Complaint instead of One thousand Nine hundred and thirty five Pagodas thirty Six fanams and Sixty Cash The Defendants for further Answer said that if they rested their defence upon the merits of the Account Current annexed to the Bill of Complaint they would particularly object to the Item of one thousand and fifty Nine Pagodas thirteen fanams and forty nine Cash on account of Charges said to be paid on the Chanks saved from the Crafts - and which the Defendants said that they Consider as inadmissible Because your Petitioner had not introduced any Document shew the same were incurred and in like manner would the Defendants have objected to the Interest as charged by your Petitioner in and by the said account Current - Because if your Petitioner had Conceived that he had a Just Claim upon the Defendants He ought to have instituted his Suit before and the Defendants said that they chiefly rested their Defence to your Petitioners said Bill of Complaint upon the deviation from the Policy which deviation they Considered as having entirely exonerated them from any Claim whatever on account of your Petitioner and that they only deemed it necessary to point out the many incorrect and

unjust

unjust Charges contained in the Account Current annexed to the Bill as a proof of the unjust and litigious Conduct of your Petitioner and lastly the Defendants stated as a further proof of this litigious disposition that they had prevcaus to the filing of the Bill offer to submit the matters in difference to arbitration agreeably to the Clause in the Policy for that purpose made and provided but that to this amicable and equitable mode of adjustment your Petitioner refused to accede—

To which said answer your Petitioner sheweth that he filed his Replication and did therein setforth that he would in due time prove that he had shipped three Sacks of Chanks on Board the Said Snow Crofts as charged in his Bill of Complaint and that the agreement entered into between your Petitioner and the said John Elliot as also the Invoice and Bill of Lading did express that the said Snow Crofts was to proceed to Bengal nor did your Petitioner ever understand that the said Snow was to touch on the Coast of Coromandel and that your Petitioner could further prove that the said John Elliot hath acknowledged upon Oath he never mentioned to your Petitioner he had such an intention your Petitioner therefore could not have supposed the said Snow Crofts intended to touch at Any Ports or Places on the Coast of Coromandel but that his intention was to proceed direct to Bengal according to his said Contract Invoice and Bill of Lading and your Petitioner did further

Setforth

setforth that not only the direct tenor of the said Documents and Policy of Insurance was in favor of your Petitioner but the inference arising from the written stipulations therein mentioned for it is expressed that the Snow Crofts was to proceed Tutocorin to the Port of delivery in Bengal River with liberty to proceed to Columbo to receive Letters on Board your Petitioner therefore said that if it was known to your Petitioner that the said John Elliot meditated to call at any other Port or Place after taking in the said Chank he would have mentioned it in his instructions for Insurance well knowing that it is a principle in all Insurances for the Insured to make known to the Insurers all matters within their knowledge which can in any wise affect the Risk your Petitioner therefore said that having been uninformed of any intention of the Said John Elliot the Commander of the said Snow Crofts to touch at any other Port or Place after receiving his said Cargoe on board Columbo only excepted and the said John Elliot having been Silens thereon that your Petitioner was not affected in his Claim against the Defendants by reason of the said John Elliot having touched at Nagapatnam Pondichary Tranquebar and Madras nor had your Petitioner any thing to do with the reasons or motives which urged the Said John Elliot to act contrary to his written Stipulations with your Petitioner nor with the

Speculative

speculative Plans of the said Daniel Kennedy as stated in the answer of the Defendants as your Petitioners was uninformed thereof at the time he loaded the Chank on Board the said Snow Crofts and also at the time he Insured the Same your Petitioner did admit that every Vessel ought to pursue the most direct Course of which the nature of things will admit to arrive at her destined Port and that no under writer or Insurer is liable to any risks which an Insured is supposed to know and does not Communicate to the Insurer but as long as the Insured doth communicate fully to the Insurers his full information of the matters which have come to his knowledge he is not affected by the Baratry of the Master or Commander or Sailors on board Such Ship or Vessel for the same is generally provided for as in the present instance by the Policy which expressly excepted among other Things the Barratry of the master and mariners your Petr. did therefore insist that having insured Nine thousand Seven hundred and forty one Pagodas he had a Right to recover that Sum or such part thereof as he hath lost by the Baratry of the master of the Vessel on which his Property was insured your Petitioner did therefore insist that his account Current as annexed to his Bill of Complaint was just and that the Objection of the Defendants was factile your Petitioner did also state that altho the

Policy

Policy of Insurance makes mention of an arbitration the Law gives the Option to the Insurer to refer the same to a Court of Law To which said Replication your Petitioner sheweth that the Defendants did file their Rejoinder and did therein state that your Petitioner in his Replication having admitted that the said Snow Crofts did without necessity or any reasonable cause by Stress of Weather or otherwise But for the Sole and avowed purpose of Trading and Bartering depart from the Regular Course of the Specific Voyage Insured the Defendants were in consequence of such deviation discharged from all Responsibility and the Policy thereby vacated and the Defendants further Said that although they were advised and did Believe that your Petitioner Martinius Mackerra was well Acquainted with the Intention of the said John Elliot to touch at defent Ports and Places on the Coast of Coromandel in the Said Snow Crofts and that Consequently he was accessary to the Deviation yet whether he was or was not Acquainted with the Intentions of the said John Elliot is very immaterial in the present Case For even admitting that the Suppression of the Circumstance happened through Mistake and without any fraudulent Intention yet still that the Defendants were deceived and the Policy therefore was void

Because

Because the Risk run was really different from the Risk understood and intended to be Run at the time of the agreement and the Defendants did admit that the Policy Executed by Edward Garnon James Landon and Robert Clerke as the Committee of the madras Insurance Company Copy whereof is annexed to the Bill of Complaint doth as well as all other Policies provide for the Barratry of the Master and mariners yet that the Defendants could not admit or by any means allow that this Doctrine doth Apply to the present Case For the law regarding Barratry is well known and clearly defined and can be Committed against none but the Owners Consequently the said John Elliot who was Owner of the Said Snow Crofts could not have Committed a Barratry nor did the Circumstance (as they pretended) of his being at the Same time Master of the Vessel alter the Case for that which would have been Construed Barratry in a person merely Sailing as master of the Vessel was not so in him That it was true that he may make himself Personally liable to the Shipper of the Goods for his Conduct but not for Barratry which must partake of some thing Criminal in its nature and be Actually Committed against the Owner by the Master or Mariners which Doctrine the Defendants pretended had been settled by Several adjudged Cases Solemnly Determined both in the Courts of Common Law and in

Equity

and which Cases the Defendants said they were ready to produce in Illustration and Support of their Assertion and therefore that they Considered any further Argument to shew that Barratry had not been Committed unnecessary The said John Elliot being as the Defendants asserted but which is not the fact named in the Policy and admitted by your Petitioner as owner and Master of the said Snow Crofts which at once as they Say does away the Charge for your Petitioner Sheweth that tho he hath in his Bill of Complaint called the said John Crofts owner as well as Master of the Said Snow Crofts yet he is named Master only in the Policy and the word owner is not therein inserted and your Petitioner Sheweth that the Defendants for further Rejoinder prayed leave to advert to the inconsistent manner in which your Petitioner had brought and Maintained the present Suit for the Defendants said that they were advised that in all actions brought upon a Policy of Insurance the Bill or Declaration ought to Set forth by what means the Loss has happened - and as your Petitioner in the Present Case depends upon the Clause of Barratry the same ought to have been Specially Stated which Rule should be as they pretend all times strictly adhered to for otherwise the Insurers would come unprepared to Defend themselves against one Charge and one Species of Loss and they would then be obliged to resist a Demand upon quite

a

a different Ground as they pretend is the Case in the present Instance and the Defendants further Said that by your Petitioners own shewing it did appear that a Voyage different to that which the Policy intended to Cover was meditated upon For that in the said Replication it is setforth that by the Agreement Entered into between your Petitioner and the said John Elliot as well as by the Invoice and Bill of Lading that the Said Snow Crofts was to proceed to Europe that the Defendants were at a loss to account for such on incongruous statement of circumstances differing so evidely from the policy for that the Madras Insurance Company would no more undertook to Cover a Voyage to Europe than they did a Voyage to the Coast of Coromandel your Petitioner sheweth that he admits that he did in his Replication insert the word Europe by mistake instead of the word Bengal but he submits that Such Clerical Error cannot affect his Claim as setforth and descreribed in his Bill of Complaint

Your Petitioner Sheweth that upon the above proceedings issue was joined and Several Exhibits in support of his Cause were produced by your Petitioner and which were duly proved by the Evidence of Henry Chichley Michell and John Leonard Beggle after which publication passed and the said Cause was set down for hearing and came on to be heard by and before the said Mayors Court on Tuesday the twentieth day of may last when the said Court thought proper &

to order and Decree and did accordingly Order and Decree that your Petitioners Bill should stand dismissed with Costs as by the said Decree herewith Lodged for the Inspection of this Honble Court & by the other proceedings in the said Cause reference being thereunto respectively had may more fully appear from which Decree of the Mayors Court your Petitioner doth appeal to this Honble Court of Appeals as he conceives the same to be highly injurious and that your Petitioner is much aggrieved & injured thereby for the following among other Reasons

First ..... Because that by the tenor of the Invoice Bill of Lading and agreement as also by the Affidavit of John Elliot the master of the Snow Crofts it is evident that the said John Elliot as Master was guilty of Barratry for it appears therefrom that the said John Elliot the Master of the Snow Crofts deviated from his agreement whereof the Second article is as follows "after having "loaded the said Chank he is to return to Columbo to receive "further instructions and to proceed from thence to Bengal" instead of which he traded on the Coast of Coromandel an act evidently for the private Interest of the Master and without the Knowledge of the Assured which act being in its self a fraud upon the Assured is that offence which by Law is called Barratry and is provided for by the policy of Assurance

Second

Second — Because the said deviation by the Masters choice and without the Assureds Order is against the 7th Article of the Laws of Assurance — which is as follows—

Beawes Lex Mercatoria

" That the Insurance shall be null if the Assured makes his Ship to touch " at any other Ports than those mentioned in the policy but if this is done " by the Master either through choice or necessity without the Assureds " order it shall not hurt the Insurance—

Third — Because that tho the said John Elliot is stated in the Bill of Complaint to be Owner as well as Master such description of the said John Elliot does not appear on the face of the policy the Invoice the Bill of Lading or the Agreement nor is it proved in any part of the proceedings in the Cause - and therefore whether the fact really be so or not yet as the said instruments upon the Tenor of which the present action is founded state the said John Elliot as Master only he as master having deviated from the Voyage for his private Interest and without the order or even knowledge of the Assured has committed Barratry as far as relates to the Assured who is to be considered as a third person in no wise to be Affected by any matter foreign from the Instruments which existed between him and the Master and the Policy of Insurance drawn up under the Terms expressed in those Instruments to Wit" an Insurance on the Snaw Crofts from Tatecorin to the Port of Delivery in Bengal River with liberty to proceed to Columbo to receive Letters on board—

Fourth — Because that the Law of Insurance is that which is to be interpreted more than any other Law according to the Equity of the Case for it is emphatically thus described by the most reputed Author on the Subject of Insurances—

" Lex de qua agimus
" est Pons Equitates "

Fifth — Because that if the said John Crofts who was known to the Assured only as Master and treated with as such should at any time after turn out to be sole or part owner of the Snaw and that the Insurers who under their Policy call him Master only and not owner should be able to set up such after information for their own benefit and rid themselves of their Covenant against the Barratry of the master of the Snaw Crofts because he so afterwards turns out to be owner an opportunity would by such ultimate decision of a Law Court be given to Insurers to relieve themselves from their policies to the overthrow of Insurances in general the hindrance of Commerce and the ruin of Individuals who under the faith of policies pursued their Trade with implied Security against all Risks comprehended therein—

For all which Reasons and such others as may be offered at the Hearing of this Cause your Petitioner prays that

that the said Decree of the Mayors Court of the Twentieth day of may last may be reversed and that your Petitioner may be Decreed the sum Sued for with Interest and costs to be paid by the Defendants—

/Signed/ Popham & Williams } Sol.rs for Appellant

Mayors Court

Mayors Court at Madraspatnam

Tuesday the 20th day of May Anno Domini 1794

Present

Mr. James Call Senior Alderman

William Webb ———

Andrew Ross John Mitford

James Daly & Alex.r Cockburn

Aldermen

Between Martinius Michern of Tranquebar Merchant by his attorney Jacob Eilbracht Governor of Pulicott by his attorney Diederich Christiane of Fort Saint George Merchant Complainant and William Balfour Olivier Colt Josias Dupre Porcher Thomas Read head and Henry Read head Robert Wolf Benjamin Roebuck and William Abbott Daniel Ince George Chalmer George Garrow Miguel Joannes Jacob ~~Arnbom~~ Samuel Moocartish Moorat Adrian De Fries John De Fries Junior Thomas De Fries and Frances Lautour of Fort St.e George Merchants Composing the Madras Insurance Company

Company heretofore represented by Edward
Garraw James Landon and Robert Clerk
acting as a Committee for the said Madras
Insurance Company Defendants—

This Cause coming on to be heard and debated this Day in the Presence of the Attornies on both Sides on Reading the Complainants Bill with Copies of a Policy of Insurance & account Current annexed— The Defendants Answer with Copy of an Exhibit annexed The Replication The Rejoinder The Interrogatories and Depositions on the part of the Complainant with Exhibits marked B C D E & F annexed On Hearing the Readings made use of by the Attornies and on due Consideration had thereon— This Court doth think fit to Order and Decree and doth accordingly Order and Decree that the Complainants Bill do stand Dismissed with Costs—

Thos/Signed/ George Taylor Regr

To

To the Honourable Sir Charles Oakeley Bart.
President in Council
Fort St. George

In the Honble the
Court of appeals

Between Martinus Muckern by his attorney Jacob Eilbracht by his attorney Dederick Christiance Complainant and William Balfour and Oliver Colt Josias Dupre porcher Thomas Redhead and Henry Redhead Robert Woolf Benjamin Roebuck and William Abbott Daniel Ince George Chalmer George Garraw Jacob Aratoon Samuel Moocartish Moorat Adrian De Fries John De Fries Junior Thomas De Fries and Francis Lautour Defendants—

Filed in my Office
the 30th June 1794.
Robert Clerke
Clk.

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

These Respondents for answer to the said appellant Petition and appeal or unto so much thereof as is necessary for them to make answer unto answer and admit That on or about the Twentieth day of march which was in the year of our Lord One Thousand seven

seven hundred and ninety three the said Appellant did file and Exhibit a Bill of Complaint in the Mayors Court at Madraspatnam against these Respondents as the persons Composing the madras Insurance Company therefore represented by Edward Garrow James Landon and Robert Clerk acting as a Committee for the said madras Insurance Company for the recovery of the Sum of Eleven thousand four hundred and eighty Six Star Pagodas fourteen fanams and thirty five cash Current money of madras - or in sterling money of Great Britain at the rate of Eight Shillings for every Pagoda the Sum of four thousand five hundred and ninety four Pounds ten Shillings and Seven pence or thereabouts - And these Respondents admit that the said Appellant did annex to his said Bill of Complaint copies of a Policy of Insurance signed by the said Edward Garrow James Landon and Robert Clerk also an account Current made up and stated in the manner which the said Appellant has setforth and discribed in and by his said petition and appeal And these Respondents for further answer admit that the appellant did in his said Bill of Complaint State that having occasion to send to Chinsurah one of the Dutch Factories at Bengal in the month of march which was in the year of our Lord One thousand seven hundred and ninety a certain quantity of Chanks he agreed with John Elliott - owner and Commander of the Snow Crofts who was then at Colombo To Sail from thence to Tutocorin and there to take

take a Cargo on Freight in the said Snow Crofts on account of the Appellant consisting of three Lacks of Chank and after completing the said Cargo to come back to Colombo to receive Letters on board and thence to proceed to Bengal - and deliver the said three Lacks of Chanks to Isaac Fitzingh Esquire Chief of Chinsurah - And these Respondents also admit that the said John Elliott accordingly Sailed from Colombo to Tutocorin and received on board the said Snow Crofts the said quantity of three Lacks of Chanks from the Appellant and signed Bills of Lading for the same

That the Appellant afterwards got the said Chanks Insured at Madras for the sum of nine thousand seven hundred and forty One Pagodas being the value of the said Chank in the name of him the Appellant as by the said policy would fully appear And these Respondents admit that the Bill of Complaint further Charged that the said Snow Sailed from Colombo with the said Cargo of Chank on board with the intention as the appellant said he supposed to proceed directly to Bengal which was not the case for instead thereof he stopped at Several places on the Coast And was lost near Coringa of which notice was in due time given to the Secretary of the Insurance Company of which this Respondents are the Members but previous thereto the said Vessel touched at madras

where

where part of the said Chank was removed to another Vessel then at anchor in the road of Madras and the same having arrived safe at Bengal was sold for the account and benefit of these Respondents as the Insurers and credit given for the same and thereupon the said appellant did charge that these Respondents were bound to make good the Insurance and liable to the Balance charged to be due on the said account And for which Sum these Respondents admit the appellant prayed a Decree with Costs—

And these Respondents for further answer admit that being summoned they did appear to the said Bill of Complaint and afterwards filed their answer and therein and thereby admitted that they were the Members composing the Madras Insurance Company represented as aforementioned by Robert Clerk Edward Garraw and James Sandon But these Respondents did in their said answer positively deny that they were by reason thereof indebted unto the appellant in the Sum of Eleven thousand four hundred and Eighty Six Pagodas fourteen fanams and thirty five Cash as charged in the said Bill of Complaint or any other sum or sums whatsoever These Respondents however did in their said answer admit it to be true as was stated in the Bill that the appellant might have had occasion to send to Chinsurah a quantity of Chank at the time mentioned by him in the Bill of Complaint. That for such purpose

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The appellant did agree with John Elliott owner and Commander of the Snow Crofts. who was then at Colombo to Sail from thence to Tutocorin. and then and there to take the Chanks on board And these Respondents in their said Answer did further admit that it was or might have been agreed upon between the appellant and the said John Elliott that after completing the Cargo the said Snow Crofts was to return to Colombo for Letters But they did not believe or admit that it was expressly stipulated between the appellant and the said John Elliott as was stated in the Bill of Complaint that he was from the said Port of Colombo to proceed direct Bengal For these Respondents in their answer insisted that the said Snow Crofts did actually receive a Cargo on board at the said Island of Ceylon calculated for the markets on the Coast of Coromandel— And with the said Cargo she left Colombo but instead of pursuing a direct course to her destined port according to the Specific Voyage Insured she did without necessity or any just and reasonable cause by Stress of weather or otherwise But actually and avowedly for the purpose of trading touch put in and Anchor at various ports and places on the Coast of Coromandel That the said Snow at the port of Madras became leaky and being driven from her anchors was afterwards

lost

lost. And these Respondents also admit that in their Joint and Seperate Answer George Chalmer one of the Defendants in proof of the Deviation in the Voyage of the said Snow Crofts did State and setforth that Daniel Kennedy a Freighter of the said Snow Crofts appeared before him in his Capacity of notary publick to Declare and protest on account of the said Snow, and amongst other things declared that he had purchased in the Course of the said Voyage at the said Island of Ceylon a Cargo intended to answer the purpose of a trading Voyage with which Cargo he left the Island of Ceylon in the said Snow Crofts touching and trading at different ports on the Coast of Coromandel in his way to Madras where he arrived and anchored on the ninth day of April in the said year one thousand seven hundred and ninety and these Respondents did thereupon insist, that from such unwarrantable deviation on the part of the assured they were as the Insurer discharged from all responsibity the policy being by means thereof vacated. And these Respondents also admit that as an additional reason for considering the said policy vacated they did in their said answer further state that if the members then forming the Committee of Madras Insurance Company had known that the said Snow Crofts was to touch at the different ports in the Coast of Coromandel they might have thought proper to reject the risk altogether or if they had agreed to accept it They would in such case have required a higher premium than what was paid on the Appellants policy The risk being much greater in proceeding such a Voyage than it would have been in following a direct course from Colombo to Bengal river For at the time of the arrival of the said Snow Crofts on the Coast of Coromandel the petty monsoon had set in and in that season blowing weather was generally expected accompanied with a turbulent Sea which occasioned the Vessels at anchor on the said Coast to labour and strain excessively which heaving and straining. These Respondents said was or might have been the Cause of the leak and subsequent loss of the said Snow Crofts whereas if she had pursued a direct course to Bengal river as she was bound to have done without touching on the Coast it was probable she would have had no such weather to contend with and would in all likelihood have arrived in safely at her destined Port in Bengal. And these Respondents also admitted that they did in their said answer further State that if the loss had happened in the regular course of the Voyage without any Deviation from the policy that even then the Appellant could not have recovered the Balance stated in the Account Current annexed to the Bill of Complaint which Account Current these Respondents shewed was in many respects highly erroneous being made out contrary to the principles of adjustment as settled by Laws of Insurance on total or partial losses. And these Respondents having in their said answer clearly shewn that

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the answer was brought, and attempted to be maintained upon principle directly opposite to the known and established laws of Insurance. And having in their said answer pointed out the liligious conduct of the Appellant By shewing that he had refused to submit the matters in difference to arbitration agreeably to Clause in the policy for that purpose made and provided concluded with praying that the said Bill might stand dismissed.

To which said Answer these Respondents admit that the said Appellant did on the Twentieth day of August which was in the year of our Lord one thousand Seven hundred and ninety three file a Replication among other things setting forth that he would in due time prove that the agreement entered into between him and the said John Elliott as also the Invoice and Bill of lading did expressly Stipulate that the said Snow Crofts was to proceed to Bengal nor did he the appellant ever understand that the said Snow was to touch on the Coast of Coromandel. That if it had been known to him the Appellant that the said John Elliott meditated to call at any porter place after taking in the said Chank he would have mentioned it in his instructions for Insurance well knowing that it was a principle for the Insured to make known to the Insurers all matters within their knowledge which could in any wise affect the Risk. But the said John Elliott having been

silent

silent thereon & the appellant was not afflicted in his Claim against these Respondents by reason of the said John Elliott having touched at the Several ports on the Coast of Coromandel. And these Respondents further admit that the Appellant in his said Replication did insist that he could not be affected by the Barratry of the master or Commander or Sailors for the Same was generally provided for in the policy as was the case in the present instance and therefore that having insured Nine thousand seven hundred and forty one Pagodas he had a right to recover that Sum or such part thereof as he had lost by the Barratry of the master of the Vessel on which his property was insured. And the Appellant in his said Replication did thereupon insist that the Account Current annexed to his Bill of Complaint was just and that the Objection of these Respon-dents were futile.

To which said Replication on the part of the Appellant these Respondents admit having filed their Rejoinder and did therein insist that as the appellant in his said Replication had admitted that the said Snow Crofts did without necessity or any reasonable cause by Stress of weather or otherwise but for the sole and avaived purpose of Trading and Bartering depart from the regular course of the specifick Voyage Insured these Respondents were in Consequence of such deviation discharged from all Responsibility and the policy thereby vacated. And these Respondents further said that although they were advised that

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the Appellant . Martinus . Miskew was well acquainted with the intention of the said John Elliott to touch at different Ports and places on the Coast of Coromandel in the said Snow Crofts and that consequently he was accessary to the Duviation yet whether he was or was not acquainted with the intentions of the said John Elliott was very immaterial in the present case For even admitting that the suppression of the Circumstance happened through mistake and without any fraudulent intention yet still that the Defendants were deceived and the Policy therefore was void Because the risk run was really different from the risk understood and intended to be run at the time of the agreement = And these Respondents in their said Rejoinder further said that although they admitted that the Policy upon which the present action was brought provided for the Barratry of the master and mariners yet they could not admit or by any means allow that such doctrine did apply to the present case For the law regarding Barratry was well known and clearly defined and could be committed against none but the owners consequently the said John Elliott who was owner of the Snow Crofts could not have committed Barratry nor did the circumstance as this Respondent asserted of his being at the same time master of the Vessel alter the case for that which would have been construed Barratry in a person merely sailing as master of the Vessel was not so in him. That it was true that he might make himself personally liable to the Shipper of the Goods for his Conduct but not for Barratry and which doctrine these Respondents said had been clearly settled by several adjudged cases solemnly determined upon in the Courts of common Law and in Equity and which cases these Respondents said they were ready to produce in Illustration and support of their assertions . And these Respondents also admit that in their said Rejoinder they did advert to the in consistent manner in which the Appellant had brought and maintained his action and which they insisted was altogether informal . inasmuch as in all actions brought upon a Policy of Insurance the Bill or declaration out to set forth with truth by what means the loss had happened for otherwise Insurers would come prepared to Defend themselves against one charge and one species of Loss and they would then be obliged to resist a demand upon quite a different Ground as was the case in the present instance —

And these Respondents admit that upon the above proceedings issue was Joined when several exhibits were produced by the Appellant and proved by the Testimony of Henry Chichley . Michell and John Leonard Beggle But these Respondents insist that the said Exhibits were altogether inadmissable and ought not to have been Received or regarded by the said . Mayors Court as legal Evidence . And these Respondents further admit that Publication having passed, the said Cause was set down for hearing and came on to be heard by and before the said . Mayors Court on Tuesday the Twentieth day of may last when the said Court thought proper

to order and decree and did accordingly order and Decree that the appellants Bill of Complaint should stand dismissed with Costs as by the said Decree copy whereof is to the said petition and appeal annexed relation being there unto had may morefully and at large appear—

And these Respondents deny that the appellant is aggrieved by such Decree or that he has any just cause or reason to appeal therefrom—

And for answer to the first reason given by the Appellant for appealing from the Decree of the said Honble Mayors Court and wherein it is alledged that by the Invoice Bill of Lading and agreement as well as by the affidavit of John Elliott that he the said John Elliott was guilty of Barratry having deviated from the Second Article of the Agreement entered into between him and the appellant These Respondents say that it does not appear he did in any respect Deviate from the terms thereof For although the said agreement stipulated that the said Snowcrofts was to proceed from Colombo to Bengal yet it by no means event to preclude him from touching at the Ports in the way thither On the contrary It doth appear from the affidavit of the said John Elliott and who is the appellants own Evidence That he knew the Said Snowcrofts was to touch on the Coast of Coromandel and which act of Concealment on the part of the said appellant makes the Deviation infinitely more glaring than it otherwise would have been These Respondents do at the same time however

contend

contend that it is very immaterial to them what agreement was entered into between the appellant and the said John Elliott or whether the Appellant as the assured party was or was not consenting to the Deviation For where there is a departure from the policy whether the assured knew it or not still the Voyage becames different from that which was understood and the Insurers are in all such cases freed unless the Deviation can be justified on the principles of necessity which the Appellant has not attempted to do And these Respondents for further Answer deny that the said John Elliott was guilty of Barratry For Barratry is defined to be an act of the master or of the Mariners which is of a criminal and fraudulent nature tending to their own benefit to the prejudice of the Owners of the Ship and without their consent and privity and upon these principles it is established from a variety of adjudged cases Where a departure is made from the policy with the consent of the Owners or even where the master departs from the terms of the Policy without their knowledge not for his own private benefit but with a view to serve the Owner that Shall not be construed Barratry but a Deviation which frees the underwriter For Barratry implies something contrary to the duty of master and mariners in the relation which they stand to the Owners of the Ship and although the master may make himself liable to the Shipper of the Goods for misconduct yet not for

Barratry

Barratry which can be committed against the owners of the Ship and them only And upon the above principles these Respondents say the said John Elliott being Owner of the Snow Crosts and charged to be so by the Appellant in his Bill of Complaint, did not nor could not have committed Barratry - And these Respondents pray leave to observe that their doctrine respecting Barratry is confirmed by every adjudged case on the Subject but the principles thereof more fully and particularly illustrated in the cases of Stanna Vers Braun natt & others Asignees of Hague a Bankrupt against Bordieu and Lewin vers Swafse

In the first of these cases the Jury staid out for some time and not clearly comprehending what the Law was respecting Barratry upon their return asked the Chief Justice whether if the master was to have no benefit by passing the marselles / which was a Deviation from the terms of the policy / but went only for the benefit of his owners - That would be Barratry the Chief Justice answered no and they found a Verdict for the Defendant accordingly -

In the Second case the Doctrine insisted upon by these Respondents is still more fully illustrated and proved, There the master was guilty not only of departing from the terms of the policy But of a fraudulent convertion of the Goods of the Shipper But it was with the Concurrence of the owner of the Ship who was on board Both of them however were found guilty of Barratry by the Admiralty Court of Guienne and condemned to the Gallies But on action being brought against the Insurers in England their Ideas of Barratry were found to be very different from ours For Lord Mansfield said that with regard to the Sentence which had been passed abroad, and which declared the master and owner to have been guilty of Barratry it was entirely out of the question - That though it was a most righteous Judgment yet that it was no part of the consideration of the Court there what was meant by Barratry in the English policy The question was left entirely open That their Idea of Barratry was manifestly different from the construction put upon that word in our own Courts for they had found the owner guilty of Barratry which was entirely repugnant to every defination of Barratry which had ever been laid down in an English Court of Justice

And these Respondents shew that the above doctrine is further confirmed by the third case To wit Lewin Vers Lewfsa determined before Lord Hardwike in the High Court of Chancery The case was that the master sailed with the Vessel to marseilles and then instead of pursuing his Voyage sailed to the West Indies and there sold the Ship and died Insolvent an action at Law being brought against the Insurers He brought his Bill in Chancery

Chancery to be relieved and for an injunction charging that the master was owner of the Ship at the same time and although he had mortgaged his Ship to Swafse He nevertheless was in equity to be considered as owner although in Law the owners Ship and property would be looked upon in the mortgagee and as the owner of a Ship could not either in Law or Equity be guilty of Barratry concerning the Ship He therefore prayed an injunction and that the policy might be delivered which was accordingly granted —

To the Second Reason or Cause of appeal These Respondents for answer say That the Article therein referred to as taken from the Lex Mercatoria can only apply to cases where the master has no concern in the Vessel but being only sailing master departs from the prescribed voyage for his own benefit to the prejudice of his employers the Owners. In such a case these Respondents admit that Barratry would be committed But in the present instance it cannot It having been clearly and Solemnly established - That where the owner is also the master of the Ship any act which would in another master be construed Barratry is not so in him —

To the third Reason or Cause of appeal These Respondents for Answer say that it is perfectly sufficient - that the said John Elliott has been charged by the Appellant in his Bill of Complaint and in the Account Current thereunto annexed to be owner of the said Snow Crofts to shew that he is so For these Respondents humbly contend that there can be no greater proof adduced of any fact than the party to whom that fact apply admitting and even insisting on it The words of the Appellants Bill of Complaint are that having occasion to send to Chinsurah a certain quantity of Chanks He agreed with John Elliott owner and Commander of the Snow Crofts to carry it After such an admission it surely would have been very unnecessary for these Respondents to have proved what the Appellant himself had actually charged the said John Elliott to be Had the fact indeed been denied or even evaded These Respondents certainly could and would have brought forward very ample proof in support thereof. And these Respondents further say that it is not usual or customary to mention in a Policy of Insurance who are the owners of the Vessel but barely to insert the names of the master. And these Respondents for further answer say that even upon the principles stated in the Appellants said third reason they ought to be liberated For where one of two innocent persons must suffer by the Act of a third the question is who gave credit and the one who trusted ought to take the consequences In the present case the Appellant as the Assured was infinitely better acquainted with the said John Elliott than these Respondents were He looked around and Singled him out as a person to transport his merchandize in whom he thought he could confide and therefore as the Appellant thought proper to make

choice

choise of a Vessel belonging to an Owner who had acted disingenuously by him, he has in a great measure himself to blame—

In answer to the fourth Reason or Cause of appeal these Respondents say that nothing can be more beneficial to Commerce than the Law of Insurance being fixed upon the clearest bases, But which these Respondents contend never can be done. If its principles are to be disturbed by the supposed equity which interested parties will ever suppose applys to their particular case— For Instance the Appellant In order to answer his own purposes has attempted to introduce what he terms an equitable doctrine on the Subject of Barratry by charging the Owner himself to be guilty of it which is repugnant to every definition of Barratry that ever has been laid down in an English Court of Justice and so are the words of Lord mansfield in delivering the Judgment of the Court in the Cause of muilt and others Assignees of Hague a Bankrupt against Board herein before alluded to

To the fifth Reason these Respondents say It has been already shown by them in this Answer to the third reason that the Appellant considered that the said John Elliott was Owner of the Snow Corsis having denominated him so not only in the Bill of Complaint but also in the account Current thereunto annexed, The first entry thereof being in the following words and figures, To the amount Insured on the Snow the Corsis Captain John Elliott the Commander and Owner And therefore these Respondents consider any other or further answer to the Said fifth Reason altogether unnecessary

For all which Reasons and such others as may be adduced at the hearing these Respondents humbly pray this Honble Court will be pleased to affirm the Decree of the said Mayors Court and that the Appellants Petition of appeal may be dismissed with exemplary costs for his litigious Conduct

Signed George Chalmer
Solicitor for Respondent

Court

Court of Appeals at Madraspatnam &c

Saturday the 15th day of November Anno Domini 1794 —

Between Martinus Michorn of Tranquebar Merchant by his attorney Jacob Eilbracht Governor of Pulicat by his attorney Dederick Christeani of Fort Saint George Merchant Appellant and William Balfour River Catt Josias DuPre Porcher Thomas Readhead and Henry Read head Robert Woolf Benjamin Roebuck and William Abbott Daniel Ince George Chalmer George Garraw Miguel Joannes Jacob Aratoon Samuel Moorcraft Moorat Adrian De Fries John De Fries Junior Thomas De Fries and Francis Lautaur of Fort St George Merchants Respondents —

This Cause coming on this day to be heared 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 20th day of May Anno Domini 1794 upon due Consideration had of the matters therein Severally Contained and of the Readings 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 Clerke Actr

To

To the Kings Most Excellent Majesty in Council—

Between Martinus Michern by his attorney Jacob Eilbracht by his attorney Dederick Christiani Complainant and William Balfour and Oliver Colt Josias Dupre Porcher Thomas Readhead and Henry Readhead, Robert Woolf Benjamin Roebuck and William Abbott Daniel Ince George Chalmer, George Garrow Jacob Aratoon Samuel Moocarlish Moorat Adrian De Fries John De Fries Junior & Thomas de Fries and Francis Latour Defendants—

The Humble Petition and appeal of the abovenamed Martinus Michern by his Attorney Jacob Eilbracht by his attorney Dederick Christiani unto your Most Excellent Majesty in Council—

Sheweth

That on or about the Twentieth day of March which was in the year of Our Lord One thousand seven hundred and ninety three your Petitioner did file his Bill of Complaint in the Mayors Court at Madraspatnam against the above named Defendants being the Persons composing the Madras Insurance Company heretofore represented by Edward Garrow James Landon and Robert Clerk acting as a committee for the Said Madras Insurance Company for the Recovery of the Sum of eleven thousand four hundred and Eighty Six Pagodas fourteen fanams and thirty five Cash Current Money of Madras and your Petitioner did annex to his said Bill of Complaint Copies of a Policy of Insurance signed by the said Edward Garrow James Landon and Robert Clerk and of an Account Current which account Current was made up as follows to wit on the Debit side thereof the Amount insured and the charges of Saving and selling a certain quantity of the said Chanks were charged and Interest thereon respectively, and on the Credit side thereof were placed the Amount sales of the said Chanks so saved and the Interest thereon and the Balance thereof amounted to the said sum of eleven thousand four hundred and eighty six Pagodas fourteen fanams and thirty five Cash for the recovery whereof your Petitioner filed his said Bill and your Petitioner did state that having Occasion to send to Chensarah one of the Dutch Factories at Bengal in the Month of March which was in the year of Our Lord One thousand seven hundred and ninety a certain Quantity of Chanks he agreed with John Elliott Owner and Commander of the Snow Crofts who was then at Colombo to sail from Colombo to Tutucorin and there to take in Cargo on Freight in the said snow Crofts on account of your Petitioner consisting of three Lacks of Chanks and

after

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

after completing the said Cargo to come back to Colombo to Receive Letters on Board and thence to proceed to Bengal and deliver the said three Lacks of Chanks to Isaac Fitsingh Esquire Chief of Chensurah - and your Petitioner did further state that the said John Elliott accordingly sailed from Colombo to Tuticorin and Received on Bord the said snaw Brafts the said Quantity of three Lacks of Chank from your Petitioner and signed Bills of Lading for the same under date the fourth day of the said month of March and your Petitioner did further setforth that he got the said Chank Insured at Madras for the Sum of nine thousand seven hundred and forty one Pagodas being the value of the said Chanks in the name of your Petitioner as by the said Policy may appear. and your Petitioner did also state that the said snaw sailed from Colombo with the said Cargo of Chank on Board with intention as your Petitioner supposed to proceed directly to Bengal which was not the case but instead thereof she stopped at several places on the Coast and was Lost near Coringa of which notice was in due time given to the secretary of the said Madras Insurance Company but previous thereto the said Vessel touched at Madras where part of the said Chank was removed to another Vessel then at anchor in the Roads of Madras and the Same having arrived safe at Bengal was sold for the account and benefit of the said Insurance Company and Credit was accordingly

accordingly given for the same in the said Account annexed to the said Bill of Complaint as your Petitioner hath above stated - your Petitioner then charged that the said Madras Insurance Company were bound to make good their Insurance and therefore liable to the said balance charged to be due on the said Account made out as above stated and whereof Copy was annexed to your Petitioners said Bill of Complaint for which sum your Petitioner prayed a Decree with Costs and that the above Defendants might be summoned - your Petitioner Sheweth that they were summoned accordingly and appeared by their Attorney after which they filed their Answer and thereby admitted that they were the Members composing the Madras Insurance Company heretofore Represented by Edward Garraw James Landon and Robert Clerke and that the said Edward Garraw James Landon and Robert Clerke in the capacity of a Committee to the said Company did execute the Original Policy of Insurance Copy whereof was annexed to your Petitioner said Bill of Complaint and therein and thereby referred to but the said Defendants denied that they did thereupon stand indebted unto your Petitioner in the Sum of Eleven thousand four hundred and Eighty six Pagodas fourteen

fanams

fanams and thirty five Cash as Charged in the said Bill of Compliant and Account Current thereunto annexed or in any other sum or sums whatever. They did however admit it to be true as is stated in the Bill that your Petr. had Occasion to send a Quantity of Chanks to Chinsurah one of the Dutch Factories situated in the River Houghley in Bengal, in the Month of March which was in the year of our Lord One thousand seven hundred and ninety and that for such purpose your Petitioner did agree with John Elliot owner and Commander of the Snow Crofts who was then at Columbo to sail from thence to Tutocorin, and then and there to take a Cargo of Chanks on board, but whether the same amounted to three Lacks or not the said Defendants said they could not pretend to say further than they were informed in and by the said Bill - The said Defendants did further admit that it was agreed upon between your Petitioner and the said John Elliot that after Compleating the Cargo the said Snow Crofts was to Return to Colombo for Letters but that they did not believe or admit that it was expressly stipulated between your Petitioner and the said John Elliot (as is stated in the Bill) that he was from the said Port of Colombo to proceed direct to Bengal - because as they stated the said Snow Crofts did actually receive a Cargo on Board, at the said Island of Ceylon calculated for the markets on the Coast of Coromandel

Coromandel, and with such Cargo did trade and touch at different Ports on the said Coast. And the said Defendants did further admit that your Petr. through the means of his then attorney Nathaniel Edward Kindersley late of Fort St. George Esquire did apply to the Madras Insurance Company whereof the Defendants are the Members for an Insurance to be made on the Cargo Laden on the said Snow Crofts, and that for and in Consideration of the premium of four hundred and eighty seven Pagodas they did Insure the Sum of nine thousand seven hundred and forty one Pagodas, Current Money of Madras upon the Cargo of the said Snow out and from Tutocorin to the Port of Delivery in Bengal with Liberty to proceed to Colombo to take Letters on Board - and the Defendants did further Answer and say that the said Snow Crofts left Colombo but instead of pursuing a direct Course for her destined Port according to the specific Voyage Insured she did without necessity or any just and reasonable Cause, by stress of Weather or otherwise but actually and avowedly for the purpose of trading touch, put in and Anchor at various ports and places on the Coast of Coromandel To wit Nagapatam Pondichary Tranquebar and Madras as the Defendants pretended they have heard and did believe, at which last place the said Snow became leaky and being driven from her anchors was afterwards lost - your Petitioner further sheweth that George Chalmer

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one of the Defendants in proof of the deviation in the Voyage of the said Snow Crofts as above setforth did pray leave to state that in his capacity of Notary Public being at a time before he became a Member of the said Madras Insurance Company and consequently when he had no interest in or any wise concerned with the present cause of action Daniel Kennedy a Freighter of the said snow Crofts appeared before him to Declare and Protest on account of the said Snow Crofts, and amongst other things he the said Daniel Kennedy declared that he had purchased in the Course of the said Voyage at the said Island of Ceylon a Cargo intended to answer the purpose of a trading Voyage with which Cargo he left the Island of Ceylon in the said snow Crofts touching and trading at different Ports on the Coast of Coromandel in his way to Madras where he arrived and anchored on the twenty ninth day of April in the said year One thousand seven hundred and ninety and the Defendants did pretend and say that from such unwarrantable deviation on the part of the Assured the Defendants were and are as the Insurers discharged from any responsibility the Policy being by means thereof vacated and that your Petitioner had no claim upon the Defendants for any loss which he might have sustained by reason of the Ship-wreck of the said Snow Crofts inasmuch as in all cases of Insurance it is a condition to be performed on the part of the Insured that the Ship shall pursue the most direct Course which the

nature

nature of things will admit to arrive at her destined Port agreeably to the Tenor of the Policy which place of Destination as well as the place of the Ships Departure is always pointed out and the Voyage as clearly as delineated as possible in order that the Under-writers or Insurers may be liable to no risk which they do not expressly subject themselves to and hence the Law is that if a Vessel insured turns from the direct Course without absolute necessity or if she calls or touches at any Port or Ports which are not expressly specified in the Policy The Insurers Obligation is at an end The Defendants did further Answer and say that in the present case if the Members then forming the Committee of the Madras Insurance Company had known that the said snow Crofts was to touch at the different Ports on the Coast of Coromandel they might have thought proper to reject the risk altogether or if they had agreed to accept it they would in such case have required a higher Premium than what was paid on your Petitioners Policy the Risk being much greater in prosecuting such a voyage than it would have been in following a direct Course from Columbo to Bengal River For at the time of the arrival of the said snow Crofts on the Coasts of Coromandel the Petty monsoon had set in and in that season blowing weather is generally Expected accompanied with a turbulent sea which occasions the Vessels at anchor on the said Coast to labour and strain excessively which heavy

straining

straining the defendants conceived was or might have been the Cause of the leak and subsequent loss of the said snow Brofts whereas if she had pursued so direct Course to Bengal River as she was bound to do without Touching on the Coast it is Probable she would have had no such weather to contend with and would in all likelyhood and as the Defendants verily believed have arrived in safety at her distined Port in Bengal. and the Defendants in proof of the bad weather which then existed prayed leave to annex to their answer for the Inspection of the said Mayors Court the Copy of a second Protest made before the said George Chalmer in his Capacity of Notary Publick on account of the said Daniel Kennedy which Protest the Defendants said was Duly Registered in his Notarial Book and ready to be proved by the subscribing witnesses if required and the Defendants prayed leave to observe that if the Loss sustained by your Petitioner had happened in the Regular Course of the Voyage without Any deviation from the Policy that even then your Petitioner could not Recover the balance stated in the account Current annexed to the Bill of Complaint which account Current the Defendants pretended was in many Respects highly erroneous being made out Contrary to the principles of adjustment as settled by the Laws of Insurance on total or partial losses that the Defendants were advised and verily believed that Insurers have nothing to do with the rise or fall of markets the nature of their Contract with the Insured being simply that the Goods should come safe to the Port of delivery or if they do not that the Amount of the Value stated in the Policy shall be paid when a total loss therefore happpens upon a valued Policy the Insured has only to prove that the Goods were actually on board to entitle him to recover and so when a partial loss has been sustained on goods the Insurer is bound to pay it but not according to the Value for which those goods would shell But by the Value Stated in the Policy and hence (they stated) that it is established that the prime Cost of the Commodity (wholly independant of the Rise or fall of the markets or the Speculation of the Merchants) is what the Insurers engage to become responsible for and the Defendants said that upon these Principles your Pet.r Ought to have given Credit for the Chank saved from the said snow Brofts not for what it sold at Calcutta but in the Proportion to what seventy seven Thousand Eight hundred and fourteen Pieces of Chank bore to Three hundred Thousand according to the following Rule

If 300,000 pieces of Chank Costs 9748 Pagodas what will 77814 Pieces cost, the answer to which is 2526-27/27 or thereabouts and the Defendants said that according to this mode of adjustment and which they pretended to be the only proper way of

stating

stating it your Petitioner ought to have credited the said Sum of two thousand five hundred and twenty six Pagodas twenty seven fanams and Twenty Seven Cash in the Account Current annexed to the Bill of Complaint instead of one thousand Nine hundred and thirty five Pagodas thirty Six fanams and sixty Cash the Defendants for further answer said that if they rested their defence upon the merits of their account Current annexed to the Bill of Complaint they would particularly object to the Item of one thousand and fifty nine Pagodas thirteen & fanams and forty nine Cash on account of Charges said to be paid on the Chanks saved from the Crofts and which the Defendants said that they Consider as inadmissable— Because your Petitioner had not Introduced any Document in support of such extraordinary Charges nor had he attempted to show how the same were incurred and in like manner would the Defendants have objected to the Interest as charged by your Pet.r in and by the said Account Current because if your Petitioner had conceived that he had a just Claim upon the Defendants he ought to have instituted his suit before and the Defendants said that they chiefly Rested their Defence to your Petitioners said Bill of Complaint upon the Deviation from the Policy which deviation they Considered as having entirely exonerated them from any Claim whatever on account of your

Petitioner

Petitioner and that they only deemed it necessary to point out the many incorrect and unjust Charges Contained in the Account Current annexed to the Bill as a proof of the unjust and Litigious Conduct of your Petitioner and lastly the Defendants stated as a further proof of this Litigious Desposition/ that they had previously to the filing of the Bill offer to submit the matters in difference to Arbitration agreeably to the Clause in the Policy for that purpose made and provided But that to this amicable and equitable mode of adjustment your Petitioner Refused to accede—

To which said Answer your Petitioner sheweth that he filed his Replication and did therein setforth that he would in due time prove that he had Shipped three Lack of Chanks on board the said Snow Crofts as Charged in his Bill of Complaint and that the agreement entered into between your Petitioner and the said John Elliot as also the Invoice and Bill of Lading did express that the said snow Crofts was to proceed to Bengal nor did your Petitioner ever understand that the said Snow was to touch on the Coast of Cormandel and that your Petitioner could further prove that the said John Elliot hath acknowledged upon Oath he never mentioned to your Petitioner he had such an intention your Petitioner therefore could not have supposed the said Snow Crofts intended to touch at any Ports or Places on the Coasts of Cormandel but

but that his intention was to proceed direct to Bengal according to his said Contract Invoice and Bill of Lading and your Petitioner did further set forth that not only direct tenor of the said Documents and Policy of Insurance was in favor of your Petitioner but the inference arising from the written stipulations therein mentioned for it is expressed that the Snow Crofts was to proceed from Tutocorin to the Port of Velury in Bengal river with liberty to proceed to Columbo to receive letters on board your Petitioner therefore said that if it was known to your Petitioner that the said John Elliot meditated to call at any other Port or place after taking in the said Chank he would have mentioned it in his instructions for Insurance well knowing that it is a principle in all Insurances for the Insured to make known to the Insurers all matters within their Knowledge which can in any wise affect the risk Your Petitioner therefore said that having been uninformed of any intention of the said John Elliot the Commander of the said Snow Crofts to touch at any other Port or Place after receiving his said Cargo on board, Colombo only excepted and the said John Elliot having been silent thereon that your Petitioner was not affected in his Claim Against the defendants by reason of the said John Elliot having touched at Nagapatam, Pondicharg, Tranquebar and Madras nor had

your

your Petitioner any thing to do with the Reasons or motives which urged the said John Elliot to act Contrary to his written stipulations with your Petitioner nor with the speculative Plains of the said Daniel Kennedy as stated in the answer of the Defendants as your Petitioner was uninformed thereof at the time he loaded the Chanks on board the said Snow Crofts and also at the time he Insured the same your Petitioner did admit that every vessel ought to pursue the most direct Course of which the nature of things will admit to arrive at her distained Port and that no under writer or insurer is liable to any risks which an Insured is supposed to know and does not communicate to the Insurer but as long as the Insured doth Communicate fully to the Insurers his full information of the matters which have come to his knowledge he is not affected by the Barratry of the master or Commander or Sailors on board such Ship or Vessel for the same is generally provided for as in the present Instance by the Policy which expressly excepted among other things the Barratry of the master and Mariners your Petitioner did therefore insist that having insured Nine thousand seven hundred and forty one Pagodas he had a Right to recover that Sum or such Part thereof as he hath lost by the Barratry of the Master of the Vessel on which his Property was insured your Petitioner did therefore insist that his account Current as annexed to his Bill of Complaint was Just and that the Objection of the Defendants was futile your Petitioner did also state that altho the Policy of Insurance makes mention of an arbitration the Law gives the Option to the Insurer to refer the Same to a Court of Law To which the said Replication

your

your Petitioner, sheweth that the Defendants did file their Rejoinder and did therein state that your Petitioner in his Replication having admitted that the said Snow Crofts did without necessity or any reasonable Cause by Stress of weather or otherwise but for the sole and avowed purpose of Trading and Bartering depart from the regular Course of the Specific Voyage Insured. the Defendants were in Consequence of such deviation discharged from all Responsibility and the Policy thereby vacated and the Defendants further said that although they were advised and did believe that your Petitioner Martinus Mickem was well Acquainted with the Intention of the said John Elliot to touch at different Ports and Places on the Coast of Coromandel in the said Snow Crofts and that consequently he was accessary to the Deviation yet whether he was or was not acquainted with the Intentions of the said John Elliot is very immaterial in the present case For even admitting that the Suppession of the Circumstance happened though Mistake and without any fraudulent Intention yet still that the Defendants were deceived and the Policy therefore was void because the risk run was really different from the Risk understood and intended to be run at the time of the agreement and the Defendants did admit that the Policy Executed by Edward Garraw James Landon and Robert Clerk as the Committee of the Madras Insurance Company Copy whereof is annexed to the Bill of Complaint

doth

doth as well as all other Policies provide for the Barratry of the master and mariners yet that the Defendants could not admit or by any means allow that this Doctrine doth apply to the present case for the law regarding Barra is well known and clearly defined can be committed against none but the own consequently the said John Elliot who was owner of the said Snow Crofts coul not have committed Barratry nor did the Circumstance as they pretended of h being at the Same time Master of the Vessel alter the case for that which would have been Construed Barratry in a person merely sailing as Master of the Vessel was not so in him That it was true that he may make himself personally liable to the shipper of the Goods for his Conduct but not for Barratry which must partake of something criminal in its nature and be actually committed against the owner by the Master or Mariners which Doctrine the Defendants pretended had been settled by several adjudged cases solemnly Determined both in the Courts of Common Law and in Equity and which cases the Defendants said they were ready to produce in Illustration and support of their assertion and therefore that they Considered any further argument to shew that Barratry had not been committed unnecessary the Said John Elliot being as the Defendants asserted but which is not the fact named in the Policy and admitted by your Petitioner as owner and master of the said snow Crofts which at once as they say does away the Charge for your Petitioner sheweth that tho he hath in his Bill of Complaint called the said John Crofts owner as

well

as Master of the said snow Crosts yet he is named Master only in the Policy and the word owner is not therein inserted and your Petitioner Sheweth that the Defendants for further Rejoinder prayed leave to advert to the inconsistend manner in which your Petitioner had brought and maintained the present Suit for the Defendants said that they were advised that in all actions brought upon a Policy of Insurance the Bill or Declaration ought to setforth by what means the loss has happened and as your Petitioner in the present case depends upon the Clause of Barratry the same ought to have been been specially stated which Rule should be as they pretend at all times strictly adhered to for otherwise the Insurers would come unprepaired to Defend themselves against one charge and one Species of Loss and they would then be obliged to resist a Demand upon quite a different Ground as they pretend is the case in the present Instance and the Defendants further said that by your Petitioners own shewing it did appear that a Voyage different to that which the Policy intended to cover was meditated upon for that in the said Replication it is setforth that by the agreement intered into between your Petitioner and the said John Elliot as well as by the Invoice and Bill of Lading that the said Snow Crost was to proceed to Europe that the Defendants were at a loss to account for such an incongruous statement of Circumstances differing so widely from the Policy for that the Madras Insurance Company would no more undertook to cover a Voyage to Europe than they did a Voyage to the Coast of Coromandel your Petitioner Sheweth that he admits that he did in his Replication insert the word Europe by mistake instead of the word Bengal but he submits that such Clerical Error cannot affect his claim as setforth and Discribed in his Bill of Complaint your Petitioner sheweth that upon the above proceedings issue was Joined and Several Exhibets in Support of his Cause were produced by your Petitioner and which were duly proved by the Evidence of Henry Chichly Michell and John Leonard Beggle after which Publication passed and the said Cause was set down for hearing and came on to be heard before the said Mayors Court on Tuesday the Twentieth day of May last when the said Court thought Proper to order and Decree and did accordingly order and Decree that your Petitioners Bill should stand dismissed with Costs as by the said Decree herewith lodged for the inspection of this Honble Court and by the other Proceedings in the said Cause reference being thereunto respectively had may more fully appear —

From which said Decree of the Mayors Court your Petitioner did appeal to the Court of appeals at Madras as he conceived the same to be highly irroneous and that your Petitioner was much aggrieved and injured thereby for the following among other reasons —

First

First..... Because that by the Tenor of the Invoice Bill of Lading and agreement as also by the affidavit of John Elliot the Master of the Snow Crofts it is evident that the said John Elliot as Master was guilty of Barratry for it appears therefrom that the said John Elliot the Master of the Snow Crofts deviated from his agreement whereof the second article is as follows after having loaded the said "Chanks he is to return to Columbo to Receive further Instructions and to proceed from thence to Bengal instead of which he traded in the Coast of Coromandel an act evidently for the Private Interest of the Master and without the knowledge of the assured, which act being in itself a Fraud upon the assured is that offence which by Law is called Barratry, and is Provided for by the Policy of Insurance—

Second... Because the said Deviation by the Masters Choice and without the assureds order is against the seventh article of the Laws of Insurance which is as follows—

That the Insurance shall be null if the assured makes his ship to touch at any other Ports than those mentioned in the Policy but if this is done by the Master either the choice or necessity without the assured order it shall not hurt the Insurance—

Third..... Because that tho the said John Elliot is stated in the Bill of Complaint to be owner as well as master such Discription of the said John Elliot does not appear on the face of the Policy the Invoice the Bill of Lading or the agreement nor is it proved in any part of the Proceedings in the Cause and therefore whether the fact really be so or not yet as the said Instruments upon the Tenor of which the Present action is founded state the said John Elliot as master only he as master having deviated from the Voyage for his Private Interest and without the Order or even knowledge of the assured has committed Barratry as far as relates to the assured who is to be considered as a Third Person in no wise to be affected by any matter foreign from the Instruments which existed between him and the master and the Policy of Insurance drawn up under the Terms expressed in those Instruments to wit Insurance on the Snow Crofts from Calcutta to the Port of "delivery in Bengal River with liberty to proceed to Columbo to receive "Letters on Board"—

Fourth..... Because That the Law of Insurance is that which is to be interpreted more than any other Law according to the Equity of the case for it is emphatically thus discribed by the most reputed author on the subject of Insurances "Lex de qua" agemmusest Fons Equitates—

Fifth..... Because that if the said John Crofts who was known to the assured only as Master and treated with as such should at any time after turn out to be sole or part owner of the Snow and that the Insurers who under their

their Policy call him master only and not owner should be able to set up such after information for their own Benefit rid themselves of their Covenant against the Barratry of the Master of the Snow Crofts because he so afterwards turns out to be owner. an Opportunity would by such an ultimate Decision of a Law Court be given to Insurers to relieve themselves from their Policies to the Over throw of Insurances in General the hindrance of Commerce and the ruin of Individuals who under the faith of Policies pursued their Trade with implied Security against all risks comprehended therein—

For all which Reasons and such others as might be offered at the Hearing of this Cause your Petitioner Prayed that the said Decree of the Mayors Court of the Twentieth of May last might be reversed and that your Petitioner might be Decreed the Sum Sued for with Interest and Costs to be paid by the Defendants To which said Petition and appeal the Defendants filed their answer and therein after admitting the several Pleadings and Proceedings as above Setforth they answered the Several Reasonings urged by your Petr. in his said Petition and appeal to the President in Council as follows to wit—

To the first Reason the Respondents answer by pretending that by the affidavit

affidavit of the said John Elliot and whom they state as as Evidence brought forward by your Petitioner it appears that your Petitioner knew that the said Snow Crofts was to touch on the Coast of Coromandel. whereas your Petitioner Prays leave to state that the said John Crofts in his affidavit doth not assert that your Petitioner knew of such deviation for his affidavit is worded as follows—

"this Deponent further maketh Oath and saith that althe he did not "inform the Dutch Governor of Columbo nor the Persons employed by him "to Ship the said Chanks that the said snow was to touch on the Coast "of Coromandel the question not having been asked of him nevertheless this "Deponent saith from many circumstances he is convinced they knew it was "the intention of this Deponent to do so— by the wording whereof your Petitioner contends that the said John Elliot did not assert that your Petitioner knew of his intention to touch on the Coast of Coromandel and as to the circumstances to which John Elliot alludes your Petitioner doth not know of any which could favor such a belief. on the Contrary the agreements of the said John Elliot with the Government of Ceylon as well as the Invoice and Bill of Lading are three Instruments under the hand of the Said John Elliot which prove that it could not be supposed the Snow Crofts was to touch on the Coast of Coromandel the Second

article

article of the agreement is in the following words—

Art. 2.

After having taken the Chanks on board he is to return Columbo to receive further Instructions and from thence to proceed to Bengal. and your Petitioner Sheweth that the Bill of Lading expresses that the said Chanks had been received at Tutocorin from your Petitioner on the fourth Day of March in the year of Our Lord one thousand Seven hundred and Ninety and the Said John Elliot therein mentions as follows—

"all which Chanks I Promise in case of a safe Voyage which "God Grant to deliver to the Honble Isaac Fitsiugh Esquire Member "of the Supreme India Council and Director for the Dutch East "India Company in Bengal or to his order agreeable to the Conven"tion made with the Government at Ceylon"—

And your Petitioner Sheweth that the Invoice of the said Chanks "which bears date at Columbo on the Eleventh day of the said month of March states that the said John Elliot was to depart therewith to Bengal Consigned to the said Isaac Fitsiugh—

from all which your Petitioner humbly Contends that he had no reason to suspose the said John Elliot intended to touch on the Coast of Coromandel and therefore he insured "at and from Tutocorin

Tutocorin to the Port of delivery in Bengal River with liberty to proceed to Columbo to Receive Letters on Board"—

And as the said John Elliot did Conceal such his intention from your Petitioner and as John Elliot deviated from his agreement Invoce and Bill of Lading for his own advantage and did so while he was master of the said Snow Crofts your Petitioner Contends that he was guilty of Barratry against which the Policy hath insured your Petitioner and therefore your Petitioner ought to recover against the Insurers and in reply to that part of the Answer of the Respon=dents to your Petitioners said appeal wherein they state the case of Stranna Brown where the Jury asked the Chief Justice whether if the Master was to have no Benefit by passing the Marsells which was a diviation from the Terms of the Policy but went only for the benefit of his owners that would be Barratry and the Chief Justice answered, no and they found a Verdict for the Defendant accordingly— your Petitioner Sheweth that the Explanation in question proves your Petitioners Claim to be well founded as the Master John Crofts in the present case was guilty of the Deviation for his own benefit and therefore guilty of Barratry— and your Petitioner humbly submits to your most Excellent Majesty in Council the following—

Court of Appeals at
Madraspatnam

Saturday the 15th day of November
Anno Domini 1794

Between Martinus Michern of Tranquebar
Merchant by his attorney Jacob Eilbracht
Governor of Pulicat by his attorney Dederich
Christini of Fort Saint George Merchant
appellant and William Balfour Oliver
Colt Josias Dupre Porcher Thomas Readhead
and Henry Readhead Robert Woolf Benjamin
Roebuck and William Abbott Daniel
Ince George Chalmer George Garraw Miguel
Joannes Jacob Aratoon Samuel Moncrieff
Mowat Adrian De Fries John De Fries
Junior Thomas De Fries and Frances Sautour
of Fort Saint George Merchants Respondents

This cause coming on this day to be heard and Debated before this Court by the attornies on both sides upon hearing the Petition of Appeal and answer and the Several Exhibits of the Honble the Mayors Court together with the Decree of the said Court given in this cause on Tuesday the 26th day of May 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

Thur

/Signed/ Robert Clerke Attr

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To the Kings Most Excellent Majisty in Council

Betweeen Martinus Michiem by his Attorney Jacob Eilbracht by his attorney Dederick Christiani Complainant and William Balfour and Oliver Colt, Josias Dufpre Porcher, Thomas Redhead, and Henry Redhead Robert Woolf Benjamin Roebuck and William Abbott Daniel Ince, George Chalmer, George Garraw, Jacob Aratoon, Samuel Mocartish, Moorat Adrian De Fries, John De Fries Junior Thomas De Fries and Francis Sautour, Defendants—

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

Filed in my Office the 29th Dec. 1794 Robert Clerk Clk

These Respondents for answer unto the said appellants petition and appeal or unto so much thereof as is necessary for them to make answer unto answer and admit That on or about the twentieth day of march which was in the year of our Lord one thousand Seven hundred and ninety three the said Appellant did file and exhibit a Bill of Complaint in the Honble the Mayors Court at Madraspatnam against these Respondents as the persons composing the madras Insurance Company therein before represented by Edward Garraw James London and Robert Clerk acting as a Committee for the said madras Insurance Company for the Recovery of the principal sum of Eleven thousand four hundred and eighty Six Star Pagodas fourteen fanams and thirty five Cash Current money of madras, or in Sterlings money of Great Britain at the rate of eight Shillings for every Pagoda the sum of Four thousand five hundred and ninety four pounds ten Shellings and seven pence or thereabouts And these Respondents admit that the said Appellant did annex to his Bill of Complaint copies of a policy of Insurance signed by the said Edward Garraw James London and Robert Clerk also an Account Current made up and stated in the manner which the said appellant has set forth and discribed in and by his said petition and appeal And these Respondents for further answer admit that the Appellant did in his said Bill of Complaint state that having occasion to send to Bhinsurah one of the Dutch Factories at Bengal in the month of march which was in the year of our Lord one thousand seven hundred and ninety a

certain

certain quantity of Chanks he agreed with John Elliott owner and Commander of the Snow Crosts who was then at Colombo to sail from thence to Tutocorin and there to take a Cargo on Freight in the said Snow Crosts on account of the Appellant consisting of three Sacks of Chanks. and after compleding the said Cargo to come back to Colombo. to receive Letters on board and thence to proceed to Bengal and deliver the said Three Sacks of Chanks to Isaac Titsingh Esquire Chief of Chinsurah. And these Respondents also admit That the said John Elliot accordingly sailed from Colombo to Tutocorin and Received on board the said Snow Crosts the said quantity of Three Sacks of Chanks from the Appellant and signed Bills of Lading for the same—

That the appellant afterwards got the said Chanks Insured at madras for the sum of nine thousand seven hundred and forty one Pagodas being the Value of the said Chanks in the name of him the appellant as by the said policy would fully appear. And these Respondents admit as hath been stated in the Appeal to your Most Excellent Majesty in Council that the Bill of Complaint charged That the said snow sailed from Colombo with the said Cargo of Chanks on board with the intention as the appellants said he supposed to proceed directly to Bengal But which was not the case for instead thereof the said Snow Crosts supposed at Several places on the Coast and was lost near Coringa of which notice were in due time given to the Secretary of the Insurance Company of which these Respondents are the members. But previous thereto the said Vessel touched at madras where part of the said Chanks was removed to another Vessel. then at anchor in the road of madras and the same having arrived safe at Bengal was sold for the Account and benefit of these Respondents as the Insurers and Credit given for the same, and thereupon the said Appellant did charge that these Respondents were bound to make good the Insurance and liable to the balance charged to be due on the said account, and for which Sum, these Respondents admit the Appellant prayed a Decree with Costs—

And these Respondents for further answer to the Appeal made to your Most Excellent majesty in Council admit that being Summoned they did appear to the said Bill of Complaint and afterwards filed their Answer and therein and thereby admitted that they were the members composing the madras Insurance Company represented as aforemen=tioned by Robert Clerk Edward Garrow and James Sandon But these

these Respondents did in their said Answer positively deny that they were by reason thereof indebted unto the Appellant in the sum of &c Eleven thousand four hundred and eighty six Pagodas fourteen fanams and Thirty five Cash as Charged in the said Bill of &c Complaint or any other Sum or Sums of money whatsoever. These &c Respondents however did in their said Answer admit it to be true as was stated in the Bill that the Appellant might have had occasion to send to Chensurah a quantity of Chank at the time mentioned by him in the Bill of Complaint That for such &c purpose the Appellant did agree with John Elliott owner and Commander of the Snow Crofts who was then at Colombo to &c sail from thence to Totocorin and then and there to take the Chanks on board. And these Respondents in their said Answer did further admit that it was or might have been agreed upon between the Appellant and the said John Elliott that after completing the Cargo the said Snow Crofts was to return to Colombo for Letters. But they did not believe or admit that it was expressly stipulated between the Appellant and the said John Elliott as was stated in the Bill of Complaint that he was from the said port of Colombo to proceed direct to

Bengal

Bengal For these Respondents in their answer insisted that the said Snow Crofts did actually receive a Cargo on board at the said &c Island of Ceylon calculated for the markets on the Coast of Coromandel And with the said Cargo she left Colombo But instead of pursuing a direct Course to her destined port according to the specific Voyage Insured she did without necessity or any just and reasonable cause by stress of weather or otherwise But actually and avowedly for the purpose Trading touch put in and Anchor at various ports and places on the Coast of &c Coromandel. That the said Snow at the port of Madras became Leaky and being driven from her Anchors was afterwards Lost And these Respondents also admit that in their joint and seperate answer George Chalmer one of the Defendants in proof of the Deviation in the Voyage of the said Snow Crofts did state and setforth that Daniel Kennedy a Freighter of the said Snow Crofts appeared before him in his Capacity of notary Publick to declare and protest on account of the said Snow and amongst other things Declared That he had purchased in the cours of these Voyage at the said Island of Ceylon a Cargo intended to answer the purpose of a Trading voyage with which Cargo he left the Island of Ceylon in the said Snow Crofts touching and trading at different Ports on the Coast of Coromandel in his way to Madras where he arrived and anchored on the ninth day

of

of April in the said year one thousand seven hundred and ninety and these Respondents did thereupon insist that from such unwarrantable Deviation on the part of the Assured, they were as the Insurer discharged from all responsibility the policy being by means thereof vacated And that the Appellant to your most Excellent majesty in Council had no Claim upon these Respondents for any loss which he might have sustained by reason of the Ship wreck of the said Snow Crofts Inasmuch as in all cases of Insurance it is a condition to be performed on the part of the Insured that the Ship shall pursue the most direct course which the nature of things will admit, To arrive at her destined port agreeably to the tenor of the policy which place of destination as well as the place of the Ships departure is always pointed out and the voyage as clearly delineated as possible in order that the under writers or Insurers may be liable to no risk which they do not expressly subject themselves to and hence these Respondents contended that according to the Laws of Insurance if a Vessel Insured turned from the direct course without absolute necessity, or if he called or touched at any part or ports which were not expressly specified in the policy the Insurers Obligation was at an end And for further Answer to the Appeal to your most Excellent Majesty in Council These Respondents admit that they did Answer and say That in the present case if the members then forming the Committee of the madras Insurance Company had known that the said Snow Crofts was to touch at the different Ports on the Coast of Coromandel they might have thought proper to reject the risk altogether or if they had agreed to accept it they would in such case have required a higher premium than what was paid on the Appellants Policy The risk being much Greater in prosecuting such a Voyage than it would have been in following a direct Course from Colombo to Bengal never For at the time of the arrival of the said Snow Crofts on the Coast of Coromandel the Pitty Monsoon had set in and in that season blowing weather is generally expected Accompanied with a Turbulent Sea which occasions the Vessels at Anchor on the said Coast to labour and strain excessively which heavy Strainings The Respondents said they Conceived was or might have been the cause of the Leak and subsequent loss of the Said Snow Crofts Whereas if she had pursued a direct course to Bengal never as she was bound to do without touching on the Coast of Coromandel it is probable she would have had no such weather to contend with and would in all likelyhood

and

and as these Respondents verily believed have arrived insafety at her destined Port in Bengal And these Respondents in proof of the bad weather which then existed admit that they prayed leave to annex to their answer for the inspection of the said mayors Court the Copy of a Second protest made before the said George Chalmer in his capacity of notary Public on account of the said Daniel Kennedy which protest these Respondents said was duly Registred in his notarial Book and ready to be proved by the subscribing Witnesses if required. and these Respondents admit that they prayed leave to Observe That if the loss sustained by the appellant had happened in the regular course of the Voyage without any deviation from the policy that even then the Appellant could not Recover the Ballance stated in the Account Current annexed to the Bill of Complaint which Account Current these Respondents admit that they contended was in many respects highly erroneous being made out contrary to the principles of adjustment as settled by the Laws of Insurance on Total or partial losses That These Respondents were advised and verily believed that Insurers had nothing to do with the rise or fall of markets the nature of their Contract with the insured being simply that the Goods should come safe to the

Port

Port of Delivery or if they did not that the amount of the value stated in the Policy should be paid when a total loss therefore happened upon a valued policy. These Respondents contended that the Insured had only to prove that the Goods were actually on board to entitle him to recover and so when a partial loss on Goods the Insurer was bound to pay it but not according to the Value for which the Goods would sell But by the Value stated in the policy and thence these Respondents admit that they stated That it was by the laws of Insurance established that the prime Cost of the Commodity [wholly independant of the rise or fall of the markets or the speculation of the merchants] was what the Insurers engaged to become responsible for. And these Respondents admit that they said that upon these principles the Appellant ought to have given Credit for the Chank saved from the said Snow Crofts, not for what it sold at Calcutta but in the proportion to what Seventy Seven thousand eight hundred and fourteen pieces of Chank bore to three hundred thousand according to the following rule—

If 300.000 pieces of Chank cost 97/8th Pagodas what

will

well. 77. 8½ pieces Cost. The Answer to which is 2526. 27. 27. or thereabouts. And these Respondents admit that they said that according to this mode of Adjustment and which they insisted was the only proper way of stating it the Appellant ought to have credited the said sum of Two thousand five hundred and Twenty Six Pagodas twenty Seven fanams and tweny Seven cash in the Account Current annexed to the Bill of Complaint instead of One Thousand nine hundred and thirty five Pagodas Thirty six fanams and sixty cash— And these Respondents for further Answer admit that they said that if they had rested their defence upon the merits of the account Current annexed to the Bill of Complaint they would have objected particularly to the Item of one thousand and fifty nine pagodas thirteen fanams and forty nine cash on account of Charges said to be paid on the Chank saved from the Crofts and which the Respondents said that they considered as inadmissable. Because the Appellant had not introduced any Document in support of such extraordinary charge, nor had he attempted to shew how the same were incurred, and in like manner these Respondents said they would have objected to the interest as charged by the Appellant in and by the said account Current because if the Appellant had conceived that he had a just Claim upon these Respondents he ought to have instituted his Suit before. And these Respondents admit

admit that they did in their Answer to the Bill further Set forth that they chiefly rested their defence to the Appellants said Bill of Complaint upon the deviation from the Policy which deviation they Considered as having entirely exonerated them from any claim whatever on account of the Appellant. And that these Respondents only deemed it necessary to point out the many incorrect and unjust charges contained in the Account Current annexed to the Bill as a proof of the unjust and litigious conduct of the Appellant. and these Respondents admit that they Set forth as a further proof of the Appellants litigious disposition that they had previous to the filing of the Bill offered to submit the matters in difference to Arbitration agreeably to the clause in the Policy for that purpose made and provided. But that to this amicable and equitable mode of Adjustment the Appellant had refused to accede—

To which said Answer these Respondents admit that the Appellant to your most Excellent Majesty in Council filed a Replication and did therein set forth that he would in due time prove that he had shipped three Lacks of Chank on board the said Snow Crofts as charged in the Bill of Complaint and that the Agreement entered into between the Appellant and the said John Elliott as also the Invoice and Bill of Lading did express

that

that the said Snow Crofts was to proceed to Bengal. And these Respondents also admit that the said Appellant did state that he never understood that the said Snow was to touch on the Coast of Coromandel and that he the Appellant could further prove that the said John Elliot had acknowledged upon oath he never mentioned to the Appellant he had such an intention therefore he could not have supposed the said Snow Crofts intended to touch at any ports and places on the Coast of Coromandel But that his intention was to proceed direct to Bengal according to his said Contract Invoice and Bill of Lading. And these Respondents further admit that the Appellant did setforth that not only the direct tenor of the said Documents and Policy of Insurance was in favor of him the Appellant but the inference arising from the written stipulations therein mentioned For it was expressed that the Snow Crofts was to proceed from the Tutocorin to the Port of Delivery in Bengal never with liberty to proceed to Colombo to receive letters on board Therefore that if it was known to him the Appellant that the said John Elliot meditated to call at any other Port or Place after taking in the said Chank he would have mentioned it in his instructions for Insurance well knowing that it was a principle in all Insurances for the Insured to make known to the Insurers all matters within their knowledge which could in any wise affect the risk. And these Respondents admit that the Appellant did thereupon state that having been in informed of any intention of the said John Elliot the Commander of the said Snow Crofts to touch at any other Port or Places after receiving his said Cargo on board. Colombo only excepted and the said John Elliot having been Silent thereon that he the Appellant was not affected in his claim against these Respondents by reason of the said John Elliott having touched at nagapatnam Pondichary Tranquebar and madras nor had the Appellant any thing to do with the reasons or motives which urged the said John Elliot to act contrary to his written Stipulations with the Appellant nor with the speculative plans of the said Daniel Kennedy as stated in the Answer of these Respondents as the Appellant was informed thereof at the time he loaded the Chanks on board the said Snow Crofts and also at the time he insured the same. And these Respondents for further Answer to the Appeal to Your Most Excellent Majesty in Council admit that the said Appellant in his said Replication did state that every Vessel ought to pursue the most direct course of which the nature of things will admit, to arrive at her destined Port. and that no underwriter or Insurer was liable to any risk which the Insured is supposed to know and does not communicate to the Insurer, But as long as the Insured communicated to the Insurers his full information of the matters which had come to his knowledge he was not affected by the Barratry of the matters

or

or Commander or Sailors on board such Ship or Vessel for the same was generally provided for as in the present instance by the policy which ~ expressly excepted among other things the Barratry of the master and mariners. The Appellant did therefore insist. That having Insured nine thousand seven hundred and forty one Pagodas he had a right to recover that Sum or such part thereof as he had lost by the Barratry of the master of the Vessel on which his property was insured. These ~ Respondents admit that the Appellant did therefore insist that his Account Current as annexed to his Bill of Complaint was just and that the objection of these Respondents was futile And these Respondents admit that the Appellant did also state that altho the policy of ~ Insurance makes mention of an Arbitration the Law gives the option to the Insurer to refer the same to a Court of Law To which said Replication these Respondents admit that they did file their ~ Rejoinder and did therein state That the Appellant in his Repli= =cation having admitted that the said Snow Crofts did without necessity or any reasonable cause by stress of weather or otherwise but for the sole and avowed purpose of Trading and Bartering depart from the regular course of the Specific voyage Insured they were in consequence of such diviation discharged from all responsibility And the policy thereby vacated And these Respondents in their Rejoinder further said. That altho they were adversed and did believe that the ~

Appellant

Appellant martinus michem was well acquainted with the intention of the said John Elliot to touch at different ports and places on the Coast of Coromandel in the said Snow Crofts and that consequently he was accessary to the Deviation yet whether he was or was not acquainted with the intention of the said John Elliot these ~ Respondents contended was very immaterial in the present case For even admitting that the suppression of the circumstance happened through mistake and without any fraudulent intention yet still these Respondents were deceived and the policy ~ therefore was void Because the risk run was really different from the risk understood and intended to be run at the time of the Agreement And these Respondents allow that they did admit that the policy executed by Edward Garraw James Landon and Robert Clerk as the Committee of the Madras Insurance Company copy whereof is annexed to the Bill of Complaint did as well as all other policies provide for the Barratry of the master and mariners But these Respondents said they could not admit or by any means allow that this Doctrine did apply to the ~ present case. For the Law regarding Barratry was known and clearly defined and could be committed against none but the Owners consequently the said John Elliot who was Owner of the said Snow Crofts could not have committed Barratry

And

And these Respondents did also in their said Rejoinder insist that the circumstance of his being at the same time Master of the Vessel could not alter the case for that which would have been construed Barratry in a person merely sailing as master of the Vessel was not so in him That it was true that he might make himself personally liable to the Shipper of the Goods for his Conduct but not for the Barratry which must partake of some thing Criminal in its nature and be actually committed against the Owner by the master or Mariners which doctrine these Respondents contended had been settled by several adjudged cases Solemnly determined both in the Courts of Common Law in equity and which cases these Respondents said they were ready to produce in illustration and support of their Assertions and therefore that they considered any further Arguments to shew that Barratry had not been committed unnecessary the said John Elliot having been named by the Appellant in his Bill of Complaint and also in the Accompt Current thereunto annexed Owner and master of the said Snow Crofts, which at once does away the charge of Barratry. And these Respondents admit that they did in their said Rejoinder pray leave to advert to the inconsistent manner in which the Appellant had brought and maintained the present Suit, In as much as, that in all Actions brought upon

upon a Policy of Insurance, The Bill or Declaration ought to set forth by what means the loss had happened and as the Appellant in the present case depended upon the clause of Barratry the same ought to have been specially stated which rule these Respondents contended should at all times be strictly adhered to For otherwise the Insurers would come in prepared to defend themselves against one charge and one species of loss and they would then be obliged to resist a demand upon quite a different ground as was the case in the present Suit - And these Respondents admit that they further said that by the Appellants own shewing it appeared that a Voyage different to that which the policy intended to cover was meditated upon For that in the Appellants Replication it was set forth that by the Agreement entered into between the Appellant and the said John Elliott as well as by the Invoice and Bill of Lading that the said Snow Crofts was to proceed to Europe That these Respondents were at a loss to Account for such an incongruous Statement of circumstances differing so evidently from the policy For that the Madras Insurance Company would no more have undertaken to cover a Voyage to Europe than they did a Voyage to the Coast of Coromandel. And these Respondents for further Answer to the Appeal to Your Most Excellent Majesty in Council say that altho' this incongruous Statement does not altogether vitiate the proceedings Yet it strongly demonstrated a carelessness in conducting the Suit as well as a want of knowledge of Insurance Law And these Respondents admit that upon the above proceedings issue was joined and several Exhibits produced by the Appellant But these Respondents deny that they were duly proved by

by the Evidence of Henry Chichley Michell and John Leonard Beggle on the Contrary these Respondents contend that such Testimony was altogether inadmissible and ought to have been thrown out. And these Respondents admit that Publication having passed, the Cause was set down for hearing and came on to be heard by and before the said Mayors Court on Tuesday the Twentieth day of May last when the said Court thought proper to order and Decree that the Appellants Bill should stand dismissed with Costs as by the said Decree copy whereof is hereunto annexed relation being thereunto had doth and will more fully and at Large appear—

From which said Decree of the Mayors Court these Respondents admit that the said Appellant did appeal to the Court of Appeals at Madras conceiving the same to be highly erroneous and that he the Appellant was much Aggrieved and Injured thereby. And these Respondents admit that for Cause of Appeal the said Appellant did adduce the following reasons—

First..... That by the tenor of the Invoice, Bill of Lading and Agreement as also by the Affidavit of John Elliot the master of the Snow Crafts it was evident that he the said John Elliot as master was guilty of Barratry for it appeared therefrom that the said John Elliot the master of the Snow Crafts had deviated from his Agreement whereof the Second Article is as follows That after having loaded the said Chanks he was Return to Colombo to receive further instructions and proceed from thence to Bengal instead of which he traded on the Coast of Coromandel an act Evidently for the private interest of the master and without the Knowledge of the Assured, which Act being in itself a fraud upon the Assured is that offence which by Law is called Barratry and is Provided for by the policy of Insurance. And for further answer to the Appeal to your Most Excellent Majesty in Council. these Respondents admit that the said Appellants for a Second Reason did state That the Deviation was by the masters choice and without the Assureds Order and which he said was against the Seventeenth article of the Laws of Insurance namely—

That the Insurance shall be null if the Assured makes his ship to touch at any other ports than those mentioned in the policy But if this is done by the master either through choice or necessity without the Assureds Order it shall not hurt the Insurance—

And for further Answer to the Appeal made to your Most Excellent Majesty in Council these Respondents admit that the said Appellant did in his Third reason say That tho the said John Elliot was stated in the Bill of Complaint to be Owner as well as master such discription of the said John Elliott did not appear on the face of the Policy the Invoice the Bill of Lading or the Agreement. nor was it proved in any part of the proceedings in the cause, and therefore whether the fact really was so or not. yet as the said Instruments upon the Tenor of which the present Action was founded stated the said John Elliot as Master only he as master having deviated from Voyage for his private interest

interest and without the Order or even the knowledge of the Assured had committed Barratry as far as related to the Assured Who was to be considered as a third person in no wise to be affected by any matter foreign from the Instrument which existed between him and the master and the policy of Insurance drawn up under the terms expressed in such instruments, To wit an Insurance on the Snow Crofts from Tuticorin to the port of delivery in Bengal river with liberty to proceed to Colombo to receive letters on board And these Respondents for further answer admit that the said Appellant in his petition to the Court of Appeal at madras did as a fourth reason state That the Laws of Insurance was that which was to be interpreted more than any other law according to the Equity of the case and which the Appellant said was imphatically described by the most reputed Author on the Subject of Insurances Lex de qua agimusest Jons Equitates And as a fifth reason these Respondents admit That the Appellant did state. That if the said John Elliott who was known to the Assured only as master and treated with as such should at any time after turn out to be sole or part Owner of the Snow, and that the Insurers who under their policy call him master only and not Owner should be able to set up such after information for their own benefit. and rid themselves of their Covenant against the Barratry of the master of the Snow Crofts because he so afterwards turned out to be Owner an

Opportunity

opportunity would by such an ultimate decision of a Court of Law be given to Insurers to relieve themselves from their policies. To the overthrow of Insurances in general the Hendrance of Commerce and the ruin of Individuals who under the faith of policies pursued the trade with implied Security against all risks comprehended therein —

For all which reasons and such others as might be offered at the hearing, these Respondents admit that the said Appellant prayed that the said Decree of the mayors Court of the Twentieth of may last might be reversed and that he might be decreed the sum sued for with interest and Costs to be paid by these Respondents To which said petition and appeal these Respondents admit to have filed their Answer and therein after admitting the Several pleadings and proceedings as above set forth they Answered the Several reasonings urged by the appellant in his said Petition and appeal to the president in Council —

And these Respondents for further answer to the Appeal made to your most Excellent Majesty in Council admit that to the first reason given by the Appellant for appealing from the Decree of the said Honble the Mayors Court to the Honble the Court of Appeals and wherein it was alledged that by the Invoice Bill of Lading and Agreement as well as by the Affidavit of John Elliott that he the said John Elliott was guilty of Barratry having deviated from the Second Article of the Agreement intered into

between

between him and the Appellant they for Answer said that it did not appear he did in any respect deviate from the terms thereof. For altho the said Agreement stipulated that the said Snow Crofts was to proceed from Columbo to Bengal, yet it by no means went to preclude him touching at the ports in the way thither on the Contrary it appeared from the Affidavit of the said John Elliott and who these Respondents contended was the Appellants own Evidence that he knew the said Snow Crofts was to touch at the Coast of Coromandel and which act of Concealment on the part of the said Appellant made the deviation infinitely more glaring than it otherwise would have been These Respondents did however in their Answer to the said petition and appeal contend that it was very immaterial to them what Agreement was entered into between the Appellant and the said John Elliot. or whether the Appellant as the Assured party was or was not consenting to the deviation For where there is a departure from the policy whether the Assured knew of it or not still the Voyage is different from that which was understood and the Insurers are in all such cases free unless the Deviation can be justified on the princi= =ples of necessity which these Respondents insisted the Appellant had not throughout his pleadings attempted to do. And these Respondents for further Answer to the Second reason given by the Appellant as cause for appealing admit that they insisted that the said John Elliott was not guilty of Barratry For Barratry implied some thing contrary to the

the duty of master and marriners in the relation which they stood to the Owners of the Ship. and that although the Master might Make himself liable to the Shipper of the Goods for Misconduct, yet not for Barratry which could be committed against the Owners of the Ship and them only And upon the Above principles these Respondents contended the said John Elliot being Owner of the Snow Crofts and charged to be so by the Appellant in his Bill of Compilaint did not nor could have committed Barratry. And these Respondents for further Answer to the Appeal Made from the decision of the Mayors Court, admit that they prayed leave to Observe that their doctrine respecting Barratry was confirmed by every adjudged case on the Subject But that the principles thereof were manfully and particularly illustracted in the cases of Stanna Vs Brown null and others Assignees of Hague a Bankrupt against Bordieu and Lewin vers Swafse-

In the first of these cases the Jury stood out for some time and not comprehending what the Law was respecting Barratry upon their return Asked the Chief Justice whether if the master was to have no benefit by passing by marsellas / which was a deviation from the terms of the policy / but went only for the benefit of the Owners That would be Barratry the Chief Justice Answered no. and they found a Verdict for the Defendant Accordingly

In the Second case to wit null and others Assignees of

Hague

Hague against Bordier these Respondents contended that the doctrine which they had insisted on was still more fully illustrated and proved Where the Master was guilty not only of departing from the terms of the policy But of a fraudulent conversion of the Goods of the Shipper But it was with the concurrence of the Owner of the Ship who was on board, both of them however were found guilty of Barratry by the Admiralty Court of Guienne and condemned to the Gallies, But an Action being brought against the Insurers in England their Ideas of Barratry were found to be very different from ours as appeared from the Words of Lord Mansfield who thus expressed himself. That with regard to the Sentence which had been passed abroad and "Which declared the Master and Owner to have been guilty of Barratry "it was entirely out of the question That though it was most righteous "Judgment yet that it was no part of the consideration of the Court "here, what was meant by Barratry in the English policy - The "Question was left entirely open That their idea of Barratry was "manifestly different from the construction put upon that word in "our own Court For they had found the Owner guilty of Barratry, which "was entirely repugnant to every definition of Barratry which had ever "been laid down in an English Court of Justice And these Respondents "said that their doctrine was further confirmed by the third case "To wit Lewin vers Swayse determined before Lord Hardwike in the High

"High Court of Chancery. The case was That the master sailed with the Vessel "to Marseiles and then instead of pursuing his Voyage sailed to the West Indies "and there sold the Ship and died Insolvent. an Action at Law being brought "against the Insurer he brought his Bill in Chancery to be relieved and "for an injunction charging that the Master was Owner of the Ship at the "same time and altho he had Mortgaged his Ship to Swayse he nevertheless "was in equity to be considered as owner although in Law the Owner Ship "and property would be looked upon in the Mortgage and as the "Owner of a Ship could not either in law or equity be guilty of Barratry "concerning the Ship He therefore prayed an Injunction and that the policy might be delivered up, which was accordingly granted by Lord Hardwike -

And these Respondents further Shew to your most Excellent Majesty in Council, That to the Second Reason or cause of Appeal from the Decree of the Mayors Court, These Respondents for Answer said That the Article therein referred to as taken from the Lex Mercatoria could only apply to Cases where the Master had no concern in the "Vessel but being only sailing master departed from the prescribed voyage for his own benefit to the prejudice of his employers the Owners In such a case these Respondents admitted that Barratry would be committed But in the present instance it could not It having been clearly and solemnly established that where the Owner is also the master

of

of the Ship, any Act which would in another Master be construed Barratry is not so in him—

And to the Third reason or cause of Appeal from the Decree of the said Mayors Court—These Respondents for answer said That it was perfectly sufficient that the said John Elliot had been charged by the Appellant in his Bill of Complaint and in the Account Current thereunto annexed to be Owner of the Snow Crofts to them that he was so For these Respondents in their Answer to the Appeal humbly contended that there Could be no greater proof adduced of any fact than the party to whom that fact applied, admitting and even insisting on it The words of the Appellants Bill of Complaint were "That having occasion to send to Chinsurah a certain quantity of Chank he greed with John Elliot Owner and Commander of the Snow Crofts to carry it" After such an admission these Respondents insisted that it would have been very unnicessary for these Respondents to have proved what the Appellant himself had actually charged the said John Elliot to be Had the fact indeed been denied or even evaded these Respondents certainly could and would have brought forward very ample proof in support of it. And these Respondents for further Answer to the Appeal made from the Decree of the Mayors Court said That even upon the principles stated in the Appellants said Third Reason they Ought to be liberated for where one of two innocent persons must suffer by the Act of a third, the question is who give credit and the one who trusted ought to take the

the consequence. In the present case these Respondents said that the Appellant as the Assured party was infinitely better acquainted with the said John Elliot than these Respondents were he looked around and singled him out as a person to transport his Merchandize in whom he thought he could confide and therefore as the Appellant thought proper to Make choice of a Vessel belonging to an Owner who had acted disingenuously by him, he had in a great measure himself to blame—

And in Answer to the fourth reason or cause of Appeal from the said Decree these Respondents said that nothing could be more beneficial to Commerce than the laws of Insurance being fixed upon the clearest cases. But which these Respondents contended were could be done if its principles were to be disturbed by the supposed equity, which interested parties would ever apply to there Particular case— And for Answer to that part of the Appellants Petition and Appeal to your Most Excellent Majesty in Council respecting the Affidavit of John Elliott this Respondents say that although the said John Elliot hath not positively Sworn that the Appellant martinus Mickerw knew of his intention of proceeding to the Coast of Coromandel yet the said Affidavit doth strongly imply that he was not ignorant of the circumstance and when it is considered that it is Testimony produced by the Appellant himself it must of course militate very much Against the Assertions he has made These Respondents humbly contend that it is very immaterial to the question before your most Excellent Majesty whether the Appellant knew of it or not For while it is on all

hands

hands acknowledged that the said John Elliott was Owner as well as master of the Snow Crofts The Appellants ignorance of his intention to proceed to the Cost of Coromandel will not create a Barratry But on the contrary it must continue to be viewed as a Deviation from the terms of the policy which Exonerates the Insurers. And these Respondents for further Answer to the Appeal made to Your Most Excellent Majesty in Council pray leave to Observe that the Appellant instead of partially referring to the case of Stamah Vers Bruce ought to have imbraced the Object of the other two cases cited by these Respondents namely nutt Vers Bordieu and Lewin vers Swafe as applying strictly to the present case and wherein the whole doctrine of Barratry is particularly illustrated the principles of which clearly exonerate these Respondents. And for Answer to that part of the Petition and Appeal made to your most Excellent Majesty in Council wherein the Appellant says that in order to discharge the Insurers from the Loss by Barratry It must Appear that the Act done was by the consent or with the privity of the Owner pro Hac Vice These Respondents perfectly concur in the doctrine and readily admit that when a person heres by Charter party the whole Ship for any particular adventure and either fills it entirely with his own Goods or takes in a Cargo or freight from different merchants such person no doubt will be considered as the temporary Owner, The Vessel being subject to his direction for the time he has engaged her And so it hath been

established

established in the Cause of Vallejo vers Wheler which is the Authority the Appellant must have Alluded to But these Respondents say That this doctrine does not extend or in the most distant manner Apply to the case of the Appellant who was only a partial Shipper of Goods In Sparks Insurance page 103 It is mentioned that in a late case It was insisted upon that an "Act of the Captain without the consent of the Owner of the Goods who were the "Insured though with the Consent of the Owners of the Ship was Barratry "so as to charge the underwriters This Doctrine however was over ruled "and could not have been admitted without over turning all former "decisions on the subject and which case is perfectly conclusive with the "present—

For all which matters and such others as may be offered at the hearing these Respondents humbly pray that the Decree of the said Honble Mayors Court and Court of Appeals may be Affirmed by your Most Excellent majesty in Council and that the Appellants petition and Appeal may be dismissed with Costs to be paid by the Appellant—

/Signed/ George Chalmer
Solicitor for Respondent

Mayors Court

Mayors Court at Madraspatnam } Tuesday the 20th day of May Anno Domini 1794

(L2)

Present

Mr. James Call Senior Alderman
William Webb
Andrew Ross John Mitford
James Daly & Alexr. Cockburn

Aldermen

Between Martinus Michaun of Tranquebar merchant by his attorney Jacob Eilbracht Govr. of pullicatt by his Attorney Diderichs Christaine of Fort Saint George merchant Complainant and William Balfour and Oliver Colt Josias Dupre porcher Thomas Redhead and Henrey Redhead Robert Woolf Benjamin Roebuck and William Abbott Daniel Ince George Chalmer & George Garrow Miguel Joannes Jacob Aratoon Samuel moocartish Mocrat Adrian De Fries John De Fries Junior Thomas De Fries and Francis Lautaur of Fort Saint George Merchants Composing the Madras Insurance Company heretofore heretofore represented by Edward Garrow James Landon and Robert Clerk Committee for the said madras Insurance Company Defendants—

This Cause coming on to be heard and debated this day in the presence of the Attornies on both sides on reading the Complainants Bill with Copies of a policy of Insurance and Account Current annexed The Defendants Answer with Copy of an Exhibit annexed, The Replication The Rejoinder The Interrogatories and Depositions on the part of the Complainant with Exhibits marked BCDE & F 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 Complainants Bill do stand dismissed with Costs—

Hur
/signed/ George Taylor Regt.

Saturday

Saturday

Saturday the 6th December 1794

Present

The Right Honble Lord Hobart

Edward Saunders and Ernest William Fallofield

To the Honorable Sir Charles Oakeley Bart

Governor &c in Council

Fort Saint George

In the Hon^ble
Court of Appeals

Between Charles Carlisle a Captain in the Service of the United Company and Administrator with the Will annexed of all and Singular the goods and Chattels Rights and Credits of Cullion Spencer Deceased late one of the Attornies of the Honourable the Mayors Court Complainant and Venatachellum Chitty Defendant

Filed in my Office
the 26th August 1794
J. Webbe, act^g Sec^y

The humble Petition and Appeal of the Defendant above named

Sheweth That

That the Complainant above named did on or about the twenty Seventh Day of May which was in the year of Our Lord One thousand Seven hundred and Ninety four Exhibit and file his Bill of Complaint in the Mayors Court at Madraspatnam Against your Petitioner for the Recovery of the Sum of Three hundred and Eight Pagodas thirty two fanams and forty Cash Current Money of Madras pretending the same to have arisen and grown due upon a Promissory Note said to have been Executed by your Petitioner unto the Complainants said Intestate — And your Petitioner Sheweth that being served with proces of Summons to Appear to, and Answer the Complainants said Bill of Complaint, and not Appearing thereto a Warrant of Contempt was prayed for Against your Petitioner and the same was served on your Petitioner in his Majesty's Selow Jail as well Appear by Copy Extract of the Minutes of the said Mayors Court hereunto annexed for the inspection of this Honourable Court to which your Petitioner begs leave to Refer and prays the same may be taken as part of this his Petition of Appeal the Original being Ready to be produced when Required — And your Petitioner Sheweth unto this Honorable Court that he did by his Attorney in Court on the Eighth Day

Day of July in the present year of Christ One Thousand Seven hundred and Ninety four Appear to the Complainants said Bill of Complaint and did prepare his Answer thereto and the same was Translated by the Sworn Interpreter of the said Mayors Court, According to the Rules of practice of the said Mayors Court but your Petitioner Sheweth unto this Honourable Court that being as above set forth in his Majestys Selow Jail he could not go up to the said Mayors Court to Swear thereto And your Petitioner Sheweth unto this Honourable that on the Twelfth Day of the present Month of August the Complainant did by his Attorney in Court produce a Certificate of the Register of the said Mayors Court setting forth that the usual Rules for Answering had Expired And your Petitioner had not put in any Answer to the Complainants said Bill of Complaint and did thereon pray that a Decree might be granted Against your Petitioner for the Sum Sued for — And your Petitioner Sheweth unto this Honourable Court that to such the prayer of the Complainants said Attorney your Petitioners Attorney did pray a further time of One Week to Answer the Complainants said Bill of Complaint And your Petitioner Sheweth unto this Honourable Court

Court that the said Mayors Court taking into Consideration the prayer of the Complainant 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 &c Three hundred and Eight Pagodas Thirty two fanams, and forty Cash, together with all such Interest, as then was or &c should thereafter become due thereon until full payment be made also all Costs of Suit as by Copy of the said Decree hereunto annexed for the inspection of this ~~inspection of this~~ Honourable Court towhich your Petitioner begs leave to Refer and prays the same may be taken as part of this his Petition and Appeal may Appear—

By which said Decree of the said &c Mayors Court your Petitioner doth conceive himself much aggrieved and doth therefore Appeal to this Honourable Court for the following Among other Reasons—

First — Because the said Mayors Court in Decreeing as aforesaid have departed from the Established practice of the said Court for your Petitioner says that by the said Established practice of the said Mayors Court a Defendant from the time of his Appearance to a Complainants Bill of Complaint has five Weeks to put in his Answer thereto and your Petitioner says that he did on the Eighth Day of July now last past Appear to the Complainants said Bill of Complaint as may Appear by an Extract of the &c Minutes of the said Mayors Court hereunto annexed for the inspection of this Honourable Court, and prayed to be &c taken as part of this his Petition of Appeal, and the said Decree of the said Mayors Court is Dated on the Twelfth day of August following whereby it is Evident that only four Weeks had Elapsed between the Appearance of your &c Petitioner and the Decree of the said Mayors Court—

Secondly — Because in the case where a Native is &c Defendant Whose Answer is by the Rules of practice of the said Mayors Court Required to be Translated, if his Answer be given into the hands of the Translator on the last Day of the Rule it is the general practice of the said Mayors Court to give such Defendant a further Rule of one Week—

Thirdly — Because your Petitioner being Confined in his Majestys Criminal Jail he had it not in his power to attend the Rules of the said Mayors Court as if he had been at large, and therefore he humbly Submits to this Honourable Court he was Entitled to some &c indulgence —

For

For all which Reasons and such others as may be offered at the hearing your Petitioner humbly prays that the Decree of the said Mayors Court may be Reversed, and that your Petitioner may be allowed a fortnight to put in his Answer to the Complainants said Bill of Complaint—

/ Signed / I. Stuart Hall
Solicitor for Appellant

Extract

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 3d Day of June Anno Domini 1795

Present

Henry Chichley Mitchell Esqr. Mayor
Andrew Ross & John Mitford
Aldermen

Charles Carlisle Administrator with the will annexed of Tullien Spencer Deceased —
vers
Vencatachellum Chitty

The Sheriff Returns the Warrant of Arrest for Contempt issued against the Defendant, Endorsed that he has served the Defendant in the Felon Goal, where he is in the Custody of the Sheriff on a Criminal Prosecution —

A true Extract
/ Signed / J. Taylor Regr
a True Copy
/ Signed / I. Stuart Hall
Solicitor for Appellant

Extract

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 8th Day of July Anno Domini 1794

Present

Henry Richley Michell Esq.r Mayor
Josias Dupre Porcher and Andrew Ross
Aldermen

Charles Carlisle Administrator of Pullien Spencer Deceased
~~Vers~~
Vencatachellum Pitty

Further Days is given the Defendant till the 22d Instant to Answer the Complainants Bill undefault of which Judgment will be given for the Complainant—

Mr. James Stuart Hall Appears as Attorney for the Defendant Bail prayed upon Oath being made to the Debt Ordered Accordingly —

A True Extract
/Signed/ G. Taylor Regr

a True Copy
/Signed/ J Stuart Hall
Solicitor for Appellant

Extract

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 12th Day of August Anno Domini 1794

Present

Mr. James Call Senior Alderman
Andrew Ross & James Daley
Aldermen

Charles Carlisle Administrator with the will annexed of Pullien Spencer Deceased ~~Vers~~
Vencatachellum Pitty

The attorney for the Complainant produces to the Court a Certificate from the Register setting forth that the usual Rules have issued for the Defendant to Answer the Complainants Bill Which he has Neglected doing he therefore prays that a Decree may now pass to Which Mr. James Stuart Hall Attorney for the Defendant Objects and prays a further time of One Week to Answer Ordered that a Decree do pass—

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

the Complainant the full and Just Sum of Three hundred and Eight Pagodas Thirty two fanams and forty Cash Pagodas 308. 32. 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 Regr.

/ Signed / I Stuart Halls
Solicitor for Appellant

To

To the Right Honourable Lord Hobart
Governor &ca in Council
Fort Saint George.

In the Honble the Court of Appeals

Between Charles Carlisle a Captain in the Service of the United Company and Administrator with the Will annexed of all and singular the Goods Chattels Rights and Credits of Cullien Spencer Deceased late one of the Attornies of the Honourable the Mayors Court Complainant and Vencata=
=chellum Chitty Defendant=

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

This Respondent admits that he did as Administra=
=tor with the Will annexed of the late Cullien Spencer Deceased on or about the Twenty seventh Day of May which was in the year of Our Lord One thousand Seven hundred and Ninety four, Exhibited and file his Bill of Complaint in the Honourable the Mayors Court at Madraspatnam Against the said Appellant for the recovery

Filed in my Office the 8th October 1794
Robert Clerk of Ct

Recovery of the Sum of Three hundred and Eight Pagodas, thirty two fanams and forty Cash Current Money of Madras being so much principal and Interest arising upon a Promissory Note Executed by the said Appellant to this Respondents Intestate in his life time And this Respondent admits that Proces did issue from the said Mayors Court directing the said Appellant to Appear to and Answer this Respondents Bill of Complaint which he Neglected doing This Respondent did thereupon pray a Warrant of Contempt might issue Against the said Appellant and which said Warrant of Contempt was Accordingly granted and Served on him in his Majestys Felon Jail Where the said Appellant was in Custody upon a Criminal prosecution and which is fully and particularly Shewn in and by an Extract of the Minutes of the said Mayors Court to the said Petition and Appeal annexed and therein and thereby Referred to, And this Respondent further Admits that the Appellant did on the Eighth Day of July in the present year of Our Lord One thousand Seven hundred and Ninety four, enter an Appearance to this Respondents Bill of Complaint through and by the means of his Attorney at Law, And this Respondent also admits that the Appellant by the Twelfth Day of August in the said year having neglected to Answer the said Bill of Complaint, This Respondent did by his Attorney, produce the usual Certificate and thereupon prayed that a Decree might pass, which the said Honble Mayors Court were pleased to grant, and did thereupon Order and Decree that the Appellant should pay to this Respondent the Sum Sued for, with all such Interest as then was or should thereafter become due thereon until full payment was made also all Costs of Suit as by the said Decree to the said Petition and Appeal annexed Relation being thereunto had will more fully Appear

And this Respondent denies that the Appellant is Aggrieved by the Decree of the said Honourable Mayors Court or that he has any just Cause or Reason to Appeal therefrom on the Contrary this Respondent saith that the said Appeal has been made from litigious Motives and with a View solely to procrastinate the payment of a Just and lawful Debt

And for Answer to the first Reason given by the Appellant as Cause of Appeal This Respondent admits that it is the practice of the said Mayors Court to allow a Defendant five Weeks to Answer a Bill of Complaint at the expiration of which time if an Answer is not filed good Cause shewn by Affidavit to induce the Court to extend the

the indulgence a Decree passes, And this Respondent further says that by the Appellants own Shewing, It Appears that he had a much greater latitude of time given him The Warrant of Contempt having been Returned served on the third of June while the Decree passed on the Twelfth Day of August following including a period of Nine Weeks and upwards instead of five, and therefore if he had any Just defence to make he had Ample time to prepare it —

To the Second Reason given by the Appellant this Respondent saith that whatever the practice of the said Mayors Court may be Respecting Answers that Require Translation it cannot Avail in the present Instance as it does not appear that any Answer was drawn out, much less put into the hands of the Interpreter for Translation —

To the Third Reason this Respondent saith that he does not admit that the Appellant being confined in his Majestys Felon Jail entitles him to any indulgence although it Appears that much indulgence was given him having from the Third Day of June to the Twelfth Day of August to Answer the Bill of Complaint which he neglected doing —

For all which Reasons and such others as may be offered at the hearing This Respondent humbly prays that the Decree

Decree of the said Mayors Court may be Affirmed and as the Appellant Appears to be guided by litigious motives this Respondent further prays that this Honourable Court will mark their disapprobation of such conduct by Taxing him with exemplary Costs —

/Signed/ G. Chalmer
Solicitor for Respondent

Court of

Court of Appeals
at
Madraspatnam

Saturday the 6th day of December
Anno Domini 1794

Between Vencatachellum Chetty of Madras
Inhabetant Appellant and Charles Carlisle a Captain
in the Service of the United Company and administrator
with the Will annexed of all and Singular the Goods
Chattles Rights and Credits of Pullion Spencer deceased
late one of the Attornies of this Hon'ble Court Respondent.

This Cause coming on this day to be heard and debated before
this Court by Mr Counsel on both sides upon reading the Petition of
Appeal and Answer and the Several Exhibits of the Hon'ble the Mayor's
Court together with the Decree of the said Court given in this Cause
on Tuesday the 12th day of August 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 and doth accordingly Order and Decree
that the said Decree of the Hon'ble the Mayor's Court do stand
affirmed and that the Appellants Petition be hence dismissed
with Costs —

Per Cur
/ Signed / Robert Clerk
Ctr

To the Honorable Sir Charles Oakeley Bart
Governor &c in Council
Fort Saint George —

In the Hon'ble
Court of Appeals

Filed in my Office
the 11th August 1794
Robert Clerk
Ctr

Between Mathew Yeats Senior
Merchant in the Service of the United
Company of Merchants of England Trading
to the East Indies under their Presidency
of Fort Saint George Complainant and Thomas
Lane Alexander Tanner and William Balfour
Surviving Executors of Arthur Lysaght —
Deceased William Duffin Executor in
India of Hugh Montgomery Deceased
Henry Pushley Mitchell and Charles Rand
Administrators of John Wheeler Deceased,
Captains Philip Mayne James Bagshaw
Butler and George Westcott Esq.r Merchant
in the said Service of the United Company
of Merchants aforesaid Defendants —

The humble Petition and Appeal of Philip
Mayne and James Bagshaw Butler two of the Defendants above named —

Shew

Shew That the Complainant above named did on or about the Twenty third Day of May Which was in the year of Our Lord One thousand Seven hundred and Ninety three Exhibit and file his Bill of Complaint in the Mayors Court against your Petitioners and Thomas Lane Alexander Farrier and William Balfour Surviving Executors of Arthur Lysaght Deceased William Duffin Executor in India of Hugh Montgomery Deceased Henry Priddy Michell and Charles Rand Administrators of John Wheeler Deceased and George Westcott And the Complainant did in and by his said Bill of Complaint Shew that some time in the year of Our Lord One thousand Seven hundred and Eighty One intelligence having arrived that War had been declared between Great Britain and the United States of Holland, the United Company of Merchants of England Trading to the East Indies by their Agents or legal Representatives at Fort St George did in consequence thereof send a Military force under the Command of Arthur Lysaght Esq.r then a Captain in the Service of the said United Company under their said Presidency of Fort Saint George to Capture the Fort or Garrison of Juggernaickporam belonging to the said United States of Holland and Accordingly the said Fort or Garrison of Juggernaickporam

Juggernaickporam was Captured by the said Mititary Force - That the Officers belonging to the said Force which Captured the said Fort or Garrison of Juggernaickporam consisted of the following Persons t:- wit the said Arthur Lysaght, and Hugh Montgomery John Wheeler and George Westcott Esquire Senior Merchant and pay Master to the said Detachment, and your Petitioners all in the Service as the Complainant did say of the said United Company under their said Presidency of Fort St George who after the Capture aforesaid Addressed a Letter to him the Complainant Dated in the Month of July which was in the year of Our Lord One thousand Seven hundred and Eighty One, and did thereby Appoint your Orator as their Agent for Receiving and disposing of such goods as might have become their property According to the Articles and Rules of War as by the Copy of the said Letter annexed to the Complainants said Bill of Complaint for the inspection of the said Mayors Court, the Complainant did say might Appear that in consequence of the said Appointment as aforesaid he the Complainant did Act as their Agent and Receive the Prize Goods from the Dutch who Commanded the said Fort or Garrison of Juggernaickporam and delivered them to William Hamilton Esquire having been so instructed by his constituents to Captors aforesaid as

by

by their Letter the Complainant did say might Appear Copy &c
thereof being thereunto annexed and that he the Complainant
did generally Act therein for the Interest and Advantage of the
said Arthur Lysaght Hugh Montgomery John Wheeler &c
George Westcott and your Petitioners and others concerned or
Interested therein and as directed by them That he the Complainant
continued to Act as agent as aforesaid from the said Month of
July One thousand Seven hundred and Eighty One to the &c
Month of September One thousand Seven hundred and Eighty
Eight and when the said United Company by their Agents or
Representatives at Fort Saint George did make a Distribution
of One half of the Prize Money of the said Fort of Juggernaick =
=poram Amounting to the Sum of Seventy four thousand two
hundred and Seventy Nine Star Pagodas thirty two fanams
and Sixty two Cash by granting a Certificate to that Amount
on the Government General of Bengal in favor of the said
Hugh Montgomery for Account of the Captors which said
Sum of Seventy four thousand Two hundred and Seventy
Nine Star Pagodas thirty two fanams and Sixty two &c
Cash was Received and divided Among the said Captors
their Respective legal Representatives According to their Respective
shares without paying unto him the Complainant his
usual Commission thereon, which in like Cases was five
per Cent and which on the said Sum of Seventy four thousand
Two hundred and Seventy Nine Pagodas Thirty two fanams
and Sixty two Cash, he the Complainant did say Amounted to
the Sum of Three thousand Seven hundred and Thirteen &c
Pagodas, forty One fanams and forty Cash and with the Interest
thereon up to the Thirtieth Day of April then last past did
Amount in the whole to the Sum of Five thousand Seven hundred
and fifty Six Star Pagodas, Twenty Eight fanams and &c
Seventy two Cash as by the Account thereof annexed to his said
Bill of Complaint the said Complainant did say might Appear
and the Complainant did say that since the Capture aforesaid
the said Arthur Lysaght had departed this life but that &c
previous to his Death he had duly Made and published his
last Will and Testament, and did therein Appoint his Wife
Martha Lysaght who was since Dead, Captain Thomas
Lane Alexander Favrier and William Balfour his Executrix
and Executors who proved the said Will and Obtained
probate thereof That the said Hugh Montgomery had since
the said Capture departed this life and that previous to his death
did duly make and publish his last Will and Testament
and did therein Appoint Doctor William Duffin to be his
sole Executor in India who proved the said Will and obtained
probate thereof That the said John Wheeler had also departed
this

This life, and that Henry Pinhley Michell and Charles Rand had Obtained Letters of Administration with the Will annexed to the Estate and Effects of the said John Wheeler and took upon themselves the whole burthen and Execution of the said Estate, and the Complainant did say that the several Estates of the said Arthur Lysaght Hugh Montgomery and John Wheeler George Westcott And your Petitioners were indebted unto him the Complainant in the said Sum of Five thousand Seven hundred and Fifty Six Pagodas Twenty Eight Fanams and Seventy two Cash Which said Sum he did say he had frequently and in an Amicable manner Demanded that they had Refused to pay the same, and thereupon did pray a general Relief and that the said Thomas Lane, Alexander Farrier, and William Balfour Surviving Executors of the said Arthur Lysaght Deceased, William Duffin Executor in India of Hugh Montgomery Deceased, Henry Chichley Michell and Charles Rand Administrators of John Wheeler Deceased George Westcott and your Petitioners might upon their Corporal Oaths full true direct and perfect Answer make to all and singular the matters and things in the said Bill of Complaint set forth, and that they might be Decreed to pay unto him the Complainant the whole of the aforesaid Sum of Five thousand Seven hundred and Fifty Six Pagodas, Twenty Eight fanams and Seventy two Cash, and that they may severally be bound by the Decree of the said Mayors Court to the Payment of the full Amount sued for, with all such Interest as there was, or should thereafter become due thereon also all Costs of the Suit and did further pray that the said Thomas Lane Alexander Farrier, and William Balfour Surviving Executors of the said Arthur Lysaght, William Duffin Executor in India of Hugh Montgomery Deceased, Henry Chichley Michell and Charles Rand Administrators of John Wheeler Deceased, George Westcott And your Petitioners might be Summoned and Required by the Sheriff of Fort Saint George Town of Madrasspatnam and the Districts thereof Personally to be, and Appear before the said Mayors Court to Answer his the Complainants said Bill of Complaint and further to Stand to, and abide by such Order and Decree therein, as to the said Mayors Court might Seem Meet —

And your Petitioners Shew unto this Honorable Court that they did Appear to the Complainants said Bill of Complaint and did Exhibit and file in the said Mayors Court a Plea and Answer And your Petitioner did in and by their said Plea Amongst other things Shew that the said Arthur Lysaght Hugh Montgomery John Wheeler and also George Westcott Paymaster of the Detachment and your Petitioners were the only Persons either themselves or by their Representatives who were made parties to the Complainants said Bill That your

your Petitioners not confessing or Acknowledging all or any of the matters and things in the said Bill contained to be true in such sort manner and form as the same are therein and thereby charged alledged or setforth to so much of the said Bill as sought to compel the Payment of the said Sum of Five thousand Seven hundred and Fifty Six Pagodas Twenty Eight fanams and Seventy two Cash or of any part thereof from your Petitioner did Plead in Bar, and for Plea did say that the said Sum of Seventy four Thousand Two hundred and Seventy Nine Pagodas Thirty two fanams and Sixty two Cash was not as the Complainants Bill did suggest dewded Amongst your Petitioner and the said other Defendants in the Complainants Bill named; or their Testators or Intestates only, for your Petitioner did aver that John Inglish a Lieutenant, Then an Ensign in the Military Service of the said United Company and Serving with the Detachment on the said Expedition Against the said Fort or Garrison of Suggernaickporam and at the Capture thereof did also share in the said Sum of Seventy four thousand Two hundred and Seventy Nine Pagodas, thirty two fanams and Sixty two Cash According to his share or Proportion thereof that the whole of the Detachment on the said Expedition Against the said Fort or Garrison of Suggernaickporam and at the Capture thereof consisting of a Number of Serjeants Subidars Semidars Havildars Naicks Naicks and Privates Sepoys Lascars and others did also share in the said Sum of Seventy four Thousand Two hundred and Seventy Nine Pagodas Thirty two fanams and Sixty two Cash Agreeably to their Respective Shares and proportions thereof, and for that the said John Inglish was not made a party to the Complainants said Bill of Complaint and for that he was a necessary party thereto your Petitioner did plead the said want of parties and matters aforesaid in Bar to so much and such part of the said Bill as seeks to compel your Petitioners to pay the said Sum of Five thousand Seven hundred and fifty Six Pagodas Twenty Eight fanams and Seventy two Cash, or any part thereof, and did humbly pray the Judgment of the said Mayors Court whether they should be Compelled to make any further or other Answer to the said Bill and your Petitioners not waiving their said Plea but wholly relying and insisting thereon for Answer to the Residue of the Complainants said Bill, or unto so much thereof as your Petitioners were advised was material or necessary for them to make Answer unto did Answer and say that they did admit that some time in the year of Our Lord One thousand Seven hundred and Eighty one Intelligence having been Received That a War had been declared Between Great Britain and the United States of Holland the said United Company of Merchants by their Agents or Legal Representatives at Fort Saint

Saint George did in Consequence thereof send a Military Force under the Command of Arthur Lysaght Esquire then a Captain in the Service of the said United Company under their said Presidency of Fort Saint George to Capture the Fort or Garrison of Juggernaickporam belonging to the United States of Holland, and that Accordingly the said Fort or Garrison was Captured by the said Military Force belonging to the said United Company of Merchants that the said Fort or Garrison was so Captured sometime on or about the Eighteenth or Nineteenth Day of the Month of July and year of Our Lord One thousand Seven hundred and Eighty one, that Amongst the Officers belonging to the Force of the said United Company who captured the said Fort or Garrison of Juggernaickporam were the parties in the Complainants said Bill named, that after the Capture aforesaid they the said Arthur Lysaght Hugh Montgomery John Wheeler, George Westcott and your Petitioners did address a Letter to the Complainant, and that the same might have been so addressed to the Complainant in the Month of July in the said year One thousand Seven hundred and Eighty One that they did therein and thereby Appoint the Complainant their Agent for Receiving and disposing of such Goods as might have been their property According to the Rules and Articles of War, and that the Exhibit annexed to the Complainants

said

said Bill of Complaint might be a Copy thereof but your Petitioner did say they did believe that the Complainant did not in consequence of the said Appointment Receive the Prize Goods from the Dutch who Commanded the said Fort or Garrison of Juggernaickporam and deliver the same to William Hamilton Esquire for your Petitioner did say that on the Day following the Capture of the said Fort or Garrison of Juggernaickporam, William Oram Esquire in the Civil Service of the said United Company of Merchants did arrive at Juggernaickporam aforesaid on the part and behalf of the said United Company of Merchants and did himself take charge of the said Prize goods or captured property, and did ship the same on Board Two Vessels to wit, the Grosvenor and Royal Admiral Indiamen then lying in the Roads of Juggernaickporam aforesaid, and that the said Prize Goods or Captured property so Shipped on board the said Ships the Grosvenor and Royal Admiral were Afterwards landed at Masulipatnam and there Sold by public Outcry without any interference on the part of the Complainant, nor did he attend, nor was he present at the time the said Prize Goods or Captured property was so sold and disposed of, and thereby and for as much as there was no one present at the said Sale on the part of the said Captors to protect and promote their Interest in the premises your Petitioner did say that they verily believed considerable injury did arise to the said

Captors

Captors and that your Petitioners had thereby and by Reason thereof suffered great loss and Damage and your Petitioners did further say that your Petitioner James Bagshaw Butler did frequently write to the Complainant, and Request him to give unto him an Account of the said Prize Goods or Captured property and furnish him with necessary particulars Relative thereto, and to his Interest therein but that the Complainant so far from Complying with such fair and Equitable Requisition, did not only Refuse so to do, but did not even so far gratify your Petitioner James Bagshaw Butler in the premises as to give him any manner of Account whatever And your Petitioners did deny That the Complainant had generally Acted in the premises for the benefit and Advantage of the said Arthur Lysaght, Hugh Montgomery John Wheeler George Westcott and your Petitioners and others concerned and Interested in the premises, and as by them directed, for your Petitioners did say that the Complainant was Repeatedly Required by the said Hugh Montgomery in the name of the Captors to proceed to the Presidency in Order to make the necessary Applications to Government for payment of the Amount due to the Captors upon the Property Captured but that the Complainant did neglect or Refuse so to do, and did not go to the Presidency That some time after the Complainant had been so Requested as aforesaid intelligence was Received as your Petitioners had

had been informed and believed the fact so to be, that the Court of Directors had given directions to the Governor and Council of Fort St George that a part of the Amount of the said Prize Goods or Captured property not Exceeding one half of the whole Amount should be paid to the Captors in India and that the other half should Remain in deposit with the said United Company or their said Agents or Representatives until a Suit Depending in the Court of Admiralty between the Forces, who had Captured the said Fort of Juggernaickporam and the Officers and Crews of the said Ships the Grosvenor and Royal Admiral Indiaman who had put in a Claim for a share in the Amount of the said Prize Goods or Captured property, should be determined That in Consequence of such intelligence the said Hugh Montgomery did Again Request the Complainant in the name and on the part and behalf of the Captors that he would come down to Madras pointing out the absolute necessity for his so doing, but that the Complainant preferring his own convenience to the Interest of his constituents did continue to Refuse Compliance with such the Requisition of the said Hugh Montgomery That in consequence of such the Neglect or Refusal of the Complainant to go down to Madras, he the said Hugh Montgomery did himself proceed thither for the purpose of supporting the Interest, and protecting the property of the said

Captors

Captors, and that on his arrival there, he did in the name of the said Captors Apply to the Governor and Council of Fort St. George aforesaid for the payment of the Prize Money by the Court of Directors so directed to be paid as aforesaid — That the said Governor and Council did signify to the said Hugh Montgomery that they would comply with his said Application provided he the said Hugh Montgomery would produce a proper Authority from the Captors And your Petitioners did say that the said Hugh Montgomery did make a Representations of the said matters to the said Captors or the Survivors thereof and that thereupon they the said Captors or their Survivors did Authorize the said Hugh Montgomery and William Balfour of Fort St. George Merchant, or and of them to receive the part of the said Prize Money by the Court of Directors so directed as aforesaid, and at the same time or some short time Afterwards did Appoint the said William Balfour their Agent in the place and stead of the Complainant who had as in your Petitioners said Answer before stated Shewn himself inimical to the interest of his said constituents the said Captors, and Totally Regardless of them or of their Affairs that thereupon the said Hugh Montgomery and William Balfour or one of them did Receive from the said Governor and Council of Fort Saint George by a Certificate a draft upon the Government General of Bengal the Sum of Seventy four thousand Two hundred and Seventy Nine Pagodas, Thirty two fanams and Sixty Two Cash And your Petitioners did further say that on the Return of the said Hugh Montgomery to the Northward the said Captors did make the Necessary Arrangements Regarding the said Sum of Seventy four thousand Two hundred and Seventy Nine Pagodas, Thirty two fanams and Sixty two Cash, as to the Proportions to be shared by the different Cases Entitled to Receive the same, that upon such Arrangements the said William Balfour did from and out of the said Sum of Seventy four thousand Two hundred and Seventy Nine Pagodas Thirty two fanams and Sixty two Cash pay to the Respective Captors or to their Representatives their Shares or proportions thereof And your Petitioners did in and by their said Answer further say that about the same time the Complainant did demand his Commission of five per Cent which he pretended was due to him as Agent for the said Captors And your Petitioners did say that upon speaking some time Afterwards with the said Hugh Montgomery Relative to the same, he the said Hugh Montgomery did inform them that the said William Balfour had settled with the Complainant and that they had Agreed to devide the Commission although the Complainant could not with any Justice or propriety lay any Claim or have any title thereto And your Petitioners did further say that they had heard nothing further from the Complainant during the life time of the said Hugh

Hugh Montgomery and until the departure from India of the said William Balfour And your Petitioners did further say, that they had heard and verily believed the fact so to be, That the Complainant although Appointed an Agent on the part and behalf of the Troops that Captured the said Fort of Juggernaickporam did aid and Assist as far as in his power lay the pretensions set up by the said Officers and Crews of the said Ships the Grosvenor and Royal Admiral Contrary to the Interests of the said Troops, and in Violation of the trust by them Reposed in him And your Petitioners did say that for the Reasons in their said Answer setforth they did deny that the Complainant did continue to act as Agent as aforesaid from the said Month of July One thousand Seven hundred and Eighty One, to the said Month of September and year of Our Lord One thousand Seven hundred and Eighty Eight, and That if he the Complainant did act at all in the premises, it was merely to be present whilst the said William Oram took charge of the said Captured property as above setforth and your Petitioners did deny that the said United Company by their Agents or Representatives at Fort Saint George aforsaid did otherwise make a distribution of one half of the said Prize Money Arising from the said Capture of the Fort of Juggernaickporam than by paying the said Sum of Seventy four thousand Two hundred and Seventy Nine Pagodas Thirty Two fanams and Sixty two Cash in manner as aforesaid to the said Hugh Montgomery and William Balfour or one of them for, that the said William Balfour did distribute and pay to the Captors, or their Representatives the said Sum of Seventy four thousand Two hundred and Seventy Nine Pagodas Thirty two fanams and Sixty two Cash, Agreeably to their Respective shares and proportions thereof and your Petitioner did further say that they did admit that the said Sum of Seventy four thousand Two hundred and Seventy Nine Pagodas, Thirty two fanams and Sixty two Cash was so distributed and paid to the said Captors without paying to the Complainant a Commission of five per Cent and did say that from his Conduct in the premises he was not in any wise Entitled thereto, nor to any part thereof but that on the Contrary he did certainly deserve censure and Reproof and yet your Petitioners did say that the said William Balfour did as they had been informed and Verily believed the fact so to be, Agree to devide the Commission with the Complainant, he the said William Balfour Retaining in his hands from and out of the said Sum of Seventy four thousand Two hundred and Seventy Nine Pagodas, Thirty two fanams and Sixty two Cash the said Commission

of

of five per Cent Amounting to the Sum of Three thousand Seven hundred and Thirteen Pagodas or thereabouts, but your Petitioners did say that although they did chearfully concear in allowing a Commission of five per Cent to the said William Balfour yet that they never did consent to the Complainants Receiving any Sum of Money whatever by way of Commission as Agent for the Captors of Suggurnaickporam or otherwise for the Reasons in their said Answer setforth and as a proof thereof they did beg leave to annex to their said Answer the Copy of a Protest they had sent to the said Hugh Montgomery on the occasion And your Petitioners did submit to the said Mayors Court how Totally groundless the Action was, which the Complainant had brought against them when it Appeard That although appointed their Agent he did absolutely Refuse to Act in that capacity Notwithstanding he was Repeatedly called upon by your Petitioners and the other Captors so to do and that instead of supporting their Interest, he did do such Acts and things as were inimical thereto; so that the Captors were as in their said Answer was Shewn, compelled to Act for themselves and at length to Appoint another person in the place or stead of the Complainant —

And your Petitioners Shew unto this

this Honourable Court that to their said Plea and Answer The Complainant did Exhibit and file his Replication in the said Mayors Court, and did therein setforth that he ought not to be barred from having and maintaining his aforesaid Suit against your Petitioners because Protesting that the said Plea in manner and form as the same is pleaded and setforth and the Matters therein contained were not sufficient in law to bar him from having or maintaining his Suit aforesaid Against your Petitioners which Suit the Complainant did say that he would aver Justify maintain and prove to be good certain true and sufficient in the law to be Answered unto in manner and form as the same was and were therein and thereby setforth and alledged and for that the Plea and Answer of your Petitioners was and were Respectively Evasive and insufficient for him the Complainant to make any further or other Reply unto, and by way of Reply to the Plea urged by your Petitioners the Complainant did say that Notwithstanding the said John Inglish and several Serjeants Subidars Jemidars Havildars Naicks Privates Sepoys Lascars and others did together with the several Persons in the Bill of Complaint named Serve with the said Detachment in the said Expedition against the said Fort or Garrison of Suggurnaickporam, and after the Capture thereof did also share in the said Sum of Seventy four thousand Two hundred and Seventy

Seventy Nine Star Pagodas thirty two fanams and Sixty two Cash, and did Receive their Respective Shares or proportions thereof and Notwithstanding the said John Inglish was not made a party to the Bill of Complaint, yet that the said Bill of Complaint was sufficiently good and formal so as to Entitle him the Complainant to Judgment for the Sum Sued for and for Costs of Suit, for that it Appeared by his said Bill of Complaint and one of the Exhibit thereunto annexed that the said Arthur Lysaght John Wheeler George Westcott Hugh Montgomery and your Petitioners were the only Persons who Appeared to Represent the said Detachment in as much as that they were the only Persons who did by their said Exhibits Authorise him the Complainant to Act in the premises, and that they do in and by their said Written Authority Style themselves the Captors of Juggernaickporam as if they were the only Persons who Captured the said Fort, and for as much as the Money Received on Account of the said Capture had been so Received by one of the said Persons to Wit the said Hugh Montgomery who distributed the same, or the due share or proportion thereof to each of the said Persons as Named in his the Complainants Bill, he the Complain=ant did insist that his Bill of Complaint was sufficiently good and formal, and still more so as by the usage in such Case a Deputation of Officers Generally Acted for the whole Detachment it being nearly impossible from the Nature

Nature of the thing that every Person Interested in the Capture could give a Voice in the Choice of an Agent, That by the same Rule or maxim of Law whereby the said John Inglish should have been made a party to the said Bill of Complaint all and each of the said Serjeants Suliadars Jemidars Havildars Naicks Privates Sepoys Lascars and others who Assisted with the Persons in the Bill named at the Apture of Juggernaickporam ought to have been made parties thereto Wherefore the Complainant did say the said Plea was faulty in its principle and did further say that Pleas against a Bill of Complaint for want of parties to such Bill, were Pleas in abatement and for as much as your Petitioners had forbeared in Bar, and that such Plea could not Apply to the want of Parties to a Bill of Complaint the Complainant for the said Reasons as well as the other Reasons he had before set forth did pray the Judgment of the said Mayors Court that the said Plea of your Petitioners might be over Ruled with Costs and by way of Replication to the Answer of your Petitioners the Complainant did say that whether the said goods were delivered over to the said William Hamilton or to the said William Oram by Order of the said William Hamilton or otherwise in no wise affected his Right to his Commission as Prize Agent, nor could his Right be Affected by any inattention omission or negligence of the said Captors Respecting the Public Sale or other mode of Disposal of the property Captured in the said Fort of Juggernaickporam

because

because as far as Related to his the Complainants duty Respecting the said goods as Agent to Captors the same was Determined by the delivery thereof to the said William Hamilton or to his Order According to the said letter whereof a Copy was annexed to his Bill of Complaint That he was not conscious of having in any wise Refused to give to your Petitioner James Bagshaw Butler every fair and proper information Respecting his interest in the premises That in Reply to that part of the Answer of your Petitioners Whereby he was charged with Refusing to go to the Presidency he did pray leave to observe that at the time the said Captors nominated him as their Agent he was known by them to be in the Service of the said United Company and under the Government of their said Presidency of Fort Saint George and Therefore subject to the Order and controul of the said Government of Fort Saint George Wherefore the said Captors having chosen him as their Agent knowing him to be under such Order and controul had no graund of censure against him for having been prevented by his said Situation as a Covenanted Servant of the said United Company from complying with the expectation of the said Captors to proceed to the Presidency of Fort Saint George and still less Reason had your Petitioners in their said pretence for not paying him his Commission as aforesaid When it appeard as he did say by the matter setforth by your Petitioners that no prejudice had been occasioned to the Captors by his the Complainants

Complainants non Compliance with such Requisition and the Complainant did deny that he was ever inimical to the Interest of his Constituent as he did say was unjustly charged in the Answer of your Petitioners and he defied them he did say to prove any such Disposition in his Conduct or that he did ever aid and assist the pretensions of the Officers and Crews of the said Ships the Grosvenor and Royal Admiral, nor that he did ever agree with the said William Balfour nor with any other Person to devide the Commission on the said Sum of Seventy four thousand Two hundred and Seventy Nine Pagodas Thirty two fanams and Sixty two Cash, that altho the said William Balfour might have acted as was stated in the Answer of your Petitioners yet that such intermeddling of the said William Balfour in the premises did not in any wise affect his the Complainants Claim to his Commission as the Appointed Agent by the Captors, and he did insist that under and by Virtue of such Appointment and of his Acting under and by Virtue thereof he was entitled to his Commission as charged in his said Bill of Complaint and as to the Protest Entered into by your Petitioners and by them stated to have been sent to the said Hugh Montgomery the Complainant did say the same was not only without Date or any other Marke of Authenticity, but was in itself too futile to merit any Reply — And your Petitioners Shew unto this Honourable Court that to the Complainants said

Replication

Replication your Petitioners did Exhibit and file his Rejoinder and therein and thereby insisting on their said Plea did say that all parties Interested were to be made parties to any Bill brought for Relief touching any matters and things which the parties were so Interested, and that in compelling a Complainant so to do, the Law had in its contemplation a Variety of Objects for the benefit of the subject to prevent fraud Collusion and oppression Which would otherwise take place to the great wrong and injury of parties made Defendants to a Bill, and therefore and for as much as the Complainants Bill was brought for the Recovery of the Sum of Five thousand Seven hundred and fifty Six Pagodas charged to be the Amount due to the Complainant as and for a Commission upon the Sum of Seventy four thousand Two hundred and Seventy Nine Pagodas Thirty two fanams and Sixty two Cash, which said Sum of Seventy four thousand Two hundred and Seventy Nine Pagodas Thirty two fanams, and Sixty two Cash was in and by the Account Current to the said Bill annexed charged to have been Received by your Petitioners and the other Defendants in the Complainants said Bill named and for as much as your Petitioners, and the said other Defendants did only Receive a part thereof and as John Inglish and a Number of other Persons did Receive as in your Petitioners said Answer was stated to be a further and the Remainder part of the said Sum of Seventy four thousand Two hundred and Seventy

Seventy Nine Pagodas, Thirty four fanams, and Sixty two Cash the said John Inglish and the said other Persons were parties Interested, and ought to have been made parties to the Complainants said Bill of Complaint and your Petitioners did say that the Complainant in and by his said Replication did admit That the said John Inglish and several Serjeants Subidars Jemidars Havildars Naigues privates Sepoys Lascars and others had Shared in the said Sum of Seventy four thousand Two hundred and Seventy Nine Pagodas Twenty two fanams and Sixty two Cash and did Receive their Respective proportions thereof your Petitioners did humbly insist that their said Plea was good and sufficient to all intents and purposes in Bar to the Complainants said Bill and that the Complainant having Admitted the premises, it was inconsistent and irrelevant to pretend that your Petitioners and the said other Defendants in the Complainants said Bill named Appeared to Represent the other Persons whom the Complainant had omitted to make parties to the said Bill and more particularly as your Petitioners could not in the nature of things and Agreeably to the usage and Custom of the Service of the said United Company of Merchants have been the Representative of the said John Inglish who possessed Equal Rights with them and the said other Defendants in the Complainants said Bill named

for

for that the said John Inglish was on the spot, and Acted for
himself in the same manner as your Petitioners and the said
other Defendants in the Complainants said Bill named
Acted for themselves, nor would it avail the Complainant to
insinuate as in and by his Replication he had insinuated
that your Petitioners and the said other Defendants in his said
Bill named had Stiled themselves the Captors of Juggernaicks
=poram as if they were the only Persons who Captured the said
"Fort" when the Complainant well knew to the Contrary and
so the same had been Shewn by your Petitioners said Plea,
and your Petitioners did say that it was equally irelevant
and ineffectual in the Complainant to pretend as in and by
his said Replication he had pretended that as Hugh
Montgomery one of the said Persons received and distributed
the said Sum of Seventy four thousand Two hundred and
Seventy Nine Pagodas Twenty two fanams and Sixty two
Cash or the due share and proportion thereof to each of the
said Persons so named in the Complainants said Bill of
Complaint was sufficiently good and formal and still more
so as Deputations of Officers generally Act for the whole
Detachment for your Petitioners did say that the payment
of a Sum of Money to any particular Person did not take
from others the Interest they have therein or the Complainant
ought

ought to have brought his Bill of Complaint Against the
said Hugh Montgomery or his Representatives only and did
say it is not the fact that Deputations of Officers generally
Acted for the whole Except in Cases where officers Acted as
Prize Agents, and in that case they would be nominated by the
whole, or they could not act as Deputies — And as to the suggestion
of the Complainant in his said Replication contained wherein
he did say that by the same Rule or maxim of the Law
Whereby the said John Inglish should have been made a party
to the said Bill of Complaint, all and each of the said Serjeants
Subidars Jemidars Hawildars Naigues private Sepoys
Lascars and others who assisted at the Capture of Juggernaick=
=poram ought to have been made parties thereto your Petitioner did
say that the same did aid their Plea instead of proving as the
Complainant would thereby have insinuated that the same is faulty
in its principle And your Petitioners did say that a Plea to a
Bill for want of parties is not as the Complainant had Asserted the
Law to be, a Plea in Abatement, but a Plea in Bar and if it
had been otherwise the Complainant should have demurred
for by Repleying he admitted the same to be good in law and
Therefore your Petitioners did pray as in and by their said
Plea they had already prayed and your Petitioners for further
Rejoinder did say that although the Complainant might
have

have been Nominated by the Captors of Suggernaickporam as their Agent yet that he never took charge of their property or in any wise acted in the premises, and although he was directed to take an Account of such property when the same should be delivered over to a Person Appointed by the Government of Fort Saint George to take charge thereof yet he suffered William Oram Esquire the Person so Appointed to possess himself of the said property and to Ship off the same for Masulipatnam without taking any Account thereof as directed so to do, for the benefit and interest of the said Captors and your Petitioners did say that the said William Oram did not Act under the Orders of William Hamilton in the Complainants Replication named but under the Orders of the Government of Fort St George aforesaid, and as the said William Oram took charge of the said Captured property the next Day after the place had surrendered to the English and as the Complainant had not then, nor had he at any time thereafter taken charge thereof, or in any wise interfered therein although frequently importuned and Requested so to do, he could not have any manner of right to any Commission as Agent or otherwise upon any Sum or Sums of Money that had arisen or were

were to arise therefrom And your Petitioners did deny that the Complainant did ever deliver the said Captured property either to the said William Hamilton, or to the said William Oram, but on the Contrary did say as in and by their said Answer they had before said that the Complainant never did take charge thereof that the said William Boggie did not act under the Orders of the said William Hamilton, but under the immediate Orders of the Government of Fort Saint George aforesaid and therefore that the Complainant did not follow the Instructions of his Constituents as given in the Cahibit to his said Bill of Complaint annexed That even if the Repliant had in obedience to the said Instructions delivered over the charge of the said Captured property to the said William Hamilton or to his Order, that his the Complainants duty as Agent did not thereby become determined but that the same continued until the whole of the said property should have been disposed of and the Amount Sales thereof Realized and paid to the Persons Entitled to Receive the same, And your Petitioners did deny that there was any inattention omission or negligence on their part Respecting the public Sales of the said Captured property or otherwise but that the Complainant was Totally inattentive and Neglectful of their Interest in Every Respect, and that thereby and by Reason thereof they had sustained great injury in the

premises

premises for your Petitioners did say as in and by their said Answer they had already said that the said Captured property so Shipped off for Masulipatnam as aforesaid was there sold by public Auction without any interference on the part of the Repliant who did not attend the said Sale, nor was he present when they were made, although it was his duty to have been present, and attended in Order to protect the Interest of his Constituents in the premises which as your Petitioners had in in their said Answer said did greatly suffer on Account of such the Conduct of the Complainant that Notwithstanding the Asertion of the Complainant in his said Replication contained that he was not conscious of having in any manner Refused to give any fair and proper information Respecting his Conduct in the premises your Petitioner James Bagshaw Butler did frequently Write to the Repliant and Request him to give to him an Account of the said Captured property and furnish him with the necessary particulars Relative thereto, and to his Interest therein, and that the Complainant did not take any manner of Notice of such fair and Just Requisition but did withhold all Accounts and intimation touching the premises, that when the Complainant was appointed the Agent for the Captors of Suggernaickporam as aforesaid

aforesaid, he was so Appointed at his own Request and in Accepting the Trust thereby imposed he of course become bound to perform the several duties connected therewith and Relative thereto, and failing in the discharge of those duties he forfeited all manner of Right and title to the benefits and advantage to be derived from the Office of Agent that if the Complainant knew that the said duties would or might interfere with his situation as a Servant of the Company he ought not to have Accepted the said trust, or in Accepting thereof he should so have Accepted it subject to particular Circumstances, and have Acquainted the Captors of the said Fort of Suggernaickporam therewith but your Petitioners did say that at the time the Complainant did Accept of the said Office of Agent he never offered any matter Relative to his Situation as a Servant of the Company, and his being subject to their Orders to the Consideration of his Constituents, nor did he give them the Most distant hint that by Reason thereof difficulties or Obstacles might arise the said Captors Therefore upon his becoming their Agent confiding in the fidelity and good Conduct Entertained no other sentiment but that he would act Justly, fairly and Zealously for their benefit and advantage, and that he would in the same manner as Agents are bound to do, assist and defend the Rights and protect and support the

the Interest of his Constituents and as the Complainant had admitted that he did Refuse to proceed to the Presidency when Repeatedly Requested by his Constituent so to do at a time when their Interest Rendered his presence at the Presidency Absolutely and indispensably necessary he had clearly Shewn that he had no right or title to make any manner of Claim or to Receive any Sum or Sums of Money whatever from your Petitioners, or from any other the Captors of Juggernaickporam for or by Reason of any prize Money and that his said Bill of Complaint had no foundation in Law Equity or Justice and your Petitioners did further say as in and by their said Answer they had already said Notwithstanding the Assertion of the Complainant to the Contrary that they had heard and Verily believed the fact so to be, that after the Complainant had been Appointed Agents for the Captors as aforesaid he did Assist as far as in his power lay the pretensions set up by the Officers and Crews of the Ships Grosvenor and Royal Admiral contrary to the Interest of the said Captors and in Violation of the trust by them Reposed in him as aforesaid And your Petitioners did say as in and by their said Answer they had already said that they were informed that William Balfour in your Petitioners said Answer named, had Agreed with the Complainant to Share half Commission upon the said Sum of Seventy four Thousand Two hundred and Seventy Nine Pagodas Twenty four fanams and Sixty two Cash but if the said William Balfour had Entered into such Agreement it must have been from the impulse of Friendship in him the said William Balfour towards the Complainant or from Motives of generosity, and in which Transaction the said Captors could have had no manner of of Concern in as much as the Complainant had not Entitled himself to Receive any benefit or Advantage whatever for or by Reason of his having been formerly Appointed the Agent for the Captors of Juggernaickporam but on the Contrary from having Accepted that trust and afterwards Neglecting and Refusing to act therein and discharge the Duties thereof and thereby injuring the parties whose benefit and advantage he had Covenanted to protect he became liable to your Petitioners and others interested in the said prize property for a Misfeasance of Office, That the intermeddling of the said William Balfour in the premises as the Complainant in and by his said Repliation expressed it was an act of necessity owing to the unjustifiable Conduct of the Complainant who although Requested Repeatedly as before Shewn, and in and by your Petitioners said Answer the same was particularly set forth to come down to the Presidency for the purpose of arranging and Adjusting the affairs of the

Captors

Captors of Juggernaickporam and supporting and protecting their Rights he did neglect and Refuse so to do, the said Captors were therefore compelled to Employ some other Person to take charge of their affairs as it was not in their own power to act for themselves owing to their want of the necessary knowledge in Accounts, and to their distance from each other in out station Remote from the Presidency that upon the Appoint=ment of the said William Balfour as Agent for the said Captors, he the said William Balfour did Enter upon the duties thereof and deligently and and faithfully discharge the same to the Entire satisfaction of his Constituents who did in consequence thereof agree to allow, and he the said William Balfour did Accordingly Receive his Commission of five per Cent for his trouble care and attention and thereupon and by Reason of the premises your Petitioners did say that Notwithstanding the Asertion of the Complainant to the Contrary he the Complainant had no Right to make any Claim, nor to be in any wise Entitled to Receive any benefit or Advantage whatever under and by Virtue of his Appointment as Agent for the said Captors of Juggernaickporam having forfeited the same by his own misfeasance and by Abandoning the Interest of the said Captors at the only times when his Services were Required and your Petitioners Shew unto this Honble Court that thereupon issue

issue did Join and Rules did pass for the Examination of Witnesses and that Witnesses were Accordingly Examined on the part of the Complainant, that one of the said Witnesses although interrogated to very material points does not depose a Single fact in opposition to or confutation of your Petitioners Answer and Rejoinder or in support of his said Bill of Complaint and Replication, and another of the said Witnesses John Tulloh speaks merely to the allowances generally made to Agents for Captured property and William Collins Jackson upon which the Complainant solely Relies shews that he was Deputy Secretary to the Government of Fort St George from the year of Our Lord One thousand Seven hundred and Eighty five to the year of Our Lord One thousand Seven hundred and Ninety and presumes from the Correspondence of the Complainant with Government that he was the Agent of the Captors of Juggernaickporam, that in one of his letters he stated that the Gentleman who had Served at Juggernaick=poram had directed him to lay before Government their Claim of a moiety of the prize goods and afterwards that the Captors in delicacy and Respect to the Board withheld their Application for prize Money from July One thousand Seven hundred and

and Eighty One to that time and that they then hoped as there was peace their Claims would be taken into Consideration but that they did Acquiesce in whatever might be the Determination of the Board as to the mode of payment that in a letter from the Complainant to the Witness under date Seventeenth February One thousand Seven hundred and Eighty Eight he the Complainant Requested a Copy of the Instruction given to the Captains of the Grosvenor and Royal Admiral Indiamen on those Vessels being sent to India in the year One thousand Seven hundred and Eighty and also a Copy of a letter to Mr. Hamilton then Chief of Ingeram and Copies of Petitions presented to the Court of Directors by the owners of the above Ships — That half of the Prize Money had been paid and the other half is Reserved until the Claims of the Owners and Commanders of the Grosvenor and Royal Admiral shall be settled, and concludes from the nature of the Complainants Correspondence with Government as set forth in his the Witnesses Deposition that he was considered by Government as the Agent of the Captors of Juggernaickporam that his Correspondence is Recorded on their Books and from them he the Witness has been able to detail the Complainants Correspondence that

That he can only Judge of the Zeal of the Complainant as Agent to the said Captors from his the Witnesses Official Situation as already detailed by him the Witness and cannot further speak thereon And your Petitioners Shew that upon the Pleadings had, publication did pass and the said Cause was set down for hearing and did Accordingly come on to be heard before the said Mayors Court on the Twenty Ninth day of July last past when the said Mayors Court was pleased to Order and Decree, and did Accordingly Order and Decree Two of the Judges thereof dissenting thereto, that the Defendants Henry Chichley Michell one of the Administrators of John Wheeler Deceased, and your Petitioners should pay unto the Complainant the full and Just Sum of Three thousand Seven hundred and thirteen Pagodas forty One fanams and forty Cash together with all such Interest as then was or should thereafter become due thereon at the rate of Ten per Cent per Annum until full payment was made also all Costs of Suit as by the said Decree Copy whereof is hereunto annexed for the inspection of this Honourable Court to which your Petitioners by leave to refer & pray the same may be taken as part of this their Petition of Appeal the Original being Ready to be produced When Required may Appear —

By which said Decree of the said Mayors

Mayors Court your Petitioners conceive themselves much Aggrieved and do therefore Appeal therefrom to this Honble Court for the following Amongst other Reasons—

First ..... Because the Plea which your Petitioners did file in the said Mayors Court for want of parties ought to have been held good and sufficient the said Plea having been Replied unto by the Complainant who thereby admitted the same to be good in law, and by confessing that John Inglish in your Petitioners said Plea named and the Serjeants Subidars Jemidars Hauildars and Naicks Priuates Sepoys Lascars and others referred to in your &c Petitioners said Plea was and were at the Capture of Suggernaickporam in the Complainants said Bill of Complaint mentioned, and by further confessing in and by his said Replication that "by the Rule or maxim of the Law "Whereby the said John Inglish should have been made a "party to the said Bill of Complaint all and each of the said "Serjeants Subidars Jemidars Hauildars Naicks private Sepoys "Lascars and others who assisted with the Persons in the said "Bill named at the Capture of Suggernaickporam ought to "have been made parties thereto" And as it Appears that the Complainant was fully in possession of the knowledge of the parties Interested in the present Suit and that the whole of the said parties were not made parties to his said Bill of Complaint the said Bill ought by reason &c Thereof and of your Petitioners said Plea to have been dismissed—

Secondly ..... Because although the Complainant was &c Appointed Agent for the Captors of Suggernaickporam on or about the Eighteenth Day of July One thousand Seven hundred and Eighty one at which period the said Town of Suggernaickporam was Captured, yet it Appears by the Complainants own Shewing that the Captors were themselves obliged to annul such powers as the Superior Authority of the Governor and Council of Madras had interfered and demanded that the Captured property should be delivered up to them, and in consequence thereof the said Captors did Address to the Complainant a letter under date of the said Month of July whereof a Copy is to his said Bill of Complaint annexed and wherein the said Captors thus expresses Themselves "The Right Honourable the President and "Council for the Affairs of the English East India Company "having demanded the goods taken in this place we direct "you to deliver up to Mr. William Hamilton or his "Order Acting for the said President and Council such "Goods as may be demanded by him keeping on Account "of them for our use" and which goods were on the Day following the Capture of the place taken possession of by William Oram Esquire in your Petitioners Answer named

Named on the part and behalf of the said United Company of Merchants and the said William Oram did Ship the said property on Board the Grosvenor and Royal Admiral Indiamen then being in the Roads of Suggernaickporam aforesaid and the same were afterwards sold at Masulipatnam by public Auction without any interference on the part of the Complainant, who did not attend the said Auction by Reason whereof the said Captors did sustain a very considerable injury loss and Damage —

Thirdly — Because from the time of the said Appointment of the Complainant as Agent and the annulling thereof until the Court of Directors were pleased to Order that one moiety of the Amount of the said prize property should be paid to the said Captors of Suggernaickporam, he the Complai= =nant did not interfere or interest himself in the affairs or for or on behalf of the said Captors, nor did he furnish them or either of them with any Account of the said prize goods although frequently importuned so to do by your = Petitioner James Bagshaw Butler, and although he was frequently importuned by Hugh Montgomery in his the Complainants Bill named on behalf of himself and the Captors at large to proceed to the Presidency in Order to make the necessary Applications to = Government for the Amount due on the said property = Captured, he the Complainants did absolutely refuse so to do — And Afterwards when the said moiety was by the said Court of Directors directed to be paid to the said Captors as aforesaid the said Hugh Montgomery did again on behalf of himself and the said Captors Request the Complainant to proceed to Madras as pointing out the Absolute necessity for his so doing, but the Complainant did continue to Refuse to comply with such Requisition and could not be prevailed upon to come down to Madras to interfere in, or attend to the affairs of the said Captors and which in and by his said Replication he fully admits and endeavours to Justify such Conduct in the following Words " at the time the said Captors nominated him as their Agent he was known by them to be in the Service of the said United Company and under the Government of Fort Saint George and therefore subject to the Order and Control of the said Government of Fort St George Wherefore the said Captors having chosen him as their Agent, knowing him to be under such Order and Control had no ground of censure Against him, for having been prevented by his situation as a Covenanted Servant of the said United Company with the Expectation of the said Captors to proceed to the Presidency " Whereby the Complainant doth Shew that although he accepted the

the said Trust of Agent for the said Captors he did not think himself bound to Act, and that he did not Act in the premises and Notwithstanding he has brought his Suit Against your Petitioners and others for a Commission on the Amount Sales of the said Captured property he confesses that he did not interfere therein although he was Requested and importuned so to do, but did abandon the same together with your Petitioners Interest in the premises by which means as your Petitioners have aversed in their said Answer upon Oath your Petitioners have been greately injured and sustained Considerable loss and damage and your Petitioners humbly Submit to this Honble Court that where a person undertakes to become Agent for another, and afterwards neglects and then Refuses to discharge the duties of such trust he is not only barred of any Right to a Commission but is also Accountable to his constituent for any loss damage or detriment his constituent might have sustained by Reason of such negligence, and Refusal And your Petitioners further submit that it lay within the knowledge of the Complainant alone as to his situation and whether he could or could not Act as occasion might Require, discharge the Duty of an Agent, and if he knew that his situation as a Covenanted Servant would prevent him from Acting as such he ought to have signified the same at the time he was about to Accept the said Trust,

That having Accepted it, he was bound to Act therein in conformity to the Will and directions of his Constituents and by neglecting or Refusing so to do, he had not nor has any manner of right to any manner of Commission or Emolument whatever by Reason of the said Capture —

Fourthly — Because in consequence of such the neglect and refusal of the Compleinant to Repair to Madras aforesaid the said Hugh Montgomery did himself proceed to the Presidency for the purpose of supporting the Interest and protecting the Rights of the said Captors, and on the arrival of the said Hugh Montgomery at the said Presidency, the said Captors, or their Survivors did Empower him Jointly with William Balfour of Fort Saint George aforesaid Merchant to demand and Receive the said moiety of the said Prize Money by the said Court of Directors directed to be paid to the said Captors and that thereupon they the said Hugh Montgomery and William Balfour did obtain from the said Governor and Council of Fort Saint George by a Certificate and draft on Bengal the Sum of Twenty four thousand Two hundred and Seventy Nine Pagodas thirty Six fanams and Sixty two Cash and on the Return of the said Hugh Montgomery to the Northward the said Captors did make the necessary Arrange=ments Regarding the same as to the proportions to be shared by the different Classes of Troops entitled to partake therein and

and the said William Balfour did in conformity to such Arrangements pay to the several Captors or to their Representatives their respective shares or proportions, and did for his trouble in the premises and as the Agent of the said Captors retain a Commission of five per Cent Amounting to the Sum of Three thousand Seven hundred and Thirteen Pagodas and the Complainant did not then commence any Suit for his pretended Commission, nor did your Petitioners or the said Captors hear any thing further on the subject from the Complainant until the death of the said Hugh Montgomery and the departure for Europe of the said William Balfour—

Fifthly — Because your Petitioners and others the said Captors were under an absolute necessity of Appointing the said William Balfour and Hugh Montgomery to act as their agents by reason of the Refusal of the Complainant to obey their Instructions or comply with their Requisitions to secure and protect their property as above set forth and because the said William Balfour did in consequence of such Appointment receive from your Petitioners and others the said Captors of Suggernaickporam a Commission of five per Cent as a Compensation for his trouble in the premis and although the Complainant hath in his said Replication suggested that the intermeddling of the said William Balfour in the premisses does not, in any wise affect his Claim to his Commission as the Appointed Agent by the Captors yet he well knows that such intermeddling of the said William Balfour as the Complainant expresses himself was under the direction and special Appointment of the said Captors, and that they were reduced to the absolute and indispensible necessity of making such Appointment owing to the neglect and Refusal of the Complainant to Act as the Agents of the said Captors Notwithstanding he was frequently importuned and Required by the said Captors so to do—

Lastly — Your Petitioners beg leave to Shew that although the Account Current to the Complainants said Bill of Complaint annexed is Dated in September One thousand Seven hundred and Eighty Eight and interest is calculated from that period, Yet the Bill of Complaint was not filed until the Month of March One thousand Seven hundred and Ninety three nor has the Complainant Shewn or attempted to Shew that he ever made any demand upon your Petitioners for the Amount of his said pretended Commission, and your Petitioners further beg leave to Shew that a Commission is in the nature of Servants Wages, and that even had the Amount of the said Commission been justly due and owing to the Complainant he was not Entitled to any Interest thereon

thereon And your Petitioners submit to this Honble Court that the Complainant has not supported by Witnesses the several charges in his said Bille setforth And the several Matters and things in his said Replication insisted on, nor has he Refuted any matter or thing in your Petitioners said Answer contained, and as your Petitioners said Answer is upon Oath it was in fact the only positive and materiall Evidences before the said Mayors Court

For all which Reasons and such others as may be offered at the hearing your Petitioners most humbly pray that this Honourable Court will be pleased to Reverse the said Decree of the said Mayors Court, and grant unto your Petitioners such further and other Relief as to this Honourable Court shall Seem Meet

/Signed/ J. Stuart Hall
Solicitor for Appellant

Mayors

Mayors Court at Madraspatnam

Tuesday the 29th Day of July 1794
Anno Domini 1794

Mayors Court

Present
Mr James Call Senior Alderman
Andrew Ross John Mitford
and Alexander Cockburn Aldermen

Between Mathew Yeats Esquire Senior Merchant in the Service of the United Company of Merchants of England trading to the East Indies under their Presidency of Fort Saint George and for some time past and Still Resident at Ingram one of the Factories of the said United Company under their Presidency of Fort Saint George Complainant and Thomas Lane Alexander Farrier and William Balfour Surviving Executors of Arthur Leyaght Deceased William Duffin Executor in India of Hugh Montgomery Deceased Henry Shickley Mitchell and Charles Rond Administrators of John Wheeler Deceased Philip Mayne Captain

Captain Lieutenant James Bagshaw
Butler Lieutenant and George Westcott Esq
Senior Merchant and Paymaster all in
the Service of the said United Company
under their said Presidency of Fort Saint
George Defendants —

This Cause coming on to be heard and Debated
this Day in the Presence of the Attornies on both sides on
Reading the Complainants Bill, with Copies of Three Exhibits
annexed the Seperate Plea and Answer of Henry Chichely
Michell The Plea and Answer of Philip Mayne and James
Bagshaw Butler with Copy of a Packet annexed The
Replication to the Seperate Plea and Answer of Henry
Chichely Michell The Replication to the Plea and Answer
of Philip Mayne and James Bagshaw Butler The Re-
Rejoinder of Henry Chichely Michell The Rejoinder of
Philip Mayne and James Bagshaw Butler The Interro-
gatories and Depositions on the part of the Complainant
with a Commission and Extracts from the Minutes of
Court annexed Three 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 Defendants Henry Chichely Michell
one of the Administrators of John Wheeler Deceased Philip
Mayne and James Bagshaw Butler do pay unto the
Complainant the full and Just Sum of Three Thousand
Seven hundred and Thirteen Pagodas forty one fanams and
forty Cash / Pagodas 3713. 41. 40 / together with all such
Interest as now is or shall hereafter become due thereon at the
Rate of Ten /10/ P. Cent P Annum untill full Payment is
made also all Costs of the Suit

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

To

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

In the Hon^ble the
Court of Appeals

The Answer of Mathew Yeats Respondt
to the Petition and Appeal of Philip Mayne
and James Bagshaw Butler Appellants

This Respondent by way of Answer to the Petition and
Appeal of the said Appellants or unto so much thereof as this
Respondent is advised to make Answer unto saith that he
admits he filed his Bill of Complaint at the time mentioned
and to the purport setforth in the Appeal and that the
Appellants did file their Plea and Answer stating therein
the several Matters and things which are for that
purpose setforth in the Petition and Appeal, and this
Respondent admits that he filed his Replication and the
Appellants filed their Rejoinder at the respective times and
Containing the several matters setforth in the said Pleadings
Respectively and that thereupon Issue was Joined Rules
passed for the examination of Witnesses and Witnesses
Examined and that Publication passed and the Cause
was heard at the times Respectively mentioned in the
Appeal

Filed in my Office
the 28th August 1794
J. Webbe Clk

Appeal, and that the said Mayors Court did pass a Decree
at the time and to the purport setforth in the Appeal by
Which Decree this Respondent denies that the Appellants
have any ground to consider themselves Aggrieved and in
support of the said Decree of the Mayors Court this Respon-
dent prays leave in the first instance to Answer the Reasons
which the Appellants have Advanced against it —

To the First Reason of the Appellants this Respondent in Answer
prays leave to setforth the following Copies of the letter of
Appointment from the Defendants in this Cause to this
Respondent and of their Order for the delivery of the goods taken
at Juggernaickporam —

M^r Mathew Yeats

Sir We the Captors of Juggernaickporam do
hereby nominate constitute and Appoint you our Agents
for the Receiving and disposing of such goods as may have
become our property According to the Custom of the by such
Capture and we do further direct that whereas certain
Gentlemen have already laid or do mean to lay Claim
as Captors to a Share of the same Goods which Claim we
have not yet Admitted that the said Goods being disposed
off and the Amount Collected, you do without loss of
time

time pay unto each of us the proper share of the Net Amount of the said Goods According to the usual devidents made on such occasions Reserving to yourself the Amount of all nessary and Customary charges and Receiving also the Sum which may or will become due unto those Claimants in case the Demands are found first Which Sum is to be disposed of According to the Determination of such Suit or Claim —

We are Sir

Your Obt. Servts

Suggernaickporam

July 1794

Arthr. Lysaght
I. Wheeler
Geo. Westcott
P. Mayne
I. B. Butler
Hy. Montgomery

Mr. Mathew Yeats

Sir

The Right Honourable the President and Council of Madras for Affairs of the English East India Company having demanded the Goods taken in this Place, We do direct you to deliver up unto Mr. William Hamilton or his Order Acting for the said President and Council such goods as may be demanded by him keeping an Account of them for our use —

We are Sir

Your Obedient Servts

Suggernaickporam

July 1781 —

Arthr. Lysaght
I. Wheeler
Geo. Westcott
P. Mayne
I. B. Butler
Henry Montgomery

From which letter of Appointment and subsequent Order it is Evident that the Defendants considered themselves as the Captors or deputed by the other Captors to act for the whole and as such Authorized to Appoint their Agent to act in the Premises and if they were not so Authorised as by their Plea they Pretend they have been guilty of a Fraud in Receiving and disposing of Money without a legal Authority so to do, and as it is a maxim of Law that no Man shall avail himself of his own wrong, and as they held themselves forth to this Respondent as the only Persons Authorised to act in the Premises this Respondent submits that the Plea is ill founded and that this Respondent hath properly preferred his Bill of Complaint by

by Naming therein all those from whom he Received his Authority —

To the Second Reason of the Appellants this Respondent for Answer saith that the Government of Fort Saint George Applied for the Captured property in Order to dispose thereof to Answer the then pressing exigencies of the States it being in the time of War, and the same were delivered Accordingly and the Amount states placed to the Credit of the Captors half whereof was paid Amounting to the Sum Stated in this Respondents Bill of Complaint being Pagodas Seventy four thousand Two hundred Thirty two Fanams and Sixty two Cash and Acknowledged by the Appellants in the Plea and Answer and the other half was Reserved "until the Claims of the owners and Commanders "of the Ships Royal Admiral and Grosvenor "shall be settled" as Appears by the Evidences of William Collins Jackson in his Deposition to the Third Interrogatory preferred on the part of this Respondent —

And to the pretence of injury to the Captors because this Respondent did not attend

attend the Sales of the said Goods the same is done away by the Appellants for they state they were sold at Masulipatam by Public Auction, nor have the Appellants Attempted to prove any injury nor did they ever Represent any such to this Respondent, And this Respondent further saith that he had not Notice of the intended Sales either from the Government of Fort Saint George or from the Captors he also saith that the said William Oram did not arrive the Day after the Capture of the said Fort of Juggernaickpooram and take charge of the Goods taken therein, on the Contrary this Respondent as Agent for the Captors took charge of the whole of the prize Goods and did deliver them agreeable to the Order of the Captors to the said William Hamilton the President of the Honourable Company at Ingeram, and that the taking charge of the said Captured property making inventories thereof for the use of the Captors and doing other things incident to his duty as Agent, did engross his time About a Month, as Appears by the Evidence of Cauchera soo Bagavantoo Branniny who Acted as Writer to this Respondent —

To

To the Third Reason this Respondent for Answer saith that the same as far as relates to this Respondents not coming to the Presidency is Accounted for by the Appellants from their Extract from this Respondents Replication and as to the proof of this Respondents Acting to the utmost of his Power for the Interest of the Captors it Appears fully from the Evidence of William Collins Jackson in his Deposition to the Second, fourth and Seventh Interrogatories of this Respondent which are as follows –

2. To the Second Interrogatory this Deponent saith that he was Deputy Secretary to the Military Department under the Government of Fort Saint George from the Month of May in the year of Our Lord One thousand Seven hundred and Eighty five to the Months of December One thousand Seven hundred and Ninety and by the Correspondence of the Complainant with the Government of Fort Saint George from the Months of May One thousand Seven hundred and Eighty five to the Nineteenth Day of March in the year One thousand Seven hundred and Eighty Eight this Deponent says he presumes he the Complainant was Agent for the Captors of Juggernaickporam the Complainants first Letter that this Deponent hath seen to the Government of Fort Saint George is Dated Twenty eighth Day of June One Thousand Seven hundred and Eighty five when Alexander Davidson Esquire was Governor he the Complainant therein States that the Gentlemen who served at Juggernaickporam had directed him to lay before Government their Claim of Moiety of the Prize Goods he afterwards states that the Captors in delicacy and Respect to the Board withheld their Appliation for Prize Money from July One thousand Seven hundred and Eighty one to that time and that they then hoped as their was Peace their Claims would be taken into Consideration – This Deponent saith that the Complainants Letter further states that they will chearfully Acquiesce in whatever might be the Determination of the Board as to the mode of payment &c Whether their Bonds Bengal Bills or otherwise as would be most convenient to the Company this Deponent saith the Complainant also wrote a letter to him this Deponent as Deputy Secretary to the Military Department Fort Saint George under Date the Seventeenth Day of February One thousand Seven hundred and Eighty Eight Requesting to have a Copy of the Instructions given to the Captains of the Grosvenor and Royal Admiral Indiamen on those Vessels being sent to Coringa in the year One thousand Seven hundred and Eighty one also Copy of a letter to

W.

Mr. Hamilton then Resident at Ingeram and Copies of Petitions presented to the Court of Directors by the owners of the above mentioned Vessels Claiming a Share of the Juggernaickporam Prize Money which Papers with the Permission of Government were furnished by this Deponent accordingly and more saith not to this Second Interrogatory

4th To the Fourth Interrogatory this Deponent saith that he conclude from the Nature of the Complainants Correspondence with Government as set forth in his this Deponents Answer to the Second Interrogatory that the Complainant was considered by Government as the Agent to the Captors of Juggernaickporam that his Correspondence is recorded in their Books and from them this Deponent has been enabled to Detail the Complainants Correspondence as set forth in his Answer to the Second Interrogatory and more he saith not to this fourth Interrogatory —

7th To the Seventh Interrogatory this Deponent saith that as he is uninformed of the matters to which this Interrogatory tends otherwise than in his official situation he can only Judge therefrom of the Zeal of the Complainant as Agent to the said Captors and having already detailed the particulars of his information respecting the Complainant in his Answer to the Second Interrogatory he cannot speak further thereon from which it Appears that this Respondent was

was Zealously active for the Interest of the Captors the whole of whose case consisted as it happened of four Points 1st the Receiving charge of the Goods taken at Juggernaickporam and taking inventories thereof &c. &c. — 2d the handing them over According to the Orders of the Captors — 3d the Application to Government for the half Share of the Prize Money and 4th the care of their Interest in asserting their exclusive Claim to the whole property in opposition to the Pretensions of the Commanders of the Ships Grosvenor and Royal Admiral —

To the Fourth Reason this Respondent for Answer saith that the same is fully Answered in the Preceeding Answer to the third Reason of the Appellant. And this Respondent further saith that the Appellants have not addduced any Evidence in Support of their charges of neglect or misfeazance against this Respondent which they ought to have done as this Respondent denied the charge and which it is presumed they of course would have done, could they have Substantiated the same —

To the Fifth Reason this Respondent for Answer saith that the same is Answered in this Respondents preceeding Answers to the Appellants Third and Fourth Reasons for appealing. And this Respondent saith that the Captors having paid William Bolsour a Commission

is

is no ground of Objection to this Respondents Claim as setfor
and Established by the Proceedings in this Cause, and this
Respondent disavows having made any Agreement whatever
with the said William Balfour respecting a Division
of the Commission due from the Captors —

To the Last Reason this Respondent for Answer saith that this
Respondents Claim to Commission is coeval with the
Captors Receipt of the Prize Money and therefore he hath
a Right to Interest from that Day and for further Answer
he saith that he hath Established his Claim by the
Evidence before stated, nor can the Appellants advantage
themselves of the Assertions in their Answer when denied
by this Respondent unless they have adduced Evidence in
Support thereof —

Wherefore and for such other Reasons as
may be adduced at the hearing of the Cause this Respondent
prays that the Decree of the Mayors Court may be confirmed
and he further prays that as the Appellants have charged
this Respondent with having (altho appointed an Agent
on the part and behalf of the Captors of Juggernaucke poram) "aided
"and assisted, as far as in his power lay the pretensions set up
"by the Officers and Crews of the said Ships Governor and
"Royal Admiral contrary to the interests of the said Captors
"and in violation of the trust Reposed in him" And as this
Respondent

Respondent denied that he was ever inimical
to the Interest of his Constituents and that the
charge was unjust and that he defied them to
prove any such Disposition in his conduct or
that he did ever did and assist the pretensions
of the Officers and Crews of the said Ships
Governor and Royal Admiral and as the said
charge hath not, Notwithstanding such denial
by this Respondent been proved by the Appellants
he submits they should be taxed with exemplary
Costs —

/Signed/ S. Popham
for self
& Robert Williams
Solicitors for Respondent

Court

Court of Appeals
at
Madraspatnam

Saturday the 6th day of December
Anno Domini 1794.

Between Philip Mayne and
James Bagshaw Butler Captains
in the Service of the United Company
under their Presidency of Fort St. George
Appellants and Mathew Yeats
Esqr. a Senior Merchant in the
Service of the said United Company
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 Decree of the
said Court given in this Cause on Tuesday the
29th day of July 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

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 29th day of July Anno Domini 1794 be
Reversed and this Court doth further Order and
Decree that the Appellants do pay unto the
Respondent the Sum of One thousand Eight
hundred and fifty six Pagodas forty three fanams
and Twenty Cash Pags. 1856 .. 43 .. 20 / together
with all such Interest as now is, or shall hereafter
become due thereon at the rate of Eight [8] per Cent
per Annum, and that each party do pay their
own Costs in both Courts —

Hur
/Signed/ Robert Clerk
Clk

To

To the Kings Most Excellent Majesty in Council

Between Mathew Yeats Complainant and Thomas Lane Alexander Fanier and William Balfour surviving Executors of Arthur Lysaught Deceased William Duffin Executor in India of Hugh Montgomery Deceased Henry Chichley Michell and Charles Rand Administrator of John Wheeler Deceased Philip Mayne and James Bagshaw Butler Defendants.

The humble Petition and Appeal of Philip Mayne and James Bagshaw Butler two of the Defendants above named.

Humbly Shweth

That the Complainant above named did on or about the Twenty third day of May Which was in the year of Our Lord One thousand seven hundred and Ninety three Exhibit and file his Bill of Complaint in the Mayors Court of Madras Against your Petitioner and others the Defendants above named as the Captors of Juggernaickporam a Settlement then belonging to the Dutch and Situated to the Northward of Madras aforesaid for the Recovery of the Sum of Five thousand seven hundred and Sixty Star Pagodas Current Money of Madras aforesaid pretending that the same was due and owing to

Filed in my Office the 19th December 1794
Robert Clerk
Ch

to him as their Agent by them duly Appointed as he did say would more fully Appear by a Copy of a Letter from them to his said Bill of Complaint annexed stating Amongst other things in his said Bill of Complaint contained that he continued to Act as their Agent from the Month of July and year of Our Lord One thousand Seven hundred and Eighty one to the Month of September One thousand Seven hundred and Eighty Eight When the United Company of Merchants of England trading to the East Indies by their Agents or Representatives at Fort Saint George did make a Distribution of One half of the Prize Money for the said Factory of Juggernaickporam Amounting to the Sum of Seventy four thousand Two hundred and Seventy Nine Pagodas Thirty two Fanams and Sixty two Cash by granting a Certificate to that Amount on the Government General of Bengal in favour of the said Hugh Montgomery for Account of all the Captors and which said Sum of Seventy four thousand Two hundred and Seventy Nine Pagodas Thirty two Fanams and Sixty two Cash was Received and devided Amongst the said Captors or their Respective legal Representatives without paying from the Complainant his usual Commission thereon which in like cases he did say was five per Cent and which on the said Sum of Seventy Four thousand Two hundred and Seventy Nine Pagodas Two Fanams and Sixty two Cash did Amount to the Sum

of

of Three thousand seven hundred and thirteen Pagodas forty one fanams and forty Cash and with Interest thereon up to the thirteenth day of April then last past did Amount in the whole to the Sum Sued for and the Complainant did in and by his said Bill pray that your Petitioners and the said other Defendants might be Decreed to pay unto him the whole of the said Sum of Five thousand Seven hundred and Fifty Six Star Pagodas Twenty Eight fanams and Seventy two Cash and that they might be severally bound by the Decree of the said Mayors Court to the payment of the full Amount sued for with all such Interest as then was or should thereafter become due thereon - And your Petitioner humbly Shew unto your Most Excellent Majesty in Council That to the Complainants said Bill of Complaint your Petitioners did put in a Plea and Answer and for Plea did Shew a want of parties in the said Bill and did plead the same in Bar thereto and your Petitioners for Answer did say that the Complainant had not Acted in the premisses and was not therefore entitled to any Advantages Arising therefrom or by means thereof that your Petitioner James Bagshaw Butler did frequently Apply to the Complainant for an Account of the said Captured property but that he the Complainant did Refuse or neglect to give the same That the said prize property was sold at Masulipatnam without any

Person present on the part of the Captors to protect their Right and promote their Interest that some time Afterwards the said Hugh Montgomery on behalf of himself and the Rest of the Captors did earnestly Request the Complainant to proceed to Madras to interfere in and guard then the said Captors Rights in the Premisses but that he the Complainant did Refuse so to do That when by Order of the Court of Directors a moiety of the said prize Money was directed to be paid by the Agents of the said United Company of Merchants at Fort Saint George the said Hugh Montgomery did again apply to the Complainant and Request him to Repair to Fort Saint George aforesaid to Receive the same but the Complainant did again refuse compliance and thereupon the said Hugh Montgomery did himself proceed to Fort Saint George aforesaid and being Reduced to the necessity of employing an Agent on the part of himself and the said other Captors owing to the Conduct of the Complainant as aforementioned did Accordingly Appoint William Balfour then of Fort Saint George Merchant to be and act as the Agent for the said Captors of Jugger= =naickporam - That the said William Balfour did in consequence Receive the said prize Money and Cause the same to be Distributed Amongst the several parties Entitled

Entitled to receive the same and he the said William Balfour for and on Account of his trouble in the premisses did Receive a Commission of five per Cent upon the said Sum so Distributed And your Petitioner humbly Shew unto your Most Excellent Majesty in Council that they did in their said Plea and Answer setforth a variety of other matters and things as they were advised, pertinent and relevent to their Defence to the several matters and things setforth in the Complainants said Bill of Complaint And your Petitioners Shew unto your Most Excellent Majesty in Council that to your Petitioners said Plea and Answer the Complainant did Exhibit and file his Replication in the said Mayors Court and in Reply to your Petitioners said Plea did admit the same to be such founded as your Petitioner is advised and Amongst other things in his said Replication contained in Reply to your Petitioners said Answer did admit that he did not Comply with the Requisitions of the said Hugh Montgomery as hereinbefore stated from your Petitioners said Answer to the Complainants said Bill of Complaint and did attempt to Justify his conduct by Observing that he was a covenanted Servant of the said United Company of Merchants and as such under the Orders of the Government of Fort St George aforesaid And your Petitioners humbly Shew unto your Most Excellent Majesty in Council that to the Complainants said Replication your Petitioners did file a Rejoinder that thereupon Issue did Join and Rules did pass for the Examination of Witnesses and Witnesses were Accordingly Examined on the part of the Complainant but your Petitioners submit to your Most Excellent Majesty in Council that their Testimony did not by any means tend to support the Complainants said Bill of Complaint And your Petitioners humbly Shew unto your Most Excellent Majesty in Council that Publication did pass and the said Cause was set down for hearing and did Accordingly come on to be heard before the said Mayors Court on the Twenty Ninth Day of July now last past when the said Mayors Court did think fit to Order and Decree and did Accordingly Order and Decree Two of the Judges thereof dissenting thereto that your Petitioners should pay unto the Complainant the Sum Sued for together with Interest due and to grow due thereon and all Costs of Suit and your Petitioners Shew unto your Most Excellent Majesty in Council that they did Appeal from the said Decree of the said Mayors Court to the Court of Appeals at Madras on or about the Thirteenth Day of August following

And

And your Petitioners do further &c
humbly Shew unto your Most Excellent Majesty in
Council that in and by their Petition of Appeal
they did Amongst other things briefly setforth the &c
Complainants said Bill of Complaint and thereby &c
Shew that the Complainant in and by his said Bill of
Complaint did say that same time in the year of our
Lord One thousand Seven hundred and Eighty one
Intelligence having arrived that a War had been declared
Between Great Britain and the United States of
Holland the United Company of Merchants of
England trading to the East Indies by their Agents or
Legal Representatives at Fort Saint George did in consequence
thereof send a Military Force under the command of
Arthur Lysaght Esquire then a Captain in the Service
of the said United Company of Merchants under their
said Presidency of Fort Saint George to Capture &c
the Fort or Garrison of Juggernaickporam belonging
to the said United States of Holland and Accordingly
the said Fort or Garrison of Juggernaickporam
was Captured by the said Military Force, that the
Officers which Captured the said Fort or Garrison
of Juggernaickporam consisted of the following
Persons

Persons to wit the said Arthur Lysaght and Hugh Montgomery
John Wheeler Lieutenant and George Westcott Esquire a
Senior Merchant and Paymaster to the said Detachment
and your Petitioners all in the Service of the said Company
under their said Presidency of Fort Saint George who after
the Capture aforesaid did address a letter to him the Complai=
=nant dated in the Month of July and year of Our Lord One
thousand Seven hundred and Eighty one and did therein &c
Appoint him the Complainant Agent for Receiving and disposing
of the prize property as might become their right According to
the Articles of War as by a Copy of a letter annexed to his said
Bill of Complaint he did say might Appear That in consequence
of the Appointment aforesaid he did Act as their Agent and
Received the Spuize Goods from the Dutch of the said Fort or
Garrison of Juggernaickporam and delivered them to William
Hamilton Esq.r having been so instructed by his constituents
the Captors aforesaid as by their letter Copy whereof was to his
said Bill annexed the Complainant did say might Appear
That he the said Complainant did generally Act therein for
the Interest of the said Arthur Lysaght Hugh Montgomery
John Wheeler George Westcott and your Petitioners and
others concerned and Interested therein and as directed by
them That he the Complainant continued to Act as agent as
aforesaid

aforesaid from the said Month of July One thousand Seven hundred and Eighty one to the Month of September One Thousand Seven hundred and Eighty Eight and when the said Company by their Agents or Representatives at Fort Saint George did make a distribution of one half of the said prize Money of the said Fort of Suggernaickporam Amounting to the Sum of Seventy four thousand Two hundred and Seventy nine Star Pagodas thirty two fanams and Sixty two Cash by granting a Certificate to that Amount on the Government General of Bengal in favor of the said Hugh Montgomery for and on Account of all the Captors and that the same was duly divided Amongst the said Captors or their Respectives Legal Representatives According to their Respective shares without paying to him the Complainant his usual Commission thereon Which in like cases he did say was five per Cent and which on the said Sum of Seventy four thousand Two hundred and Seventy Nine Pagodas Thirty two fanams and Sixty two Cash did Amount he did say to the Sum of Three thousand Seven hundred and thirteen forty one fanams and forty Cash and with the Interest thereon up to the Thirteenth Day of April then last past did amount in the whole to the Sum of Five thousand Seven hundred and

and fifty Six Star Pagodas Twenty Eight fanams and Seventy two Cash That he the Complainant did in and by his said Bill of Complaint further say that subsequent to the Capture aforesaid the said Arthur Lysaght had departed this life but that previous to his Death he did duly make and publish his last will and Testament and did therein nominate and Appoint his Wife Martha Lysaght since also Deceased Thomas Lane Alexander Farrier and William Balfour his Executrix and Executors who proved the said Will and Obtained Probate thereof That the said Hugh Montgomery had since the said Capture departed this life and that previous to his decease he had made and published his last Will and Testament in Writing and did therein Appoint Doctor William Duffin to be his sole Executor in India who proved the said Will and obtained probate thereof That the said John Wheeler had also departed this life and that Henry Chichley Michell and Charles Rand had obtained Letters of Administration with a Will and Codicil annexed to the Estate and Effects of the said John Wheeler and took upon themselves the whole burthen and Execution thereof that the Complainant did say that the several Estates of the said Arthur Lysaght Hugh Montgomery

and

and John Wheeler and George Westcott and your &c
Petitioners were Jointly and severally indebted unto him
the Complainant in the said Sum of Five thousand
Seven hundred and fifty Six Pagodas Twenty &c
Eight fanams and seventy two Cash and which said
Sum he did say he had frequently demanded of the
parties in his said Bill of Complaint named and that
they had Refused to pay the same And the Complainant
had thereupon in and by his said Bill of Complaint
prayed that the said parties might be Decreed to
pay unto him the whole of the Sum Sued for that
they might be severally bound by the said Decree to
the payment of the full Amount sued for and all such
Interest as there was or should thereafter become due
thereon and also all Costs of Suit And your Petitioners
did by their said Petition of Appeal to the said Court of
Appeals Shew that to the Complainants said Bill of
Complaint they did Appear and Exhibit and file
a Plea and Answer that therein and thereby for
Plea shewed that the said Arthur Lysaght Hugh
Montgomery John Wheeler George Westcott and
your Petitioners were the only parties to the Complai=
=nants said Bill That your Petitioners not &c
confessing

confessing or Acknowledging all or any part of the matters
and things in the Complainants said Bill contained to be
true in such sort, manner and form as the same were therein
and thereby charged alledged and set forth to so much of the said
Bill as sought to compel the payment of the said Sum of
Five thousand Seven hundred and Sixty five Pagodas &c
Twenty Eight fanams and Seventy two Cash or of any part
thereof your Petitioners did plead in Bar and for Plea did
say that the said Sum of Seventy four thousand Two hundred
and Seventy Nine Pagodas Thirty two fanams and &c
Sixty two Cash was not as the Complainants Bill did
suggest devided Amongst your Petitioners and the said
other Defendants in the said Bill named nor their Testators
or Intestates for your Petitioners did aver that John &c
English a Lieutinant Here — an Ensign in the Military
Service of the said United Company of Merchants and
Serving with the Detachment in the said Expedition
Against the said Fort or Garrison of Suggernaickporam
and at the Capture thereof did also share in the said Sum
of Seventy four thousand Two hundred and Seventy
Nine Pagodas thirty two fanams and Sixty two Cash
According to his Share or proportion thereof and that
the whole of the Detachment serving on the Expedition
against

Against the said Fort or Garrison of Juggernaickporam and at the Capture thereof consisting of a Number of Serjeants Subidars Semidars Havildars Naigues and private Sepoys Lascars and others did also share in the said Sum of Seventy four Thousand Two hundred and Seventy Nine Pagodas Thirty two fanams and Sixty two Cash Agreeably to their respective shares and proportions therein and for that the said John English was not made a party to the Complainants said Bill of Complaint and for that he was a necessary party thereto your Petitioners did plead the said want of Parties in bar to the said Bill so far as the same sought to compel your Petitioners to pay the said Sum of Five thousand Seven hundred and Fifty Six Pagodas Twenty Eight fanams and Seventy two Cash as any part thereof and humbly prayed the Judgment of the said Mayors Court thereon - That for Answer to the Residue of the said Bill or unto so much thereof as your Petitioners were advised was material or necessary for them to make Answer unto did Answer and say that they did admit that some time in the year of Our Lord One thousand Seven hundred and Eighty One Intelligence having been Received that War had been declared between Great Britain and the

The United States of Holland the said United Company of Merchants by their Agents or Representatives at Fort Saint George did in consequence thereof send a Military Force under the command of Arthur Lysaght Esquire to Capture the said Fort or Garrison of Juggernaickporam and that the same was Captured Accordingly and about the time in the Complainants said Bill of Complaint for that purpose set forth That Amongst the Officers belonging to the said Military Force and present at the Capture of the said Fort or Garrison of Juggernaickporam were the Officers in the Complainants said Bill named, that after the Capture aforesaid the said Arthur Lysaght Hugh Montgomery John Wheeler George Westcott and your Petitioners did address a letter to the Complainant and that the same might have been so addressed in the Month of July in the said year of Our Lord One thousand Seven hundred and Eighty one - That they did thereon and thereby appoint the Complainant their Agent for Receiving and disposing of such Goods as might be their property According to the Rules and Articles of War and that the Exhibit annexed to the Complainants said Bill might have been a true Copy thereof but your Petitioners did say they believed that

That the Complainant did not in consequence of the said Appointment receive the Prize Goods from the Dutch at the said Fort or Garison of Suggernaickporam and deliver the same to William Hamilton Esquire for your Petitioners did say that on the Day following the Apture of the said Fort or Garison of Suggernaickporam William Oram Esquire in the Civil Service of the said United Company of Merchants did arrive at Suggernaickporam on the part and behalf of the said United Company of Merchants and did himself take charge of the said Prize Goods or Captured property and did Ship the same on Board Two Vessels to wit the Governor and Royal Admiral Indiamen then lying in the Roads of Suggernaickporam and that the said prize Goods or Captured Property so Shipped on Board the said Ships the Governor and Royal Admiral were Afterwards landed at Masulipatnam and there sold by Public Auction Without any interference on the part of the Complainant nor did he attend nor was he present at the said sale on part of the said Captors to protect and promote their Interest in the premisses and thereby and by Reason thereof your Petitioners did say that they verily believed that considerable injury did arise to the said Captors and that your

Petitioners had thereby and by Reason thereof suffered great loss and sustained much Damage And your Petitioners did further say that your Petitioner James Bagshaw Butler did frequently Write to the Complainant and Request he would furnish him with an Account of the said prize Goods or Captured property and the necessary particulars or Relative thereto and to his Interest therein But that the Complainants so far from complying with such fair and Equitable Requisitions did not only Refuse so to do but did neglect to take any manner of Notice thereof And your Petitioners did deny that the Complainant had generally Acted in the premisses for the benefit and Advantage of the said Captors and as by them directed for your Petitioners did say that the Complainant was Repeatedly Required by the said Hugh Montgomery in the Name of the Captors to proceed to the Presidency or Order in Order to make the necessary Applications to Government for the payment of the amount due to the said Captors upon the property Captured but that the Complainant did neglect or Refuse so to do and did not go to the Presidency That sometime after the Complainant had been so Requested as aforesaid Intelligence was Received as your Petitioners had been informed and believed the fact so to be that the

Court

Court of Directors had given directions to the Governor and Council of Fort Saint George that a part of the Amount of the said prize Goods or Captured property should be paid to the Captors in India the same not Exceeding one half of the whole Amount and that the other half should Remain in Deposit with the said United Company or their said Agents or Representatives until a Suit depending in the Court of Admirally between the Forces that had Captured the said Fort or Garrison of Juggernaickporam and the Officers and Crews of the said Ships the Governor and Royal Admiral who had put in a Claim for a share in the Amount of the said prize Goods should be determined That in consequence of such Intelligence the said Hugh Montgomery did again Request the Com=plainant in the name and on the part and behalf of the said Captors that he would proceed to Madras pointing out the absolute necessity for so doing but that the Complainant preferring his own convenience to the Interest of his constituents did continue to refuse compliance with such the Requisition of the said Hugh Montgomery That in consequence of such the neglect or Refusal of the Complainant to proceed to Madras he the said Hugh Montgomery did himself proceed thither for the purpose of supporting the Interest and protesting the property of the said Captors and that on his Arrival there he did in the Notice of the said Captors Apply to the Governor and Council of Fort Saint George aforesaid for the payment of the said Prize Money by the Court of Directors so Ordered to be paid as aforesaid That the said Governor and Council did thereupon signify to the said Hugh Montgomery that they would comply with his said Application provided he the said Hugh Montgomery would produce a proper Authority from the Captors And your Petitioners did say that the said Hugh Montgomery did make the necessary Representation to the said Captors or the survivors thereof and that thereupon they the said Captors or the Survivors of them did Authorize the said Hugh Montgomery and William Balfour of Fort Saint George aforesaid Merchant or one of them to Receive the part of the said prize Money by the Court of Directors so directed to be paid as aforesaid and at the same time or some short time afterwards did Appoint the said William Balfour to be their Agent in the place or stead of the Complainant who had as your Petitioners did say they had in their said Answer before stated Shewed himself

himself inimical to the Interest of his said constituents
the said Captors and Totally regardless of them and of
their concerns That thereupon the said Hugh Montgomery
and William Balfour or one of them did receive from
the said Governor and Council by a Certificate a draft
upon the Government General of Bengal for the Amount
in the Complainants said Bill setforth and on the
return of the said Hugh Montgomery to the Northward
the said Captors did make the necessary Arrangements:
regarding the same as to the proportions to be received
by the different Clases entitled to share therein That
upon such Arrangements the said William Balfour
did from and out of the said Sum of Seventy four &c
thousand two hundred and Seventy Nine Pagodas
Thirty two fanams and Sixty two Cash pay to the &c
several Captors or to their Representatives their shares or
proportions thereof and your Petitioners did say that
about the same time the Complainant did demand
his Commission of five per Cent which he pretended
was due and owing to him as Agent for the Captors
And your Petitioners did say that upon speaking
to the said Hugh Montgomery some time Afterwards
regarding the premisses he the said Hugh Montgomery

did inform them that the said William Balfour had
Settled with the Complainant and that they had agreed
to devide the Commission although the Complainant
could not in any Justice or propriety lay any Claim or
have any Title thereto And your Petitioners did say that
they had heard nothing from the Complainant during the
lifetime of the said Hugh Montgomery and until the
departure from India of the said William Balfour and
your Petitioners did further say that they had heard
and believed the fact so to be that the Complainant although
Appointed an Agent on the part of the Troops that Captured
the said Fort or Garison of Juggernaickporam did aid
and Assist as far as in his power lay the pretensions set up
by the said Officers and Crews of the said Ships the &c
Governor and Royal Admiral contrary to the Interests
of the said Troops and in Violation of the Trust by them
reposed in him and your Petitioners did say that for the
Reasons in their said Answer setforth your Petitioners did
deny that the Complainant did continue to Act as Agent
as aforesaid from the said Month of July One thousand
Seven hundred and Eighty one to the said Month of
September and year of Our Lord One thousand Seven
hundred and Eighty Eight and that if he the Complainant

did

did act at all in the premises it was merely to be present whilst the said William Oram took charge of the said Captured property as above mentioned and your Petitioners did deny that the said United Company by their Agents or Representatives at Fort Saint George aforesaid did otherwise make a Distribution of one half of the said prize Money Arising from the said Capture of the Fort of Juggernaickporam than by paying the said Sum of Seventy four thousand Two hundred and Seventy Nine Pagodas Thirty two fanams and Sixty two Cash in manner as aforesaid to the said Hugh Montgomery and William Balfour or one of them for that the said William Balfour did distribute and pay to the Captors or their Representatives the said Sum of Seventy four thousand Two hundred and Seventy Nine Pagodas thirty two fanams and Sixty two Agreeably to their Respective shares and proportions thereof and your Petitioners did further say that they did admit that the said Sum of Seventy four thousand Two hundred and Seventy Nine Pagodas Thirty two fanams and Sixty two Cash was so distributed and paid to the said Captors without paying to the Complainants a

Commission of five Cent and did further say that from his Conduct in the premises he was not in any wise Entitled thereto, nor to any part thereof but that on the Contrary he did certainly deserve censure and Reproof and yet your Petitioners did say that the said William Balfour did as they had been informed and Verily believed the fact so to be, agree to devide the Commission with the Complainant he the said William Balfour Retaining in his hands from and out of the said Sum of Seventy four thousand Two hundred and Seventy Nine Pagodas, Thirty two fanams and Sixty two Cash the said Commission of five per Cent Amounting to the Sum of Three Thousand Seven hundred and thirteen Pagodas or thereabouts, but your Petitioners did say that although They did Chearfully concur in allowing a Commission of five per Cent to the said William Balfour yet they never did consent to the Complainants Receiving any Sum of Money whatever, by way of Commission as Agent for the Captors of Juggernaickporam or otherwise for the Reasons in their said Answer setforth and as a proof thereof they did by leave to annex to their said Answer the Copy of a Protest they had sent to the said

Hugh

Hugh Montgomery on the occasion And your &c
Petitioners did submit to the said Mayors Court now
Totally groundless the Action was, which the Complainant
had brought against them, when it Appeared that &c
although Appointed their Agent he did Absolutely
Refuse to Act in that Capacity Notwithstanding he was
Repeatedly called upon by your Petitioners and the
other Captors so to do and that instead of supporting
their Interest he did do such Acts and things as were
inimical thereto so that the Captors were as in their said
Answer was shewn compelled to Act for themselves and
at length to Appoint another Person in place or stead of
the Complainant – And your Petitioners did in their said
Petition of Appeal to the said Court of Appeals Shew that
to their said Plea and Answer the Complainant did exhibit
and file his Replication in the said Mayors Court and
did therein say that he ought not to be barred from having
and maintaining his aforesaid Suit Against your &c
Petitioners because protesting that the said Plea in
manner and forme as the same was pleaded and setforth
and the matters therein contained were not sufficient
in Law to bar him from having or maintaining his
Suit aforesaid Against your Petitioner which Suit the
Complainant

Complainant did say he would aver Justify maintain and
prove to be certain and sufficient in the Law to be Answered
unto in manner and forme as the same was and were therein
setforth and alledged and for that the Plea and Answer of your
Petitioner was and were respectively Evasive and insufficient
for him to make any Reply unto and by way of Reply to the
Plea urged by your Petitioners the Complainant did say that
Notwithstanding the said John English and Several Serjeants
Subidars Semidars Havildars Naicks Privates Sepoys
Lascars and Others did together with the several Persons in the
Bill of Complaint named serve with the said Detachment
in the said expedition Against the said Fort or Garrison of
Suggernaickporam and after the Capture thereof did also share
in the said Sum of Seventy four thousand Two hundred and
Seventy Nine Star Pagodas thirty two fanams and Sixty two
Cash and did Receive their respective Shares or proportions
thereof and Notwithstanding the said John English was not
made a party to the Bill of Complaint yet that the said Bill
of Complaint was sufficiently good and formal so as to Entitle
him the Complainant to Judgment for the Sum Sued for
and for Costs of Suit for that it Appeared by his said Bill of
Complaint and one of the Exhibits thereunto annexed that the
said Arthur Lysaght John Wheeler George Westcott Hugh
Montgomery and your Petitioners were the only Persons
who

Hugh Montgomery on the occasion And your &c
Petitioners did submit to the said Mayors Court now
Totally groundless the Action was, which the Complainant
had brought against them, when it Appeared that &c
although Appointed their Agent he did Absolutely
Refuse to Act in that Capacity, Notwithstanding he was
Repeatedly called upon by your Petitioners and the
other Captors so to do and that instead of supporting
their Interest he did do such Acts and things as were
inimical thereto so that the Captors were as in their said
Answer was shewn compelled to Act for themselves and
at length to Appoint another Person in place or stead of
the Complainant – And your Petitioners did in their said
Petition of Appeal to the said Court of Appeals Shew that
to their said Plea and Answer the Complainant did exhibit
and file his Replication in the said Mayors Court and
did therein say that he ought not to be barred from having
and maintaining his aforesaid Suit Against your &c
Petitioners because protesting that the said Plea in
manner and form as the same was pleaded and set forth
and the matters therein contained were not sufficient
in Law to bar him from having or maintaining his
Suit aforesaid Against your Petitioner which Suit the
Complainant

Complainant did say he would aver Justify maintain and
prove to be certain and sufficient in the Law to be Answered
unto in manner and form as the same was and were therein
set forth and alledged and for that the Plea and Answer of your
Petitioner was and were Respectively Evasive, and insufficient
for him to make any Reply unto, and by way of Reply to the
Plea urged by your Petitioners the Complainant did say that
Notwithstanding the said John English and Several Serjeants
Subidars Jemidars Havildars Naicks Privates Sepoys
Lascars and others did together with the several Persons in the
Bill of Complaint named serve with the said Detachment
in the said expedition Against the said Fort or Garrison of
Juggernaickporam and after the Capture thereof did also share
in the said Sum of Seventy four thousand Two hundred and
Seventy Nine Star Pagodas thirty two fanams and Sixty two
Cash and did Receive their Respective Shares or proportions
thereof and Notwithstanding the said John English was not
made a party to the Bill of Complaint yet that the said Bill
of Complaint was sufficiently good and formal so as to Entitle
him the Complainant to Judgment for the Sum Sued for
and for Costs of Suit for that it Appeared by his said Bill of
Complaint and one of the Exhibits thereunto annexed that the
said Arthur Speight John Wheeler George Westcott Hugh
Montgomery and your Petitioners were the only Persons
who

who Appeared to Represent the said Detachment in as much as that they were the only Persons who did Authorise him the Complainant to Act in the premises and that they did in and by their said Written Authority Style themselves the Captors of Juggernaickporam as if they were the only Persons who Captured the said Fort and for as much as the Money Received on Account of the said Capture had been so Received by one of the said Persons to wit the said Hugh Montgomery who distributed the same or the due share or proportion thereof to each of the said Persons so named in his the Complainants Bill he the Complainant did insist that his Bill of Complaint was sufficiently good and formal and still more so, as by the usage in such Case a Deputation of Officers generally acted for the whole Detachment it being nearly impossible from the Nature of the thing that every Person Interested in the Capture could give a Voice in the choice of an Agent that by the same Rule or maxim of Law whereby the said John Inglish should have been made a party to the said Bill of Complaint all and each of the said Serjants Subidars Jemidars Havildars Naicks Private Sepoys Lascars and others who Assisted with the Persons in the Bill named at the Capture of Juggernaickporam ought to have been made parties thereto Wherefore the Complainant did say the said Plea was faulty in its Principle, and did further say that

Pleas against a Bill of Complaint for want of parties to such Bill were Pleas in Abatement, and for as much as your Petitioners had Pleaded in Bar, and that such Plea could not Apply to the want of parties to a Bill of Complaint the said Reasons as well as the other Reasons he had before setforth did pray the Judgement of the Court that the said Plea of your Petitioner might be over Ruled with Costs and by way of Replication to the Answer of your Petitioner the Complainant did say that whether the said Goods were delivered over to the said William Hamilton or to the said William Oram by Order of the said William Hamilton or otherwise in no wise affected his Right to his Commission as Prize Agent, nor could his Right be affected by any inattention omission or negligence of the said Captors respecting the Public Sale or other mode of disposal of the property Captured in the said Fort of Juggernaickporam because as far as Related to his the Complainants duty respecting the said goods as Agent to the Captors the same was determined by the delivery thereof to the said William Hamilton or to his Order According to the said Letter whereof a Copy was annexed to his Bill of Complaint, that he was not conscious of having in any wise Refused to give to your Petitioner James Bagshaw Butler every fair and proper information respecting his interest in the premises – that in Reply

to that part of the Answer of your Petitioner whereby he was charged with Refusing to go to the Presidency he did pray leave to observe that at the time the said Captors Nominated him as their Agent he was knowen by them to be in the Service of the said United Company and under the Government of the said Presidency of Fort Saint George and therefore subject to the Order and Controul of the said Government of Fort Saint George wherefore the said Captors having chosen him as their Agent knowing him to be under such Order and Controul had no ground of censure against him for having been prevented by his said Situation as a Covenanted Servant of the said United Company from Complying with the Expectation of the said Captors to proceed to the Presidency of Fort Saint George and still less Reason had your Petitioners in their said pretence for not paying him his Commission as aforesaid when it Appeared as he did say by the matters set forth by your Petitioners that no prejudice hath been occasioned to the Captors by his the Complainants non Compliance with such Requisition and the Complainant did deny that he was ever inimical to the Interest of the said Constituents as he did say was unjustly charged in the Answer of your Petitioners and he defied them he did say to prove any such Dispositions in his Conduct, or that he did ever aid and Assist the pretensions

of the Officers and Crews of the said Ships Grosvenor and Royal Admiral nor that he did ever agree with the said William Balfour nor with any other Person to devide the Commission on the said Sum of Seventy four thousand two Hundred and Seventy Nine Pagodas, thirty two fanams and Sixty two Cash, that altho the said William Balfour might have Acted as was stated in the Answer of your Petitioners yet that such intermeddling of the said William Balfour in the premises did not in any wise Affect his the Complainants Claim to his Commission as the Appointed Agent by the Captors, and he did insist that under and by Virtue of such Appointment and of his Acting under and by Virtue thereof he was Entitled to his Commission as Charged in his said Bill of Complaint and as to the Protest Entered into by your Petitioners and by their stated to have been sent to the said Hugh Montgomery the Complainant did say the same was not only without date or any other mark of Authenticity but was in itself too futile to merit any Reply And your Petitioners did Shew to the said Court of Appeals that to the Complainants Replication your Petitioners did Exhibit and file their Rejoinder and therein and thereby insisting on their said Plea did say that all parties interested were to be made parties to any Bill brought for Relief touching touching any matter and things in which such

parties

parties were interested and that in Compelling a Complainant so to do the Law had in its Contemplation a Variety of Objects for the benefit of the Subject to prevent fraud Collusion and oppression which would otherwise take place to the great wrong and injury of parties made Defendants to a Bill and therefore and for as much as the Complainants Bill was brought for the Recovery of the Sum of Five thousand Seven hundred and fifty Six Pagodas charged to be the Amount due to the Complainant as and for a Commission upon the Sum of Seventy four thousand two hundred and Seventy five Pagodas thirty two fanams and Sixty two Cash which said Sum of Seventy four thousand two hundred and Seventy Nine Pagodas thirty two fanams and Sixty two Cash was in and by the Account Current to the said Bill annexed charged to have been Received by your Petitioners and the other Defendants in the Complainants said Bill named and for as much as your Petitioners and the said other Defendants did only Receive a part thereof and as John Inglish and number of other Persons did Receive as in your Petitioners said Answer the same was so stated to be the Remainder part of the said Sum of Seventy four thousand two hundred and Seventy Nine Pagodas thirty two fanams and Sixty two Cash the said John Inglish and the said other Persons were parties interested and ought to have

have been made parties to the Complainants Bill of Complaint and your Petitioners did say that the Complainant in and by his said Replication did admit that the said John Inglish and several Serjeants Subidars Jemidars Havildars Naigues Privates Sepoys Lascars and other had shared in the said Sum of Seventy four thousand two hundred and Seventy Nine Pagodas twenty two fanams and Sixty two Cash and did Receive their respective proportions thereof your Petitioners did humbly insist that their said Plea was good and sufficient to all intents and purposes in bar to the Complainants said Bill and that the Complainant having admitted the premisses it was inconsistent and irrelevant to pretend that your Petitioners and the said other persons in the Complainants Bill named Appeared to Represent the other persons whom the Complainant had omitted to make parties to his said Bill and more particularly as your Petitioners could not in the nature of things and Agreeably to the usage and Custom of the Service of the said United Company of Merchants have been the Representative of the said John Inglish who possessed equal rights with them and the said other Defendants in the Complainants said Bill named for that the said John Inglish was on the spot and Acted for himself in the same

manner

manner as your Petitioners and the said other Defendants in the Complainants said Bill named acted for themselves nor would it avail the Complainant to insinuate as in and by his Replication he had insinuated that your Petitioners and the said other Defendants in his said Bill named had stiled themselves the Captors of Suggernaikporam as if they were the only Persons who Captured the said Fort When the Complainant well knew to the Contrary and so the same had been Shewn by your Petitioners said Plea And your Petitioner did say that it was Equally inelevant and ineffectual in the Complainant to pretend as in and by his said Replication he had pretended, that as Hugh Montgomery one of the said persons received and distributed the said Sum of Seventy four thousand two hundred and Seventy Nine Pagodas Twenty two fanams and Sixty two Cash or the due share and proportion thereof to each of the said Persons so named in the Complainants said Bill his said Bill of Complaint was sufficiently good and formal and still more so, as Deputation of Officers generally act for the whole Detachment, for your Petitioners did say that the payment of a Sum of Money to any particulars Person did not take from others the Interest they have therein or the Complainant ought to have brought his Bill of Complaint against the said Hugh Montgomery or his Representatives only and did say it is not the fact that Deputations of Officers generally acted for the whole except in cases where Officers acted as prize Agents and in that Case they would be Nominated by the whole, or they could not act as Deputies and as to the Suggestion of the Complainant in his said Replication contained wherein he did say that by the same Rule or maxim of Law Whereby the said Jo. in Inglish should have been made a party to the said Bill of Complaint all and each of the said Serjeants Subidars Jemidars or Havildars Naigues privates Sepoys Lascars and others who Assisted at the Capture of Suggernaikporam ought to have been made parties thereto your Petitioners did say that the same did strengthen their said Plea instead of proving as the Complainant would thereby have insinuated that the same is faulty in its principle And your Petitioners did say that a Plea to a Bill for want of parties was not as the Complainant had Asserted the Law to be a Plea in Abatement, but a Plea in bar and if it had been otherwise the Complainant should have demurred for by Replying he admitted the same to be good in Law and therefore your Petitioners did pray as in and by their said Plea they had already prayed And your Petitioners for further Rejoinder did say that although the Complainant might

might have been Nominated by the Captors of Suggernaickpara as their Agent, yet that he never took charge of their property or in any wise Acted in the premises and although he was directed to take an Account of such property when the same should be delivered over to a Person Appointed by the Government of Fort Saint George to take charge thereof yet he suffered William Oram Esq.r the Person so appointed to process himself of the said property and to Ship off the same for Masulipatnam without taking any Account thereof altho directed so to do for the benefit and Interest of the said Captors And your Petitioners did say that the said William Oram did not Act under the Orders of William Hamilton in the Complainants Replication named, but under the Orders of the Government of Fort Saint George aforesaid and as the said William Oram took charge of the said Captured property the next Day after the place had surrendered to the English and as the Complainant had not then, nor had he at any time thereafter taken charge thereof or in any wise interfered therein although frequently importuned and Requested so to do, he could not have any manner of right to any Commission as Agent or otherwise upon any Sum or Sums of Money that had arisen or were to arise therefrom And your Petitioners did deny that the Complainant did ever deliver the said Captured property either to the said William Hamilton or to the said William Oram, but on the contrary did say as in and by their said Answer they had before said that the said William Oram did not Act under the Orders of the said William Hamilton but under the immediate Orders of the Government of Fort Saint George aforesaid and therefore that the Complainant did not follow the Instructions of his Constituents as given in the Exhibit to his said Bill of Complaint annexed that even if the Complainant had in Obedience to the said Instructions delivered over the charge of the said Captured property to the said William Hamilton or to his Order his the Complainants duty as Agent did not thereby become Determined but that the same continued until the whole of the said property should have been disposed of, and the Amount Sales thereof Realized and paid to the Persons Entitled to Receive the same And your Petitioners did deny that there was any inattention Omission or Negligence on their part Respecting the public Sales of the said Captured property or otherwise but that the Complainant was Totally inattentive and neglectful of their Interest in every Respect and that thereby and by Reason thereof they had sustained great injury in the premises for your Petitioners did say as in and by their said

said Answer they had already said that the said Captured property so Shipped off for Masulipatnam as aforesaid was there sold by publick Outcry without any interference on the part of the Complainant who did not Attend the said Sale nor was he present when they were made although it was his Duty to have been present and attend in Order to protect the Interest of his Constituents in the premises Which as your Petitioners had in their said Answer said did greatly suffer on Account of such the Conduct of the Complainant That Notwithstanding the Assertion of the Complainant in his said Replication Contained that he was not conscious of having in any manner Refused to give any fair and proper information respecting his Conduct in the premises your Petitioner James Bagshaw Butler did frequently Write to the Complainant and Request him to give him an Account of the said Captured property and furnish him with the necessary particulars Relative thereto, and to his interest therein and that the Complainant did not take any manner of Notice of such fair and Just Requisition but did with hold all Accounts and intimation touching the premises That when the Complainant was Appointed Agent for the Captors of Juggernaickporam as aforesaid, he was so Appointed at his own Request and in

in Accepting the trust thereby imposed he of course became bound to perform the several duties connected therewith and Relative thereto and failing in the discharge of those Duties he forfeited all manner of right and Title to the benefits and Advantage to be derived from the Office of Agent that if the Complainant knew that the said Duties would or might interfere with his Situation as a Servant of the Company he ought not to have Accepted the said trust or in Accepting thereof he should so have Accepted it Subject to particular Circumstances, and have Acquainted the said Captors of Juggernaickporam therewith, but your Petitioners did say that at the time the Complainant did Accept of the said Office of Agent, he never offered any matter Relative to his Situation as a Servant of the Company and his being subject to their Orders to the Consideration of his Constituents, nor did he give to them the most distant hint that by Reason thereof Difficulties or Obstacles might arise the said Captors therefore upon his becoming their Agent confiding in their fidelity and good Conduct Entertained no other sentiment but that he would Act Justly fairly and Zealously for their benefit and Advantage and that he would in the same manner as Agents are bound to do Assist did Defend the Rights and protect and support the Interest

of

of his Constituents, and as the Complainant had admitted that he did refuse to proceed to the Presidency when so repeatedly Requested by his Constituents so to do, at a time When their Interest rendered his presence there absolutely and indispensably necessary, he had clearly Shewn that he had no right or title to make any manner of Claim or to Receive any Sum or Sums of Money whatever from your Petitioners or from any other the Captors of Juggernaickporam for or by Reason of any Prize Money, that his said Bill of Complaint had no foundation in Law Equity or Justice And your Petitioners did further say, as in and by their said Answer they had already said Notwithstanding the Assertion of the Complainant to the Contrary that they had heard and Verily believed the fact so to be, that after the Complainant had been Appointed Agent for the Captors as aforesaid he did Assist as far as in his power lay the pretensions set up by the Officers and Crew of the Ships Grosvenor and Royal Admiral Contrary to the Interest of the said Captors and in Violation of the trust by them Reposed in him as aforesaid: And your Petitioners did say as in and by their said Answer they have already said that they have informed that William Balfour in your Petitioners said Answer named, had Agreed with the Complainant to Share half Commission upon the said Sum of Seventy four Thousand Two hundred and Seventy Nine Pagodas Twenty four fanams and Sixty two Cash but if the said William Balfour had entered into such Agreement it must have been from the impulse of Friendship in him the said William Balfour towards the Complainant or from Motives of generosity and in which Transaction the said Captors could have had no manner of concern in as much as the Complainant had not intitled himself to Receive any benefit or Advantage Whatever for or by Reason of his having been formerly Appointed the Agent for the Captors of Juggernaickporam but on the contrary having Accepted that trust and Afterwards neglecting and Refusing to act therein and discharge the Duties thereof and thereby injuring the parties whose benefit and Advantage he had Covenanted to protect, he became liable to your Petitioners and others interested in the said prize property for a misfeasance of Office That the intermeddling of the said William Balfour in the premises as the Complainant in and by his said Replication expressed it, was an Act of necessity owing to the unjustifiable Conduct of the Complainant who although Requested Repeatedly as Shewn in and by your Petitioners said Answer to come down to the Presidency for the purpose

of

of arranging and Adjusting the Affairs of the Captors of Juggernaickporam and supporting and protecting their Rights he did neglect and Refuse so to do the said Captors were therefore Compelled to Employ some other Person to take charge of their Affairs, as it was not in their own power to Act for themselves owing to their want of the Necessary Knowledge in Accounts, and to their distance from each other in out stations & Remote from the Presidency that upon the Appointment of the said William Balfour as Agent for the Captors of Juggernaickporam he the said William Balfour did Enter upon the Duties thereof, and deligently and faithfully discharge the same to the entire satisfaction of his Constituents, who did in consequence thereof agree to allow, and he the said William Balfour did Accordingly Receive his Commission of five per Cent for his trouble care and Attention and thereupon and by Reason of the premises your Petitioners did say that Notwithstanding the Assertion of the Complainant to the Contrary he the Complainant had no Right to make any Claim nor to be in any wise Entitled to Receive any benefit or Advantage whatever under and by Virtue of his Appointment as Agent to the said Captors of Juggernaick-poram having forfaited the same by his own & Misfeasance and by Abandoning the Interest of the said Captors at the only times when his Services were Required And your Petitioners did Shew unto the said Court of Appeals that thereupon Issue did Join and Rules did pass for the Examination of Witnesses, and that Witnesses were Accordingly Examined on the part of the Complainant That one of the said Witnesses although Interrogated to a very material paint did not Depose a syllable in & Opposition to, or Confutation of your Petitioners said Answer and Rejoinder, or in support of his said Bill of Complaint and Replication and another of the said Witnesses John Tullok spoke merely to the Allowances generally made to Agents for Captors and Prodate & William Collins Jackson upon which the Complainant solely Relied Shewed that he was Deputy Secretary to the Governor of Fort Saint George from One thousand Seven hundred and Eighty five to the year One thousand Seven hundred and Ninety and & presumed from the Correspondence of the Complainant with Government that he was the Agent of the Captors of & Juggernaickporam that in one of his letters he stated that the Captors who had served at Juggernaickporam had directed him to lay before Government their Claim of a moiety of the prize Goods and Afterwards that the Captors in deliacy

and

and Respect to the Board with held their Application
for prize Money from July One thousand Seven hundred
and Eighty one, to that time and that they then hoped
as there was no Hostilities their Claim would be taken
into Consideration but that they did Acquisce in whatever
might be the Determination of the Board as to mode
of payment That in a letter from the Complainant to the
Witness under Date Sixteenth February One thousand
Seven hundred and Eighty Eight he the Complainant
Requested a Copy of the Instructions given to the owners
of the Grosvenor and Royal Admiral Indiamen on
their Vessels being sent to India in the year One thousand
Seven hundred and Eighty and also a Copy of a letter
from him to Mr Hamilton then Chief of Ingeram
and Copies of Petition presented to the Court of Directors
by the owners of the above Ships, that half of their Prize
Money had been paid and the other half was Reserved
until the Claims of the owners and Commanders
of the Grosvenor and Royal Admiral should be settled
and Concluded — that from the nature of the Complainants
Correspondence with Government as set forth in his the
Witnesses Disposition, he was considered by Government
as the Agent of the Captors of Juggernaick Peramm, that his
Correspondence was recorded in their Books and from them

he the Witness had been able to detail the Complainants
Correspondence, that he could only Judge of the Zeal of the
Complainant as Agent to the said Captors from his the
Witnesses official Situation as already detailed by him
the Witness and could not further speak thereon And
your Petitioner did Shew to the said Court of Appeals
that upon the pleadings had publication did pass, and
the said Cause was set down for hearing and did
Accordingly come on to be heard before the said Mayors
Court on the twenty Ninth day of July and 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 two of the
Judges thereof dissenting therefrom that the Defendant
Henry Thichley Michell one of the Administrators of
John Wheeler Deceased and your Petitioners should pay
unto the Complainant the full and Just Sum of Three
thousand Seven hundred and thirteen Pagodas forty one
fanams and forty Cash together with all such Interest as
then was or should thereafter become due thereon at the rate
of Ten per Cent per Annum until full payment was made
also all Costs of Suit as by Copies of the said Decree and
Dissent to your Petitioners Petition of Appeal to the said
Court of Appeals annexed reference being thereunto had

Your

your Petitioners did state would more fully and at large
Appear —

By which said Order and Decree of the said
Mayors Court your Petitioners did state that they did
think themselves much Aggrieved and did therefore
Appeal therefrom to the said Court of Appeals for the
following Amongst other Reasons First Because the
Plea which your Petitioners did file in the said Mayors Court
for want of parties ought to have been held good and sufficient.
the said Plea having been Replied unto by the Complainants
who thereby admitted the same to be good in Law and by
confessing that John Inglish in your Petitioners said Plea
named and the Serjeants Subidars Jomidars Havildars
and Naigues private Sepoys Lascars and others referred
to in your Petitioners said Plea was and were the Captors
of Juggernaick poram in the Complainants said Bill
of Complaint mentioned and by further confessing in and
by his said Replication "That by the Rule or maxim of
"the Law Whereby the said John Inglish should have
"been made a party to the said Bill of Complaint all and
"each of the said Serjeants Subidars Jomidars Havildars
"Naigues private Sepoys Lascars and others who Assisted
"with the Persons in the said Bill named at the
"Capture of Juggernaick poram ought to have been
made

made parties thereto — And as it appeared that the Complainant
was fully in possession of the knowledge of the parties interested
in the present Suit and that the whole of the said parties were
not made parties to his said Bill of Complaint the said Bill
ought by Reason thereof and of your Petitioners said Plea
to have been dismissed — Secondly Because although the
Complainant was Appointed Agent for the Captors of Jugger=
=naick poram on or about the Eighteenth day of July One
thousand Seven hundred and Eighty one, at which period the
said Town of Juggernaick poram was Captured yet it appeared
by the Complainants own Shewing that the Captors were
themselves obliged to anul such powers as the Superior Authority
of the Governor and Council of Madras had interfered and
demanded that the Captured property should be delivered up
to them and in consequence thereof the said Captors did address
to the Complainant a letter under date of the said Month of
July whereof a Copy was to his said Bill of Complaint annexed
and wherein the said Captors did thus express themself "The
Right Honourable the President and Council for the affairs
of the English East India Company having demanded the
goods taken in this place We direct you to deliver up to Mr.
William Hamilton or his Order Acting for the said President
and Council such Goods as may be demanded by him keeping

an

an Account of them for our use" and which Goods were on the
Day following the Capture of the place taken possession of by
William Oram Esquire in your Petitioners Answer named
on the part and behalf of the said United Company of
Merchants and the said William Oram did Ship the
said property on Board the Glosvenor and Royal Admiral
Indiamen then lying in the Roads of Juggernaickporam
aforesaid and the same were afterwards sold at Masulipatnam
by Public Auction without any interference on the part of the
Complainant who did not attend the said Auction and
that by Reason thereof the said Captors did sustain a very
considerable injury loss and damage — Thirdly Because
from the time of the said Appointment of the Complainant
as Agent and the annulling thereof until the Court of Directors
were pleased to Order that one moiety of the Amount of the said
prize property should be paid to the said Captors of Juggernaick
=poram he the Complainant did not interfere or interest
himself in the affairs or favor on behalf of the said Captors,
nor did he furnish them or either of them with any Account
of the said prize Goods although frequently importuned so to
do by your Petitioner James Bagshaw Butler, and although
he was frequently importuned by Hugh Montgomery
in his the Complainants Bill named on behalf of himself
and

and the Captors at large to proceed to the Presidency in order to make
the necessary Applications to Government for the Amount due on
the said property Captured, he the Complainant did absolutely
Refuse so to do And afterwards When the said moiety was by the
said Court of Directors directed to be paid to the said Captors
as aforesaid the said Hugh Montgomery, did again on behalf
of himself and the said Captors request the Complainant to
proceed to Madras pointing out the absolute necessity for his
so doing, but that the Complainant did continue to refuse to
comply with such Requisition and could not be prevailed upon
to come down to Madras to interfere in, or attend to the affairs
of the said Captors and which in and by his said Replication
he did fully admit, and Endeavoured to Justify such conduct
in the following Words" — at the time the said Captors nominated
"him as their Agent he was known by them to be in the Service
"of the said United Company and under the Government of their
"said Presidency of Fort Saint George and therefore subject to the
"Order and Control of the said Government of Fort Saint George
"Wherefore the said Captors having chosen him as their Agent
"knowing him to be under such order and Control had no
"ground of censure against him for having been prevented by his
"Situation as a Covenanted Servant of the said United Company
"with the Expectation of the said Captors to proceed to the
Presidency

Presidency" Whereby the Complainant did shew that although he accepted the said trust of Agent for the said Captors he did not think himself bound to act and that he did not act in the premises and Notwithstanding he had brought his Suit Against your Petitioners and others for a Commission on the Amount sales of the said Captured property he did confess that he did not interfere therein although he was Requested and importuned so to do but did abandon the same together with your Petitioners Intered in the premises, by which means as your Petitioners had averred in their said Answer upon Oath, your Petitioners had been greatly injured and sustained considerable loss and Damage — And your Petitioners did humbly submit to the said Court of Appeals that were a person undertook to become Agent for Another and afterwards neglected and then refused to discharge the Duties of such trust he was not only barred of any right to a Commission but was also Accountable to his Constituents for any loss Damage or detriment his Constituents might have sustained by reason of such Negligence and Refusal And your Petitioners did further submit that it lay within the Knowledge of the Complainant alone as to his Situation, and whether he could or could not Act as occasion might Require in the discharge of the Duty of an Agent and if he knew that his Situation as a Covenanted servant would prevent him from Acting as such he ought to have signified the same at the time he was about to Accept the said Trust, that having Accepted it he was bound to act therein in conformity to the Will and Instructions of his Constituents and by neglecting or Refusing so to do, he had not any manner of right to any Advantage of Commission or other Emolument whatever by Reason of the said Capture — Fourthly Because in consequence of such the neglect and Refusal of the Complainant to Repair to Madras aforesaid, the said Hugh Montgomery did himself proceed to the Presidency for the purpose of supporting the Interest and protecting the Rights of the said Captors and on the arrival of the said Hugh Montgomery at the said Presidency the said Captors or their Surviviors did Empower him Jointly with William Balfour of Fort St George aforesaid Merchant to demand and receive the said moiety of the said prize Money by the said Court of Directors directed to be paid to the said Captors and that thereupon they the said Hugh Montgomery and William Balfour did obtain from the said Governor and Council of Fort St George by a Certificate and draft on Bengal the Sum of Seventy four thousand Two hundred and Seventy Nine

Nine Pagodas, thirty two fanams and Sixty two Cash and on the Return of the said Hugh Montgomery to the Northward the said Captors did make the necessary arrange=ments Regarding as the same as to the proportions to be Shared by the different Classes of Troops Entitled to partake therein and the said William Balfour did in Conformity to such Arrangements pay to the several Captors or to their Representatives their Shares or proportions &c and did for his trouble in the premises and as the Agent of the said Captors Retain a Commission of five per Cent Amounting to the Sum of Three thousand Seven hundred and Thirteen Pagodas and the Complainant did not then commence any Suit for his pretended Commission nor did your Petitioners or the said other Captors hear any thing further on the subject from the Complainant until the Death of the said Hugh Montgomery and the Departure for Europe of the said William Balfour Fifthly Because your Petitioners and others the said Captors were under an absolute &c necessity of Appointing the said William Balfour and Hugh Montgomery to act as their Agents by Reason of the Refusal of the Complainant to Obey their Instructions or Comply with their Requisitions to secure and protect them

them properly as above set forth and because the said William Balfour did in consequence of such Appointment receive from your Petitioners and others the said Captors of Suggeraickpovam a Commission of five per Cent for his trouble in the premises &c And although the Complainant hath in and by his said Replication suggested that the Intermeddling of the said William Balfour in the premises, did not in any wise affect his Claim to his Commission as the Appointed Agent by the Captors yet he well knew that such intermeddling of the said William Balfour as the Complainant had expressed himself was under the direction and special Appointment of the said Captors, and that they were Reduced to the absolute and indispen=sable necessity of Making such Appointment owing to the neglect and Refusal of the Complainant to act as the Agent of the said Captors notwithstanding he was frequently importuned and required by the said Captors so to do Lastly your Petitioners did beg leave to Shew that although the Account Current to the Complainant said Bill of Complaint annexed was Dated in September One thousand Seven hundred and Eighty Eight and Interest was calculated from that period yet that the Bill of Complaint was not filed until the Month of March One thousand Seven hundred and Ninety three, nor had the Complainant Shewn or attempted to

to

to Shew that he ever made any Demand upon your
Petitioners for the Amount of his said pretended commis-
=sion And your Petitioner did further beg leave to Shew
that a Commission was in the nature of Servants Wages
and that even had the Amount of the said Commission
been Justly due and owing to the Complainant he was not
Entitled to any Interest thereon and your Petitioners
did submit to the said Court of Appeals that the Complai=
=nant had not supported by Witnesses the several charges
in his said Bill set forth, and the several matters and
things in his said Replication insisted on nor had he
refuted any matter or thing in your Petitioners said
Answer contained and as your Petitioners said Answer
was upon oath it was in fact the only positive and
material Evidence before the said Mayors Court For
all which Reasons and such others as might be offered
at the hearing your Petitioner did humbly pray that
the said Decree of the said Mayors Court might be
Reversed and that your Petitioner might have such
further Relief in the premises as to the said Court of
Appeals should seem meet—

And your Petitioners humbly
Shew unto your Most Excellent Majesty in
Council

Council that to your Petitioners said Petition of Appeal
in the said Court of Appeals the Complainant did Exhibit
and file an Answer, and thereun did Amongst other things
in Answer to your Petitioners Reason or Cause of Appeal
say that he did pray leave to set forth the following Copies
of the Letter of Appointment from the Defendants in this
Cause to him and of their Order for the delivery of the Goods
taken at Juggernaickporam, viz. Mr. Mathew Yeats.
Sir, We the Captors of Juggernaickporam do hereby
Nominate Constitute and Appoint you our Agents for
the Recovery and disposing of such Goods as may have
become our property According to the Custom of War
by such Capture— and we do further direct that Whereas
certain Gentlemen have already laid or do mean to lay
Claim as Captors to a share of the same Goods, which
Claim we have not yet admitted that the said Goods
being disposed off and the Amount collected, you do without
loss time pay unto each of us the proper share of the neat
Amount of the said Goods According to the usual Devidend
made on such occasions Reserving to yourself the Amount
of all necessary and Customary Charges and Receiving
also the Sum which may or will become due unto those
Claimants in case the Demands are found just which

Sum

Sum is to be disposed of According to the Determination of such Suit or Claim – We are Sir your Obedients Servants Arthur Lysaght James Wheeler George Westcott Philip Mayne James Bagshaw Butler and Hugh Montgomery Suggermadickporam July 5th 1794 –

To Mathew Yeats, Sir The Right Honourable the President and Council of Madras for affairs of the English East India Company having demanded the Goods taken in the place We do direct you to deliver up unto Mr. William Hamilton or his Order acting for the said President and Council such Goods as may be demanded by his keeping an Account of them for our use – We are Sir your Obedient Servants Arthur Lysaght J. Wheeler George Westcott P. Mayne. J. B. Butler Hugh

maxim of Law, that no man should avail himself of his own Wrong, and as they held themselves forth to him the Complainant as the only persons Authorised to Act in the premises he did submit that the plea was ill founded, and that he had properly preferred his Bill of Complaint by naming therein all those from whom he Received his Authority

To the Second Reason the Complainant did say, that the Government of Fort St. George Applied for the Captured property in Order to dispose thereof to Answer the then pressing exigencies of the state it being in the time of War and the same were delivered Accordingly and the Amount sales placed to the Credit of the Captors half whereof was paid Amounting to the Sum stated in his the Complainants Bill of Complaint being Pagodas Seventy four thousand Two hundred and two Pagodas Thirty two fanams and Sixty two Cash and Acknowledged by

the same was done away by your Petitioners for they had stated they were sold at Masulipatnam by Public Auction, nor had your Petitioners Attempted to prove any injury nor did they ever Represent any such to him the Complainant and he did further say that he had Notice of the intended Sales either from the Government of Fort Saint George or from the Captors, that the said William Oram did not arrive the day after the Capture of the said Fort of Juggernaickporam and take charge of the Goods taken therein on the Contrary the Complainant did say that as Agent for the Captors he took charge of the whole of the prize Goods and did deliver them Agreable to the Order of the Captors to the said William Hamilton the President of the Honourable Company at Ingeram and that he taking charge of the said Captured property making Intentories thereof for the use of the Captors and doing other things incident to his duty as Agent did engross his time about a Month he did say as Appeared by the evidence of Cavaterajoo Bagavanloo Braming who Acted as his Writer — To the third Reason the Complainant did say that as far as Related to his not coming to the Presidency was Accounted for by your Petitioners from their Extract from his — Replication and as to the proof of his Acting to the utmost of his power for the Interest of the Captors it Appeared he did say fully from the Evidence of William Collins Jackson Which your Petitioners humbly Shew to your Most Excellent Majesty in Council the Complainant did in and by his said Answer to your Petitioners said Petition of Appeal Recite Verbatim, and from which the Complainant did say it Appeared that he was Zelously Active for the Interest of the Captors the whole of whose case consisted as it happened of four points 1st. The receiving charge of the Goods taken at Juggernaickporam and taking Inventories thereof &c. 2d. The handing them over According to the Order of the Captors 3. The Application to Government for their Share of the Prize Money, and 4th. The care of their Interest in Asserting their Exclusive Claim to the whole property in opposition to the pretensions of the Commanders of the Ships Grosvenor and Royal Admiral To the fourth Reason this Respondent the Complainant did say that the same was fully Answered in the Preceeding Answer To the third Reason of your Petitioners and the Complainant did further say that your Petitioners had not adduced any Evidence in support of their charges of Neglect or Misfeazance Against your Petitioners which he did say they ought to have done as he had denied the charge and

the same was done away by your Petitioners for they had stated they were sold at Masulipatnam by Public Auction; nor had your Petitioners Attempted to prove any injury nor did they ever Represent any such to him the Complainant and he did further say that he had Notice of the intended Sales either from the Government of Fort Saint George or from the Captors, that the said William Oram did not arrive the day after the Capture of the said Fort of Juggernaickporam and take charge of the Goods taken therein on the Contrary the Complainant did say that as Agent for the Captors he took charge of the whole of the prize Goods and did deliver them Agreable to the Order of the Captors to the said William Hamilton the President of the Honourable Company at Injeram and that he taking charge of the said Captured property making Inventories thereof for the use of the Captors and doing other things incident to his duty as Agent did engross his time about a Month he did say as Appeared by the evidence of Cavaleraju Bagavanloo Braming who Acted as his Writer. To the third Reason the Complainant did say that as far as Related to his not coming to the Presidency was Accounted for by your Petitioners from their Extract from his Replication and as to the proof of his Acting to the utmost of his power for the Interest of the Captors it Appeared he did say fully from the Evidence of William Collins Jackson Which your Petitioners humbly Shew to your Most Excellent Majesty in Council the Complainant did in and by his said Answer to your Petitioners said Petition of Appeal Viva Voce Verbation, and from which the Complainant did say it Appeared that he was Zelously Active for the Interest of the Captors the whole of whose case consisted as it happend of four points 1st The receiving charge of the Goods taken at Juggernaickporam and taking Inventories thereof &c. 2. The handing them over According to the Order of the Captors 3. The Application to Government for their Share of the Prize Money, and 4th The care of their Interest in Asserting their Exclusive Claim to the whole property in opposition to the pretensions of the Commanders of the Ships Grosvenor and Royal Admiral To the fourth Reason this Respondent the Complainant did say that the same was fully Answered in the Preceeding Answer To the third Reason of your Petitioners and the Complainant did further say that your Petitioners had not adduced any Evidence in support of their charges of Neglect or Misfeazance Against your Petitioners which he did say they ought to have done as he had denied the charge and

And which it was presumed they of course would have done, could they have Substantiated the same To the Fifth Reason the Complainant did say that the same was Answered in his preceding Answers to your Petitioners Third and Fourth Reason for Appealing and the Complainants did say that the Captors having paid William Balfour a Commission was no ground of objection to his Claim as set forth and Established by the Proceedings in the Cause and he the Complainant disavowed having made any Agreement whatever with the said William Balfour respecting a Division of the Commission due from the Captors To the last Reason the Complainant did say that his Claim to Commission was coeval with the Captors Receipt of the Prize Money and therefore he had a Right to Interest from that Day and for further Answer did say that he had Established his Claim by the Evidence before stated nor could your Petitioners Advantage themselves of the Assertions in their Answer when denied by him unless they had Adduced Evidence in support thereof Wherefore and for such other Reasons as might be adduced at the hearing of the Cause he did pray that the Decree of the Mayors Court might be confirmed, and further that as your

Petitioners

Petitioners had charged him with having (although ~~~
Appointed an Agent on the part and behalf of the Captors of Juggernaick poram) "Aided and Assisted as far as in "his power lay the pretensions set up by the Officers and "Crews of the said Ships Grosvenor and Admiral Contrary "to the Interests of the said Captors and in Violations of the "trust Reposed in him" And as the Complainant did say he had denied that he was ever inimical to the Interest of his Constituents and that the charge was unjust, and that he defied them to prove any such Disposition in his Conduct or that he did ever aid and Assist the ~~~ pretensions of the Officers and Crews of the said Ships ~~~ Grosvenor and Royal Admiral, and as the said Charge had Notwithstanding such denial by him the Complainants been ever proved by your Petitioners, he did submit they should be taxed with Exemplary Costs—

And your Petitioners humbly Shew unto your Most Excellent Majesty in Council that the said Petition of Appeal of your Petitioners to the said Court of Appeals and the Complainants Answer thereto did come on to be heard and Determined by and before the said Court of Appeals on the Sixth day of December and year of Our Lord One thousand Seven hundred and Ninety four

four 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 Dated the 29th Twenty Ninth day of July Anno Domini 1791 be reversed and the said Court of Appeals was further pleased to Order and Decree that your Petitioners do pay unto the Complainant the Sum of One thousand Eight hundred and fifty five Pagodas Forty three fanams and Twenty 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 Annum and that each party pay their own Costs as by Copy of the said Order and Decree hereunto annexed for the inspection of your Most Excellent Majesty in Council to which your Petitioners humbly crave leave to Refer and pray the same may be taken as part of this their Petition and Appeal may more fully and at large Appear —

By which said Decree of the said Court of Appeals your Petitioners do humbly conceive that they are much aggrieved and do therefore Appeal therefrom and from the said Decree of the said Mayors Court to your Most Excellent Majesty in Council for the following Reasons —

First

First ..... Because your Petitioners do humbly conceive that the said Decree of the said Court of Appeals and of the said Mayors Court are contrary both to Law and to Equity And your Petitioners do humbly submit to your Most Excellent Majesty in Council that the Reasons set forth in your Petitioners said Petition of Appeal to the said Court of Appeals were sufficiently Demonstrative that the Complainant had no manner of Right either in Law or in Equity to bring any Action or Suit Against your Petitioners and that his Bill of Complaint was defective for want of parties — That although the Complainant might have been Appointed by your Petitioners and others Defendants in the Complainants Bill named yet that they were compelled almost immediately to Revoke the same under the Commands of the Executive Government whose Commands both your Petitioners and the Complainant were Obliged to Obey — That the Complainants did not Regard himself as the Agent of your Petitioners and the said other Defendants in the Complainants Bill named for that when Required to furnish Accounts of the Captured Property to your Petitioners and others the said Captors he did Refuse to comply with such Requisition

nor

nor did he attend at the Sale of the said property at Masulipatnam to protect the right and Interest of your Petitioners therein That when he was afterwards Requested to proceed to the Presidency on matters of importance to your Petitioners and others the said Captors he did in like manner refuse compliance and that when the Court of Directors had directed that a Moiety of the prize Money arising from the Sale of the said Captured property should be paid to your Petitioners and others the said Captors he did Refuse to Repair to the Presidency to Receive the same and make the proper distribution thereof although Entered by the said Captors so to do in the [illegible] that your Petitioners and others were reduced by such the Conduct of the Complainant to Appoint another Agent and who did Receive the said moiety and therefrom disburse to the Respective Captors the Respective Shares to which they were entitled Receiving for his trouble as Agent as aforementioned a Commission of five per Cent Amounting in the Aggregate to the principal Sum for which the Complainant has brought his Bill against your Petitioners and others Defendants in the said Bill named - That although the Complainant has so brought his Bill against your Petitioners for the full Amount of the said Commission he did and doth well know that your Petitioners

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Petitioners and the said other Defendants in the Complainants Bill named did Receive only a portion of the said prize Money and that the whole was distributed Amongst both Officers and Men who were on the expedition against the fort or Garrison of Juggernaickporam herein before mentioned That Notwithstanding the said distribution of the said prize Money was made in the year of Our Lord One thousand Seven hundred and Eighty Eight the Complainant did not bring his Bill of Complaint against your Petitioners and others the Defendants in the said Bill Named until the year One thousand Seven hundred and Ninety three and during that period he never on Account of his said pretended Commission contenting himself with a simple Application at the moment when the said prize Money was Ordered to be paid and Remaining in Silence ever Afterwards That a Commission on Captured property is in the Nature of a gratuity or Wages from the Captors to their Agent and that therefore even had the Complainant continued to be and Act as your Petitioners and the said other Captors Agent he had no right to any Interest on the Amount of the Commission

For all which Reasons and such Others as may be offered at the Hea

Hearing of thise your Petitioners
Appeal, your Petitioners Most
humbly Pray that your Most excellent
Majesty in Counsil will Vouchsafe
to Reverse the said Decree of the said
Mayors Court and Court of Appeals
and that your Most Excellent Majesty
in Counsil will further Vouchsafe the
premises considered to grant unto
your Petitioners such further Relief
in the premises as to your Most excellent
Majesty in Counsil shall Seem Meet—

/Signed/ J. Stuart Hall
Solicitor for Appellant

Court of

Court of Appeals
at
Madraspatnam

Saturday the 6th day of December
Anno Domini 1794

Between Philip Mayne and
James Bagshaw Butler Captains in
the Service of the United Company
under their Presidency of Fort St. Geor
Appellants and Mathew Yeats Esqr.
a Senior Merchant in the Service
the said United Company Respond

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 severa
Exhibits of the Honble the Mayors Court together with th
Decree of the said Court given in this Cause on Tuesday, the
29th day of July Anno Domini 1794 upon due Consideration
had of the matters therein severally contained and of the Ple
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 M
Court dated the 29th day of July Anno Domini 1794
Reversed and this Court doth further Order and Decree tha
Appellants do pay unto the Respondent the Sum of
thousa

Thousand Eight hundred and fifty Six Pagodas forty three fanams and twenty Cash / Pags 1856. 43. 20 / together with all such Interest as now is or shall hereafter become due thereon at the rate of Eight / 8 / per Cent per Annum and that each party do pay their own Costs in both Courts

Thus

/ Signed / Robert Clerke Clk

a true Copy

/ Signed / James Stuart Hall
Solicitor for Petr

To the Kings Most Excellent Majesty in Council

Between Mathew Yeats Complainant and Thomas Lane Alexander Farrier and William Balfour Surviving Executors of Arthur Lysaght Deceased William Duffin Executor in India of Hugh Montgomery Deceased Henry Chichley Michell and Charles Rand Administrators of John Wheeler Deceased Philip Mayne and James Bagshaw Butler Defendants

The Answer of Mathew Yeats the above named Complainant to the Petition and Appeal of Philip Mayne and James Bagshaw Butler two of the Defendants above named

Filed in my Office the 25th February 1795
Robert Clerke Clk

This Respondent by way of Answer to the Petition and Appeal of the said Appellants or unto so much thereof as this Respondent is advised to make Answer unto Answereth and saith that he admits his having filed his Bill of Complaint in the Mayors Court at Madraspatnam against the said Appellants and the other Defendants above named as the Captors of Juggunaikporam a settlement then belonging to the Dutch and situated to the Northward of Madras for the Recovery of the Sum of Five thousand Seven hundred and Sixty,

So

Sixty Pagodas due to this Respondent as Agent to the said Defendants and so Appointed under their letter whereof a Copy is annexed to his Bill of Complaint This Respondent Admits his having Acted as their Agent for the period stated in this Respondents Bill of Complaint when the half of the prize Money Amounting to the Sum in the Petition of Appeal set forth was Received and Distributed Among the Captors in the manner stated in the said Petition and Appeal and that this Respondent did not Receive his usual Commission thereon being Five per Cent which Amounted in principal Money on the said Sum of Seventy four thousand Two hundred and Twenty Nine Pagodas Two fanams and Sixty two Cash to the Sum of Three thousand Seven hundred and thirteen Pagodas Forty one fanams and Forty Cash and with the Interest thereon from the day the said Distribution took place to the date of the Account Current annexed to this Respondents Bill of Complaint the whole did Amount to the Sum of Five thousand Seven hundred and Sixty pagodas for Recovery whereof this Respondent admits he filed his Bill of Complaint against the said Defendants to which Bill of Complaint this Respondent admits that the Appellants did Appear by their Attorney and filed the Plea and Answer to the purport stated in the Petition and Appeal to your most Excellent Majesty in Council And this Respondent admits that he filed his Replication and that the Appellants filed their Rejoinder to the purport stated in the said Petition and Appeal and this Respondent further Admits that issue was Joined on the above Proceedings and Witnesses Examined on the part of this Respondent after which Publication passed and the Cause was set down for hearing and the same came on for Determination in the said Mayors Court on the said Twenty Ninth day of July in the said year of Our Lord one thousand Seven hundred and Ninety four when the said Mayors Court did Order and Decree that the Defendant Henry Chinley Michell one of the Administrators of John Whaler Deceased and the Appellants should pay unto this Respondent the full and Just Sum of three thousand Seven hundred and thirteen Pagodas forty one fanams and forty Cash together with all such Interest as then was or should thereafter become due thereon at the rate of Ten per Cent per Annum until full payment was made also all Costs of Suit from which Decree this Respondent doth Admit that the Appellants did Appeal to the Court of Appeals at Madras pretending that they were Aggrieved thereby and urging such Reasons against the said Decree as are stated in the Petition and Appeal to your Majesty in Council to which Appeal this Respondent admits he put in

his

his Answer therein Reputing as he humbly insists the several Arguments urged by the Appellants Against the said Decree of the Mayors Court and setting forth Reasons in support of such Decree —

This Respondent admits that the above Cause came on for decision in the said Court of Appeals at Madras on the said Sixth day of December last past when the said Court of Appeals thought fit to Reverse the said Decree of the said Mayors Court and did Decree that this Respondt should Receive from the said Appellants only the Sum of One thousand Eight hundred and fifty Six Pagodas forty three Fanams and Twenty Nine Cash being the half of the said Sum of Three thousand Seven hundred and thirteen Pagodas Forty one fanams and forty Cash so Decreed as aforesaid by the said Decree of the Mayors Court and the said Court of Appeals did further Decree that this Respondent should Receive — Interest only at the Rate of Eight per Cent per Annum instead of ten per Cent as Decreed by the said Mayors Court and the said Court of Appeals did further Decree that each party should pay his own Costs instead of Ordering the Defendants in the Cause to pay the Costs as had been decreed by the said Mayors Court —

This Respondent denies that the Appellants have any Reason to be Aggrieved by such Decree of the said Court of Appeals but this Respondent saith that he hath much Reason to be Aggrieved thereby and he doth now submit to your most Excellent Majesty in Council his Reasons as well in support of the said Decree of the Mayors Court at Madras as Against the Reversal thereof by the said Court of Appeals at Madras —

First — This Respondent saith that his Appointment of Agent to the said Captors is in the words and Figures following —

M.r Mathew Yeats

Sir

We the Captors of Juggernaickporam do hereby constitute and Appoint you our Agent for the Recovering and disposing of such goods as may become our property According to the Custom of War by such Capture and we do further direct that whereas Certain Gentlemen have already laid or do mean to lay Claim as Captors to a share of the same goods which Claim we have not yet admitted that the said goods being disposed of and the Amount Collected you do without loss of time pay unto each of us the proper Share of the net Amount of the said goods According to the usual Devidents made on such occasions Reserving to yourself the Amount of all necessary and Customary charges and Receiving also the Sum which may or will become due unto those Claimants in case the Demands are found Just which Sum is to be disposed of According to the Determination of

of such Suit or Claim—

Juggunaickporam
July 1781—

Weare Sir
Yr. Obedt. Servt.
Arthr. Lysaght
I. Wheeler
Geo. Westcott
P. Mayne
I. B. Butler
H. Montgomery

And this Respondent saith that some time after he had taken possession of the said Captured property and had sorted every part and made Inventories thereof so as to be prepared for disposal by public Sale or otherwise he Received from the said Appellants and the other Captors a Letter or Order in the words and figures following to Wit—

Mr. Mathew Yeats

Sir.

The Right Honourable the President and Council of Madras for Affairs of the English East India Company having demanded the goods taken in this place We do direct you to deliver up unto Mr. Hamilton or his Order Acting for the said President and Council such goods as may be Demanded by him keeping an Account

of

of them for our use—

Weare
Sir.
Your Obedt. Servt.
Arthr. Lysaght
I. Wheeler
Geo. Westcott
Philip Mayne
I. B. Butler
H. Montgomery

Which said Letter of Appointment and subsequent Order being Signed by the same Persons who in the said Letter of Appointment stiled themselves the Captors Juggernaickporam this Respondent had Reason to conclude either that they were the only Captors of Juggernaickporam or that they were Deputed by the Other Captors and that in either case this Respondent was to consider them as fully Authorized to Appoint their Agent to act in the premises and as to the pretence of the Appellants in their Plea that they alone were not Authorized to Appropriate the said Captured property and that therefore this Respondent ought to have brought his suit Against all the Captors to wit the Havildars Naiks Sepoys and others who had Served in the Detachment which

Advised

Reduced the said Fort of Juggernaick Sporam this Respondt saith that if the said Appellants and others the Defendants in this Cause were not Authorized to Appoint an Agent and to dispose of the Captured property as by their Plea &c they pretend they have been guilty of a fraud in Receiving and disposing of Money without a legal Authority so to do and as they ought not to avail themselves of their wrong and as they have held themselves forth to this Respondent as the only Persons Authorized to act in the premises this Respondent submits that the Plea of the Appellants to this Respondents Bill of Complaint under the pretency of a want of parties is ill founded and therefore this Respondent hath properly preferred his Bill of Complaint by Naming therein all those from whom he received his Authority

And in Answer to the pretence of the Appellants that the Captured property was but a short time in the hands of this Respondent he saith that the length of time of its being in his possession is not any part of his Case for his right to Commission is founded on his Appointment on his Consequent charge of the Captured property and on his delivery thereof &c According to the Order of his Constituents the said Defendants in this Cause if in the intermediate time he hath not been guilty of any Act to injure the said property or the Interest of his Constituents his title to the Commission is clear and as no such charge hath been proved Against him the Decree of the Mayors Court is well founded This Respondent saith that the Reason why the said property remained so short a time in the possession of this Respondent as Agent for the Captors is that the then Government of Fort St George Applyed for the Captured property in Order to dispose thereof to Answer the pressing exiginicies of the state it being in the time of War and the same was delivered Accordingly and the Amount Sales placed to the Credit of the Captors half Whereof was paid Amounting to the Sum stated in this Respondents Bill of Complaint being Pagodas Twenty four Thousand Two hundred and Two, thirty Two Fanams and Sixty two Cash and Acknowledged by the &c Appellants in their Plea and Answer and the other half was reserved until the Claims of the owners and Commanders of the Ships Grosvenor and Royal Admiral shall be settled as appears by the Evidence of William Collins Jackson in his Deposition to the Third Interrogatory prefered on the part of this Respondt and as to the pretence of Injury to the Captors because this Respondt did not attend the Sales of the said goods the same is done away by the Appellants for they state that they were Sold at Masulipatam by public Auction and in the presence of the Chief and Council of Masulipatnam nor have

have the Appellants Attempted to prove any injury done to them by this Respondent nor did they ever represent any such to this Respondent and this Respondent further saith that he had not Notice of the intended sales either from the Government of Fort St. George or from the Captors This Respondent in Reply to the Assertion of the Appellants that William Oram in the Appeal named had taken charge of the Captured property the day after the Fort of Juggernaick-poram had surrendered saith that this Respondent as agent for the Captors took charge of the whole of the prize Goods and delivered them in conformity to the Order of the Captors to the said William Hamilton at that time the President of the said United Company at Ingeram and this Respondent saith that the taking charge of the said Captured property making inventories thereof for the use of the Captors and doing other things incident to his Duty as agent did engross his time about a month as Appears by the Evidence of Cavoheraboo Bagavanloo Braminy who acted as writer to this Respondent

This Respondent saith that the Appellants have presumed to lay to this Respondents charge that he did not proceed to the Presidency of Fort St. George to Attend to their Interests whereas this Respondent saith that

that all matters relating to their Interests respecting the said goods were effected at Juggernaickporam the Captured place and within Twelve miles of Ingeram the place where this Respondent had been previously stationed and it was not only out of this Respondents power to proceed to Fort Saint George on Account of his Employ in the Service of the said United Company of which the Appellants and the other Defendants to this Suit were well informed When they Appointed this Respondent their agent as aforesaid but he saith that the Interests of the Appellants and the other Defendants to this suit did not suffer thereby as appears from the Evidence of William Collins Jackson heretofore Deputy Secretary to the Military and Political Departments at Fort Saint George who in his Depositions to the Second fourth and Sixth Interrogatories stated that from the Correspondence of this Respondent with the Government of Fort Saint George from the Month of May in the year of Our Lord One thousand Seven hundred and Eighty five to the Nineteenth day of March in the year of Our Lord One thousand Seven hundred and Eighty Eight it Appeared this Respondent was Agent for the Captors of Juggernaickporam that this Respondents first letter to the Government of Fort St. George was Dated in the year of Our Lord One thousand Seven hundred and Eighty

five

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five

five and that he therein stated the Claims of the Captors of Juggernaick poram to the moiety of the prize Money and that from delivery and respect to Government they had forebore their Application from the year One thousand seven hundred and Eighty one to that time and that as there was then peace they hoped their Claims would be noticed and that they would be satisfied with such mode of Liquidation as best suited the convenience of Government whether in Bonds Bengal Bills or otherwise - The said William Collins Jackson also stated that this Respondent Applied to Government for a Copy of the Instructions given to the Captains of the Grosvenor and Royal Admiral Indiamn When those Vessels were sent in the year of Our Lord one Thousand Seven hundred and Eighty one to Coringa a Port very near to Juggernaick poram also for a Copy of the letter from the Government of Fort Saint George to the said William Hamilton then Resident at Ingeram and for Copies of the Petitions presented to the Court of Directors by the owners of the above mentioned Vessels Claiming a Share of the Juggernaick poram prize Money all which were furnished to this Respondent and the said William Collins Jackson also stated that this Respondent was considered by Government as the Agent for the said Captors and that as far as his Official Situation

Situation could enable him to form a Judgment it appeard that this Respondent acted with Zeal for the Captors from all which this Respondent humbly Submits to the Consideration of your Majesty in Counsil that this Respondt was Zealously Active for the Interest of the Captors the whole of whose Case consisted of four points -

First - The Receiving charge of the Goods taken at Juggernaick poram Second The handing them over According to the Order of the Captors Third the Application to Government for the half Share of the prize Money and Fourth the Case of their Interest in asserting their exclusive Claim to the whole property in opposition to the pretensions of the Commanders of the Ships Grosvenor and Royal Admiral To all of which points the Evidence goes fully in favour of this Respondent while the pretended charges of the Appellants against this Respondent for neglect or misfeasance altho pointedly denied by this Respondent are not supported by any one Witness on behalf of the Appellants and as to their pretending that they said William Balfour Commission and therefore ought not to be subjected to a Commission to this Respondent he saith that his title to the usual Commission in such Case which was proved by the Evidence of John Tulloh on behalf of this Respondent to be five p Cent is in no wise impeached by

Their

their allowing a Commission to the said William Balfour who does not Appear to have done any one Act in the premises except to have Received from the hands of Hugh Montgomery (then the Senior surviving Officer of those who Captured Juggernaid) from the said half of the Amount sales of the prize goods when the same was issued by the Government of Fort Saint George at the Instance of this Respondent as before stated and then deviding the same among the Captors an Act which it was well known to the Captors this Respondent could not do, as the Duties of his Station at Ingram being about Four hundred Miles to the Northward of Fort St George prevented his Proceeding to Fort Saint George at that time — and so satisfied hath this Respondent always been of his Claim to the full commission as Agent for the Captors that he hath uniformly disclaimed all offers of Compromise or division thereof with the said William Balfour Notwithstanding the said Appellants have presumed to assert to the contrary in their said Appeal —

This Respondent in Reply to the objection of the Appellants to this Respondent having a right to Interest on the Sum sued for saith that his Claim being coeval with the Division of the prize Money his right to Interest on such Claim accrues from that day

This Respondent by way of refuting generally the several ill founded Assertions of the Appellants set forth in their Answer to this Respondents Bill of Complaint saith that as he hath denied such Assertions in his Answer the Appellants ought to have proved the same, Whereas the Appellants have not adduced one Single Evidence in Support of any fact although it is evident from the Nature of those Assertions that the proof thereof if such Assertions were founded, could have been Established without difficulty

This Respondent in Answer to the Reasons urged by the Appellants in their Appeal to your Most Excellent Majesty in Council prays leave to state that as to such part thereof which charges this Respondent Bill to be deficient for want of Parties he hath before answered thereunto by stating that the Appellants and others the Defendants above named Assumed to themselves the Appellation of Captors whence this Respondent humbly Submits that he had every Reason to consider the said Defendants as the Captors "De Jure" and as this Respondent received the said Captured property and had the uncontrouled power over the Same under and by Virtue of their nomination of this Respondent as their Agent this Respondent had an equal right to consider the said Defendants to be the Captors "De Facto" he therefore doth insist that their making any

Plea

Plea against this Respondents Bill of Complaint under the pretence of want of parties is a direct and manifest implication against their own integrity as Guilty of a fraud in assuming an exclusive right to property to which they now declare they had only a Claim in Common with the other Captors of the Fort of Suggernaikporam and as to the pretence of the Appellants that they were compelled almost immediately to revoke their Appointment in favor of this Respondent under the Commands of the executive Government whose Commands the Appellants and this Respondent were obliged to obey this Respondent saith first that the said Order did not come to this Respondent until near a Month after he had received charge of the said goods during which time he had an inventory thereof made and did such other things as were incident to his duty as Agent and Secondly that the Appointment of Agent the receiving charge and inventorying the goods are sufficient Acts to entitle this Respondent as Agent to five per Cent Commission on the Amount Which was Afterwards Devided from the Sales thereof This Respondent hath uniformly denied and doth still deny that he ever refused to the Captors to furnish Accounts to the Appponents and the other Captors of the Captured property nor was he guilty of any Act to the prejudice of the Captors nor did he omit any

any act matter or thing within his power to promote their Interest – he admits that he did not attend the Sale of the Goods at Masulipatnam but as to the Pretence of injury to the Rights and Interests of the Appellants and the other Captors because he did not attend the said Sale such pretence is ill founded for the said goods were sold as before stated by public Auction and in the presence of the Chief and Council of Masulipatam but without adverting in anywise to the intermediate fate of the said Goods from the time this Respondent gave them up to the said William Hamilton to the time they were sold and the Amount Carried to the Credit of the Captors this Respondent is in no wise responsible having no pretence of intermeddling therein after he had delivered up the possession thereof to the said William Hamilton under the said Order of the Captors –

This Respondent admits that he did not come to the Presidency to receive the prize Money and deveide it Among the Captors and the Reason why he did not was that the Duties of his Employ at Ingram aforesaid Rendered it impractable for him to Repair to the Presidency at the time the Money was Ordered to be paid

to

to the said Captors but this Respondent Submits that as the said Captors made choice of this Respondent as their Agent as well from their Opinion of his Real and integrity as from the very Circumstance of his Station having been at Ingeram a Factory of the said United Company within Twelve Miles of Chiggernaikporam and that this Respondent under the Appointment of the said Captors to that Effect took charge of the said Prize goods and Arrainged and inventoried them and afterwards delivered them up in Conformity to the Order of the said Captors and as this Respondent did as before stated correspond with the said Government of Fort St. George as well in support of the Rights of the said Captors to the payment of the half Value of the said captured property as substantiate their Right to the other half in Opposition to the Claim set up by the Commanders of the Ships Grosvenor & Royal Admiral this Respondent submits that his being prevented by the Duties of his Employ to travel Four hundred Miles to receive the said Prize Money and Devide the same among the Captors ought not to annul a Claim founded on his precious Services as Agent to the Captors to receive the usual Commission of five per Cent paid to prize Agents especially as the Captors well knew When

When they Appointed this Respondent their Agent that he could not quit his station at Ingeram and as to the pretence of the Appellants that the Money was devided soon after it was received and that this Respondent neglected to prefer his Claim to Commission from the year of Our Lord One thousand Seven hundred and Eighty Eight when the Distribution of the prize Money was made to the year of Our Lord One thousand Seven hundred and Ninety three when this Respondent filed his Bill of Complaint against the Appellants and the said other Captors this Respondent saith that the intermediate time was employed in efforts on the part of this Respondent to induce the said Captors to an Amicable Settlement with this Respondent and as a proof thereof this Respondent saith that he once offered to take two and a half per Cent on the Amount already devided if the Captors would agree to pay this Respondent the like Commission on the Remaining half which Remains in deposit till the Claim of the owners of the Ships Grosvenor and Royal Admiral be determined in the event of the adjudication of the Court of Admiralty in England being in favor of the said Captors which offer the said Captors Refused and tendered to this Respondent only the half Commission on the said half of the prize property already Distributed —

This Respondent therefore Submits to your Most Excellent Majesty in Council that he hath at present

present a right to the full Commission as well on the said half of the Captured property already divided as on the other half in Cast the Adjudication of the Court of Admiralty in England should be in favor of the said Appellants and of the said other Captors of Juggernaick &c.

Wherefore and for such other Reasons as may be offered at the hearing of this Cause this Respondent most humbly prays your Most Excellent Majesty in Council to Confirm the said Decree of the Mayors Court in this Cause And this Respondent further prays that as the Appellants have charged this Respondent with having although appointed "an Agent on the part and behalf of the Captors of Juggernaick &c "&c" aided and Assisted as far as in his power lay the "pretensions set up by the said Officers and Crews of the said "Ships the Grosvenor and Royal Admiral contrary to the "interests of the said Troops and in violation of the trust reposed "in him" and as this Respondent denied that he was ever inimical to the interest of his Constituent and that the charge was unjust and that he defied them to prove any such disposition in his Conduct or that he did ever aid and Assist the pretensions of the Officers and Crews of the said Ships Grosvenor and Royal Admiral and as the said charge hath not notwithstanding such denial by this Respondent been proved by the Appellants he submits to your Most Excellent Majesty in Council they should be taxed with exemplary Costs—

/Signed/ S. Topham
Solicitor for Respondent

To

To the Right Honble Robert Lord Hobart

Governor in Counsil

Fort Saint George

In the Honble the Court of Appeals at Madraspatnam

Between Richard Parks of Fort St George Merchant Surviving Executor in East India of John Douglas formerly of Fort St George Merchant Deceased Compleinant and Kistnasaumy Eyar of Madras Inhabitant Defendant—

The humble Petition of Appeal of the above named Complainant—

Fileed in my office the 27th October 1794
Robert Clerk Ctr

That your Petitioner as Surviving Executor in East India of John Douglas Deceased did in or about the Twenty fourth day of July Now last past Exhibit and file his Bill of Compleint in the Honble the Mayors Court of Madraspatnam against the above named Defendant Kistnasaumy Eyar therein stating that the said John Douglas did Advance and lend to the said Kistnaswamy Eyar the Sum of Fourteen thousand Nine hundred and Ten Pagodas Current Money of Madras and the said Kistnaswamy Eyar for Securing the Repayment thereof with Interest did Sign seal and Deliver a Certain Bond or Obligation bearing date the first day of October One thousand Seven hundred and Eighty and to which Bond was subjoined an undertaking and Assignment as a Collateral Security for the said Sum of Fourteen thousand Nine hundred and Ten Current Pagodas whereby the said Kistnasaumy Eyar did grant Bargain and Sell and in due form deliver unto the said John Douglas Sundry Bonds Notes Obligations and Agreements mentioned in a Schedule annexed to the said Bond And your Petitioner Sheweth that there was likewise subjoined or annexed to the said Bond a condition purporting that on payment of the said Sum of Fourteen thousand Nine hundred and Ten Current Pagodas with Interest after the rate of Twelve per Cent the said Bond or Obligation should become void and that in default of such payment it should be lawful for the said John Douglas to Receive Mortgage Assign and alienate the Amount or produce of the said Bonds, Notes, Obligations, and Agreements and also thereby constituted the said John Douglas his Attorney for that and other purposes expressed therein And your Petitioner further Sheweth that the said John Douglas made several Applications to the said Kistnasaumy Eyar for payment of the said Sum of Current Pagodas Fourteen thousand Nine hundred and Ten so lent and Advanced on his said Bond and also demanded payment of the Sums of Money Comprised and

and Secured in and by the said Bond and Acknowledgement deposited by the said Kistnasawmy Eyer with the said John Douglas Collaterally to secure the payment of the said Sum of Fourteen thousand Nine hundred and ten Pagodas and Interest but your Petitioner charges that the said Sum of Fourteen thousand Ninehundred and ten Current Pagodas and Interest due thereon or any part thereof was not paid to the said John Douglas &c pursuant to the said Applications and that the same Remained due and owing to him at his Decease and your Petitioner &c Sheweth that the said John Douglas departed this life in or about the year One thousand Seven hundred and Eighty five having previously made his last Will and Testament in Writing and thereof appointed Charles Smith Richard Leathem &c Benjamin Winthrop, Alexander Davidson Samuel Johnston and your Petitioner Executors thereof that the said Charles Smith Richard Leathem Benjamin Winthrop Samuel Johnston and your Petitioner not Appearing to prove the said Will and take out probate thereof the said Alexander Davidson did duly prove the same in the said Mayors Court in its Capacity of King ordinary and on or about the Ninth day of December in the year One thousand Seven hundred and Eighty five obtain Probate thereof and take upon himself the sole Burthen of an Executor And your Petitioner Shews that the said Alexander Davidson did

did depart this life in or about the year One thousand Seven hundred and Ninety one And your Petitioner and the said Samuel Johnston did procure the said Will to be sent to them who did duly Exhibit the same in the perogative Court of the Archbishop of Canterbury and in or about the Month of March One thousand Seven hundred and Ninety two did obtain an &c Examplification thereof under the seal of the said Perogative Court and by reason thereof Administration of all and Singular the Goods and Chattels of the said John Douglas being Committed to them they become thereby entitled to Administer the same but your Petitioner only of the said Executors Remained in East India—

And your Petitioner hath annexed to this his Bill of Complaint and which he prays may be taken as part thereof a Bill or Account of the Principal and Interest due to your Petitioner as Executor of the said John Douglas Amounting to Current Pagodas Three hundred and Ninety five Eleven fanams and twenty one Cash—

And your Petitioner did in and by his said Bill of Complaint pray the said Mayors Court that the said Kistnasawmy Eyer might be Ordered and directed by the Decree of the said Court to pay to your Petitioner the "Sum of Fourteen thousand Nine hundred and Ten Current "Pagodas together with Interest for the same after the rate of

Twelve

"Twelve per Cent per Annum from the said first day of October
"One thousand Seven hundred and Eighty to the time of the said
"Decree and that your Petitioner might have such further
"and other Relief as to the said Court should Seem Expedient
"and should be agreeably to Equity and Justice" — And your
Petitioner further states unto this Honourable Court that the
said Kistnasawmy Eyer having been duly Summoned to
Appear to and Answer your Petitioners said Bill of Complaint
he did on the Twenty Ninth day of July One thousand Seven
hundred and Ninety four last past Appear thereto by his Attorney
at Law James Stuart Hall and Cause his Answer taken on
oath to be filed in the said Mayors Court thereon and thereby
Amongst other matters setting forth that some time in or about
the year of Christ one thousand Seven hundred and Seventy
Nine it was determined by the then Governor and Council of
Fort Saint George to take possession of the Guntoor Circar or
District or province Situated to the Northward of Madras
and that in consequence of such the Determination of the
said Governor and Council the Troops of the Honourable the
East India Company serving under their Presidency of
Fort Saint George did proceed thither as the said Kistnasawmy
Eyar has heard and Verily believes the fact so to be to take
possession of the said District or province of Guntoor and
the

the said Kistnasawmy Eyar says that the said Governor and
Council did at or about the same time agree with his Highness
the Nabob of the Carnatic that they the said Governor and Council
should deliver over to his said Highness the Nabob the said district
or Province of Guntoor and the said Kistnasawmy Eyer says
that it was further agreed by the said Governor and Council and
his said Highness the Nabob that in consideration of the premises
his said Highness the Nabob should make a certain donation
to the said Governor and to each Member of the said Council and
the said Kistnasawmy Eyer say that Samuel Johnston late of
Fort Saint George aforesaid Esquire was then one of the Members
of the said Council of Fort Saint George and it was conditioned and
Agreed by the said Samuel Johnston and his said Highness the
Nabob that his said Highness the Nabob should give to the said
Samuel Johnston for and in consideration and on Account of his
individual Vote in the premises as a Member of the said Council
of Fort Saint George the Sum of Fifty thousand Pagodas and the
said Kistnasawmy Eyer says that some time afterwards the
said Samuel Johnston did come to a Settlement of his Accounts
with the Durbar of his said Highness the Nabob when there
Appeared a balance in favor of the said Samuel Johnston
Amounting to the Sum of Sixty two thousand and five hundred
Pagodas and the said Kistnasawmy Eyer says that the said
balance was made up and Composed of the said Sum of Fifty
thousand

thousand Pagodas and the Interest due thereon calculated at the rate of Twenty four per Cent per Annum together with some other very trifling Sum or Sums and the said Kistnasawmy Eyer says that for securing the payment of the said Sum of Sixty two thousand and five hundred Pagodas his said Highness the Nabob did offer to Execute unto the said Samuel Johnston his Bond or Obligation in Writing and the said Kistnasawmy Eyer saith that such the offer of his said Highness the Nabob was not Approved of nor Accepted by the said Samuel Johnston who did press and importune his said Highness the Nabob to give unto him the said Samuel Johnston some other Security for the payment of the said Sum of Sixty two thousand and five hundred Pagodas and the said Kistnasawmy Eyer saith that his said Highness the Nabob being unwilling as the said Kistnasawmy Eyer has heard and believes the fact so to be to displease the said Samuel Johnston for Reasons best known to himself did desire Covoor Vydenadah Moodelly of Madras Inhabitant and the said Kistnasawmy Eyer to grant their several Bonds or Obligations in Writing to the said Samuel Johnston for and on Account of the said Sum of Sixty Two thousand and five hundred Pagodas and the said Kistnasawmy Eyer says that the said Covoor Videnadah Moodelly and the said Kistnasawmy Eyar did comply with such the Requisition of his said Highness the

the Nabob and the said Kistnasawmy Eyer did Accordingly Execute a Bond to the said Samuel Johnston for the Sum of Twelve thousand and five hundred Pagodas and the said Covoor Vydenadah Moodelly did Execute another Bond or Bonds to the said Samuel Johnston for the Sum of Fifty thousand Pagodas and making together the said Sum of Sixty two thousand and five hundred Pagodas and the said Kistnasawmy Eyer says that in order to conceal the transaction for which the said Bonds were Executed and as the same is herein above particularly set forth and for Reasons best known to the said Samuel Johnston he the said Samuel Johnston did Require that the said Bonds should be Executed to and in the name of your Petitioners Testator who acted in the premises as the confidential friend and private agent of the said Samuel Johnston and the said Kistnasawmy Eyer says that in consequence thereof the said Bonds for securing the payment of the said Sum of Sixty two thousand and five hundred Pagodas were by the said Kistnasawmy Eyer and the said Covoor Vydenadah Moodelly Executed to and in the name of your Petitioners Testator and the said Answer stated several other Circumstances foreign to the subject of this Appeal - and your Petitioner further sets forth that he did on or about the Thirtieth day of September One thousand Seven hundred and

Ninety

Ninety four last by his Attorney at Law Caused a General
Replication to be filed in the said Mayors Court to the Answer of
the said Kistnasawmy Eyer and which comprised an unqualified
Denial of all and every the Matters and allegations Stated in the
said Answer and thereby as your Petitioner is advised did impose
on the said Kistnasawmy Eyer the onus of establishing such his
said Answer to the Claim of your said Petitioner And your
Petitioner further Sheweth that a general Rejoinder had been
filed by the said Kistnasawmy Eyer before it was discovered that
an Error had been Committed in the said Bill of Complaint
it being stated that your "Petitioner had annexed to his said
" Bill and which he prayed might be taken as part thereof an
" Account of the principal and Interest due to Your Petitioner
" as executor of the said John Douglas Amounting to Current
" Pagodas Three hundred and Ninety five Eleven fanams and
" Twenty one Cash or in sterling Money of Great Britain at the
" Rate of Eight Shillings for every Pagoda the Sum of One hundred
" and fifty Eight Pounds and two Shillings or thereabouts"
And your Petitioner further Shews that such Error was not
occasioned by any false Computation of the Aggregate Sum
or of the Component parts thereof but by the Copier of the said
Bill of Complaint Mistaking the Division of the decimal
fpations stated therein and Writing the same Three hundred
and Ninety five Pagodas Eleven fanams and Twenty one
Cash

Cash instead of Thirty Nine Thousand five hundred and Eleven
Pagodas and Twenty one fanams and calculating the Exchange
therein diminished the sterling Money Conformable thereto
and your Petitioner having referred in the said Paragraph in
which such error was made to the Account Current annexed to his
said Bill of Complaint such Clerical Mistake is obvious and
Accountable and the principal and Interest accurately calculated
therein and your Petitioner further Shews that his said Attorney
at Law did apply to the Mayors Court on the fourteenth day of
October One thousand Seven hundred and Ninety four last for
leave to correct and Amend the said Error in his said Bill of
Complaint but which application was opposed by the Attorney
for the said Kistnasawmy Eyer who obtained a Weeks time to
Shew Cause against the said Amendment so prayed by your
Petitioners Attorney - And your Petitioner further states that
on the day allowed to the said Kistnasawmy Eyers Attorney
to Shew Cause he did shew for Cause before Mr. Alderman
Call, Mr. Alderman Ross and Mr. Alderman Mitford then
composing the said Court against the said Amendment - that the
" sum declared to be due differs widely from the Sum prayed to
" be Decreed and that the Sum declared by the Bill to be due
" is the only Sum that can be Decreed and therefore that your
" Petitioner ought to amend his Bill de Novo " and the said
Mayors Court did then and there order that the motion of the
attorney

Attorney for your said Petitioner for leave to Amend should be over Ruled — but your Petitioner further shews that Mr. Alderman Mitford being one of the Aldermen then setting in the said Mayors Court did dissent from the said Resolution and did order and Direct that such this Dissent should be entered on the Records of the said Court and which is in the words to the purport following Mr. Alderman Mitford dissents to the Resolution of the Court thinking that the Amendment prayed for might be allowed as by the said Order or Interlocutary Decree and the dissent therefrom Copies of which are hereunto annexed which your Petitioner prays may be admitted and Received as part of this his Petition of Appeal Reference being thereto had will more fully appear — from which said interlocutary order or Decree your Petitioner appealed to this Honorable Court as your Petitioner is advised and believes that the same is erroneous inequitable and Vexatious and that your Petitioner is much aggrieved thereby for the following Reasons —

First —— Because by the established Rules of Courts of Equity it is Competent to Complainants (by Petition or motion to the Courts in which Suits be pending at any time before final Decree passed in such Suits to apply for and obtain leave to Amend their Bills of Complaint unless such Amendment tends to introduce New matters foreign and embarrassing to the Original Subjects of Litigation or to the Issue joined between the parties and then the Complainant must Record such new Matter by a Supplemental Bill and that such Rule is established and is Reasonable and equitable Will Appear from several Determinations which your Petitioner is ready to produce before this Honble Court —

Second —— That the Subject of the present appeal falls precisely within the principle and Rule of such Determinations in as much as your Petitioner first discovered the error in the said Bill of Complaint and which was merely Clerical and arose by the means herein before Stated and the Amendment proposed by your Petitioners Attorney to correct the said error did not introduce any New matter or Subject of Complaint and the paragraph or Clause of the said Bill in which such error exists is Neither in the Stating or Charging part of the said Bill of Complaint or the prayer thereof but merely Referential and declaratory of an Account Current annexed thereto and part thereof and that the Aggregate and also the Component parts of the said Account are Accurate and true —

Lastly —— That the said Kistnasawmy Edyer Neither demurred excepted or otherwise objected to the said Bill of Complaint in the early and proper Stages for such Proceedings but Actually answered and Rejoined on the Merits of the said Answer having admitted his Signing Sealing and delivering the said Bond, without Charging that the same was obtained by force or fraud — For all which Reasons and such others as may be offered at the hearing your Petitioner prays that the said interlocutary order or Decree of the said Mayors Court of the Twenty first instant may be Reversed and that your Petitioner may be allowed to Rectify the said Clerical error so discovered in his said Bill of Complaint and such further Relief had as this Honble Court shall think fit —

(Signed) G. Easley
Solicitor for Appellant.

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 21st. day of October Anno Domini 1794 –

Present

Mr. James Call Senior Alderman

Andrew Ross and John Mitford

Aldermen

Richard Parks Executor of John Douglas deceased

~~vers~~

Kistnasawmy Braminy

The Attorney for the Defendant objects to the motion made last Court day by the Attorney for the Complainant to Amend his Bill, because the Sum declared to be due differs widely from the Sum by the Bill prayed to be decreed, and the Sum declared by the Bill to be due is the only Sum that can be decreed and therefore the Complainant ought to Amend his Bill de Novo &c. Extract from the Minutes of last Court day read – The Court having taken the same into Consideration It is Ordered that the motion of the Attorney for the Complainant for leave to Amend be over ruled – Mr. Alderman Mitford dissents to the Resolution of the Court thinking that the Amendment prayed for might be allowed –

A true Extract

/ Signed / G. Taylor Regr.

A true Copy

/ Signed / G. Easley

Solicitor for Appellant

To

Dr. Kistnasawmy Esqr. in Account Current with the Estate of John Douglas Deceased Cr.

1794 June 30 By balance due ..... 39511 21 "

Pags. 39511 21 "

Extract

1780 Octr. 1 To Sundry Amount of your Mortgage Bond of this date to the deceased payable on demand ..... 11910 "

1794 June 30 To Interest on ditto from 1st October 1780 to this day at 12 per Cent per Annum being 13 3/4 ..... 21601 21 "

Pags. 39511 21 "

Madras 30th June 1794

Errors Excepted

(Signed) R. Parks Executor.

A true Copy

/ Signed / G. Easley

Solicitor for Appellant

To the Right Honorable Robert Lord Hobart
Governor in Council
Fort Saint George

In the Hon^ble
Court of Appeals

Between Richard Parks of Fort St George
Merchant Surviving Executor in East India
of John Douglas formerly of Fort St George
Merchant Deceased Complainant and
Kistnasawmy Eyer of Madras Inhabitant
Defendant—

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

Filed in my Office
the 12th Nov. 1794
Robert Clerk
Ass^t

This Respondent admits that the Appellant did
on or about the time in his Petition of Appeal set forth Exhibit
and file his Bill of Complaint in the Mayors Court against
this Respondent and this Respondent doth admit that the
Appellant did in and by his said Bill of Complaint amongst
other Matters and things set forth in manner form and
Substance as by the Appellants said Petition of Appeal
the same is recited charged or Expressed And this Respon^t
further says that it is true that he did Appear to the
Appellants said Bill of Complaint and did thereto
Exhibit

Exhibit and file his Answer upon Oath, and that the same did contain
the matters and things in the Appellants said Petition of Appeal
set forth And this Respondent admits that to his said Answer the
Appellant did file a General Repliciation and that thereto he this
Respondent did file a general Rejoinder and it might have been
as this Appellant has stated the fact to be before the Error in the
said Petition of Appeal stated had been discovered but this
Respondent doth not admit that the Error was the same in
manner and form as the same is set forth in Red Ink in and
by the Appellants said Petition of Appeal whereby he would
Endeavour to make it Appear a palpable clerical Error and
thereupon this Respondent says that by the practice of the said
Mayors Court the Sum Sued for in Pagodas is to be set forth in
the declarative part of the Bill and then Reduced into pounds
Sterling and the Appellant in conformity thereto did charge that
this Respondent did stand indebted unto him the Appellant
in the Sum of Three hundred and Ninety five Pagodas Eleven
fanams and twenty Cash making in sterling Money of Great
Britain at the Exchange of Eight Shillings for every Pagoda
the Sum of One hundred and fifty Eight pounds and two
Shillings or thereabouts which latter part the Appellant has
omitted to set forth in his said Petition of Appeal and which
this Respondent conceives he ought not to have omitted the
same

same being of material consequence as may hereafter appear for this Respondent Submits to this Honourable Court that even admitting the Sum in Pagodas had Arisen as the Appellant would suggest by the means of Mistating the decimal fractions yet that the Calculation of the Exchange in pounds Sterling cannot be Justified by the same Plea and further this Respondent submits to this Honourable Court that an Account Current as annexed to a Bill of Complaint is an Exhibit containing the particulars that compose the Aggregate Sum charged in the Bill and is therefore merely a paper of Reference and consequently as Dependant upon the Amount charged in the Bill can in no wise be allied as a Document by which such Amount may be corrected - and this Respondent further Answering says that he admits that the Appellant did on or about the time in his said Petition and Appeal for that purpose set forth move the said Mayors Court for leave to correct and Amend the Error in his said Bill contained and that this Respondent did object to the manner and form in which such correction and Amendment was by the Appellant moved to be made, and did suggest the mode to be adapted as adapted in like cases in Order to Obtain the Correction of the said error Apparent on the Appellants said Bill And this Respondent admits that the said Mayors Court taking the same into Consideration were pleased to over Rule the Appellants said Motion.

motion - And this Respondent doth except to that part of the Appellants Petition of Appeal commencing with the words "but your Petitioner further Shews that Mr. Alderman "Wilford" and ending with the Words" that the Amendment "prayed for may be allowed" because this Respondent says he is advised that it is the course of this Honourable Court not to allow the opinion of an and individual Alderman in opposition to the Order or Decree of the said Mayors Court to be introduced in the Pleadings before this Honourable Court and this Respondent doth therefore humbly submit to this Honble Court that the same ought to be Expunged with Costs And this Respondent further Answering says that he does not admit that the Appellant was or is aggrieved by the said Order of the said Mayors Court or that the same is erroneous or that it can possibly be Vexatious or that he the Appellant hath any Cause of Appeal therefrom to this Honorable Court -

And to the Appellants first Reason or Cause of Appeal this Respondent says he admit that it is the practice of Courts of Equity to allow of an Amendment of a Bill upon motion and says that it is a motion of course and never Refused in the said Mayors Court at any time before issue be Joined and this Respondent says he is advised that the said Mayors Court never did refuse the Appellant Leave to Amend

Amend his said Bill it was the mode of Amendment as proposed by the Appellant that the said Mayors Court refused to allow of for this Respondent says it is the practice of the said Mayors Court in cases where Amendments are Required that the party desirous of Amending do bring into the said Mayors Court an Amended Bill, and then move for leave to file the same which as this Respondent has already shewn is granted Accordingly and this Respondent says he is advised that the doctrine of Supplemental Bills as stated by the Appellants in and by his said Petition of Appeal doth not apply in the present instance but is a Question Totally unconnected therewith and altogether foreign thereto

In Answer to the Appellants Second Reason or Cause of Appeal this Respondents submits to this Honourable Court that the subject of the present Appeal does not as insisted on by the Appellant fall within the principle and Rule of the Determinations in his first Reason or Cause of Appeal set forth, nor does this Respondent admit that the Petitioner first discovered the Error in his said Bill or that if such be the fact, he concealed the same, for this Respondent says that the motion for Amendment thereof was not made until this Respondents Clerk in Court was about to point out the said Error to the said Mayors Court and pursue those steps that Appeared necessary to be taken thereon and this Respondent further humbly submits to this Honourable Court that the said Error was not merely clerical as the Appellant in and by his said Second Reason or Cause of Appeal has insisted on, nor made by the Copier of the said Bill as the Appellant in another part of his said Petition of Appeal he has Asserted the fact to be, on the contrary this Respondent says as he has hereinbefore shewn that the same was a subject in which the Appellant had combined facts and Circumstances and in which he had Exercised both his Reason and his Judgment and Notwithstanding the Assertion of the Appellant Regarding the Amendments proposed this Respondent doth further submit to this Honourable Court that altering of Three hundred and Ninety five Pagodas or Eleven fanams and Twenty Cash into the Sum of Thirty Nine thousand five hundred and Eleven Pagodas and twenty one fanams and the Sum of One hundred and fifty Eight Pounds and two Shillings or thereabouts into the Sum of Fifteen thousand Eight hundred and four Pounds Eleven Shillings and ten pence is certainly introducing new matter and that although as the Appellant suggests the said Error was neither the charging part of the Bill, nor the prayer thereof yet that the error is not by Reason thereof

lefsened

lessened but on the contrary considerably increased for this Respondent says it is in the declarative part of a Bill which Shews the Sum for which the Plaintiff brings his Suit, and that the charging part and prayer of a Bill arises out of the declarative part and wholly dependant thereon and that therefore the Dulcrative part of a Bill is the Vital part thereof and not as the Appellant would make it Appear "merely Referential and declaratory of an Account Current annexed thereto and part thereof" And this Respondent further Answering says he admits that he did not file any Plea or Demurrer to the Complainants said Bill of Complaint and that he did actually Answer and Rejoinder on the merits of the said Answer but this Respondent humbly submits to this Honourable Court that he was not by Reason thereof precluded from making his Objections to the irregular mode the Appellant thought proper to adapt to correct Errors in his said Bill And this Respondent says that the Appellant well knows that he might have corrected his said Errors without an Appeal to this Honble Court by an Amended Bill which as this Respondent has herein before shewn could not have been refused by the said Mayors Court and the Appellant also well knows that the said Mayors Court did express themselves to that purport or Effect And this Respondent says that he is advised that if he had not by his Clerk in Court suggested to the Solicitor for the Appellant the necessity of correcting the Errors in his said Bill contained, and that the same had gone down to a hearing with the said Errors therein that the said Mayors Court could not have given a Decree for more than the Sum of Three hundred and Ninety five Pagodas Eleven fanams and Twenty one Cash Notwithstanding the Appellant had in and by his said Bill prayed that the said Mayors Court would Decree this Respondent to pay the Sum of Fourteen thousand Nine hundred and ten Pagodas together with an Interest thereon for this Respondent submits to this Honourable Court that it is Repugnant to Reason that one man should Extort from another a larger Sum than he had declared to be due to him And this Respondent submits to this Honble Court that the Appellant has followed up by his said Petition of Appeal the Errors set forth in his said motion for leave to Amend his said Bill of Complaint for this Respondent says that the Appellant has not set forth in his said Petition of Appeal nor has he annexed thereto, as he ought to have done an Extract from the Minutes of the said Mayors Court of the fourteenth day of October containing the motion by

Court

by him made for leave to Amend and correct the Errors in his said Bill contained and therefore this Honble Court have nothing before them, Whereon to form their Judgment Regarding the injury complained of by the Appellant and the Relief by him prayed—

For all which Reasons and such others as may be offered at the hearing this Respondent humbly prays that this Honble Court will be pleased to dismiss the Appellants Petition of Appeal with Costs and that this Respondent may have such other Relief in the premises as to this Honble Court shall seem Meet—

/Signed/ I. Stuart Hall
Solicitor for Respondent

Court of

Court of Appeals at Madraspatnam } Saturday the 6th. day of December Anno Domini 1794—

Between Richard Parks of Fort Saint George Merchant Surviving Executor in the East India of John Douglas formerly of Fort Saint George Merchant Deceased Appellant and Kistnasaumy Braming of Madras &c 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 Extracts from the &c Proceedings of the Honble the Mayors Court together with the Order of the said Court given in this Cause on Tuesday the 21st. day of October Anno Domini 1794 upon due Consideration had of the Matters therein severally Contained and of the &c 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 dated the 21st. day of October Anno Domini 1794 be Reversed and that each party do pay their own Costs—

/Signed/ R. Clerk CCM

To

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

In the Court of Appeals
at Madraspatnam

Between Charles Carlisle Administrator
to the Estate and Effects of Pullion
Spencer Deceased Complainant and
Mocundoo Naick of Madras Defendant

The humble Petition and Appeal of the
above named Defendant—

Sheweth

That on the thirteenth day of June in the present
year of our Lord One thousand Seven hundred and Ninety four
the above named Complainant as Administrator aforesaid
did file a Bill of Complaint in the Honourable the Mayors
Court at Madraspatnam against your Petitioner for the
Recovery of the Sum of One hundred and Ninety Eight Pagodas
one fanam and thirty three Cash charged to be due and owing
to him by your Petitioner upon two Notes of hand charged to
have been Executed by your Petitioner and an Account
Current Copy whereof was annexed to the Complainants
said Bill of Complaint - and your Petitioner further

Sheweth that a Summons did issue from the said Mayors
Court directing your Petitioner to appear to and Answer the
said Bill of Complaint and Accordingly your Petitioner did
Appear by his Attorney at Law - and the usual Rules having
passed for your Petitioner to Answer - your Petitioner further
Sheweth that before such Answer could be prepared in time to be
filed the said Mayors Court on the Twenty Ninth day of the
Month of July at the instance of the Complainants Attorney
passed a Decree that your Petitioner should pay unto the
Complainant the full and Just Sum of One hundred and Ninety
Eight Pagodas one fanam and thirty three Cash together with
the Interest due or which might grow due thereon &c also all Costs
of Suit as will more fully appear by the original of the said
Decree Extract or order from the Minutes of the said Mayors
Court hereunto annexed for the inspection of this Honourable
Court and which your Petitioner prays may be admitted as part
of this his Petition —

From which said Decree Extract or order
of the said Mayors Court your Petitioner doth Appeal to this
Honourable Court as he conceives himself much Aggrieved and
injured thereby —

First ——— Because it is the practise of the said Mayors
Court to grant a further time of several Weeks According to the
Circumstances

Filed in my Office
the 11th August 1794
Robert Clerk

Circumstances of the Case for a Defendant to put in his Answer on a prayer to that effect — therefore your Petitioner humbly Submits that no prejudice could have happened to the Complainant if the said Court had granted a further time for your Petitioner to file his Answer —

Secondly — Because your Petitioner did pray Oyer of the two Original Promissory Notes on which the Complainant hath grounded his Complaint — as by his said Bill may Appear which said prayer of your Petitioner the said Honourable the Mayors Court were pleased to over Rule —

Thirdly — Because even had your Petetioner Omitted to make such prayer as in his Second Reason is stated it was the indispensible Duty of the Complai= =nant to have produced and moved the Instruments on which his Claim was founded, which the Complai= =nant having Neglected to do — your Petitioner humbly Submitteth that the said Honourable the Mayors Court have given a Decree upon the bare averment of the Complainant without any proof whatever

Which

which your Petitioner doth humbly contend was contrary to Law —

For all which Reasons and such others as may be offered at the hearing your Petitioner prays that this Honourable Court will be pleased to Set aside the said Decree Extract or order of the said Mayors Court and to Order that a Rule may issue to the said Mayors Court for a further time for your Petitioner to file his Answer to the said Bill of Complaint of the Complainant —

[Signed] C. Samuel
Solicitor for the Appellt

Extract

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 29th Day of July Anno Dominis 1794 —

Present

Mr James Call Senior Alderman
Andrew Ross John Mitford and
Alexander Cockburn Aldermen

Charles Carlisle Administrator of Pullien Spencer Deceased —
vers
Moocondoo Naick

The Attorney for the Complainant produces to the Court a Certificate from the Register Setting forth that the Usual Rules have issued for the Defendant to answer the Complainants Bill Which he has neglected doing — He therefore prays that a Decree may now pass — Bill Read —

It Appearing by the Records of this Court that the usual Rules have issued for the Defendant to Answer the Complainants Bill which he has neglected doing This Court doth therefore think fit to Order and Decree and doth Accordingly Order and Decree that the Defendant shall pay unto the Complainant the full and Just Sum of One hundred and Ninety eight Pagodas one fanam and thirty three Cash / Pagodas 198 . 1 . 33 / 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. C. Atkinson Dy Regr.

To

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

In the Court of Appeals
at Madraspatnam

Between Charles Carlisle Administrator with the Will annexed to the Estate and Effects of Pullien Spencer Deceased Complainant and Moocoondoo Naick of Madras Defendant

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

This Respondent admits that he did as Administrator with the Will annexed of the Estate and Effects of Pullien Spencer Deceased on the Thirteenth day of June in the present year of Our Lord One thousand Seven hundred and Ninety four file and Exhibit a Bill of Complaint in the Honourable the Mayors Court at Madraspatnam against the said Moocondoo Naick the Defendant above named for the Recovery of the Sum of One hundred and Ninety Eight Pagodas one fanam and thirty three Cash Current Money of Madras being so much Principal and Interest arising upon Two Notes of hand Executed by the said Defendant to this Respondents Intestate in his life time And this Respondent admits that a Summon did Issue from the said Mayors Court directing the said Defendant to Appear to and Answer this Respondents Bill of Complaint and Accordingly the Defendant did Appear by his Attorney at Law and the usual Rules having passed for the Defendant to Answer the said Bill which he Neglected doing The said Honourable Mayors Court were pleased to Order and Decree that the Defendant should pay to this Respondent the Sum Sued for with Interest and Costs of Suit, as by the said Decree Relation being thereunto had will more fully and at large Appear — And this Respondt denies that the Appellant is Aggrieved by the Decree of the said Mayors Court or that he has any Just Cause or Reason to Appeal therefrom or on the Contrary this Respondent saith that it has been done from litigious motives and with a view solely to procrastinate the payment of a Just debt

And for Answer to the first Reason given by the Appellant

Filed in my Office
the 14th Sept 1794
J. Webb
Actg Clk

Appellant as Cause for Appealing from the
Decree of the said Mayors Court This Respondent
admits that the said Court are some time induced
from the peculiar Circumstance of a Defendants
Case, to grant time for Answering the Bill of
Complaint beyond the Usual Rules But when they
grant such indulgence, It is always upon the prayer
of the Defendant supported by an Affidavit —
setting forth the special Circumstance on which he
relies But in the present case no prayer was made
for further time, nor Affidavit filed, as will Appear
by Reference to the said Decree And therefore upon
this Respondent producing a Certificate from the
Register setting forth that the usual Rules had issued
for the Appellant to Answer this Respondents Bill
Which he had Neglected doing they therefore Ordered
a Decree to pass as a Matter of Course no Objections
Whatever having been made thereto —

To the Second Reason or Cause of Appeal This Respondent
saith that the Appellant did not pray Oyer of the
Two

Two Original Promissory Notes on which the Action
has been brought for if he had done so the same would
have Appeared upon the Record And this Respondent
humbly Submits to this Honourable Court that
an Assertion altogether so false and made with a view
to mislead and deceive them deserves some severe
Mark of their Reprehension —

To the Third Reason this Respondent saith that
the Documents upon which an Action is founded
are never produced unless prayed for, And a
Defendant failing to make that prayer, It is considered
in every Respect as an Acquiescence on his part in the
Justness of the Claim —

For all which Reasons
and such others as may be offered at the hearing
this Respondent humbly prays that this Honble
Court will be pleased to Affirm the Decree of
the said Honourable Mayors Court And as the
Appellant

Appellant has evinced a Wanton and very litigious Disposition This Respondent further prays this Honourable Court will make their disapprobation thereof by Taxing him with Exemplary Costs—

/Signed/ G Chalmer
Solicitor for Respondent

Court of Appeals at Madraspatnam } Saturday the 6th day of December Anno Domini 1794

Between Mooroondoo Naick of Madras Inhabitant Appellant and Charles Carlisle a Captain in the Service of the United Company and Administrator with the Will annexed of all and singular the goods Chattles Rights and Credits of Pullin Spencer Deceased late one of the attornies of this Honourable Court 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 29th day of July 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—

/Signed/ Robert Clerk
Clk Court

Court of Appeals
at
Madraspatnam

Saturday the 6th day of December
Anno Domini 1794—

Between Emanuel Samuel of Fort St George one of the Attornies of this Honble Court Appellant and James Daly of Madras Esqr and Suncoo Pedda Kistnamah Chitty — Administrator of Chinna Kistnamah Naick Deceased Respondent—

The Attorney for the Respondent Moves for a Rule to pass that the Appellant may give good and Substantial Security for Interest and Costs in the said Suit pursuant to the Charter Within 15 days in default thereof that the Petition of Appeal to the King in Council be taken off the file — and that the Clerk of Appeals may be restrained in the meantime from issuing a Transcript of the Proceedings —

Ordered that the Consideration defered untill Tuesday the 9th Instant —

Thur
/Signed/ Robert Clerk
Ath

Thursday

Thursday the 9th December 1794,
Present,
The Right Honble Lord Hobart,
Edward Saunders and C. W. Fallofield,

Between Emanuel Samuel of — Fort St George One of the Attornies of this Honble Court — Appellant and James Daly of Madras Esqr and Suncoo Pedda — Kistnamah Chitty Administrators of Chinna Kistnamah Naick deceased, Respondents, —

Motion of the Attorney for Respondents and Order of last Court day Read. —

It appearing that the Practice which has hither to obtained in this Court of not Requiring Attornies to give Security for Interest and Costs on appeals to the King in Council is not Warranted by the Charter it is hereafter to be disallowed in all Cases And in the present case it is Ordered that the Appellants do give Security for Interest and Costs within 15 days from this date or in default thereof that the Appellants Petition and Appeal be taken off the File —

Thur
/Signed/ Robert Clerk
Ath

To

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

In the Honble the
Court of Appeals.

Between Covoor Mootiah Moodelly Surviving
Administrator of Covoor Vydenada Moodelly
deceased Complainant And Benjamin Sulivan
Administrator of Henry Boyle Sulivan deceas
Defendant. —

The humble Petition And appeal of the Abovenamed
Benjamin Sulivan, —

Sheweth,

That the above named Covoor Vydenadah Moodelly
did on the Twenty eighth day of October One thousand Seven
hundred and Eighty file a Bill of Complaint in the Mayors
Court at Madras against Henry Benjamin Sulivan
a Captain in the Service of his Highness the Nabob of
Arcot for the recovery of Pagodas Nine hundred
Charged to have been due upon a promissory Note
Copy whereof was stated to be annexed to the said Bill
of Complaint and that the said Mayors Court on the
Twelfth day of December then Next following passed a Decree
against the said Henry Benjamin Sulivan for default of answer
and thereby directed the said Henry Benjamin Sulivan to pay
the said Covoor Vydenadah Moodelly the said Sum of Nine
hundred

Filed in my Office
the 2d. June 1794
Robert Clerk
Ctr

hundred Pagodas together with all Interest due thereon and all
Costs of Suit. —

Your Petitioner Sheweth that on the Twenty fifth
of the same Month of December Henry Boyle Sulivan filed a Petn
and Appeal in this Honble Court and Stating therein that being the
only person of the Surname of Sulivan who bare the Commission of
Captain in the Service of the said Nabob he had conceived that the
said Bill of Complaint might have been filed Against him and
had therefore directed his Attorney to Appear for him but that
being then upon Service it was not in his power to give instruc-
tions to his said Attorney in due time to plead a Misnomer or any
other Plea or to file an Answer to the said Bill of Complaint
and further stating that in default thereof the said Mayors Court
had pronounced the Decree above Mentioned Against the
Said Henry Benjamin Sulivan: wherefore he prayed that as
his Name was Henry Boyle Sulivan and not Henry Benjamin
Sulivan he may be Allowed for the furtherance of Justice and
to enable the said Covoor Vydenada Moodelly to Sue him by his
proper Name one Weeks time to plead to or Answer the said
Bill of Complaint. —

And your Petitioner Sheweth that the
Said Covoor Videnadah Moodelly filed his Answer to the said
Petition and Appeal on the tenth day of January One thousand
Seven hundred and eighty one and dying some Months after
that Covoor Yagambrum Moodelly and Covoor Mootiah Moodelly
Obtained

obtained Letters of administration under the Seal of the Mayor's Court of Madras to his Estate and Effects some time in the year of our Lord one thousand Seven hundred and Eighty two, —

Your Petitioner Sheweth that at the time of obtaining the said Letters of administration to the estate and Effects of the said Covoor Vydenadah Moodelly by them the said Covoor Yagambra Moodelly and Covoor Mootiah Moodelly and for Several Months after the said Henry Boyle Sulivan was alive and that although the said Suit had abated by the Death of the said Covoor Vydenada Moodelly that they the said Covoor Yagambra Moodelly and Covoor Mootiah Moodelly did not during the life time of the said Henry Boyle Sulivan revive nor attempt to revive the said Suit against him either by his proper Name of Henry Boyle Sulivan or by the Name of Henry Benjamin Sulivan. —

And your Petitioner Sheweth that the said Henry Boyle Sulivan departed this Life some time in the Month of February Ane thousand Seven hundred and eighty three and that having died Intestate Letters of Administration of his Estate and Effects of were by the said Mayor's Court granted to your Petitioner as his Brother and Next of kin on or About the fourth day of March then Next following. —

Your Petitioner Sheweth that by the said death of the Henry

Henry Boyle Sulivan the surviving Party to the said Suit if a party he was by the said Name of Henry Benjamin Sulivan meant and intended to be the said Suit was as he is advised and believes at an end, and in no wise before the said Mayor's Court and — therefore that no further proceeding could be taken or allowed in the said Suit without a gross and Manifest Violation of that order and regularity which is Essentially requisite to the due administration of Justice and without the introduction of confusion and uncertainty in the mode of pleading. — And your Petitioner sheweth that no new Bill of Complaint having been then filed by the said Covoor Yagambram Moodelly and Covoor Mootiah Moodelly against your Petitioner as Administrator of the Estate and Effects of the said Henry Boyle Sulivan your Petitioner conceived either that the said pretended Note of hand Never had existence or that if the same had been duly executed it had been fully paid off and discharged by the said Henry Boyle Sulivan who your Petitioner sheweth lived two years and four Months or thereabouts after the time of filing the said Bill of Complaint to wit from the Twenty eighth of October Ane thousand Seven hundred and eighty to the Fifteenth of February Ane thousand Seven hundred and eighty three and therefore your Petitioner as Administrator to his said deceased Brother proceeded to pay off the debts and demands upon his estate as fast as he could collect Assets for that purpose and on the Twenty fourth day of March Ane thousand Seven hundred

4

and eighty five had not only paid away the whole of the said
Assets but was then actually in advance the Sum of Two hundred
and Two Pagodas Nine fanams and fifty Six Cash which is
still due and Owing to your Petitioner, —

But your Petitioner sheweth that on the Twenty
fourth day of June One thousand Seven hundred and Eighty
Eight Six years after the death of the said Covoor Videnada =
= Moodally five years after the deaths of both Plaintiff and
Defendant in the said Suit and three years and upwards
after your Petitioner had fully Administered all the Assets of
the Estate of the said Henry Boyle Sulivan which had come to
his hands aforesaid and after your Petitioner had expended
for the honor of his deceased Brother in the discharge of his fair
and Acknowledged debts the further Sum of One thousand Pags
or thereabouts of his own proper Money they the said Covoor yagam =
= brum Moodelly and Covoor Mootiah Moodelly thought proper
to file a Bill of Revivor against your Petitioner as admtor
of the Estate of Henry Benjamin Sulivan alias Henry Boyle
Sulivan and tho the proceedings in the Kings Ordinary in the
said Mayors Court stated your Petitioner to be Administrator
to the Estate of Henry Boyle Sulivan and in No wise to the
Estate of Henry Benjamin Sulivan alias Henry Boyle
Sulivan and though your Petitioner by his attorney shewed
the same as also that both the parties to the Original Suit,
had been long dead and the said Suit in course out of

Court

Court as good and Sufficient cause why the said Suit should not
be revived, — Yet your Petitioner sheweth that the said Mayors
Court thought fit to Order and direct that the said Suit should
stand revived and that on an Appeal brought from the said Order
this Honble Court were pleased on or about the Eighteenth day of
April One thousand Seven hundred and eighty Nine to affirm
the same, —

And your Petitioner Sheweth that the
said Suit being thus revived the Petition and Appeal of the
said Henry Boyle Sulivan which had as aforesaid been
filed so early as the Twenty fifth day of December One —
Thousand Seven hundred and eighty and which in —
consequence Must have stood at the head of the list of Causes
to be heard and determined in this Honble Court ought to have
been brought by the said Complainants to a Speedy hearing
and decision, yet your Petitioner Sheweth that no Attempt
was made on the part of the said Complainants to bring the said
Cause to a hearing until the Twenty fourth day of December
One thousand Seven hundred And Ninety One when this Honble
Court thought fit to order and direct that the aforesaid Decree
of the said Mayors Court bearing date the Twelfth day of
December One thousand Seven hundred and eighty should
be reversed: and although the Petition and Appeal of the said
Henry Boyle Sulivan prayed for the Allowance of One Week
only to plead or Answer this Honble Court were pleased to allow

Your

your Petitioner fourteen days for that purpose. —

And your Petitioner Sheweth that he did thereupon prepare and in due time file his plea And Answer as Administrator to the said Henry Boyle Sulivan and for Plea did set forth the Misnomer in the Bill of Complaint to the like tenor And purport as Set forth by his Intestate in his Petition and Appeal to this Honble Court And praying Judgment of the said Mayors Court by Reason of Such Misnomer proceeded to Answer the said Bill of Complaint And for Answer stated Nearly to the following purport namely that he did not know whether the said Henry Boyle Sulivan did Sign the said Note of hand or whether if he had signed the Same he ever received the full or any consideration therefor and in case he might have received a full consideration for the same that he did not know whether the whole or Some part thereof may not have been discharged by the said Henry Boyle Sulivan during the life time of the said Covoor Vydenada Moodelly And your Petitioner urged that it was incumbent on the Administrators of the said Covoor Vydenadah Moodelly to Set forth the same fully for the Satisfaction of the said Mayors Court for that the whole of the circumstances of the case respecting the said Note of hand and the Conduct of the said Covoor Vydenadah Moodelly And of his said Administrators in the premises appeared Mysterious and unjustifiable. —

unjustifiable for your Petitioners observed that the said Note of hand bore date the Twenty Seventh day of August One thousand Seven hundred and eighty when it was well known that the said Henry Boyle Sulivan was about to quit this Presidency on public Service and that if the said Covoor Vydenada Moodelly was so urgent as to file a Bill for the recovery thereof in two Months after the date of the said Note, that is to Say, on the Twenty eighth day of October Next following it Seemed extraordinary and unaccountable that after his death his Administrators should have omitted to revive the Suit during the life time of the said Henry Boyle Sulivan and after the death of the said Henry Boyle Sulivan should likewise have omitted to revive the same against your Petitioner from the fourth day of March One thousand Seven hundred and Eighty three, when Letters of Administration were granted to your Petitioner by the said Mayors Court to the estate and effects of the said Henry Boyle Sulivan unto the Twenty fourth day of June One thousand Seven hundred and eighty eight being a period of five years and upwards. —

And your Petitioner Sheweth that in order to be fully informed of the premises And to do that Justice which he owed to the Estate of his Intestate he filed a Bill of discovery against the said Administrators of Covoor Vydenadia Moodelly interrogated them to the

above

above points and to such others as appeared Material towards obtaining full information to which said Bill of discovery the said Admtors put in their Answer and therein blending with the points of information to which they were interrogated certain ill founded Assertions and unjust imputations to the prejudice of your Petr and his said Intestate your Petitioner was compelled to Abviate and remove the same and to Shew that the extraordinary delay in bringing the Cause in question to a hearing was in no wise imputable to him and that your Petitioner had not trifled or attempted to trifle with the surviving Administrator of the said Covoor Vydenada Moodelly in order to prevent his prosing the said Cause to a decision and further that it appeared by his Inventory and Account Current of the Estate of his Intestate of Record in the said Mayors Court that he had Applied all the Assetts thereof which had come to his hands to the discharge of the debts of his said Intestate and that he then was as he still continues to be a considerable Creditor of the said Estate not by Virtue of any Claim on his Intestate at the time of his death but by reason of his Anxious attention to the Memory and Credit of his said Intestate as his Brother and further that having no personal objection to the said Surviving Administrator of Covoor Vydenada Moodelly or to Covoor Vydenada Moodelly personally his only Motive for not discharging the said demand was from an impression that it was not fairly due, and it had been under contest by his Intestate and as there appeared to be on the part of the Complainant no progress whatever in the Cause from the Eleventh day of January One thousand Seven hundred and Eighty one when he filed his Answer to the Appeal of the said Henry Boyle Sulivan to the Twenty fourth day of June One thousand Seven hundred and Eighty eight when the Bill of revivor against your Petitioner was filed the same being a period of Seven Years five Months and thirteen days and further because the said demand, though contested as aforesaid by your Petitioners Intestate, had not been proved nor attempted to be proved by the Original Complainant nor the Name subscribed to the Note of hand Mentioned in the Original Bill of Complaint proved to be the Name or proper hand writing of your Petitioners said Intestate nor the said Note of hand produced or shewn or offered to be produced or shewn to your Petitioner. —

And your Petitioner sheweth that after the usual proceedings were had and issue Joined two witnesses were examined on the part of the Surviving Administrator of Covoor Vydenada Moodelly neither of whom was interrogated to the hand Writing of the said Henry Boyle Sulivan nor was the Name said to be Subscribed to the said Note of hand any how proved to have been Written by your Petitioners Intestate the said Henry Boyle Sulivan Neither were the said Witnesses interrogated to any other Matter of importance to the Cause than to Applications to your Petitioner and promises from your

Petr

Petitioner to discharge the said demand when he should have sufficient
Assets for that purpose which promises your Petitioner might have
Made in regard to the demand of the said Covoor Vydenada Moodelly
in the same manner as he might have promised in regard to all
other Demands upon the Estate of his said Intestate, but your
Petitioner sheweth that the said promises Must in their nature
be considered as aforesaid as provisional that is to say, provided
the said demands appeared to your Petitioner to be clear fair
and honest demands and not otherwise. —

And your Petitioner sheweth that the Surviving
Administrator of the said Covoor Vydenada Moodelly did in
his Answer to your Petitioners Cross Bill state that your
Petitioner had no right to pay away to Simple Contract Creditors
any part of the Estate of his said Intestate at a time when he
had obtained the Judgment of the said Mayors Court and therefore
prayed that if the Estate of your Petitioners Intestate should
not now be Sufficient to pay off his demand that your Petr.
should be directed to pay the same out of his own pocket.
but your Petitioner shewed in his Replication to the said
Answer that the said Surviving Administrator to the Estate
of the said Covoor Vydenada Moodelly had no right whatever
to Claim a priority of Payment his demand being a Simple
Contract demand as were all other demands upon the Estate
of your Petitioners Intestate, and that as to the Judgment
of the said Mayors Court the same had been reversed and
set aside in this Honble Court. —

And

And your Petitioner sheweth that the said Cause
coming on to be heard on Tuesday the Twentieth day of May
One thousand Seven hundred and Ninety four the said Mayors
Court did decree that your Petitioner should pay unto the said
Surviving Administrator of the said Covoor Vydenada Moodelly
the Sum of Nine hundred Pagodas out of the Estate of
Henry Bayle Sulivan deceased together with all such
Interest as then was or thereafter should become due untill
full payment should be made: as also all Costs of the
Original Suit — And in default of Sufficient Assets to
Satisfy the said demand that your Petitioner should pay
the same out of his own pocket — And they did further order
and Decree that your Petitioners Cross Bill should stand
dismissed and that the costs thereof should be paid by your
Petitioner out of his own pocket as may more fully
appear by Copy of the said Decree hereunto annexed Wherefore
your Petitioner appeals to this Honble Court from the said
Decree as grievous and oppressive for the following Amongother
Reasons. —

First — Because the Decree of the said Mayors Court
under date the Twelfth day of December One thousand
Seven hundred and eighty against Henry Benjamin
Sulivan being reversed by this Honble Court on the Twenty
fourth day of December One thousand Seven hundred
And Ninety One the Same was of Necessity reversed
abinitio — And therefore gave not to the Surviving Admtor

of

of Covoor Vydenada a right to priority of payment over any other Simple Contract Creditor Much Less a Judgment Debt but leaving the demand in that Class of debts in which it originally was Viz. that of Simple Contract debts and which Class of debts embraced the whole of the demands on the Estate of your Petitioners Intestate reserved and Secured to your Petitioner the Right of paying in preference such of the said demands as appeared to his satisfaction to be just and honest and that your Petitioner in the execution of such his right could be guiltty of no "devastavit" whereby in failure of Assets he may be by law compelled to pay the Complainants demand out of his own pocket. —

Secondly. ——— Because no attempt having been made to prove the said Note of hand or that the Name thereto Subscribed was of the proper hand Writing of your Petitioners Intestate, and your Petitioner never having seen the same, and being in total ignorance whether the same if ever executed, had or had not been paid in the whole or in part during the life time of one or both of the Original Parties and the said Henry Boyle Sulivan having for a considerable time before his death contested the same your Petitioner was Justifiable in filing his Cross Bill for the discovery of these facts and was as he conceives bound in duty so to do wherefore he ought not to be decreed to pay the Costs of the Cross Suit out of his own pocket. —

Thirdly ——— Because any promise whether Verbally or by letter which your Petitioner as Administrator to his said Intestate may have made to pay the said demand when he should have Assets to enable him thereto Necessarily implied a condition that your Petitioner should be fully satisfied that the same was Justly due and Owing and not otherwise and the Original Note of hand Never having been produced to your Petitioner by the said Complainant or by any Person on his behalf after Administration was granted to him to the Estate and Effects of his said Intestate or as he fully believed at any time before it was not possible for him to know Whether the same was or was not subscribed by his said Intestate and therefore he could not be Satisfied that the same was Justly due And Owing — Wherefore your Petitioner conceives that he could not be absolutely and unconditionally bound by Reason of any such promise to pay the amount of the said demand either out of the Assetts of the said Estate or out of his own funds. —

Fourthly ——— Because no attempt having been Made to prove the said Note of hand or that the Name thereto Subscribed was of the proper hand Writing of your Petitioners Intestate Acknowledged in his life time the Amount thereof to be due the Original Bill of Complaint having no other ground on which it could be Supported against the Estate and Effects of your Petitioners Intestate ought to have been dismissed with Costs. —

Fifthly ——— Because the Complainant having introduced indecient and improper matter into his Answer to your Petitioners Cross Bill and by attempting therein to traduce the Credit and Characted of your Petitioner and his Intestate compelled your Petitioner to enter into a Justification of himself and his

Said

Said Intestate and thereby giving occasion to an unnecessary length of pleading, ought to have been decreed to pay the Costs thereof.

Sixthly — Because the said Decree directs the Complainants demand to be paid with all Interest due and to grow due thereon untill full payment be made without ascertaining the rate at which Interest should be charged thereon thereby leaving it in the discretion And power of the said Complainant to Sue out execution thereon worth Interest at the rate of Twelve ℔ Cent if he thinks proper whereas by the Charter of his late Majesty bearing date the eighth day of January in the Twenty Sixth year of his Reign And by which Charter the said Mayors Court and this Honble Court were erected and established the Interest to be Decreed should not exceed the current rate of Interest which prevailed at the time of pronouncing such Decree which Current Interest at the time when the Decree herein appealed from was pronounced did not as your Petitioner is Advised and believes Amount to more than Eight ℔ Cent

For all which Reasons and Such others as may be offered at the Hearing of this Cause your Petitioner prays that the aforesaid Decree of the said Mayors Court may be Reversed and that your Petitioner may receive such further and other relief as to this Honble Court may seem meet and proper. —

/Signed/ Stephen Popham, Solr. for
Robert Williams Appellant

Extract

Mayors Court
at
Madraspatnam

Tuesday the 20th day of May
Anno Domini 1794. —

£ 5

Present

Henry Chicheley Michell Esqr. Mayor.
James Call. William Webb,
Josias DuPre Porcher. Andrew Ross
John Mitford James Daly
William Abbott and Alexander Cockburn
Aldermen

Between Covoor Mootiah Moodelyar of Madras Inhabitant Surviving Admr. of all and Singular the Goods Chattles and Credits of Covoor Vydenadah Moodelly late of Madras Inhabitant Deceased Original Complainant and Cross Defendant and Benjamin Sulivan of Fort St George Esqr. Administrator to the Estate and Effects of Henry Boyle Sulivan deceased Original Defendant, and Cross Complainant,

Mayors Court

These Causes Coming on to be heard and debated this day in the presence of the Attornies on both Sides on Reading the Original Complainants Bill with Copy, of a Note annexed the Bill of Revivor The Original Defendants Plea and answer The Cross Bill The Replication The Cross Answer The

The Rejoinder the Cross Replication The Cross Amended Rejoinder
The Interrogatories and Depositions on the Part of the Original
Complainant and Cross 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 Original Defendant
do pay unto the Original Complainant out of the Estate &
Effects of Henry Boyle Sulivan Deceased the full and
Just Sum of Nine hundred Pagodas / Pag. 900 — /
together with all such Interest as now is or shall —
hereafter become due thereon untill full payment is made
Wrade also all Costs of the Original Suit and indefault
of Sufficient Assets to Satisfy the Complainants Demand
that the Defendant do pay the Amount out of his own
Pocket and this further Order and Decree that the Cross
Bill do stand dismissed and that the Costs thereof be paid
by the Cross Complainant out of his own Pocket —

Wm
/Signed/ George Taylor
Regr

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

In the Honble
the Court of Appeals

Between Benjamin Sulivan Admtor
to the Estate and Effects of Henry Benjamin
Sulivan alias Henry Boyle Sulivan
deceased Appellant and Covoor Mootiah
Moodelly Surviving Administrator of the
Estate and Effects of Covoor Vedenadah Moodelly
deceased. Respondent —

The Answer of the above Named Respondent
to the Petition and Appeal of the above Named Appellant.

This Respondent admits that the above Named
Covoor Vydenada Moodelliar did on the Twenty Eighth day of
October which was in the year of Christ One thousand Seven
hundred and Eighty Exhibit and file his Bill of Complaint
in the Mayors Court at Madraspatnam against Henry Ben=
-Jamin Sulivan a Captain in the Service of His Highness
the Nabob of Arcot for the Recovery of the Sum of
Nine hundred Pagodas due and Owing upon a promissary
Note a Copy whereof was annexed to the said Bill of
Complaint And this Respondent Admits that the said
Mayors Court did at the time And for the Reasons in
the Appellants said Petition of Appeal set forth give a

Filed in my Office
the 5th July 1794
Robert Clerk
Ctr

Decree

Decree on the said Bill of Complaint in Substance as the
is by the Appellant stated in his said Petition of Appeal.—
this Respondent Admits that the Appellants Intestate di
at the time by the Appellant in his said Petition of Appeal
Set forth file a Petition of Appeal in this Honble Court and
admit that the Appellants said Intestate might in his said
Petition of Appeal Set forth the Several Matters and things
by the Appellant insisted on in his said Petition of Appeal
of the Appellants said Intestate the said Covoor Vydenadah
Moodelly did exhibit and file his answer about the time in
the Appellants said Petition of Appeal Set forth and did by
his said Answer Shew that the Appellants said Intestate
Appear to the Bill of Complaint filed Against him by the
Covoor Vydenadah Mo[odelliar] upon the Usual Summons
Without Making Any Objection thereto And that he did
upon the Usual Rules for Answer having Expired put in a
plea or Answer thereto nor did he object to the Rules that
issued in the Cause but did by his Attorney in Court consent
thereto that upon the certificate being produced in confor-
=mity to the practice of the said Mayors Court in Order to
obtain a Decree the Attorney of the Appellants Said
Intestate did not Object thereto but did allow the
said Decree to pass.— That if it was true that the
Appellants said Intestate had been Baptized by the
Name of Henry Boyle he could not avail himself
of the misnomer of Henry Benjamin after he had
Suffered a decree to go Against him in those

Names

Names as the said Covoor Vydenadah Moodelliar did say
might Appear in Several Adjudged Cases reference being
thereunto had that if a Misnomer really existed the Appellants
said Intestate should have regularly pleaded the same and
have Set forth his real Name upon Oath that in Law no
Man could have two Names of Baptism and that as the
Appellants said Intestate acknowledged he knew of no
other person in the Service of his said Highness the
Nabob of the Rank of Captain And therefore conceived
the Bill to have been filed against him he thereby
admitted the identity of his power And that as he had
not put in any plea on Oath he the said Covoor Vyde-
=nadah Moodelliar could not Amend his Bill —
According to the prayer of the Appellants said Intestate
for that if he did he the Appellants said Intestate
might plead thereto that his Name was not Henry
Boyle but Henry Benjamin Lobo[ano] And this
Respondent admits that some sort time after filing
the said Answer the said Covoor Vydenadah Moodelliar
did depart this life and that Covoor Yagambram and
this Respondent did obtain Letters of Administration
of his Estate and Effects some time in the year One
thousand Seven hundred and Ninety two.— And this
Respondent admits that the Appellants said Intestate
might have departed this life about the time in
the Appellants said Petition of Appeal Set forth

and

and that the Appellant did Obtain Letters of administration of his Estate and Effects as Brother and Neat of kin.— But this Respondent by no means admit the assertion in the appellants said Petition of appeal contained that the said Suit was at anend and that no further proceedings could be taken and Allowed therein Without a Violation of that order and Regularly which was essentially Necessary to the due administration of Justice for this Respondent Submits to this Honble Court that the appellants said Intestate having by his attorney Appealed to the said Bill of Complaint and Suffered the Rules to issue and Subsequently a Decree to go against him without offering any Manner of Objection thereto he waived any right he might have been Entitled to by Law and admitted that he was the person Meant and intended by the said Bill of Complaint and this Respondent is advised that if a Defendant Suffers a Judgement or Decree to pass against him by a Wrong Name, he may be taken in Execution under that Wrongname and were the case otherwise this Respondent is Advised that there would not be any end to litigation and that the purposes of Justice would be frustrated and this Respondent Submits to this Honble Court the premises considered that it would not have been safe to bring a New Bill against the appellants said Intestate Merely because he had irregularly insisted upon a Misnomer in his said Petition of appeal instead of having Set forth the same in a regular Manner by a plea upon Oath and further Submits that the appellant was not Justified in Supposing nor that he had any foundation to Suppose that because no New Bill was filed against him in Manner as aforesaid that either the said Note of hand Never had existence or that the same had been paid off and discharged by his Intestate for it Appears by the appellants own Shewing that his Intestate did in and by his said Petition of appeal pray that as his Name was Henry Boyle Sulivan and not Henry Benjamin Sulivan he might be allowed for the furtherance of Justice and to Enable the said Covoor Vydenadah Moodelliar to Sue him by his proper Name and Week time to plead or Answer the said Bill of Complaint which this Respondent is Advised is an Admission in fact and in Law on the part of the appellants said Intestate of the Existence of the said Note, And denies accuracy only in his Name of Baptism and further this Respondent Submits to this Honble Court that if the said Note had been discharged by Appellants Intestate the same would have Appeared by a release and by withdrawing of the said Petition of Appeal in this Honble Court and the Bill of Complaint in the said Mayors Court and this Respondent Says he is advised that an Executor or Administrator is bound to take Notice of all Judgments or Decrees against his Testator or Intestate and as there was a Judgment against the

Appella

Intestate by the Said Covoor Vydenadah Moodelly the
appellant had no right to pay off Any other debts and
demands against the Estate of his Intestate of an inferior
degree and that as this Respondent to said Intestate
had so filed his said Bill of Compleint against the
appellants Intestate and he having received notice
thereof from the administrators of this Respondents said
Intestate he the appellant had no right to discharge
any Claim upon the Estate of his said Intestate under
a Specialty. —

And this Respondent Admits that the
Number of years set forth in the appellants said Petition
of appeal might have elapsed from the time of filing the
said Bill of Complaint to the time in which this
Respondent and his deceased Co-Administrator did
file a Bill of Revivor against the appellant and further
admits that they did then file their said Bill of Revivor
against the appellant and further admits of the said
Henry Benjamin Sulivan alias Henry Boyle Sulivan
that thereupon Summons did issue to which the appellant
did appear by his attorney in Court but this Respondent
does not admit that he did by his said Attorney shew
for Cause against the said Bill of Revivor insist on
the Several matters and things in his said Petition
of appeal set forth for this Respondent says that
instead of Shewing as the appellant has urged that
the

that the proceedings in the Kings Ordinary in the said
Mayors Court stated the appellant to be Administrator to the
Estate of Henry Boyle Sulivan and in No wise to the
Estate of Henry Benjamin Sulivan the appellant by his said
attorney did Shew only that the Suit had Never been Revived
in the life time of either of the parties and that the time of
Six years and More having elapsed Since the last
continuance of the "Suit" and this Respondent Says
that the Cause of so much delay in filing the Bill of
Revivor rested entirely with the appellant who repeatedly
promised this Respondent that he would come to an
amicable Settlement with the Administrators of this
Repliants said Intestate on account of the Note of
hand upon which the said Bill of Complaint was
grounded and this Respondent Says that the said
Mayors Court did think fit to Order that the said
Suit should stand revived and that the appellant
did appeal from the said Order of the said Mayors
Court to this Honble Court and that this Honble Court was
pleased to affirm the Same, — and this Respondent
Submits to this Honble Court Notwithstanding the Sugge-
-stion of the appellant to the contrary that the appeals before
this Honble Court are brought on in rotation and that the
bringing on a Matter to hearing rests with the Court
and not with the party and that therefore it was not
in the power of this Respondent to have brought on the

matter

on the Matter of appeal from the Decree of the said Mayors Court earlier than the period Set forth in the Appellants said Petition of appeal and further this Respondent Submits to this Honble Court that it is the appellant who shews a grievance, and that it is his Duty at Least as much so as it is that of the Respondents to bring on the Matter to hearing and this Respondent further answering says he admits that upon hearing of the Petition and Appeal by the Appellants Intestate from the said Decree of the said Mayors Court this Honble Court was pleased to Reverse the Same and to allow the time in the Appellants said Petition of appeal Set forth and for the purposes therein contained. — And this Respondent Admits that thereupon the Appellant did in due time file his Plea and Answer and that he might in his said Plea have set forth, amongst other things the Matters and things in his said Petition of appeal recited and that he might have prayed Judgment thereon and this Respondent admits that the Appellant might in his Answer have stated amongst other things the several Matters and things in his said Petition of appeal Set forth. —

And this Respondent admits that the Appellant did file a Pfs Bill against this Respondent in the Nature of a Bill of discovery against this Respt. only and not against the Administrators of the said Covoor Vydenadah Moodelliar as Erroneously Stated in the Appellants

Appellants said Petition of appeal for this Respondent Says that his Co. administrator had long before the filing of the said Bill of discovery departed this Life and this Respondent Says that the appellant did in and by his said Bill of discovery interrogate this Respondent as Surviving Administrator and not the Administrators of the said Covoor Vydenadah Moodelliar as Erroneously Stated in the said Appellants Said Petition of appeal. — that to Such Bill of discovery this Respondent alone did put in his Answer as Surviving Administrator And not the Administrators of the Said Covoor Vydenadah Moodelliar as is Erroneously stated in the said Petition of appeal. —

And this Respondent Says that the appellant has not thought proper in his said Petition of appeal to state the Several Matters of most material consequence by this Respondent urged in his Replication to the Appellants said Plea and Answer nor the Several Matters and things by him Set up in his defence to the Appellants said Bill of discovery And this Respondent therefore begs leave briefly to State the Same And this Respondent Says that in and by his said Replication to the Appellants Plea and Answer he did Set forth that the Plea of a Misnomer was irregularly pleaded for that the Same could only be pleaded by the party himself and that the Appellant was the Administrator

only

only of the party and that the Appellant in pleading Such
Misnomer did do that which his Intestate in his life time had declined
doing. — that this Respondents Intestate had obtained a Decree
against the Intestate of the Appellant and that no Misnomer
Was pleaded by him and this Respondent did say that in the
life time of his Coadministrator a Bill of Revivor to revive
the said Suit was filed against the Appellant in the said Mayors
Court and that the said Mayors Court did thereon order the said
Suit to Stand Revived. that the Appellant did appeal from the
said Decree of the said Mayors Court to this Honble Court and
that he did in his said Petition of appeal urge the said
Misnomer that the said Appeal coming on to be heard this
Honble Court was pleased to affirm the said Order of the said
Mayors Court and that the Appellant did not think fit to appeal
from the Order of this Honble Court to His Majesty in Council
but did Submit thereto and in Course did admit the
insufficiency of the said Matter of Misnomer as set forth
in his said Appeal and this Respondent in and by his said
Replication did admit that Henry Boyle Sulivan was
the name of his Intestate that in and by the said Bill
of Complaint he was called Henry and that his proper addition
of Captain in the Service of his Highness the Nabob of Arcot
had been Set forth and that therefore the plea of Misnomer
was unfounded. — And this Respondent did in and by
his said Replication say that his Intestate did not
depart this life in One thousand Seven hundred and Eighty

One

One or the begining of the year One thousand Seven hundred and
Eighty two as erroneously stated in the Appellants said Plea
but that he departed this life in the Month of August One thousand
Seven hundred and Eighty two that Letters of Administration
of his Estate were not granted on or about the fifth day of
February One thousand Seven hundred and Eighty two but
that they did pass the Seal in the Month of October in that
year that an interval of Near twelve Months had not
elapsed between the time of Obtaining Letters of Administra-
tion to the Estate of this Respondents Intestate and the
death of the Intestate of the Appellant whose Intestate died
in February One thousand Seven hundred and Ninety three
and that therefore the inference attempted to be drawn
from the premises by the Appellant was unfounded. — that
the Appellant was highly irregular in the matter set forth
in his Plea regarding a pretended Want of process of
Revivor in the life time of his Intestate in so much as that
the said Mayors Court had determined on the question
and that this Honble Court had affirmed the Same that an
interval of Six years and upwards had not as erroneously
Stated by the Appellant elapsed between Obtaining Letters of
Administration of Estate and Effects of this Honble Respondents
Intestate and filing the said Bill of Revivor that such
interval did not exceed the term of five years and therefore
the Statute of Limitations as pleaded by the Appellant did
not Apply and that during Such interval the Appellant

had, —

had frequently promised to pay the Amount of this Respondents Claim and that it was upon the faith of such promises that the said Bill of Revivor was so long delayed and this Respondt did in and by his said Replication say that the alias set forth in his said Bill of Revivor was in consequence of the Assertions of the appellants Intestate contained in his said Petition of appeal from the said Decree of the said Mayors Court — And this Respondent did in and by his said Replication say that the distinction between the title of the Nabob of the Carnatic and Nabob of Arcot was of no consequence as they were well known to be one and the same personage and this Respondent did in and by his said Replication shew that the plea of the appellant of a Variance between the said Bill of Revivor and the Original Bill and between the prayer of the Appellant and the Order of the said Mayors Court thereon was frivolous And this Respondent did in and by his said Replication say that the Appellant in filing his Pros Bill against this Respondent and therein having charged and interrogated this Respondent upon the Matters and things set forth in his said Plea had thereby and by reason thereof over ruled the same — And this Respondent did also say that the appellant well knew that his Intestate did sign the Note whereof a Copy was to this Respondents said Bill of Complaint annexed that he the Appellants said Intestate had received the full consideration therein Mentioned that he had not discharged the same and that the whole was then due and owing And this Respondent did in and by his said Replication refer to his Cross Answer for the means by which the Appellant had obtained a Knowledge of the premises and for a confutation of the Suggestions by the Appellant in his said plea and Answer set forth And for the reasons that induced this Respondents Intestate to file his said Bill of Complaint for the recovery of the Amount of the said Note of hand — And this Respondent says that in and by his said Answer to the Appellants said Pros Bill of Complaint after Verifying the Several Matters and things in this Respondents said Replication contained did Amongst other things say in Opposition to the Charge in the Appellants said Pros Bill contained that there never was any Mysterious or unjustifiable conduct in the premises on the part of this Respondents Intestate in his life time Nor on the part of his Administrators whereby to Warrant a Suspicion as charged by the Appellant that even had his said Intestate ever owed Any Money to the Intestate of this Respondent that the Whole or the greater part thereof had been liquidated And this Respondent did say that no part of the said Sum of Nine hundred Pagodas was ever paid to this Respondents Intestate in his life time nor to his administrators after his decease but that the same and every part thereof was still due and owing to this Respondent as administrator as aforesaid And this

Respondt

Respondent did in and by his said Cross Answer further say that he did frequently importune and in the Strongest term press his Solicitor to bring on the Cause in this Honble Court when pending thereon that is to say the Appeal of the Appellants Intestate from the Decree of the said Mayors Court and the Appeal of the Appellant from the Order of the said Court and this Respondent in and by his said Answer did shew how and in what manner the said Sum of Nine hundred Pagodas had became due to his Intestate in his lifetime that this Respondent did himself deliver the Same to the Appellants said Intestate that this Respondents Intestate having been informed some time afterwards that the Appellants said Intestate was about to leave Madras did through this Respondent require that he the Appellants Intestate would pay the said Sum of Nine hundred Pagodas or that he would Execute a Bond as a Security for the payment thereof that thereupon the Appellants Intestate did use this Respondent very ill and did refuse to comply with the said requisition that this Respondent did complain to the Appellant of Such the conduct of his said Intestate desiring his interference on which the Appellant did say he would Speak to his said Intestate on the Subject and that some time afterwards the Appellants said Intestate did instead of Executing a Bond grant the Note of hand in Question promising to discharge the said Bond Note of hand in fifteen days that upon receiving the said Note of hand he did carry and Shew the Same to the Appellant who did say that it would as effectually secure the Payment of the Money due to this Respondents Intestate as a Bond or Words to that effect which satisfied this Respondents said Intestate that this Respondents said Intestate having Waited a considerable time beyond the said fifteen days and understanding that the Appellants said Intestate had discharged other Claims without taking any further Notice of the sum due to him this Respondents Intestate he this Respondents Intestate did exhibit and file his said Bill of Complaint in the said Mayors Court and this Respondent did in and by his said Answer Say that upon the death of the Appellants said Intestate which this Respondent did shew took place four or five Months after the death of this Respondents Intestate he this Respondent and his late Brother Covoor Yagambram Moodelliar as Administrators as aforesaid did request their Proctor to pray for Letters of of Administration to the Estate of the Appellants Intestate and this Respondents Proctor did afterwards inform this Respondent and his said late Brother that the measure was unnecessary for that he had spoken to the Appellants who said that he intended himself to pray for the said Letters as Brother and Next of kin and that on obtaining the Same he would See Justice done to this Respondents

and

And his said late Brother or words to that or the like effect That upon the Appellants praying for the Said Letters of Administration this Respondent did apply to him through the Means of Soobaroy his the Appellants debash and Request he would take into his consideration the Satisfying the debt in question that thereupon the Appellant did then Make Enquiries regarding the Same and declaring the Same to be Just did faithfully promise the said Soobaroy and this Respondent that he would pay off the same in preference to any other Claim out of the first Assets that should come into his possession of the Estate of his said Intestate or words to that or the like effect and did afterwards frequently and at different times repeat the same — That upon such the promises of the appellant this Respondent did rest well Satisfyed until some= =time anno about the year of Christ One thousand Seven hundred and Eighty Seven when this Respondent did Request his Attorney at Law to apply to the appellant for the performance of his said promise And this Respond.t his said Attorney at Law did address the Appellant Accordingly who in Answer thereto did by letter express himself in the Words and figures following that is to say "To Henry DuPuy Esq.r Black Town, Dear Sir, In "Answer to your favor of Yesterday Relative to the demand "of the Administrators of Vydenadah on my Brothers Estate "I have to inform you that the Whole of his property has been long

"Long since applied to the discharge of his debts Except a "Nabobs Consolidated Bond for about four thousand Pag.s "principal this Bond has been Certified through the committee "for examing the private Claims of the Nabob to the Court of "Directors and Some arrangement may be expected in the "Course of the year Doctor Ruddiman Captain Taylor "and one or two More are Nearly in the Same Situation "With Videnada as Administrator but as Soon as I can "turn the Bond into Cash I will discharge their demands "at least as far as Assets will Enable Me, and I believe "there will be Sufficient for all I have a Copy of my "Brothers Note of hand to Vydenadah And when it shall "be in my power to discharge it I will give you early — "information I am Dear Sir / Signed / Benjamin Sullivan"

And this Respondent did in and by his Answer shew that the appellant notwithstanding his promises had totally Neglected the Claim of this Respondent and that therefore he determined to pursue the Coercive Measures he had — began but that being advised by his friends to delay the Same and at the Same time trusting that he might receive that Justice the appellant had so repeatedly promise he this Respondent did post pone the Same until some= =time in the Month of June which was in the year of Christ One thousand Seven hundred and Eighty Eight When this Respondent finding that all further — Expectation from the appellant was in Vain he

died

did instruct his attorney at Law to file a Bill of Revivor and the Same was filed accordingly and this Respondent did in and by his said Answer Solemnly declare that untill the Appellant had filed an Inventory And Account Current in the said Mayors Court on the thirtieth December one thousand Seven hundred and Ninety he did not know that the Appellant had received and paid away Such Large Sums of Money on Account of the estate of his said Intestate that by the said Account Current it would Appear that the Appellant had discharged claims upon the Estate of his said Intestate of a less degree than the Claims of this Respondent and Such as were not authenticated by the Appellants said Intestate in his life time in the Same Manner as the Claim of this Respondents Intestate had been Authenticated and as the Appellant ought not to have paid and discharged such Claims at a time when this Respondent had Obtained a Judgment in the said Mayors Court and for other cogent Reasons that might arise from the premises this Respondent did humbly trust that if the Estate of the Appellants said Intestate should not be Sufficient to pay off the said Sum of nine hundred Pagodas together with all Interest due thereon that the Appellant might be decreed to pay the same out of his own pocket for that otherwise this Respondent did humbly Submit to the said

Mayors

Mayors Court that the Appellant would be left to benefit by his own wrongs contrary to Equity and good conscience and this Respondent says that the Appellant did to this Respondents said Answer Exhibit and file his Replication and thereto this Respondent did file his Rejoinder. — And this Respondent having thus Set forth Some of the most Material points of his said Original Replication and Cross Answer and which the Appellant had omitted to do in and by his said Petition of appeal for further Answer to the Appellants said Petition of Appl. Says that his this Respondents said Cross Answer did not as the Appellant has Represented the facts to be in and by his said Petition of Appeal contain ill — founded Assertions but that the Matters and things in this Respondents said Answer Set forth were founded in truth and this Respondent says he never Meant Nor intended to offer in and by his said answer any unjust imputations to the prejudice of the Appellant and this — Respondent does not admit that any Such unjust — imputations were Set forth by this Respondent in and by his said Cross answer and this Respondent says he has hereinbefore shewn that the delay in bringing the Cause to a hearing was in every respect imputable — to the Appellant and that he had Actually trifled with this Respondent in order as it would seem to prevent him from pressing the Said Cause to a

decision

decision and this Respondent says that although the appellant might have applied as he has asserted the fact to be all the assets of his said Intestate to the payment of his debts yet this Respondent says as he has already shewn that the appellant never did Entertain a doubt that the demand of this Respondent on the Estate of his Intestate, being fairly and Justly due Notwithstanding his suggestion to the contrary in his said Petition of Appeal contained for this Defendant shewn that the Appellant had full knowledge of the Justness of the said Demand in its earliest stage that he had afterwards Examined and fully Admitted the Same and had repeatedly promised to pay and discharge the Amount thereof And this Respondent further Answering says he admits that after the usual proceedings were had and issue Joined two Witnesses were Examined on the part of this Respondent and that Neither of them was interrogated to the hand Writing of the Appellants intestate nor did this Respondent by the said Witness prove that the Signature affixed to the Said Note of hand was of the hand Writing of the Appellants Intestate because the said Witnesses not knowing the hand writing of the Appellants Intestate could not depose thereto And this Respondent was advised that the proving of the said Signature was not Necessary insomuch as that the said Original Note of hand was delivered into the said Mayors Court at the Instance of the Appellant, who did tacitly admit the Signature

Signature thereto affixed to be of the hand Writing of his Intestate, for that he did not make any Objection thereto and in so much as that the Respondent did in and by his said Ors answer upon Oath shew that the appellant had Acknowledged the Authenticity of the said Note and had frequently promised to pay off the Amount thereon due to this Respondent who did support such his shewing in his said Answer contained by the Testimony of witnesses of unimpeached Character and this Respondent says that the said note of hand was produced and Shewn to the Appellant Notwithstanding his assertion to the contrary in his said Petition of appeal contained, and Notwithstanding the further Assertion that the Same was not offered to be Shewn to him for this Respondent says that pending the Suit in the said Mayors Court the Appellant did pray Oyer of the said Note of hand and the Same was in consequence thereof delivered into the said Mayors Court for the inspection of the Appellant and this Respondent says notwithstanding the Assertion of the Appellant to the contrary that the Witnesses Examined on his this Respondents part were interrogated to other Matters of importance to the Cause than the promises of the Appellant to discharge the said demand when he should have Sufficient Assets, for that purpose and this Respondent in Order to illustrate the fact begs leave to Set forth the depositions of Henry Dudley one of the Attornies of the said Mayors Court and a Solicitor in this Honble Court and Sobarny the debashof

the

the Appellant as the Appellant has totally Omitted to Set forth the Same. — The Said Henry DuPey to the Second Interrogatory Says that he was the Attorney at Law Employed by this Respondents Intestate to commence the present Suit against the Intestate of the Appellant that he did commence the Same accordingly And that he did prosecute the Same until a Decree was given thereon believes this Respondent did make application to the Appellant for the Amount of the said Decree, — that he the Deponent did likewise to the best of his Recollection make application to the Same Effect on behalf of this Respondent and his late Brother Conor Gagambram Modelliar and that he had frequently made Such applications since his decease. — That the Appellant never did Object to the Justness of the debt but did at different times promise to pay it so Soon as he should collect Sufficient assets believed that this Respondent And his said late Brother did in consequence of the intention of payment of the Appellant desist in their intentions of Reviving and otherwise Proceedings in the Decree obtained by their Intestate against the Intestate of the Appellant. To the third Interrogatory ~~Against the Intestate of the Appellant to the third Interrogatory~~ the said Henry DuPey did say that this Respondent did at times apply to him the Deponent as this Respondents Solicitor to bring on to a hearing the Appeal that had been lodged by the Appellant from

from the Order of the said Mayors Court hereinbefore Mentioned that he the Deponent did use his Endeavours to bring on the Same to a hearing that the same was put off on account of this Respondent trusting to the promises of the Appellant that he would make Satisfaction to this Respondent for the Amount of the said demand. — To the fifth Interrogatory the said Henry DuPey says that this Respondent did in the year One thousand Seven hundred And Eighty Seven request the Deponent as his Attorney at Law to apply to the Appellant for the performance of his promise of payment of the Demand en question and that he did address the Appellant Accordingly and that the paper Writing Shewn to him at the time of his Examination is the Answer to the Sixth Interrogatory Says that About one or two Months after the death of the Appellants Intestate at the requisition of this Respondent and his said late Brother he did apply to the Appellant And request him to take into Consideration this Respondents Claim on the Estate of his the Appellants Intestate that the Appellant did declare that Such claim was just and that he would pay off the Same in preference to every other out of the first Assets and that he did frequently repeat the said promise And this Respondent says that from the depositions above Set forth the promises of the Appellant were not as he would Suggest they were provisional that is to say provided the demand in

question

question appeared to him be just but on the contrary that they were unconditional promises upon an admission of the justness of the premises.—

And this Respondent says he admits that upon the pleadings had the said Cause was Set down for hearing and that the same did Accordingly come on to be heard before the said Mayors Court on Tuesday the — Twentieth day of May one thousand Seven hundred and Ninety four, and that the said Mayors Court did decree that the Appellant should pay unto this Respondent as Surviving Administrator of the said Covoor Vedenadah — Moodelliar the Sum of Nine hundred Pagodas out of the Estate of his the appellants Intestate together with all Such Interest as then was or thereafter should become due thereon untill full payment should be made as all Costs of the Original Suit and in default of Sufficient effects to Satisfy the said demands that the Appellant should pay the same out of his own pocket and that the — Appellants Cross Bill should stand dismissed and that the Costs thereof should be paid out of his the Appellants own pocket 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 Cause of appeal therefrom to this Honble Court.— And this Respondent in answer to the Appellants first Reason for Appealing from the said Decree of the said

Mayors

Court to this Honble Court says that although the Decree of the said Mayors Court of the Twelfth day of December one thousand Seven hundred and Eighty was reversed by this Honble Court yet that untill the same was reversed it was in its operation in the premises a judgement and as such ought to have been regarded by the Appellant but this Respondent says that although this Honble Court was pleased to reverse the said Decree of the said Mayors Court the same was reversed partially only that is to say — it was so far reversed only as to give the Appellant an opportunity of defending the Suit instituted against his said Intestate / the Bill having been taken pro confesso / and did not go to a complete reversal of the said Decree that is to say it did not dismiss the said Bill of Complaint which was retained and is the same upon which the Decree from whence the Appellant now appeals to this Honble Court was granted and this Respondent says that the said Bill of Complaint was notice of the debt due from the Estate of the Appellant Intestate to the Intestate of this Respondt and that the Appellant was bound thereby and could not legally Satisfy and discharge any demands on the Estate of his said Intestate / unless the same were of a — Superior degree to the Claim set up by this Respondent said Intestate / without retaining Sufficient effects in his hands to Satisfy the Claim of the Same for this — Respondent is advised that the Appellants could not

pay /

pay off and discharge any simple contract claim when he had Notice as above Set forth that there was a Suit pending the said Mayors Court against the Estate of his said Intestate and the more especially as he had Acknowledged the Justness of the Claim for which the said Suit had been instituted and had repeatedly promised to discharge the Amount thereof and therefore this Respondent says he is advised notwithstanding the Suggestion of the Appellant to the contrary he had not any light reserved or secured to him of paying in preference any Demands against the Estate of his said Intestate in whatever light they might have appeared to him as he admit the whole of the said demands were of a simple contract degree and this Respondent further says he is advised that the Appellant in having paid and discharged those demands and thereby disbursed the whole of the Assets of the said — Estate of his said Intestate has committed a devastavit as to this Respondent as Surviving Administrator as aforesaid for this Respondent says he is advised that the improper Application of the Assets of a deceased person is equally a devastavit in the Executor or Administrator as if he had wasted or injured the same and that as the Appellant has improperly applied the Assets of the Estate of his said Intestate he has committed a Devastavit and thereby and by reason thereof is compelled in failure of Assets pay this Respondents Demand that is to say the Amount of the said Decree

of the said Mayors Court out of his own pocket —

To the Second Reason for appeal this Respondent says that he has already shewn that it was not necessary on the part of this Respondent to prove the Signature affixed to the said Note of hand because the Appellant did not by denying the same put him to the proof thereof but on the contrary he did pray Oyer of the said Note of hand and did tacitly admit the due Execution thereof and further because the Appellant did admit the debt to be due and did promise to pay the same and thereupon this Respondent says he is at a loss to account for the Assertion of the Appellant that he has never seen the said Note of hand and for the inference drawn from the premises that he the Appellant is totally ignorant whether the said Note of hand ever executed had or had not been paid in the whole or in part during the life time of one — or both of the parties and to that part of the Appellants said Reason for Appeal wherein he alledges that his Intestate had for a considerable time before his death contested the Same, this Respondent says that the Appellants Intestate did not in and by his said Petition of Appeal further contest the said Note of hand than by asserting that this Respondents Intestate had Sued him by a wrong Name and thereon prayed that the Decree might be Reversed in order to enable these Respondents Intestate to Sue him the Appellants Intestate by his right name and this Respondent Submits to this Honble Court

that

that he has shewn that the Appellant was intimately acquainted with the demand in question and with the Note of hand even at the time it was first granted by his Intestate and that he did give his sentiment thereon as to the legal operation thereof that he acknowledged to have in his possession a Copy of the said Note of hand Admitted the Justness of the Amount thereby secured to this Respondents Intestate and repeatedly promised to pay the same and thereupon this Respondent further Submits to this Honble Court that the appellants said Cross Bill was altogether irrelevant and unnecessary and that therefore the Decree of the said Mayors Court in decreeing that the Appellant should pay the Costs attending the same out of his own pocket was both legal and equitable. —

To the third Reason for appeal this Respondent Says as he has hereinbefore shewn that the appellants promises both Verbal and in Writing did not nor could they carry with them any implication that he must be first Satisfied that the debt in question Was Justly due before he would pay the Same because this Respond.t Says such promises were Made after the Appellant had admitted the fact as Appears by this Respondents answer upon Oath And by the testimony of the Witnesses he has produced in further Support thereof to the other part of the said third Reason for appeal this Respondent has already Answered in his Answer to the appellants said Second Reason for appeal and partly by his this Respondents Answer to the appellants first Reason for appeal and thereupon this Respondent Submits to this Honble Court that the said Mayors Court in decreeing that the appellant should pay the Amount of this Respondents demand out of the said Estate or out of his own funds did decree according to Law and to Common Justice. —

To the fourth Reason for appeal this Respondent Says he has already Answered the same to the Appellants Second Reason for appeal thereupon this Respondent says he is Advised that the said Mayors Court ought not to have dismissed this Respondents said Bill of Complaint nor could the said Mayors Court have done otherwise than decreeing thereon as aforementioned. —

To the fifth Reason this Respondent says that is ad conscious of having introduced any improper Matter in his Answer to the appellants Cross Bill nor did he even Mean or intend to traduce his Credit and Character or either of them that from the mode of defence adopted by the Appellant in the Original Suit and the Nature of the Charges contained in the said Cross Bill this Respondent was compelled reluctantly to set forth Such truths as tended to Support his cause And this Respondent further says that his Bill of Complaint was even shorter than a declaration at Common Law but the Answer of the Appellant embraced matters

and

things foreign as this Respondent is advised to the matters in question and further that the appellant did unnecessarily exhibit a Cross Bill and thereby in fact make two Suits — and thereupon this Respondent Submits to this Honble Court that it is the appellant and not this Respondt. Who has given an occasion to an unnecessary length of pleading —

To the Sixth Reason for appeal this Respondent says that at the time the note of hand in question was executed the Current Rate of Interest was twelve per Cent and that by an act of the Twenty fourth year of the Reign of his present Majesty Such Rate of Interest is Sanctioned and that although the Current Rate of Interest at the time the said Decree of the said Mayors Court was given might have been Eight per Cent yet that from the time this Respondents said Bill of Complaint was filed to the time when the appellant filed his said Answer and Cross Bill the Current Rate of Interest was twelve per Cent and therefore this Respondent Submits to this Honble Court that as this Respondent might and ought to have had a Decree at a time when the Rate of Interest was twelve per Cent and that he should have obtained Such Decree at that period had it not been for the faith and confidence he placed in the Repeated promises by the appellant made to this Respondent as above set forth of payment of the said debt due from the Estate of his the appellants said Intestate to the Estate of this Respondents Intestate the appellant has no right to any abatement of Interest and thereby to benefit of his own Wrongs and Laches or Laches occasioned by his proceedings in the premises —

For all which Reasons and Such others as may be offered at the hearing this Respondent most humbly prays that this Honble Court will be pleased to affirm the said Decree of the said Mayors Court and to dismiss the appellants Petition of appeal with Costs —

/Signed/ James Stuart Hall
Solicitor for Respdt.

Court of

Court of Appeals
at
Madraspatnam

Tuesday the 9th day of December
Anno Domini 1794.

Between Benyamin Sulivan of Fort St George
Esqr Administrator to the Estate and Effects of Henry
Boyle Sulivan deceased Appellant and
Covoor Neetiah Moodelliar of Madras
Inhabitant Surviving Administrator of all
and Singular the Goods Chattles and
Credits of Covoor Vydenadah Moodelliar
late of the same place Inhabitant 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 this Honble the Mayors Court together with the Decree of the said Court given in this Cause on Tuesday the 20th day of May 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 as far as it goes to the payment of the Debt— Interest and Costs out of the Assets of the Estate of Henry Boyle Sulivan deceased with Costs in this Court and that the Reversed so far as it goes to the payment Eventually of the said debt Interest and Costs out of the pocket— of the Original Defendant and Cross Complainant and so far as the same does go to the Charge of Interest at the Rate of Twelve per Cent which Interest this Court doth think fit to Order shall be at the Rate of Eight per Cent per Annum on the Original Sum Sued for And no More and this Court doth further think fit to Order and Decree and doth Accordingly Order and Decree that the said Decree of the said Mayors Court— Regarding the Cross Bill be affirmed with Costs in this Court.—

/Signed/ Robert Clerk
Clk

To

To the Kings Most Excellent Majesty in Council

Between Covoor Mootiah Moodelliar Surviving Administrator of Covoor Vydenadah Moodelliar deceased Original Complainant and Cross Defendant and Benjamin Sulivan Administrator to the Estate and Effects of Henry Benjamin Sulivan alias Henry Boyle Sulivan deceased Original defendant and Cross Complainant —

The humble Petition and Appeal of the Above Named Original Complainant and Cross Defendant

Sheweth,

Filed in my Office the 19th December 1796
Robert Clerk Cct.

That your Petitioners Intestate the above Named Covoor Vydenadah Moodelly dies on the Twenty Eighth day of October which was in the year of Christ One thousand Seven hundred and Eighty Exhibit and file a Bill of Complaint in the Mayors Court of Madraspatnam against the Intestate of the Original Defendant and Cross Complainant Above named for the recovery of the Sum of Nine hundred Pagodas Arrent Money of Madras due and Owing upon a Note of hand whereof a Copy was to the said Bill of Complaint annexed and your Petitioner humbly Sheweth unto your most Excellent Majesty in Council that the usual Rules for answering having Expired and

No answer having been put in to the said Bill of Complaint by the said Intestate of the said Original Defendant and Cross Complainant the said Mayors Court According to the Established Law and practice thereof in Like Cases did on the twelfth day of December then next following pass a Decree against the Intestate of the said Original Defendant and Cross Complainant and therein and thereby did Decree that the said Intestate of the original Defendant and Cross Complainant do pay to your Petitioners Intestate the said Sum of nine hundred Pagodas together with all Interest due thereon and all Costs of Suit And your Petitioner humbly Sheweth unto your most Excellent majesty in Council that on the Twenty fifth day of the said month of December the said Intestate of the said Original Defendant and Cross Complainant did file a Petition and Appeal in the Court of Appeals of madras stating therein that being the only person of the surname of sulivan who bore a Commission in the service of his Highness the nabob he Conceived that the said Bill of Complaint might have been filed against him and had therefore directed his attorney to appear for him but that being then upon service it was not in his power to give instructions to the said attorney to plead a misnomer or any other plea or to file an answer to the said Bill of Complaint and further stating that in default thereof the said mayors Court pronounced the said Decree hereinabove alluded to whereupon he prayed that as his name was Henry Boyle sulivan and not Henry Benjamin

Benjamin Sullivan he might be allowed for the furtherance of Justice and to enable your Petitioners said Intestate to sue him by his proper name one Weeks time to plead or Answer the said Bill of Complaint that to the said Petition of appeal of the said Intestate of the said Original Defendant and Cross Complainants your Petitioners said Intestate did Exhibit and file his answer in the said Court of Appeals and did shortly afterwards depart this life Intestate and that thereupon your Petitioner and Coovoor Yagambrum moodelly Obtained Letters of administration of his Estate and Effects under the seal of the said mayors Court in its Ecclesiastical Capacity and your Petitioner humbly Sheweth unto your most Excellent majesty in Council in the Course of some few Months after the decease of your Petitioners Intestate the Intestate of the Original Defendant and Cross Complainant did also depart this life Intestate and that thereupon the Original Defendant and Cross Complainant did obtain Letters of administration of his Estate and Effects under the Seal of the said mayors Court in its Ecclesiastical Capacity—and your Petitioner Sheweth unto your most Excellent Majesty in Council that amused by the promise of payment of the Amount of the said Decree of the said mayors Court repeatedly made by the Original Defendants and Cross Complainants and fully relying thereon and trusting thereto your Petitioner did not Receive the said Cause until some time on or about the year of Christ One thousand Seven hundred and Eighty Eight when finding the said Original Defendant and Cross Complainant did not mean to perform the said promises by him so repeatedly made as above mentioned—your Petitioner and the said yagambrum moodelliar since deceased did file a Bill of

Revivor

Revivor of the said mayors Court that to the said Bill of Revivor the Original Defendant and Cross Complainant did appear and did object to the said Suit being revived that the said mayors Court taking the same into their Consideration did think fit to order and did accordingly Order that the same should stand and be Revived and your Petitioner Sheweth unto your Most Excellent Majesty in Council that the Original Defendant and Cross Complainants did appeal from the said Order of the said Mayors Court to the Court of Appeals at Madras where on or about the month of April which was in the year of Christ one thousand Seven hundred and Eighty nine the said Order of the said mayors Court was affirmed and the Petition of Appeal Dismissed And your Petitioner Sheweth unto your most Excellent majesty in Council that the suit having become thus revived the Petition of Appeal of the Intestate of the Original Defendant and Cross Complainant from the Decree of the said mayors Court hereinabove mentioned did come on to be argued when the said Court of Appeals was pleased to grant the prayer thereof and Open the said Decree of the said mayors Court and allow the Original Defendant and Cross Complainant as administrator as aforesaid the term of fourteen days to put in a plea or answer to the said Bill of Complaint Exhibited and filed by your Petitioners Intestate on the said Mayors Court as hereinabove mentioned—

And your Petitioner Sheweth unto your most Excellent majesty in Council that the said Original Defendant and Cross

Complainant

Complainant did on or about the time limited by the said Court of Appeals for that purpose Exhibit and file his plea and answer to the said Bill of Complaints so filed by the Intestate of your Petitioner in his life time and did therein and thereby plead the said pretended misnomer and by way of answer did setforth several matters and things in objection to the payment and satisfaction of the claim set up in and by the said Bill of Complaint and did some time afterwards Exhibit and file his Cross Bill of Complaint in the said mayors Court and your Petitioner Sheweth unto your most Excellent majesty in Council that he did Exhibit and file his Replication in the said mayors Court to the Answer of the said Original Defendant and Cross Complainant and did Exhibit and file an Answer to the said Cross Bill that thereupon the Original Defendant and Cross Complainant did file a Rejoinder in the said original Suit and a Replication in the said Cross suit and that to such Replication your Petitioner did file a Rejoinder That the said Original and Cross suit being thus at ~~issue~~ issue did Join and rules did pass for the Examination of Witnesses and that Witnesses were accordingly Examined on the part of your Petitioner who did fully prove the Several matters and things mentioned and setforth in the pleadings Exhibited as above stated on the part of your Petitioner and your Petitioner Sheweth unto your most Excellent majesty in Council that thereafter publication did pass and the Cause and Cross Cause were set down for hearing and did come on to be heard accordingly

Accordingly before the said mayors Court on the twentieth day of may and year of Christ 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 Original Defendant do pay unto your Petitioner out of the Estate and Effects of Henry Boyle sullivan deceased the full and Just sum of Nine hundred Pagodas to gether with all such Interest as there was or should thereafter become due thereon until full payment was made also all Costs of the Original Suit, and in default of sufficient Assets to satisfy your Petrs demand that the Original Defendant do pay the amount out of his Own pocket and it was further Ordered and Decreed that the Cross Bill do stand dismissed and that the Costs thereof be paid by the Cross Complainant out of his Own Pocket as by Copy of the said Order and Decree of the said mayors Court hereunto annexed for the inspection of your most Excellent majesty in Council to which your Petitioner humbly craves leave to refer and prays the same may be taken as part of this his Petition and appeal may appear—

And your Petitioner Sheweth unto your most Excellent Majesty in Council that the said Original Defendant and Cross Complainant did on the Second day of June following Appeal from the said Decree of the said mayors Court to the Court of Appeals at madras Above mentioned and did in his Petition of Appeal Amongst other things say that at the time of Obtaining the said

letters

letters of Administration to the Estate and Effects of the said Coovoor Vydenada Moodelly by your Petitioner and the said Coovoor Yagambrum moodelly and for several months after the said Henry Boyle sulivan was alive and that although the said suit had abated by the death of the said Coovoor Vydenada Moodelly your Petitioner and the said Coovoor Yagambrum moodelly did not during the life time of the said Henry Boyle sulivan revive nor attempt to Revive the said suit against him either by his proper name of Henry Boyle sulivan or by the name of Henry Benjamin Sulivan that the said Henry Boyle sulivan departed this life some time in the month of February One thousand Seven hundred and Eighty three and that having died Intestate letters of administration of his Estate and Effects were by the said mayors court granted to him the Original Defendant and Cross Complainant as his Brother and next of kin on or about the fourth day of March then next following that by the death of the said Henry Boyle sulivan the surviving party to the said suit if a party he was by the said name of Henry Benjamin Sulivan meant and intended to be, the said suit was as he the said Original Defendant and Cross Complainant was advised and believed at an End and in no wise before the said mayors court and therefore that no further proceeding could be taken or allowed in the said suit without a gross and manifest Violation of that Order and regularity which was essentially requisite to the due administration of Justice, and without the introduction of confusion

and

and uncertainly in the mode of pleading That no new Bill of Complaint having been then filed by your Petitioner and the said Coovoor Yagambrum Moodelly against him the Original Defendant and Cross Complainant As administrator of the Estate and Effects of the said Henry Boyle Sulivan conceived either that the said pretended note of hand never had Existence or that if the same had been duely Executed it had been fully paid off and discharged by the said Henry Boyle Sulivan who lived two years and four Months or thereabout after the time of filing the said Bill of Complaint to wit from the twenty Eighth of October One thousand seven hundred and Eighty to the sixteenth of February One thousand seven hundred and Eighty three and therefore as administrator to his said deceased Brother he the Original Defendant and Cross Complainant proceeded to pay off the debts and Demands upon his Estate as fast as he could collect Asfets for that purpose and on the twenty fourth day of march One thousand Seven hundred and Eighty five had not only paid away the whole of the said Asfets, but was then Actually in advance the Sum of Two hundred and two pagodas nine fanams and fifty six cash which was still due and owing to him the Original Defendant and Cross Complainant - That on the twenty fourth day of June One thousand Seven hundred and Eighty Eight six years after the death of the said Coovoor Vydenada moodelly five years after the death of both Plaintiff and Defendant in the said Suit and three years

and

and upwards after fully administering all the afsets of the Estate of the said Henry Boyle Sulivan which had come to his hands as aforesaid/ and after he the Original Defendant and Crofs Complainant had Expended for the honor of his deceased Brother in the discharge of his fair and acknowledged debts the further sum of one thousand pagodas or thereabouts of his own proper Money your Petitioner and the said Coovoor Yagambrum moodelly thought proper to file a Bill of Revivor against the Original Defendant and Crofs Complainant as administrator of the Estate of Henry Benjamin Sulivan Alias Henry Boyle Sulivan, and the the proceedings in the Kings Ordinary in the said mayors Court stated the Original Defendant and Crofs Complainant to be administrator to the Estate of Henry Boyle sulivan and in like wise to the Estate of Henry Benjamin Sulivan alias Henry Boyle Sulivan and though he had by his Attorney shewn the same as also that both the parties to the Original Suit had been long dead/ and the said suit in course out of Court as good and sufficient cause why the said suit should not be revived yet that the said Mayors Court thought fit to Order and direct that the said Suit should stand Revived, and that on an appeal brought from the said Order the said Court of Appeals were pleased on or about the Eighteenth day of April One thousand seven hundred and Eighty nine to affirm the same - That the said suit being so Revived the Petition and appeal of the said Henry Boyle sulivan which had as aforesaid been filed so Early as the Twenty fifth day of December One thousand seven

hundred

hundred and Eighty and which in Consequence must have stood at the head of the List of the Causes to be heard and determined in the said Court of Appeals ought to have been brought by your Petitioner to a speedy hearing and decision yet that no attempt was made on the part of your Petitioner to bring the said Cause to a hearing until the twenty fourth day of December one Thousand Seven hundred and ninety one when the said Court of appeals thought fit to order and decreed that the said Decree of the said Mayors Court bearing date the twelfth day of December One Thousand seven hundred and Eighty should be Reversed, and although the Petition and appeal of the said Henry Boyle Sulivan prayed for the allowance of one Week only to plead or answer the said Court of Appeals were pleased to allow him the Original Defendant and Crofs Complainant fourteen days for that purpose - That he did thereupon prepare and in due time file his Plea and answer as administrator to the said Henry Boyle sulivan/ and for Plea did setforth the misnamer in the Bill of Complaint to the like tenor and purport as setforth by his Intestate in his Petition and Appeal to the said Court of Appeals and praying Judgment of the said mayors Court by reason of such misnomer proceeded to Answer the said Bill of Complaint and for Answer stated nearly to the following purport namely that he did not know whether the said Henry Boyle sulivan did sign the said note of hand or whether if

he

he had signed the same he Ever received the full or any Consideration therefor and in case he might have received a full Consideration for the same that he did not know whether the whole or some part thereof might not have been discharged by the said Henry Boyle Sulivan during the life time of the said Coovoor Vydenada moodelly That it was incumbent on the Administrators of the said Coovoor Vydenada moodelly to set forth the same fully for the satisfaction of the said mayors Court for that the whole of the Circumstances of the case respecting the said note of hand and the conduct of the said Coovoor Vydenada Moodelly and of his said Administrators in the premises appeared mysterious and unjustifiable for that the said note of hand bore date the twenty seventh day of August One thousand seven hundred and Eighty when it was well known that the said Henry Boyle Sulivan was about to quit the Presidency on Publice Service and that if the said Coovoor Vydenada moodelly was so urgent to file a Bill for the recovery thereof in two months after the date of the said note, that is to say on the twenty eighth day of October next following it seemed Extraordinary and unaccountable that after his death his administrators should have omitted to receive the suit during the life time of the said Henry Boyle Sulivan, and After the death of the said Henry Boyle sulivan should likewise have omitted

to

to Revive the same against him the Original Defendant and Cross Complainant from the fourth day of march One thousand seven hundred and Eighty three when letters of administration were granted to him the Original Defendant and Cross Complainant by the said mayors Court to the Estate and Effects of the said Henry Boyle Sulivan unto the twenty fourth day of June One thousand Seven hundred and Eighty Eight being a period of five years and upwards That in order to be fully informed of the premises and to do that Justice which he owed to the Estate of his Intestate he the Original Defendant and Cross Complainant filed a Bill of Discovery against the said Administrators of Coovoor Vydenadah Moodelliar interrogating them to the above points and to such others as appeared Material towards obtaining full information that to which said Bill of Discovery the said administrators put in their Answer and therein blending with the points of information to which they were interrogated certain ill founded Assertions and unjust imputations to the prejudice of him the said Original Defendant and Cross Complainant and his said Intestate he was Compelled to obviate and remove the same and to shew that the Extraordinary delay in bringing the Cause in question to a hearing was in no wise imputable to him and that he had not trifled or attempted to trifle with the surviving administrator of the said Coovoor Vydenada moodelly in order to prevent his prefsing the Cause to

a

a decision / and further that it Appeared by his Inventory and Account
Current of the Estate of his Intestate of Record in the said mayors Court
that he had applied all the afsets thereof which had come to his hand
to the discharge of the debts of his said Intestate and that he therefore
he still continued to be a considerable Creditor of the said Estate, and by
Virtue of any Claim on his Intestate at the time of his death but by reason
of his Avicious attention to the memory and Credit of his said Intestate
As his Brother and further that having no personal Objection to the
said surviving Administrator of Coovoor Vydenada Moodelly or to Coovoor
Vydenada Moodelly personally his only motive for not discharging the
said demand was from an impression that it was not fairly due as
had been under Contest by his Intestate and as there appeared to be on
the part of the Complainant no progress whatever in the Cause from the
Eleventh day of January One thousand Seven hundred and Eighty one
when he filed his Answer to the Appeal of the said Henry Boyle
Sulivan to the twenty fourth day of June One thousand seven hundred
and Eighty Eight when the said Bill of Revivor was filed the same
being a period of seven years five months and thirteen Days and
further because the said Demand though contested as aforesaid by his
Intestate had not been proved nor attempted to be proved by the
Original Complainants nor the name subscribed to the note of hand

Mentioned

Mentioned in the Original Bill of Complaint proved to be the name or proper hand
Writing of his the Original Defendant and Cross Complainants said Intestate
nor the said Note of hand produced or shewn or offered to be produced or
shewn to him the Original Defendant and Cross Complainant – That after
the usual proceedings were had and Issue Joined, two Witnesses were Examined
On the part of the Surviving Administrator of Coovoor Vydenada Moodelly
Neither of whom was interrogated to the hand writing of the said Henry
Boyle sulivan nor was the name said to be subscribed to the said note
of hand any how proved to have been Written by your Petitioners Intestate
the said Henry Boyle sulivan neither were the said Witnesses interrogated
to any other matter of importance to the Cause than to Applications to him the
Original Defendant and Cross Complainant and promises from him to
discharge the said demand when he should have sufficient Afsets for that purpose
which promises he did say might have made in regard to the demand of the
said Coovoor Vydenada Moodelly in the same manner as he might have
promised in regard to all other demands upon the Estate of his said Intestate
but he did say that the said promises must in their nature be considered as
provisional that is to say provided the said demands appeared to him to be
clear fair and honest demands and not otherwise – That the surviving Administrator
of the said Coovoor Vydenada moodelly did in his Answer to the said Cross Bill
state that the Original Defendant and Cross Complainant had no right to

pay

pay away do simple Contract Creditors any part of the Estate of his said ~ Account
Intestate at a time when he had Obtained the Judgment of the said mayors Court
Court and therefore prayed that if the Estate should not then be sufficient is hands
to pay off his demand that he the Original Defendant and Cross Complainant was as
should be directed to pay the same out of his Own pocket but he did say that he not by
had shewn in his Replication to the said answer that the said Surviving ~ reason
Administrator of the Estate of the said Coovoor Vydenada Moodeliar had no right tate
whatever to claim a priority of payment his demand being a simple Contract of
demand as were all other demands upon the Estate of his the said Original covoor
Defendant and Cross Complainants Intestate and that as to the Judgment the
of the said mayors Court the same had been Reversed and set aside in the sit
said Court of Appeals— That the said Cause Coming on to be heard on ~ on
Tuesday the twentieth day of may one thousand seven hundred and ninety
four the said mayors Court did Decree that he the said Original Defendant
and Cross Complainant should pay unto the said surviving Administrator
of the said Coovoor Vydenada Moodelly the sum of nine hundred Pagodas out of
the Estate of Henry Boyle Sullivan deceased to gether with all such Interest
as then was or should thereafter become due until full payment should be
made as also all Costs of the Original Suit and in default of sufficient
Afsets to satisfy the said demand that he the Original Defendant and
Cross Complainant should pay the same out of his own pocket— and
did

accordingly Order and Decree that the said Decree of the Honble the mayors
Court do stand affirmed as far as it goes to the payment of the Debt
Interest and Costs out of the Afsets of the Estate of Henry Boyle sullivan
Deceased with Costs in this Court and that it be Reversed so far as it goes
to the payment Eventually of the said debt Interest and Costs out of the
pocket of the Original Defendant and Cross Complainant and so far
as the same does go to the charge of Interest at the rate of twelve per Cent
which Interest this Court doth think fit to Order shall be at the rate of
eight per Cent per Annum on the Original sum sued for and no more
and this Court doth further think fit to Order and Decree and
doth accordingly Order and Decree that the said Decree of the said
mayors Court regarding the Cross Bill be affirmed with Cost
in this Court— re of afsets

How pay[illegible] and out of his Owne
re
pocket— See
it having been made to prove the said
note of hand or that the name thereto subscribed was of the proper hand writing
of his Intestate and never having seen the same and being in total ~
Ignorance whether the same if Ever Executed had or had not been paid in
the

pay away do simple Contract Creditors any part of the Estate of his said
Intestate at a time when he had Obtained the Judgment of the said mayors
Court and therefore prayed that if the Estate should not then be sufficient
to pay off his demand that he the Original Defendant and Cross Complainant
should be directed to pay the same out of his Own pocket but he did say that he
had shewn in his Replication to the said answer that the said Surviving
Administrator of the Estate of the said Coovoor Vydenada Moodeliar had no right
whatever to claim a priority of payment his demand being a simple Contract
demand as were all other demands upon the Estate of his the said Original
Defendant and Cross Complainants Intestate and that as to the Judgment
of the said mayors Court the same had been Reversed and set aside in the
said Court of Appeals— That the said Cause coming on to be heard on
Tuesday the twentieth day of may one thousand seven hundred and ninety
four the said mayors Court did Decree that he the said Original Defendant
and Cross Complainant should pay unto the said surviving Administrator
of the said Coovoor Vydenada Moodelly the sum of nine hundred Pagodas out of
the Estate of Henry Boyle sullivan deceased to gether with all such Interest
as then was or should thereafter become due until full payment should be
made as also all Costs of the Original Suit and in default of sufficient
Assets to satisfy the said demand that he the Original Defendant and
Cross Complainant should pay the same out of his own pocket— and

did

did further Order and Decree that his said Cross Bill should stand dismissed and
that the Costs thereof should be paid by him out of his pocket wherefore he did say
he did appeal to the said Court of Appeals from the said Decree as grievous and
Oppressive for the following amongst other Reasons—

First Because the Decree of the said mayors Court under date the twelfth day of
December One thousand seven hundred and Eighty against Henry Benjamin
sullivan being Reversed by the said Court of Appeals on the Twenty fourth day of
December One thousand seven hundred and ninety one the same was of necessity
reversed abinitio and therefore gave not to the surviving administrator of Coovoor
Vydenada a right to priority of payments over any other simple Contract
Creditor much less a Judgment debt but leaving the demand in that Class of debts
in which it originally was Viz.t that of simple Contract debts and which Class
of debts Embraced the wholes of the demands in the Estate of his Intestate reserved
and secured to him the Right of paying in preference such of the said demands
as appeared to his satisfaction to be just and honest and that in the Execution of
such his Right he could be guilty of no devastavits whereby in failure of Assets
he may be by Law compellable to pay the Complainants demand out of his Own
pocket— Secondly Because no attempt having been made to prove the said
note of hand or that the name thereto subscribed was of the proper hand writing
of his Intestate and never having seen the same and being in total
Ignorance whether the same if Ever Executed had or had not been paid in

the

the whole or in part during the life time of one or both of the Original parties and the said Henry Boyle sullivan having for a considerable time before his death contested the same he the Original Defendant and Cross Complainant was Justifiable in filing his Cross Bill for the discovery of those facts and was as he conceived bound in duty so to do. wherefore he ought not to be decreed to pay the Costs of the Cross Suit out of his own pockets— Thirdly Because any promise whether Verbally or by Letter which as administrator to his said Intestate he might have made to pay the said demand where he should have afsets to Enable him thereto necessarily implied a condition that he should be fully satisfied that the same was Justly due and owing and not otherwise and the Original note of hand never having been produced to him by your Petitioner or by any person on his behalf after Administration was granted to him to the Estate and Effects of his said Intestate or as he fully believed at any time before it was not possible for him to know whether the same was or was not subscribed by his said Intestate and therefore he could not be satisfied that the same was justly due and owing Wherefore he did say he conceived that he could not be absolutely and unconditionally bound by reason of any such promise to pay the Amount of the said demand either out of the afsets of the said Estate or out of his own funds— Fourthly Because no attempt having been made to prove the said note of hand or that the name thereto subscribed was of the proper hand writing of his Intestate or that his Intestate Acknowledged in his life time the Amount thereof to be due the Original Bill of Complaint having no other ground on which it could be supported against the Estate and Effects of his the Original Defendant and Cross Complainants Intestate ought to have been dismissed with Costs— Fifthly Because your Petitioner having introduced indicents and improper matter into his Answer to the said Cross Bill and by attempting therein to traduce the Credits and Character of him the Original Defendants and Cross Complainant and his Intestate compelled him to Enter into a Justification of himself and his said Intestate and thereby giving occasion to an unnecessary length of pleading out to have been decreed to pay the Costs thereof— Sixthly Because the said Decree of the said mayors Court did direct your Petitioners demand to be paid with all Interest due and to grow due thereon until full payment be made without ascertaining the rate at which Interest should be charged thereon thereby leaving it in the discretion and power of your Petitioner to sue out Execution thereon with Interest at the rate of Twelve per cent per annum if he thought proper whereas by the Charter of his late majesty bearing date the Eighth day of January in the Twenty sixth year of his Reign and by which Charter the said Mayors Court and the said Court of appeals were Erected and Established the

the Interest to be Decreed should not Exceed the Current rate of Interest which prevailed at the time of pronouncing such Decree which Current Interest at the time when the Decree appealed from was pronounced did not as he was advised and believed amount to more than Eight per cent — For all which Reasons and such others as might be offered at the Hearing the Original Defendant and Cross Complainant did pray that the said Decree of the said mayors Court might be Reversed and that he might receive such further and other Relief as to the said Court of Appeals might seem meet and proper —

And your Petitioner Sheweth unto your Most Excellent Majesty in Council that to the said Original Defendant and Cross Complainants said Petition of appeal he your Petitioner did Exhibit and file his Answer in the said Court of Appeals and therein and thereby admitting the several matters and things reciting the pleadings in the Cause in the said mayors Court so far as the same were faithfully recited did amongst other things Answer and say that the Original Defendant and Cross Complainants Intestate did appear to the Bill of Complaint filed against him in the said mayors Court by your Petitioners Intestate and did allow the usual Rules for answering the same to Expire and upon your Petitioners said Intestate having produced a Certificate of the same to the said mayors Court

agreeably

agreeably to the practice thereof in Order to Obtain a Decree the Original Defendant and Cross Complainants Intestate did not Object thereto but did allow the said Decree to pass That if it had been true that he had been Baptized by the names of Henry Boyle he could not have availed himself of the misnomer of Henry Benjamin after he had suffered a Decree to go against him in those names as your Petitioners said Intestate had said might appear in several adjudged Cases reference being thereunto had — That if a misnomer had really Existed the Original Defendant and Cross Complainants Intestate should have regularly pleaded the same and have set forth his real name upon Oath that in Law no man could have two names of Baptism and that as the Original Defendant and Cross Complainants Intestate had acknowledged that he knew of no other person in the service of his said Highness the Nabob of the rank of Captain and therefore conceived the Bill to have been filed against him, he thereby admitted the identity of his person and that as he had not put in any plea on Oath your Petitioners Intestate could not have amended his Bill According to the prayer of the Original Defendant and Cross Complainants Intestate for that if he had he the Original Defendant and Cross Complainants Intestate might have pleaded thereto that his name was not Henry Boyle but Henry Benjamin — and your Petitioner in and by his said Answer did admit that the said suit was not revived

received in the life time of the Original Defendant and Cross Complainants said Intestate, and did also admit that the Original Defendant and Cross Complainants said Intestate might have departed this life about the time in his said Petition of appeal set forth and that the Original Defendant and Cross Complainants did obtain Letters of administration of his Estate and Effects as Brother and next of kin but your Petitioner did say that he did not by any means admit the Assertion in the Original Defendant and Cross Complainants said Petition of Appeal contained that the said suit was at an End, and that no further proceedings could be taken and allowed therein without a Violation of that order and regularity which was essentially necessary to the due administration of Justice, for your Petitioner did submit to the said Court of Appeals that the Original Defendant and Cross Complainants said Intestate having by his attorney appeared to the said Bill of Complaint and suffered the Rules to issue and subsequently a Decree to go against him without offering any manner of Objection thereto had waived any right he might have been Entitled to by Law, and admitted that he was the person meants and intended by the said Bill of Complaint and your Petitioner did say he was advised that if a Defendant suffered a Judgment or Decree to pass against him by a Wrong name he would be taken in Execution under that wrong name that were the case

otherwise

otherwise your Petitioner was advised there would not be an End to Litigation and that the purposes of Justice would be frustrated And your Petitioner did submit to the said Court of Appeals the premises considered that it would not have been safe to bring a new Bill against the Original Defendant and Cross Complainants said Intestate merely because he had irregularly insisted upon a misnomer in his said Petition of Appeal instead of having set forth the same in a regular manner by a plea upon Oath and further that the Original Defendant and Cross Complainant was not Justified in supposing nor had he any foundation to suppose that because no new Bill had been filed against him as administrator as aforesaid, that either the said note of hand never had Existence or that the same had been paid off and discharged by his Intestate for that it appeared by his the Original Defendant and Cross Complainants own shewing that his Intestate did in and by his said Petition of Appeal pray that as his name was Henry Boyle sullivan and not Henry Benjamin sullivan he might be allowed for the furtherance of Justice and to Enable your Petitioners said Intestate to sue him by his proper name One Weeks time to plead or Answer the said Bill of Complaint which your Petitioner did say he was advised was an admission in fact and in Law on the part of the Original Defendant and Cross Complainants Intestate of the

Existence

Existence of the said note, and denying accuracy only in his name of Baptism and your Petitioner did say he was advised that an Executor or administrator was bound to take notice of all Judgments or Decrees against his Testator or Intestate, and as there was a Judgment Against the Original Defendant and Cross Complainants Intestate Obtained by your Petitioners Intestate in his life time he the Original Defendant and Cross Complainant had no right to pay off other debts and demands against the Estate of his Intestate of an Inferior degree and that as your Petitioners said Intestate had so filed his said Bill of Complaint against the appellant Intestate and he the Original Defendant and Cross Complainant having received notice thereof from his administrators he had no right to discharge any Claims upon the Estate of his said Intestate under a specialty - and your Petitioner in answer to the Assertions in the Original Defendants and Cross complainants said Petition of appeal contained regarding the Revivor in the Cause did say that he did not admit that he the Original Defendant and Cross complainants did by his attorney shew for cause against the said Bill of Revivor the several matters and things in his said Petition of appeal setforth for your Petitioner did say that instead of shewing as the Appellant had urged that the proceedings in the Kings Ordinary in the said Mayors Court stated him to administrator to the Estate of Henry Boyle Sulivan and in no wise to the Estate of Henry Benjamin Sulivan he did by his said attorney shew only that the suit had never been received in the life time of either of the Original parties and that the time of six years and more had Elapsed since the last the Continuance of the suit and your Petitioner did also say that the Cause of so much delay in filing the said Bill of Revevir as setforth in the Original Defendant and Cross Complainants said Petition of appeal rested Entirely with himself as he had repeatedly promised your Petitioner that he would come to an amicable settlement with the administrators of your Petitioners Intestate On Account of the note of hand upon which the said Bill of Complaints was founded and your Petitioner did say that the said mayors Court had thought fit to Order that the said suit should stand revived that the Original Defendant and Cross Complainant had appealed from the said Order of the said Mayors Court to the said Court of appeals and that the said Court of Appeals had been pleased to affirm the same and your Petitioner did submit to the said Court of Appeals notwithstanding the suggestion of the Original Defendant and Cross Complainants to the contrary that the Causes before the said Court of Appeals were brought on in rotation, and that the bringing them to hearing did rest with the said Court of appeals and not with the suitors before its and that therefore it was not in the power of your Petitioner to have brought on the said Appeal from the said Decree of the said Mayors Court Earlier than the

the period setforth in the Original Defendant and Cross Complainants said Petition of appeal and your Petitioner did admit that upon hearing of the Petition and appeal by the Original Defendant and Cross complainants Intestate from the said Decree of the said mayors Court the said Court of appeals was pleased to Reverse the same, and to allow the time in the Original Defendant and Cross Complainants said Petition of appeal setforth and for the purposes therein Contained—

And your Petitioner in and by his said Answer did admit that thereupon the Original Defendant and Cross Complainant did in due time file his Plea and answer and that he might in his said Plea have setforth amongst other things the matters and things in his said Petition of Appeal recited and that he might have prayed Judgment thereon and your Petitioner further Answering did say that the Original Defendant and Cross Complainant did file a Cross Bill against the Respondent in the said mayors Court in the nature of a Bill of Discovery and against your Petitioner only and not against the Administrators of the said Coovoor Vydenadum modelly as Erroneously stated in his the Original Defendants and Cross Complainants said Petition of Appeal and your Petitioner did say that his Co administrator had only before the filing of the said Cross Bill departed this life and your Petitioner did further say that the Original Defendant and Cross Complainant did in and by

by his said Cross Bill interrogate your Petitioner as surviving administrator and not the Administrators of the said Coovoor Vydenadu modelly as Erroneously stated in the Original Defendant and Cross Complainants Petition of appeal that to such Cross Bill your Petitioner did alone put in his Answer as Surviving administrator, and not the administrators of the said Coovoor Vydenadah modelly as is erroneously stated in the said Petition of appeal And your Petitioner did say that the Original Defendant and Cross Complainant had not shouth proper in his said Petition of appeal to state the several matters of most material Consequence by your Petitioner urged in his Replication to the Original Defendant and Cross Complainants said Plea and Answer nor the Several matters and things by your Petitioner setup in his defence to the said Cross Bill your Petitioner did therefore beg leave briefly to state the same and your Petitioner did say that in and by his said Replication he had setforth that the plea of misnomer was irregularly pleaded for that the same could only have been pleaded by the party himself and that the Original Defendant and Cross Complainant was the Administrator only of the party and that in pleading the misnomer in question he did do that which his Intestate in his life time had declined doing that your Petitioners Intestate had Obtained a Decree against the Original Defendant and Cross Complainants Intestate and that no misnomer had been pleaded by him— That in the life

time

of your Petitioners to administrator a Bill of Revivor to Revive the said suit was filed against the Original Defendant and Cross Complainant in the mayors Court and that the said mayors Court had thereon ordered the Same to stand revived that the Original Defendant and Cross Complainant did appeal from the said Order of the said mayors Court to the said Court of Appeals and that he had in his said Petition of appeal urged the said misnomer that the said appeal coming on to be heard the said Court of appeals was pleased to affirm the said Order of the said mayors Court and that the Appellant did not think fit to appeal therefrom to your most Excellent majesty in Council but did submit thereto and in course did admit the insufficiency of the said matter of Misnomer as setforth in the said appeal That your Petitioner in and by his said Replication had said that the Original Defendant and Cross Complainant did admit That Henry Boyle Sulivan was the name of his Intestate that in and by the said Bill of Complaint he was called Henry and that his proper addition of Captain in the Service of his Highness the nabob of Arcot had been setforth and that therefore the plea of misnomer was unfounded - That your Petitioner had in and by his said Replication further said that his Intestate did not depart this life in One thousand seven hundred and Eighty One on the begining of the year One thousand seven hundred and

and Eighty two as Erroneously stated in the Original Defendant and Cross Complainants said Plea but that he departed this life in the month of August One thousand seven hundred and Eighty two that Letters of administration of his Estate were not granted on or about the fifth of February One thousand seven hundred and Eighty two but that they did pass the Seal in the month of October of that year - That an interval of near twelve months had not Elapsed between the time of Obtaining Letters of administration to the Estate of your Petitioners Intestate and the death of the Intestate of the Original Defendant and Cross Complainant who died in February one thousand Seven hundred and Eighty three and that therefore the inference attempted to be Drawn from the premises by the Original Defendant and Cross Complainant was unfounded That the Original Defendant and Cross Complainant was highly irregular in the matter setforth in his said Plea regarding a pretended want of process of Revivor in the life time of his Intestate inasmuch as that the said mayors Court had determined on the question and that the said Court of Appeals had affirmed the same That an interval of six years and upwards had not Elapsed between Obtaining Letters of Administration of the Estate and Effects of your Petitioners Intestate and filing the said Bill of Revivor as Erroneously stated by the Original Defendant and Cross Complainant in and by his said Plea and Answer, that

such

such interval did not Exceed the term of five years and therefore the statute of Limitations as pleaded by the Original Defendant and Cross Complainant did not apply that during the interval alluded to the Original Defendant and Cross Complainant had frequently promised to pay the Amount of your Petitioners Claim and that it was upon the faith of such promises that the said Bill of Revivor was so long delayed And your Petitioner did in and by his said Replication had also said that the alias setforth in the said Bill of Revivor was in consequence of the assertions of the Original Defendant and Cross Complainants Intestate contained in his said Petition of appeal from the said Decree of the said Mayors Court - That your Petitioner had in and by his said Replication said that the distinction between the Honble nabob of the Carnatics and nabob of arcot was of no Consequence as they were well known to be one and the same personage - That your Petitioner had in and by his said Replication shewn that the Plea of the Original Defendant and Cross Complainant of a Variance between the said Bill of Revivor and the Original Bill and between the prayer of the Original Defendant and Cross Complainant and the Order of the said mayors Court thereon was frivolous and that your Petitioner had in and by his said Replication said that the Original Defendant and Cross Complainant in filing his said Cross Bill against your

Petitioner

Petitioner and thereon having charged and interrogated him upon the matters and things setforth in his the Original Defendant and Cross Complainants said Plea had thereby and by reason thereof Overruled the same - That the Original Defendant and Cross Complainant well knew that his Intestate did sign the note whereof a Copy was to your Petitioners said Bill of Complaint annexed that his the Original Defendant and Cross Complainants said Intestate had received the full Consideration therein mentioned That he had not discharged the same and that the whole was then due and owing - That your Petitioner had in and by his said Replication referred to his Cross Answer for the means by which the Appellant had Obtained a knowledge of the premises and for a Computation of the suggestions by the Original Defendant and Cross Complainant in his said Plea and Answer setforth and for the reasons that induced your Petitioners Intestate to file his said Bill of Complaint for the recovery of the Amount of the said note of hand That your Petitioner in and by his said answer to the said Cross Bill of Complaint after Verifying the several matters and things in his your Petitioners said Replication contained had amongst other things said in Opposition to the charges in the said Cross Bill contained that there was not any Mysterious or unjustifiable Conduct in the premises on the part of your Petitioners Intestate in his life time nor on the part of

his

his administrators whereby to warrant a suspecion as asserted by the Original
Defendant and Cross Complainant that had his Intestate Ever Owed any money
to the Intestate of your Petitioner the whole or the greater part thereof had been
liquidated. That your Petitioner had said that no part of the said sum of nine
hundred pagodas was Ever paid to his Intestate in his life time nor to his
Administrators after his decease but that the same and Every part thereof was
still due and owing to your Petitioner as administrator as aforesaid. That
in and by his said Cross answer your Petitioner had further said that he
did frequently importune and in the strongest terms press his solicitor to
bring on the cause in the said Court of appeals when pending therein that
was to say the Appeal of the Original Defendant and Cross Complainants
Intestate from the Decree of the said mayors Court and his the Original
Defendant and Cross Complainants Own appeal as administrator as
aforesaid from the Order of the said Court That your Petitioner in and by
his said answer had shewn how and in what manner the said sum of
nine hundred pagodas had become due to his Intestate in his life time
that your Petitioner did himself deliver the same to the Original
Defendant and Cross Complainants said Intestate. that your Petitioners
said Intestate having been informed some time afterwards that the
Original Defendant and Cross Complainants said Intestate was
About to leave madras did through your Petitioner require that he the Original
Defendant and Cross Complainants said Intestate would pay the said

sum

sum of nine hundred Pagodas or that he would Execute a Bond as a security
for the payment thereof that thereupon the Original Defendant and Cross
Complainants said Intestate did use your Petitioner very ill and did
refuse to comply with the said requisitions that your Petitioner did
Complain to the Original Defendant and Cross Complainant of such the
conduct of his said Intestate and during his interference that thereupon
the said Original Defendant and Cross Complainant did say he would
speak to his said Intestate on the subject and some time afterwards
the Original Defendant and Cross Complainants said Intestate
did instead of Executing a Bond, grant the note of hand in
question promising to discharge the same in fifteen days That upon
receiving the said note of hand your Petitioner did carry and
shew the same to the Original Defendant and Cross Complainant
who did say that it would as effectually secure the payment of the
Money due to your Petitioners Intestate as a Bond or words to
that effect which satisfied your Petitioners said Intestate who
having waited a considerable time beyond the said fifteen days and
understanding that the Original Defendant and Cross Complainant
said Intestate had discharged other claims without taking any
further notice of the sum due to him did Exhibit and file his
said Bill of Complaint in the said mayors Court and that your
Petitioner had in and by his said answer said that upon the

death

death of the Original Defendant and Cross Complainants said Intestate which Event your Petitioner had shewn took place four or five months after the death of his your Petitioners Intestate your Petitioner and his late Brother the said Cowoor Yagambrum moodelly as administrator as aforesaid did request their Proctor to pray for Letters of administration to the Estate of the Original Defendant and Cross Complainants said Intestate and your Petitioners Proctor did inform your Petitioner and his said late Brother that the measure was unnecessary for that he had spoken to the Original Defendant and Cross Complainant who said that he intended himself to pray for the said Letters as Brother and next of kin and that on obtaining the same he would see Justice done to your Petitioner and his said late Brother or words to that or the like Effect-That upon the Original Defendant and Cross Complainants praying for the said Letters of administration your Petitioner did apply to him through the means of Soobarry his the Original Defendant and Cross Complainants Dubash and request he would take into Consideration the satisfying the debts in question that thereupon the Original Defendant and Cross Complainant did make Enquiries regarding the same and declaring it to be just did faithfully promise the said Soobaroy and your Petitioner that he would pay off the same in preference to other claims out of the

first

first effects that should come into his possession of the Estate of his said Intestate or words to that or the like Effect and did afterwards frequently and at different times repeat the same That upon such the promises of the Original Defendant and Cross Complainants your Petitioner did rest well satisfied until same time on or about the year of Christ One thousand seven hundred and Eighty Seven when your Petitioner did request his attorney at Law to apply to the Original Defendant and Cross Complainant for the performance of his said promise and your Petitioners said attorney at Law did address the Original Defendant and Cross Complainant accordingly, who in answer by letter did Express himself in the Words and figures following that is to Say To Henry Dupuy Esquire Black Town-Dear Sir- In answer to your favor of yesterday relative to the demand of the Administrator of Nydenadah On my Brothers Estate I have to inform you that the whole of his Property has been long since applied to the dis Except of Nabobs Consolidated Bond for about four thousand Pagodas principal this Bond has been certified through the Committee for Examining the private Claims of the nabob to the Court of Directors and some arrangement may be Expected in the Course of the year Doctor Ruddiman Captain Taylor and one or two more are nearly in the same

situation

situation with Vedenadas administrator but as soon as I can turn the
Bond into Cash I will discharge their demands at least as far as it
will Enable me and I believe there will be sufficient for all Have
a Copy of my Brothers note of hand to Vedenadah. and when it
shall be in my power to discharge it I will give you Early informa-
Iam Dear Sir /Signed/ Benjamin sulivan- and That your Petitio-
had in and by his said answer shewn that the Original Defendant
and Cross Complainant notwithstanding his promises had totally
neglected the said Claim of your Petitioner and therefore he
determined to pursue the Conceive measures he had begun but
that being advised by his Friends to delay the same; and
time trusting that he might at last receive that Justice the Original Defendant
and Cross Complainant had so repeatedly promised your Petitioner did desist
from the same until some time in the month of June which was in the year
of Christ One thousand seven hundred and Eighty Eight when finding
that all further Expectation from the Original Defendant and Cross
Complainant was in Vain he did instruct his attorney at Law to file a
Bill of Revivor, and the same was filed accordingly and that your
Petitioner had in and by his said answer solemnly declared that until
the Original Defendant and Cross Complainant had filed an Inventory
and account Current in the said mayors Court on the thirtieth day of
December

December One thousand seven hundred and ninety one he did not know
that the Original Defendant and Cross Complainants had received and
paid away such large sums of money on account of the Estate of his said
Intestate that by the said Account Current it would appear that the
Original Defendant and Cross Complainant had discharged Claims upon
the Estate of his said Intestate of a less Degree then the Claims of
your Petitioner and such as were not authenticated by the Original
Defendant and Cross Complainants said Intestate in his life time in
the same manner as the Claim of your Petitioner Intestate had been
authenticated and as the Original Defendant and Cross Complainants
out not to have paid and discharged such claims at a time
when your Petitioner had obtained a Judgment in the said mayors
Court and for other cogent Reasons that arose from the premises your
Petitioner did humbly trust that if the Estate of the Original Defendant
and Cross Complainants said Intestate should not be sufficient to
pay off the said sum of nine hundred Pagodas together with all
Interest due thereon that the Original Defendant and Cross Complai-
nant should be Decreed to pay the same out of his own pocket for
that otherwise your Petitioner had humbly submitted to the said
Mayors Court the Original Defendant and Cross Complainant would
be left to benefit by his own wrongs Contrary to Equity and good
conscience and your Petitioner did in and by his said answer to

the

the Petition of appeal of the Original Defendant and Cross Complainants say that to his said Answer the Original Defendant and Cross Complainant did Exhibit and file his Replication and thereto your Petitioner did file his Rejoinder That your Petitioner did say that having thus set forth the material points of his Original Replication and Cross Answer and which the Original Defendant and Cross Complainants had omitted to do in and by his said Petition of appeal for further Answer to the Original Defendant and Cross Complainants said Petition of Appeal did say that his your Petitioners said Cross Answer did not as the Original Defendant and Cross Complainant had represented the fact to be in and by his said Petition of Appeal Contain ill founded assertions but that the matters and things therein set forth were founded in truth and your Petitioner did say that he never meant nor intended to infer in and by his said Answer any unjust imputations to the prejudice of the Original Defendant and Cross Complainant and your Petitioner did say that he did not admit that any such unjust imputations were set forth in and by his said Cross Answer and your Petitioner did say he had therein before shewn that the delay in bringing the said Cause to a hearing was in Every respect imputable to the Original Defendant and Cross Complainant who had actually trifled with your Petitioner in Order as it would seem to prevent your Petitioner from pressing the said Cause to a Decision and your Petitioner did say that although the Original Defendant and Cross Complainant might have applied as he had asserted the fact to be, all the Assets of his said Intestates Estate to the payment of his debts yet that he had no right so to do and your Petitioner did say that he had already shewn that the Original Defendant and Cross Complainant never did Entertain a doubt of the Justness of the Demand of your Petitioner on the Estate of his Intestate notwithstanding his suggestion to the Contrary in his said Petition of Appeal contained for your Petitioner did say he had shewn that the Appellant had full knowledge of the Justness of the said Demand in its Earliest stage that he had afterwards Examined and fully admitted the same and had repeatedly promised to pay and discharge the Amount thereof and your Petitioner further Answering did say he did admit that after the usual Proceedings were had issue Joined two Witnesses were Examined on the part of your Petitioner and that neither of them was interrogated to the hand writing of the Appellants Intestate nor did your Petitioner by the said Witnesses prove that the signature affixed to the said note of hand was of the hand writing of the Original Defendant and

and Cross Complainants said Intestate because the said witnesses not knowing the hand writing of the Original Defendant and Cross Complainants Intestate could not have deposed thereto - And your Petitioner did say he was advised that the proving of the said signature was not necessary insomuch as that the said Original note of hand was delivered into the said mayors Court at the instance of the Original Defendant and Cross Complainant who did tacitly admit the signature thereto affixed to be the hand writing of his Intestate for that he did not make any Objection thereto and insomuch as your Petitioner did in and by his said Cross Answer upon Oath shew that the Original Defendant and Cross Complainant had acknowledged the authenticity of the said note and had frequently promised to pay off the amount thereon due to your Petitioner who did support such his shewing in his said answer Contained by the testimony of Witnesses of unimpeached Character and your Petitioner did say that the said note of hand was produced and shewn to the Original Defendant and Cross Complainant notwithstanting his Assertion to the Contrary in his said Petition of appeal Contained and notwithstanding the further assertion that the same was not offered to be shewn to him for your Petitioner did say that pending the suit in the said mayors Court the Original Defendant and Cross Complaint did pray Oyer of the said note of hand and the same was in consequence thereof delivered into the said mayors Court for his Inspection - That notwithstanding the Assertion of the Appellant to the Contrary the Witnesses Examined on the part of your Petitioner were interrogated to other matters of importance to the Cause than the promises of the Original Defendant and Cross Complainants to discharge the said demand when he should have sufficients Assets for that purpose And your Petitioner in Order to illustrate the fact did begleave to set forth the Depositions of Henry Dupuy one of the Attornies of the said mayors Court and a Solicitor in the said Court of Appeals and of Soobarroy the Debash of the Original Defendant and Cross Complainant who had omitted to set forth the same - That the said Henry Dupuy to the Second Interrogatory did say that he was the Attorney at Law Employed by your Petitioners Intestate to Commence the present suit against the Original Defendant and Cross Complainants Intestate that he did commence the same accordingly and that he did prosecute the same until a Decree had been given thereon, believed your Petitioner had made application to the Original Defendant and Cross Complainant for the Amount of the said Decree that he the Deponent did likewise to the best of his recollection make application to the same Effect on behalf of your Petitioner Petitioner and his late Brother Cowoor yagambrum moodeliar, and that he had frequently

made

made such Applications since his decease That the Original Defendant and Cross Complainant never did Object to the justness of the debt but did at different times promise to pay it so soon as he should collect sufficient Assets believed that your Petitioner and his said late Brother did in consequence of the intimation of the promise of payment of the Original Defendant and Cross Complainants desist in their intentions of Reviving and otherwise proceeding in the Decree Obtained by their Intestate against the Intestate of the Original Defendant and Cross Complainant That your Petitioner did at times apply to him the Deponent as his solicitor to bring on to a hearing the Appeal that had been lodged by the Original Defendant and Cross Complainant from the said Order of the said mayors Court that he the Deponent did use his Endeavours to bring on the same to a hearing, that the same was put off on account of your Petitioners trusting to the promises of the Original Defendant and Cross Complainant that he would make satisfaction to your Petitioner for the amount of the said Demand That your Petitioner did in the Year One thousand seven hundred and Eighty seven request the Deponent as his attorney at Law to apply to the Original Defendant and Cross Complainant for the performance of his promise of payment of the demand in question and that he did address the Original Defendant and Cross

Cross Complainant accordingly and that the paper writing shewn to him at the time of his Examination was the Answer he received from the Original Defendant and Cross Complainant and the said Scobaroy did say that about one or two months after the death of the Original Defendant and Cross Complainants Intestate at the requisition of your Petitioner and his said late Brother he did apply to the Original Defendant and Cross Complainant and request him to take into Consideration your Petitioners Claim on the Estate of his the Original Defendant and Cross Complainants Intestate that the Original Defendant and Cross Complainant did declare that such claim was just and that he would pay off the same in preference to Every other out of the first Assets and that he did frequently repeat the said promise and your Petitioner did say that from the said Depositions the promises of the Original Defendant and Cross Complainant were not as he would suggest they were provisional that was to say provided the demand in question Appeared to him to be just, but on the contrary that they were unconditional promises upon an admission of the justness of the premises – And your Petitioner did in and by his said Petition of Appeal admit that upon the pleadings had the said Cause was set down for hearing, and that the same did accordingly come on to be heard before the said mayors Court on Tuesday the twentieth day of may One thousand seven hundred and ninety four and that the said mayors

Court

Court did decree that the Original Defendant and Cross Complainant should pay unto your Petitioner as surviving administrator of the said Coovor-Vydenada Moodelly the sum of Nine hundred Pagodas out of the Estate of his the Original Defendant and Cross Complainants Intestate together with all such Interest as then was or thereafter should become due thereon until full payment should be made as also all Costs of the Original Suit and in default of sufficient assets to satisfy the said Demand that the Original Defendant and Cross Complainant should pay the same Out of his own pocket and that the Original Defendant and Cross-Complainants Cross Bill should stand dismissed and that the Costs thereof should be paid out of his the Original Defendant and Cross Complainants own Pocket but your Petitioner did not admit that the Original Defendant and Cross Complainant was in any wise aggrieved by the said Decree of the said mayors Court or that he had any Cause of Appeal therefrom to the said Court of Appeals And your Petitioner in Answer to the Original Defendant and Cross Complainants first Reason for appealing from the said Decree of the said mayors Court to the said Court of Appeals did say that although the Decree of the said mayors Court of the twelfth day of December One thousand Seven hundred and Eighty was Reversed by the said Court of appeals yet that until the same was Reversed it was in its operation in the premises a Judgment and as such ought to have been regarded by

by the Original Defendant and Cross Complainant But your Petitioner did say that although the said Court of Appeals was pleased to Reverse the said Decree of the said mayors Court the same was reversed partially that is to say it was Reversed only so as to give the Original Defendant and Cross Complainant an Opportunity of defending the suit instituted against his said Intestate the Bill having been taken pro Confesso and did not go to a Complete reversal of the said Decree that is to say it did not dismiss the said Bill of Complaint which was retained and was the same upon which the Decree was granted from whence the Original Defendant and Cross Complainant had appealed to the said Court of Appeals – and your Petitioner did say that the said Bill of Complaint was notice of the debt due from the Estate of the Original Defendant and Cross Complainants Intestate to the Intestate of your Petitioner and that the Original Defendant and Cross Complainant was bound thereby and could not legally satisfy and discharge any demands on the Estate of his said Intestate unless the same were of a superior Degree to the Claim set up by your Petitioners Intestate without retaining sufficient assets in his hands to satisfy the same for your Petitioner did say he was advised that the Original Defendant and Cross Complainant could not pay off and discharge any simple Contract claim when he had notice as above set forth that there was a suit pending the said mayors Court against the Estate of his said Intestate, and the more particularly as he had acknowledged the Justness of the Claim for which the said suit had been

instituted

instituted and had repeatedly promised to discharge the amount thereof and therefore
your Petitioner did say he was advised notwithstanding the suggestions of
the Original Defendant and Cross Complainant to the Contrary he had
not any right reserved or secured to him of paying in preference any
demands against the Estate of his said Intestate in whatever light they might
have appeared to him as he did admit whole of the said demands were of a simple
contract degree and your Petitioner did further say he was advised that the
Original Defendant and Cross Complainant having paid and discharged these
demands and thereby disbursed the whole of the Assets of the said Estate of his
Intestate had committed a Devastavits as to your Petitioner as surviving
Administrator as aforesaid for your Petitioner did say he was advised that the
improper application of the Assets of a deceased person was Equally a
Devastavit in the Executor or administrator as if he had wasted or injured
the same and that as the Original Defendant and Cross Complainant had
improperly applied the Assets of the Estate of his said Intestate he had
committed a Devastavit and thereby and by reason thereof was compellable
in failure of Assets to pay your Petitioners demand that is to say the amount
of the said Decree of the said mayors Court Court out of his own pocket
To the Second Reason for appeal your Petitioner did say that it was
not necessary on his part to prove the Signature affixed to the said note of
hand because the Original Defendant and Cross Complainants did not
by denying the same put your Petitioner to the proof thereof but on the
contrary

contrary did pray Oyer of the said note of hand and did tacitly admits the due
Execution thereof and further because he did admit the debt to be due and did promise
to pay the same and thereupon your Petitioner did say he was at a loss to account
for the assertion of the Original Defendant and Cross Complainant that he had
never seen the said note of hand and for the inference drawn from the
promises that he the appellant was totally ignorant whether the said note
if Ever Evented had or had not been paid in the whole or in part during
the life time of one or both of the Original parties and to that part of the
Original Defendant and Cross complainants said Reasons for Appeal wherein
he did alledge his Intestate had for a Considerable time before his death contested
the same your Petitioner did say that the Original Defendant and Cross Complai-
-nants Intestate did not in and by his Petition and appeal further Contest the
said note of hand thereby asserting that your Petitioners Intestate had
sued him by a wrong name and thereupon prayed that the said Decree
might be Reversed in order to Enable your Petitioners Intestate to sue him
by his Right name and your Pett. did submit to the said Court of appeals that
he had Shewn that the Original Defendant and Cross Complainant was
intimately acquainted with the demand in question and with the
note of hand at the time it was granted by his Intestate and that
he did give his sentiments thereon as to the legal operation thereof that
he Acknowledged to have in his possession a Copy of the said note of hand
admitted the Justness of the amount thereby secured to your Petitioners

Intestate

Intestate and repeatedly promised to pay the same and thereupon your Petitioner did further submit to the said Court of appeals that the Original Defendant and Cross Complainants said Cross Bill was altogether irrelevant and unnecessary and that therefore the Decree of the said mayors Court in decreeing that the Original Defendant and Cross Complainants should pay the Costs attending the same out of his Own pocket was both legal and Equitable To the third Reason for appeal your Petitioner did say as he had therein before shewn that the Original Defendant and Cross Complainants promises both Verbal and in writing did not nor could they carry with them any implication that he must be first satisfied that the debt in question was justly due before he would pay the same because your Petitioner did say such promises were made after the Original Defendant and Cross Complainant had admitted the fact as appeared by your Petitioners Answer upon Oath and by the Testimony of the Witnesses he had produced in further support thereof To the other part of the said third Reason for appeal your Petitioner did say he had already answered the same in his answer to the said second Reason for appeal and partly by his answer to the first Reason for appeal and thereupon he did submit to the said Court of appeals that the said Mayors Court in decreeing that the Original Defendant and Cross Complainant should pay the Amount of his your Petitioners demand out of the said Estate or Eventually out of his the Original Defendant and Cross Complainants Own funds, did

decree

decree according to Law and to Common Justice

To the fourth Reason for appeal your Petitioner did say he had already answered the same in his answer to the Second Reason for appeal and thereupon he did say he was advised that the said mayors Court ought not to have dismissed his said Bill of Complaint and that the said Mayors Court could not have done otherwise than decreeing thereon as aforementioned To the first Reason your Petitioner did say that he was not conscious of having introduced any improper matter in his answer to the said Cross Bill nor did he Ever mean or intend to traduce his the Original Defendant and Cross Complainants Character But from the mode of Defence adopted by the Original Defendant and Cross Complainant in the Original Suit and the nature of the Charges contained in the said Cross Bill your Petitioner was compelled reluctantly to set forth such truths as tended to support his Cause and your Petitioner did further say that his Bill of Complaint was Even shorter than a Declaration at Common Law but the answer of the Original Defendant and Cross Complainant Embraced matters and things foreign as your Petitioner was advised to the matters in question and further that he did unnecessarily Exhibit a Cross Bill and thereby in fact make two Suits and thereupon your Petitioner did submit to the said Court of appeals that it was the Original Defendant and Cross Complainant and not your Petitioner who had given an occasion to an unnecessary length of Pleadings - To the Sixth

Reason

Reason for appeal your Petitioner did say that at the time the note of hand in question was Executed the Current rate of Interest was twelve per cent and that by an act of the twenty fourth year of the Reign of his present majesty such rate of Interest at the time the said Decree of the said Mayors Court was given might have been Eight per cent yet that from the time the said Bill of Complaint was filed to the time when the Original Defendant and Cross Complainant filed his Answer and Cross Bill the Current rate of Interest was twelve per cent, and therefore your Petitioner did submit to the Said Court of Appeals that as your Petitioner might and ought to have had a Decree at a time when the rate of Interest was twelve per cent and as he should have Obtained such Decree at that period had it not been for the faith and confidence he placed in the repeated promises made to him by the Original Defendant and Cross Complainant as above set forth of payment of the said debt due from the Estate of his the Original Defendant and Cross Complainants said Intestate to the Estate of your Petitioners Intestate he had no right to any Abatement of Interest and thereby to benefit by his Own wrongs & Laches occasioned by his proceedings in the premises and your Petitioner did therefore pray that the said Petition and appeal of the said Original Defendant and Cross Complainant might be dismissed with Costs and the said Decree of the said Mayors Court affirmed

And your Petitioner Sheweth unto your most Excellent majesty in Council that the Original Defendant and Cross Complainants said Petition of appeal and your Petitioners said answer thereto did come on to be heard and determined before the said Court of Appeals on the ninth day of December in the Year of Christ One thousand Seven hundred and ninety four when the said Court of appeals did order and Decree that the said Decree of the said mayors Court should stand affirmed so far as it went to the payment of the Debt Interest and Costs out of the Afsets of the Estate of Henry Boyle Sulivan deceased with Costs in the said Court and that it be Reversed so far as it went to the payment Eventually of the said debt Interest and Costs out of the pocket of the Original Defendant and Cross Complainant and so far as it went to the charge of Interest at the rate of twelve per cent which Interest the said Court did think fit to Order should be at the rate of eight per cent and the said Court of Appeals did further order and Decree that the said mayors Court regarding the said Cross Bill be affirmed with Costs in that Court as by Copy of the said order and Decree hereunto annexed for the inspection of your most Excellent Majesty in Council reference being thereunto had may appear—

By which said Order and Decree of the said Court of Appeals your Petitioner doth humbly conceive that he is much aggrieved

aggrieved and injured and doth therefore appeal therefrom to your most Excellent majesty in Council—

Fast.... Because your Petitioner doth humbly submit to your most Excellent majesty in Council that the said Decree of the said mayors Court was fair and Equitable and consonant with the Letter and spirit of the Laws in like cases and that the said Decree of the said Court of Appeals is a departure from the Law and contrary to that Equity to which your Petr humbly submits to your most Excellent majesty in Council his Case supported by the best possible testimony is fully Entitled to—

Secondly.... Because your Petitioner doth humbly submits to your most Excellent majesty in Council that it is fully in Evidence that the Original Defendant and Cross Complainant did very shortly after the decease of his Intestate who departed this life a few months only subsequent to the decease of your Petitioners Intestate acknowledge the justness of the Claim of Your Petitioner and faithfully promise to pay off the same in preference to any other out of the first Assets that he did frequently repeat the said promises and such Evidence which was given by the Original Defendant and Cross Complainants own Debash is amply supported by the Testimony of Henry Dupuy who also Shews that the delay in bringing a Bill of Revivor and bringing the former appeal of the Original Defendant and Cross Complainants Intestate to a hearing was Entirely owing to the promises of the Original Defendant and Cross Complainant of satisfying the said Claim of your Petitioner and which is in some measure supported by a letter Exhibited in the pleadings from the Original Defendant and Cross Complainant to Your Petitioners attorney at Law and thereupon your Petitioner doth humbly submit your most Excellent Majesty in Council that the Laches which the Original Defendant and Cross Complainant has attempted to fix on your Petitioner do attach to himself and that your Petitioner was lulled into a security that induced him not to prosecute the Litigation by the Assurance he had a right to Entertain in his own mind of an amicable Accomodation an Assurance founded on the promises of the Original Defendant and Cross Complainant repeatedly given that he would pay and satisfy your Petitioners demand in preference to any other, and which your Petitioner humbly submits to your most Excellent Majesty in Council the Original Defendant and Cross Complainant ought to have done and was by Law bound to do—

Thirdly.... Because a Judgement of the said mayors Court had been by your Petitioner Obtained against the Original Defendant and Cross Complainants Intestate in his life time

and

and the Original Defendant and Cross Compluinant was bound by law to take notice thereof and altho the Original Defendant and Cross Complainant has suggested that the same was appealed from by his Intestate and that therefore it was a Judgment only in suspense yet your Petitioner humbly submits to Your most Excellent majesty in Council that it was sufficiently binding upon the Original Defendant and Cross Complainants for him to have retained in his hands afsets to Answer the same, Eventually as such Judgement and appeal were made in the year one thousand seven hundred and Eighty and no decision upon the said appeal took place until the year One thousand seven hundred and ninety One and in the mean time according to the Accounts of the Original Defendant and Cross Complainant the whole of the afsets of the said Estate of his Intestate had been paid away and your Petitioner further humbly Sheweth unto your most Excellent majesty in Council that Even had no Judgment been obtained the filing of the Bill in the said mayors Court by your Petitioners Intestate against the Original Defendant and Cross Complainants Intestate in his life time was sufficient in itself to bind the afsets in the hands of the Original Defendant and Cross Complainant as it appears by his Own shewing that the whole of the Claims against his Intestate were of a simple Contract nature

Lastly ..... your Petitioner humbly submits to your Most Excellent Majesty in Council that the Reasons in your Petitioners Answer Contained in Objection to the Reasons setforth in the Petition of Appeal of the Original Defendant and Cross Complainant to the said Court of Appeals were sufficient to shew the Equity and Justice of the said Decree of the said Mayors Court and to have induced the said Court of Appeals to Confirm the said Decree —

your Petitioner therefore humbly prays that premises Considered your Most Excellent Majesty in Council will be pleased to reverse the said Order and Decree of the said Court of Appeals at Madraspatnam and affirm the said Decree of the said Mayors Courts of Madras-patnam aforesaid, and further that your Most Excellent Majesty in Council will Vouchsafe to grant unto Your Petitioner such further and other Relief in the premises as to your Most Excellent Majesty in Council shall seem Most Meet

/signed/ James Stuart Hall
Solicitor for Appellant

Mayors

Mayors Court at
Madraspatnam

Tuesday the 20th day of may
Anno Domini 1794

L.S.

Present

Hr. Chr. Michell Esqr. Mayor
James Ball William Webb Josias
Dupre Porcher Andrew Ross
John Mitford James Daly Wm.
Abbott and Alexr. Cockburn

Aldermen

Between Coovoor Moodiah Moodiliar
surviving administrator of all and singular
the Goods Chattels and Credits of Coovoor
Vydenadah Moodelly late of Madras
Inhabitant deceased Original Complainant
and Cross Defendant and Benjamin Sulivan
of Fort St. George Esquire Administrator to
the Estate & Effects of Henry Boyle Salivan
deceased original Defendant & Cross Complainant

Mayors Court

These causes coming on to be heard and debated this day in the presence of the attornies on both sides on Reading the Original Complainants Complainants Bill with Copy of a note of hand annexed the Bill of Revivor the Original Defendants Plea and answer The Cross Bill. The Replication The Cross Answer The Rejoinder the Cross Replication The Cross Amended Rejoinder The Interrogatories and depositions on the part of the Original Complainant and Cross 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 Original Defendant do pay unto the Original Complainant out of the Estate and Effects of Henry Boyle Salivan Deceased the full and just Sum of Nine hundred Pags Pags 900 " " together with all such Interest as now is or shall hereafter become due thereon until full payment is made also all costs of the Original Suit, and in defaults of sufficient Assets to satisfy the Complainants demand, that the Defendant do pay the Amount out of his own Pocket and it is further Ordered and Decreed that the Cross Bill do stand dismissed and that the costs thereof be paid by the Cross Complainants out of his own pocket

Test signed George Taylor Regr.

a true Copy
signed James Stuart Hall
solicitor for appellant

Court of Appeals