25,000—4-5-32.

Block 7

Rack No.

Shelf No. 1

No. 27

General No.

High Court Series VI

Appeals against Mayor's Court [illegible]

Vol. 27.

4098

129

Saturday the 16th day of January 1796.

Present,

The Right Honble Lord Hobart,

Edward Saunders and Ernst William Fallofield,

To the Right Honble Robert Lord Hobart

Governor and President in Council

at

Fort Saint George &c

&c &c

In the Honble the Court of Appeals

Between Francis Lind a Senior Merchant in the Service of the united Company of Merchants of England trading to the East Indies Complainant; and Petty Tomboo Naick of Madras Inhabitant Administrator of all and Every the goods Chattles reights and

Filed in my Office the 8th December 1794

Robert Clerk
Clk

And credits of Paicala Ram
asawmy Naick late of
Madras aforesaid Deceased
Defendant

The humble Petition and Appeal of

the above named Defendant

Sheweth

That the said Frances Lind did on or about the Eighteenth Day of February which was in the English year One Thousand Seven hundred and Ninety one file his Bill of Compliant Against your Petitioner in the Honble the Mayors Court at Madraspatnam and by his said Bill did set forth that he the Complainant having had extensive dealings and transactions in the buying and Selling of Muslins did employ your Petitioner said Intestate Paicala Ramasawmy Naick as his Dubash who did usually receive such muslins and dispose of the same as from time to time Ordered and directed by the said Francis Lind and upon his Account and for his sole benefit and advantage — And the said Francis Lind did by his said Bill shew that some time in the year one thousand Seven hundred and Eighty Nine your Petitioner said Intestate did depart this life Intestate but having at such the time of his Decease in his Custody and posession Two hundred and forty four Peices of Muslin the property of him the said Francis Lind and which muslin the said Francis Lind did charge that your Petitioner said Intestate had in his life time received on his the said Francis Linds Account and to be disposed of on his the said Francis Linds sole benefit and advantage and in manner as to be directed by him the said Francis Lind. And the said Francis Lind did by his said Bill further Shew that some time in the month of May which was in the year one Thousand Seven hundred and Ninety one your Petitioner did upon Application to the said Honble the Mayors Court in their Capacity of Kings Ordinary duly obtain Letters of Administration to all and Singular the Goods Chattles and Credits Rights of the said Paicala Ramasawmy Naick And that your Petitioner did thereupon possess himself of

of the said Two hundred and forty four Peices of Muslins and that though your Petitioner well knew the said Two hundred and forty four Peices of Muslins to be the property of and belonging to the said Complainant yet that your Petitioner did wrongfully and fraudulently hold and detain the same thereby pretending fraudulently to Deprive the said Complainant Wherefore he the said Francis Lind did by his said Bill charge that your Petitioner did stand Justly and truly indebted unto him the said Francis Lind for and on account of the said Two hundred and forty four Peices of Muslin so Charged to be by your Petitioner wrongfully and fraudulently detained from him the said Complainant as aforesaid in the full and Just Sum of Eight hundred and Sixty one Star Pagodas Twenty Eight fanams and forty Cash Current money of Madras or Sterling money of Great Britain at the rate of Eight Shillings for every Pagoda the Sum of Three hundred and Thirty four Pounds thirteen

thirteen Shillings or thereabouts as would more fully appear by an Account Current Copy whereof was said to be annexed to the said Bill and prayed to be taken as part of the said Bill And the said Francis Lind by his said Bill did further say and charge that he had frequently and in an amicable manner Applied to your Petitioner either to deliver to him the said Francis Lind the said Two hundred and forty four Peices of Muslin or to pay for the same the said Sum of Eight hundred and Sixty one Star Pagodas Twenty Eight fanams and forty Cash and that your Petitioner combining and Confiderating to and with divers Persons then unknown to him the said Francis Lind but contriving how to defraud him had refused to deliver the said Two hundred and forty four Peices of Muslin or to pay for them the said Sum of Eight hundred Sixty one Pagodas Twenty Eight fanams and forty Cash which actings and doings of your Petitioner were contrary to Equity and good conscience and to the great wrong and injury of him the said Francis Lind

in

in as much as the said Francis Lind was remediless in the premises without the aid of the said Honble the Mayors Court he the said Francis Lind did therefore pray that your Petitioner should answer certain Interrogatories in the said Bill contained and be further Decreed to pay and satisfy to him the said Francis Lind the said Sum of Eight hundred and Sixty one Pagodas Twenty Eight fanams and forty Cash with all Interest as then was or should thereafter become due thereon as also all Costs of Suit as by the said Bill and Copy Account Current Annexed and to which your Petitioner prays to refer in aid of this his Petition of Appeal will fully And at large Appear And your Petitioner Sheweth that to such Bill of the said Francis Lind your Petitioner did duly put in his Answer on Oath and did depose that he admitted it might be true as in the Bill was charged that the Complainant had very extensive dealings and transactions with the said Paucala Ramasawmy Naick in many matters as his the said Complainants Dubash and did also admit that

that the said Complainant might have had dealings and transactions in the buying and selling of Muslins and that the said Complainant did employ or was engaged therein with the said Paucala Ramasawmy Naick and that the said Paucala Ramasawmy Naick might for any thing your Petitioner knows to the Contrary thereof have usually received the same and disposed thereof but Whether the said Paucala Ramsawmy Naick did from time to time dispose of such muslins According to the Complainants Order and directions or upon the Complainants Account or for his the said Complainants Sole benefit And advantage or for the mutual Advantage of the Complainants and the said Intestate your Petitioner could not set forth And your Petitioner further Answering did say that he admitted that the said Paucala Ramasawmy Naick did depart this life Intestate and at the time in the Complainants said Bill of Complaint mentioned but your Petitioner did say that he did not know that the said Paucala Ramasawmy Naick had at the time of his death in his

his custody or possession Two hundred and forty four Puces of Muslins or any other Quantity of Muslin the property of and belonging to the said Complainant and your Petitioner did admit that he did on or about the Sixth day of May which was in the year of our Lord one thousand seven hundred and ninety duly obtain administration to all and singular the Goods and Chattles rights and Credits of the said Paucala Ramasawmy Naick, and did also admit that he did as the Administrator of the said Paucala Ramasawmy naick possess himself of Two hundred and forty four Puces of Muslins which he found Amongst the property of the said Paucala Ramasawmy Naick but he did positively say that he did not know that the said Two hundred and forty four Puces of Muslin or any part thereof were the property of or belonging to the said Complainant but did admit that he held and did detain the said Two hundred and forty Puces of Muslin, but denied that he did wrongfully or fraudulently or with an intent fraudulently or otherwise to deprive the said Complainant thereof detain the said Two hundred and forty four Puces of Muslin or any part thereof for your Petitioner said that he detained the same not knowing to whom they or any of them actualy belonged until the said Complainant should duly prove his the said Complainants property therein and rights thereto if any he had And your Petitioner did say that upon the said Complainants so doing he your Petitioner would be ready and willing to deliver up the said Muslins to the said Complainant And your Petitioner did say that untill the said Complainants should prove the said Muslins to belong to him that your Petitioner would not as he was advised and believed be warranted as the Administrator of the said Intestate to deliver up the said muslins or any part of them to the said Complainant And your Petitioner did say that he was advised and did believe that the said Complainants Bill of Complaint being in the nature of an Action of detinue for the recovery of the said Muslins that he the said Complainant could not

therefore

therefore recover the Amount in value of the said Muslins in as much as your Petitioner was ready and willing to deliver up the said Two hundred and forty four Pieces of Muslin to the said complainant when he the said complainant should duly establish his right thereto and that if your Petitioner was to deliver up the said Muslins before it was well ascertained that the complainant had a right thereto And that they did not belong to the Estate of the said Intestate he your Petitioner would subject himself to be Accountable to the Creditors of the said Intestates Estate for wasting the goods of the said Estate for the due administration and distribution whereof he was bound to the said Honble the Mayors court in their Ecclesiastical Capacity your Petitioner did further Answer that the said Two hundred and forty four Pieces of Muslin were not of the value of five hundred and ninety nine Madras Pagodas forty one fanams and sixty cash or any such Sum of money And your Petitioner did say that the charge of Interest in the Account Current Annexed

annexed to the complainants said Bill of complaint contained was unjust and unfounded And did say that for the several causes and reasons in the said Answer set forth that your Petitioner was not indebted to the said complainant in the sum of Eight hundred and Sixty one Pagodas Twenty Eight fanams And forty Cash or in any other Sum of money whatever And your Petitioner did deny all and all manner of Combination and confederacy wherewith he was charged in and by the said Bill of complaint All which Matters And things your Petitioner did say he was ready to aver and prove as the said Honble the Mayors court should direct and award and therefore humbly prayed to be thence dismissed with his reasonable costs and charges on such behalf most wrongfully sustained And your Petitioner Sheweth that to such answer the said Francis Lind did reply that he would aver and prove his said Bill to be true certain and sufficient in the Law to be Answered unto and that the said Answer of your Petitioner was uncertain untrue and insufficient to be replied unto yet for further Replication did

did say that your Petitioner as Administrator of the said Paucala Ramasawmy Naick Deceased did stand Justly and truly indebted unto him the said Complainant in the full And just Sum of Eight hundred and Sixty four Pagodas Twenty Eight fanams And forty Cash in manner And form as the same was charged and set forth in his the Complainants said Bill of Complaint And did further say that notwithstanding the waswi Answer of your Petitioner that he your Petitioner well Know the Muslins set forth in his the Complainants said Bill to be his the Complainants property and had theretofore frequently Admitted the truth so to be and further that your Petitioners said Intestate was Employed by him the said Complainant in the sale and disposal thereof not for the mutual benefit and Advantage of his your Petitioners said Intestate And the Complainant but for the benefit and advantage of him the Complainant only and that so your Petitioner had frequently confessed the truth to be

and

And so the same in fact appeared by your Petitioners own shewing for that altho your Petitioner evaded Admitting which in equity And good conscience he ought not to have done that the said Muslins were the Property of him the Complainant yet that your Petitioner confessed the same to be in his your Petitioners posession and did not take upon him to say they were the property of your Petitioners said Intestate but on the contrary only pretended that he did not Know to whom they actually belonged And further Pretended that he was ready to deliver up the same to him the Complainants on his the Complainants proving the same to be his property and which the Complainants did say was a mere pretext framed for the purpose of giving a color to his your Petitioners litigious disposition And fraudulent intentions And the said Complainant did say that your Petitioner having possessed himself of the said Muslins as set forth in his the Complainants said Bill and having fraudulently converted the same to his your Petitioners own use and well knowing

the

the promises yet refusing to deliver up the same to him the Complainant that therefore he the Complainant was thereupon warranted in bringing his action for the Amount thereof upon the Account Current to his said Bill annexed and which Account Current the said Complainant did aver and said he would maintain and prove to be equitable and Just and did therefore say that the principal Sum in the said Account Current contained was the prime cost of the said Muslin unjustly and fraudulently withheld and detained by your Petitioner and by your Petitioner as aforesaid converted to his own use, and that the other Items did involve the Charges of merchandise arising from duties on the said muslins paid by him the Complainant together With an Interest upon the whole calculated from the period on which he the Complainant did demand the delivery of the said Muslins from your Petitioner, and his your Petitioners refusal to comply therewith And thereupon the said Complainant did say that the said charge of Interest notwithstanding the Assertion of your Petitioner to the contrary was regular and Just and in conformity to usage and custom in like cases and did further say that had he charged a profit on the said muslins Which he had not done that he would have been warranted in so doing because that it was a Maxim that no man has a right to set a value on anothers Goods And that every Merchant is entitled to a reasonable profit And the said Complainant did by his said Replication further say that notwithstanding the insinuation of your Petitioner to the contrary that he the Complainant had not misconceived his action for that he was advised that Actions of detinue appertain to Courts of Law and that they are tried by a Jury and determined by a Verdict And therefore he did say that he could not have brought an Action of detinue and further he did say that he had brought his action Against your Petitioner in conformity to the rules And practice of the Honble the Mayors Court for the Amount of Goods and not for the Goods themselves because that it was upon the forme and not upon the latter that he the Complainant could pray the Judgment

Judgment and obtain a Decree of the Mayors Court
all which matters and things the said
Complainant did say he was ready to aver maintain and
prove as the said Honoble the Mayors Court should
direct and did humbly pray as in and by his said Bill
he had already prayed — To which Replication of
the said Complainant your Petitioner did Rejoin and
for Rejoinder did say that he your Petitioner did not
as administrator of the said Paucala Ramsawmy saith
Deceased or otherwise stand justly or truly indebted unto
the said Repliant in the Sum of Eight hundred and
Sixty four Pagodas Twenty Eight fanams and forty cash
or in any Sum of money whatever though the said Complainant
had by his said Bill of Complaint untruly Charged your
Petitioner to be indebted to him the said Complainant
And your Petitioner did say that there was no
evasion whatever set forth or contained in his said
Answer and that he did not well or at all know
that the Muslins mentioned in the Complainants
said Bill of Complaint were the Property of the said
Complainant nor had your Petitioner theretofore or

Could

could he nor did he frequently or at all admit that the
said Muslins or any part thereof were the property
of the said Complainant for your Petitioner did say
that he having found Two hundred and forty four
Pieces of Muslins Amongst the property of your Petitioners
said Intestate he your Petitioner must and did
Conclude therefrom that the said Two hundred and forty
four Pieces of Muslin even the property of his said
Intestate untill the contrary thereof should be duly
proved and the Complainants right thereto if any he had
established and your Petitioner did say that he had not
Admitted or confessed nor did admit or confess that
his said Intestate was employed by the said Repliant
in the sale and disposal of the said Two hundred and forty
four Pieces of Muslins nor that of his said Intestate
had been employed by the said Repliant to dispose
of Two hundred and forty four Pieces of Muslins and
that he actually disposed thereof upon the Repliants
sole Account that the said Repliant had a right to
credit for the Amount Sales But your Petitioner did
say that as no such transaction Appeared on his said

Intestates

Intestates Books that he could not give the said
Repliant any such credit And your Petitioner did
say that when the said Repliant should Establish
that your Petitioners said Intestate sold Two hundred
and forty four Pieces of Muslins upon the said Repliants
Account and What the same Amounted to that then
your Petitioner would be ready and willing thereupon
to give the said Repliant credit to that Amount out of
a large sum of money Towit Ten Thousand One
hundred and ninety Seven Pagodas Twenty Six fanams
And fifty four Cash then and at that time due
and owing by the said Repliant to your Petitioner as
Administrator aforesaid And your Petitioner did say
that if he had Admitted that the said Two hundred and
forty four Pieces of Muslins were the property of the said
Repliant that he your Petitioner would have Admitted
that which he did not know to be fact And your Petitioner
did say that his so doing so far from being consonicious
would not only have been in your Petitioner a
flagrant act of injustice towards the Creditors of his
said

said Intestate but have subjected your Petitioner
to the consequence of a Devastavet and your
Petitioner did say that he did admit that he was in
possession of Two hundred and forty four Pieces of
Muslins but that he could not therefore take upon
him to say that they were the property of the said
Repliant on the contrary your Petitioner did say
that the Evidence of the property of the said Muslin
was in favor of the said Intestates Estate by his being
at the time of his death possessed thereof And which
right was now vested in your Petitioner and could
not be done away untill the Repliant should prove
that he had an absolute and exclusive right thereto
if any such right the said Repliant had and
which reasonable Satisfaction the said Repliant
had never given or offered to give to your Petitioner
and your Petitioner did not pretend but Admitted
as the truth was that he was ready to deliver up the
said Two hundred and forty four Pieces of Muslin to the
said Repliant on his proving them to be his property
And your Petitioner did say that the same was no

pretext

pretext whatever in your Petitioner and further
that your Petitioners disposition was not litigious nor
were his intentions fraudulent or as scandalously charg
in the Repliants said Replication with a view thereby
to injure your Petitioners Reputation And your Petitioner
did say that he did not possess himself of the said
Two hundred and forty four Peices of Muslins or of any
part thereof in such Manner as was Charged in the
Complainants said Bill of Complaint and your
Petitioner did say that tho the said Repliant had by his
said Replication endeavored to Change the nature of his
said Action from an Action of detinue to an
action of Trover and conversion yet your Petitioner
did say that so far from his your Petitioners having
converted the said Two hundred and forty four
Peices of Muslins or any part thereof to his own use
the said Muslins then were as in your Petitioners said
Answer herein before mentioned forthcoming and ready
to be delivered up to the said Repliant on his proving
the same to be his property and your Petitioner did

further

further say that notwithstanding the Repliants
said Assertions to the contrary the Account Current
annexed to his said Bill of Complaint was totally
groundless and without foundation and that the
utmost which the said Repliant could insinuate
was that he gave your Petitioners said Intestate Two
hundred and forty four Peices of Muslins to dispose
of and your Petitioner did say that if the said
Repliant so did and that the said Muslins were
not disposed of all the said ~~the~~ said Repliant
could be entitled to or expect from an Agent or factor
in such case would be to have the said Muslins returned
to him and your Petitioner did say that he was
advised and did believe that the maxims Customs
and Laws pretended to be described in the Repliants
said Replication were mis applied and impertinent
to the matter in Question all which matters and
things your Petitioner did say he would maintain
and support. And your Petitioner sheweth that
as you having Joined in the said Cause and Rules
prayed for the Examination of Witnesses the said

Complainant

Complainant did Examine three Persons to wit —
Davesekamony, Sedumberam, and one Topelam, a Peon,
Which Davesekamony did Depose to the Second
Interrogatory that Paucala Ramasawmy Naick
in his life time was Dubash to the Complainant,
and that he was in the habits of buying and selling
Muslins and otherwise transacting Business for,
and an Account and for the benefit of the said
Complainant. and further said that he did know
that the said Paucala Ramasawmy Naick
had in his possession just previous to and at
the time of his decease, some Dales of Cloth / but
this Deponent cannot say how many / the property
of and belonging to the said Complainant and did say
that your Petitioner, said Intestate did so possess the
same for the purpose of disposing thereof for and on
Account of the Complainant And the said Witness did
further say that he knew the fact so to be that your
Petitioner did as Administrator of the said Paucala
Ramasawmy Naick possess himself of the said Bales
of Cloth, and that your Petitioner did hold and
possess

possess the same but this Witness said that he did
not know the prime Cost of the said Bales of Cloth
or the Charges of Merchandize thereon — And your
Petitioner Sheweth that the same Witness did depose
to the last Interrogatory that a Sohort time after the
decease of the said Paucala Ramasawmy Naick, the
Complainant sent one of his the Witnesses People
with a Note to your Petitioner as Administrator to the
Estate of the said Paucala Ramasawmy Naick to
demand of him the Bales in question and that your
Petitioner returned for Answer that he could not send
him the Bales before the Accounts between the
Complainant And the said Paucala Ramasawmy
Naick were Adjusted, but that your Petitioner
Acknowledged to have the Bales in his possession further
this Witness did not depose And your Petitioner
Sheweth that Sedumberam did to the Second Interroga
tory depose that Paucala Ramasawmy Naick
was in his life time Dubash to the Complainant
and that he was in the habits of buying and
selling Muslins and otherwise transacting Business
for

for and on Account and for the benefit of the Complainant and said that he the Witness knew that the said Paucala Ramasawmy Naick had in his posession just previous to and at the time of his decease a Bale of Muslin the property of the said Complainant and further said that he did so posess the same for the purpose of disposing thereof for and on Account of the Complainant And the Witness did further say that he knew that your Petitioner did as Administrator of the said Paucala Ramasawmy Naick posess himself of the said Muslin and that your Petitioner did hold and posess the same But the Witness said that he did not know the prime cost thereof, or the charges on merchandize thereon such as Duties of Custom — And more he did not Depose — And your Petitioner — Sheweth that the last witness Topelam Peon to the same Interrogatory did Depose that Paucala Ramasawmy Naick was in his life time Dubash to the Complainant and that he was in the Habits of buying and selling Cloth and otherwise Transacting Business for and on Account and for the Benefit of the Complainant but did

did not know whether the said Paucala Ramasawmy Naick had in his posession just previous to and at the time of his decease a Bale or part of a Bale of muslin the property of and belonging to the said Complainant yet the Witness said that he had heard and believed the fact so to be, that your Petitioner did as Administrator of the said Paucala Ramasawmy Naick posess himself of some Bales of Cloth belonging to the Complainant And that your Petitioner did hold and posess the same but Witness knew not that the prime cost of the said Bales of Cloth, nor did he know what was the Amount of duties of Custom thereon And to the last Interrogatory the same Witness did say that sometime Ago Mr. Lind the Complainant did send him the Witness together with one Latchamana with a note to your Petitioner desiring him to deliver over to the Witness and the said Latmana the Bales of Cloth in question. Whereupon your Petitioner did return a verbal Massage to the Complainant that he would not deliver the said Bales of Cloth untill the Accounts were Adjusted between the Complainant and himself as

as Administrator to the Estate of the said
Paucala Ramasaumy Mauck and more the
said Witness did not Depose — And your
Petitioner sheweth that he did not Examine
Evidence in the said Suit nor was it as your
Petitioner conceived necessary he should do so because
your Petitioner required no more to do the Complainants
Justice provided he was entitled to any relief by his Suit
than that he should establish such Right your
Petitioner having no Interest to act unjustly in
the premises he acting only as Administrator
and in no other right And your Petitioner
Sheweth that in such state the said Cause came
on to be heard in the said Honble the Mayors Court
on the Twenty fifth Day of November in
the present year one Thousand Seven hundred
and Ninety four when the said Court did think
fit to order and Decree that your Petitioner
should pay out of his own proper Monies unto
the Complainant the said Francis Lind the
full

full Sum charged in the Account Current to wit
Eight hundred and Sixty one Pagodas Twenty Eight
fanams and forty Cash together with all such
Interest as then was or thereafter should become due
thereon untill full payment should be made together
with all Costs of Suit as by a Copy of the said Decree
hereunto annexed And prayed to be taken as part
of this your Petitioners Petition may fully appear
from which Decree of the said Honble the Mayors
Court your Petitioner doth appeal for the following
Amongst other Reasons

First Because that the said Decree doth
give a certain Sum of Money in lieu of the Muslins
whereas your Petitioner doth say that the said
Court had no right to decree otherwise than a
restitution of the Goods not their value had that
value even been ascertained which it was not for
your Petitioner hath shewn that the said Goods
came to your Petitioners hands legally and as the
Administrator of Paucala Ramasaumy Mauck
to whom they were it seems entrusted for Sale

as

as being the Complainants Servant and your Petitioner could know nothing of the right of property till the same should be legally established

Secondly Because— The prime Cost of the said Muslins is no where Established by Evidence nor so much as an Attempt made to Shew the marked price of Similar Muslins as a direction to the said Mayors Court in framing their Judgment in granting a Decree.

Thirdly Because— An Interest Account is made up on such presumed prime Cost Whereas your Petitioner doth say that under the circumstances of this Case no Interest can or ought to be Charged as the trust was voluntary on the Complainants part nor does it Appear that your Petitioners Intestate was to receive any advantage for Executing the same and your Petitioner hath in his pleadings Shewn that he your Petitioner hath made no use or advantage of the said Goods on the Contrary hath as of necessity as an Administrator he was bound to do Kept them to abide the Issue of the Complainants Suit and Suit and as is established by the Complainants own Evidence herein before Set forth—

Fourthly— Because your Petitioner hath in his Pleadings Shewn that the Complainant is Charged to be indebted unto your Petitioners Intestate in a Sum of Ten Thousands Pagodas And upwards And for recovery of which Sum your Petitioner as Administrator aforesaid did institute his Suit Against the said Complainants in the said Honble the Mayors Court And which Suit is still depending And at Issue in the said Court and therefore your Petitioner doth say that the Complainant ought not to have had a Judgment Against an Estate muchless Against your Petitioner where he is charged to be so greatly indebted—

And Lastly— your Petitioner doth say that the said Decree of the said Honble the Mayors Court is mistaken in as much as your Petitioner is thereby ordered to pay the Amount thereof out of his own private monies and not out of the Estate of your Petitioners said Intestate Paucala Ramasawmy mynaick

Paucala Ramasawmy Naick on the injustice of
Which Sentence your Petitioner forbear to remark
but trusts on the equitable interposition of this Hon.ble
Hon.ble Court to rectify all the Errors and imperfections
of Such a Decree

Forall which Reasons and
Such other as shall be offered at
the hearing your Petitioner prays
that this Hon.ble Court will
be pleased to reverse the said Decree
of the said Hon.ble the Mayors Court
And grant unto your Petitioner
Such further And other relief in the
premises with his Costs And
Expences so wrongfully sustained
as to the wisdom of this Hon.ble
Court Shall seem meet.—
And your Petitioner Shall Ever Pray

/Signed/ John Wilkinson
Solicitor for Petitioner

Mayors

Mayors Court at
Madraspatnam

Tuesday the 25th day of Novem.r
Anno Domini 1794.

L.S

Present

James Call Esq.r Senior Alderman
William Webb Andrew Ross &
Benj.n Robuck Aldermen.

Between Francis Laird
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
Complainant And Petty Lamboo
Naick of Madras Inhabitant
Defendant.—

Mayors Court

This Cause coming on to be Heard
And Debated this day in the Presence of the Attornies
on both Sides on Reading the Complainants Bill with
Copy

Copy of an Account Current Annexed The Defendants Answer The Amended Replication, The Amended Rejoinder The Interrogatories And Depositions on the part of the Complainant 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 Eight Hundred and Sixty One Pagodas Twenty eight fanams and forty Cash/ Pag.s 861.. 28.. 40/ to gether with all such Interest as now is or shall hereafter become due thereon untill full payment is made also all Costs of this Suit Out of his own proper Monies —

Hear /Signed/ G. E. Askin
Dy Regr

A true Copy
/Signed/ John Wilkinson
Solicitor for Appellant

To

To the Right Hon'ble Lord Hobart
President & Governor &c.
in Council Fort St. George

In the Hon'ble
the Court of Appeals

Between Frances Lind
Complainant And Petty Tomboo
Maick Administrator of Paucala
Ramasawmy Maick deceased
Defendant.

The Answer of the Complainant above-named to the Petitioner and Appeal of the Defendant abovenamed. —

Filed in My Office
the 5th January 1795.
Robert Clerk
Clk

This Respondent admits that he did on or about the Eighteenth day of February which was in the year of Our Lord One thousand Seven hundred and Ninety one Exhibit and file his Bill of Complaint in the mayors Court of Madras patnam Against the Appellant And did in and by his said Bill of Complaint Set forth the several matters And

things

things in the Appellants said Petition of Appeal for that purpose Setforth And thereupon did Charge that the Appellant did stand Justly And truly indebted unto him this Respondent in the Sums of Eight hundred And Sixty two Pagodas, twenty Eight fanams And forty Cash Which this Respondent did say would more particularly and at large Appear by an Acisunt Current to this Respondents said Bill of Complainant Annexed And this Respondent further Answering says he doth Admit that to his said Bill of Complaint the Appellant did Exhibit and file his Answer And therein admit Setforth and say as in and by the Appellants said Petition of Appeal the same are Setforth And this Respondent further Answering says he does admit that to the Appellants said Answer he did Exhibit and file a Replication And for Replication did state the several matters in the Appellants said Petition and Appeal for that purpose Setforth And this Respondent further Answering says he Admits that to the said Replication the Appellant did Exhibit and

and file his Rejoinder And that he did therein and thereby Setforth as in his said Petition of Appeal the same is recited And this Respondent says that thereupon Issue did Join and rules did pass for the Examination of Witnesses, and that Witnesses were Examined Accordingly On the part of this Respondent And that such Witnesses did depose as stated by the Appellant in his said Petition of Appeal And this Respondent says that thereupon Publication did pass and the Cause was Set down for hearing And this Respondent admits that the same did Accordingly come On to be heard before the said mayors Court on the twenty fifth day of November now last past, When the said mayors Court did think fit to order And Decree and did Accordingly Order And Decree that the Appellant should pay out of his own proper Monies unto this Respondent the full Sum charged in the Account Current to wit Eight hundred And Sixty One Pagodas twenty Eight fanams And forty Cash together with all such Interest As there was or

Should

Should thereafter become due thereon until full payment Should be made together with all Costs of Suit But your Petitioner doth not admit that the Complainant is thereby Aggrieved, or that he has any Cause of Appeal therefrom—

And in answer to the Appellants first Reason for Appeal this Respondent says that the mayors Court had a right to Decree in manner and form as they have done, that the detention of the property of the Appellant as an administrator after the same had been regularly demanded by this Respondent as the proprietor thereof and Knowing as the Appellant certainly did that it was not the property of his Intestate was sufficient to charge him the Amount of such property by him so unlawfully detained out of his own pocket for this Respondent says that it Appears by the Appellants Answer to this Respondents said Bill of Complaint he admits that this Respondent might have had dealings and transactions in the buying and selling Muslins And that this Respondent did Employ or was Engaged therein With his the Appellants Intestate who might for ought he the Appellant Knows to the Contrary have usually received the same and disposed thereof And although he pretends that he cannot Admit that the two hundred and forty four peices of Muslins charged in this Respondents said Bill of Complaint were in his Intestates posession at the time of his Decease yet he admits that as Administrator of his said Intestate he did posses himself of the identical Number of two hundred and forty four peices of Muslins on Obtaining Letters of Administrator of his Estate and Effects and that the same were in posession of his said Intestate at the time of his Decease And although he also says that he did not Know that they were the property of this Respondent Yet he has not attempted to Shew that either by the Books of his said Intestate by his Writers or Servants or otherwise that there were any Appearance warranting Even a Surmise that they were the property of his Intestate on the contrary he

he did in and by his said Answer pretend. that on this Respondents proving his property therein, that he the Appellant was ready to deliver up the same And this Respondent say as a further proof of the rectitude of the said Decree of the said mayors court that if the said mayors court had Decreed a restitution of the property after the same had lain at the pleasure of the Appellant for nearly four years it could have been of little value. and he would have been left to Enjoy the satisfaction of having led this Respondent through a Vexatious litigation and at last have Effected with impunity an injury to his property And further this Respondent Submits to this Honble Court that it was not very possible to ascertain the muslins left in the possession of the Appellants Intestate in his life time. and another litigation might have been the consequence had the said mayors court decreed as the Appellant Conceives they Ought to have done And this Respondent further Says that he did

as

as certain the Amount of the said Muslins, as far as the Nature of the case and the Circumstances Connected therewith would Admit of for this Respondent Says he did charge no more than the prime Costs of the said muslins and the charges of Merchandize thereon. and that it was not in his power to Examine Witnesses to the quality of the muslins the same being in the possession of the Appellant And this Respondent humbly Submits to this Honble Court that the Appellant whenshe shew the Amount charged in this Respondents said Bill of Complaint ought to have controverted the same but he has not Examined Witnesses either to that, or any other point in the Cause; or he ought, in the first instance, to have delivered up the said muslins to this Respondent, Which he this Respondent was with Satisfied to have received and by Which he might have made a very considerable profit and this Respondent further humbly Submits to this Honble Court that it is a mere pretext in the Appellant to say that he could Know Nothing of the

right

right of property in this Respondent until the same should be legally Established for in that case no man could obtain a restitution of property left in the professsion of a Deceased person in his life time Without commencing a Suit Law at Law—

To the Appellants Second Reason for Appeal this Respondent says as in And by his Answer to the Appellants first Reason for Appeal he has Already said, he did Establish the Amount of the muslins so far as the State of the case And the Circumstances connected therewith Would admit of and this Respondent says it was impossible for him to have shewn by Evidence the Market price of Similar muslins, as to that End he must have produced the muslins in question and so have drawn the Estimate price by Comparison And it Appears by the Appellants own shewing that he withheld the said muslins from this Respondent And that he still has the same in his possession and therefore the Appellant Shews that this Respondent Ought to have performed an impossibility And Which was occasioned by his the Appellants conduct in the premises—

To the Appellants third Reason for Appeal, this Respondent says that he Admits the Trust Regarding the muslins was Valuntary on his part, And if the Appellant had delivered the said muslins to this Respondent upon his Application for that purpose, this Respondent would not have made any charge of Interest And this Respondent Submits to this Honble Court that the said third Reason for Appeal doth Evince the litigious Spirit of the Respondent for he therein seems to admit Every thing charged in this Respondents said Bill of Complaint and Set forth in his said Replication, And Which is Supported by the Testimony of Lopelain Who Shews that the Appellant did well Know that the said muslins did belong to this Respondent previously to any Bill having been filed Against him on Account thereof for the said Lopelain to the last Interrogatory says that a short time after the Decease of the Appellants Intestate this

this Respondent did send him together with one Letchemy with a Note to the Appellant to deliver over to them the bale of Cloth in question that thereupon the Appellant did send a verbal message to this Respondent that he would not deliver the said Bale of Cloth until the Accounts were adjusted between this Respondent and himself as aforesaid And thereof this Respondent doth submit to this Honble Court that the said Mayors Court in Decreeing as they have done Interest upon the prime Costs and Charges of merchandize of the said Muslins have done no more than common Justice

To the Appellants fourth Reason for Appeal this Respondent says that the Appellant was irregular in introducing any matter or thing in the pleadings that by his own shewing has not any reference to the matter in question, and Equally so in bringing the same forward in his Petition of Appeal The Appellant has filed his

Bill

Bill of Complaint in the said mayors Court for the Sum stated in his said fourth Reason, and having Sworn to the Debt has held this Respondent to Bail as he has himself shewn and the same is now Pending in the said mayors Court And this Respondent says that if the Appellant was not convinced at the time he filed his answer to this Respondents said Bill of Complaint that the Matter in question was seperate and distinct from the matters and things contained in the Bill of Complaint by him brought against this Respondent as alluded to, in and by his said fourth Reason of Appeal he would by his said answer to this Respondents said Bill of Complaint have claimed a set off for the Amount and have filed a Cross Bill for the balance by him pretended to have been due and Owing from this Respondent, and which is the usual course And this Respondent Submits to this Honble Court that if the Appellants doctrine was to prevail, there would be no End to a Suit for a Defendant would only have to file

Bills

Bills as Judgment was about to be had to prevent it passing and therefore this Respondent Submits to this Honble Court that the said Decree of the said mayors Court was not premature according to the practice of the said mayors Court, and according to the practice of every other Court and that the same is Just in its Operation against the personal monies of the Appellant and further this Respondent Submits to this Honble Court that the Decree ought not to have been as the Appellant would insinuate against the Estate of the deceased but against the appellant personally in so much as that the same has been occasioned by the misconduct of the appellant who well knows that the Estate of his Intestate is insolvent, and that if the Decree had gone against the said Estate, that it would have been the same as if there had not been any Decree, as this Respondent would not have derived a benefit of one Pagoda on account thereof

For

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 dismiss the appellants Petition of Appeal with Costs

/Signed/ James Stuart Hall
Solicitor for Respondent

Court

Court of Appeals } Saturday the 16th day of January
Madraspatnam } Anno Domini 1796.

Between Petty Tomboo Naick of Madras Inhabitant Administrator of Paucala Ramasawmy Naick deceased Appellant And Francis Lind a Senior Merchant in the Civil Service of the United Company of Merchants of England trading to the East Indies under the Presidency of Fort St. George Respondent,

This Cause coming on this day to be heard And debated before this Court by the Attornies on both sides upon hearing the Petition of Appeal And Answer and the several Exhibits of the Hon'ble the Mayors Court together With the Decree of the said Court given this Cause on Tuesday the 25th day of Novemr. 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 Hon'ble the Mayors Court do stand affirmed And that the Appellants Petition be hence dismissed with Costs—

Hur

(Signed) J Webbe clk

To

To the Kings Most Excellent Majesty in Council

Between Francis Lind Complainant and Petty Tomboo Naick Administrator of Paucala Ramasawmy Naick Defendant.

The Petition and Appeal of the said Petty Tomboo Naick

Most Humbly Sheweth

That the said Francis Lind did on or about the Eighteenth day of February which was in the English year One Thousand Seven hundred and Ninety one file his Bill of Complaint Against your Petitioner in the Hon'ble the mayors Court at Madraspatnam And by his said Bill did setforth that he the Complainant having had Extensive dealings and Transactions in the buying and Selling of Muslins did employ your Petitioner's said Intestate Paucala Ramasawmy naick as his Dubash who did usually receive such muslins, and dispose of the same as from time to time

Filed in my Office the 29th January 1796
J Webbe clk

time Ordered and directed by the said Francis Lind and upon his Account and for his sole benefit and advantage and the said Francis Lind did by his said Bill shew that some time in the year One thousand Seven hundred and Eighty nine your Petitioner said Intestate did depart this life Intistate but having at such the time of his Decease in his Custody and possession Two hundred and forty four Peices of muslins the property of him the said Francis Lind and which muslins the said Francis Lind did charge that your Petitioners said Intestate had in his life time received on his the said Francis Linds Account and to be disposed of on his the said Francis Linds sole benefit and advantage and in manner as to be directed by him the said Francis Lind And the said Francis Lind did by his said Bill further shew that sometime in the month of may which was in the year One thousand Seven hundred and Ninety one your Petitioner did upon application to the said Honble the mayors Court in their capacity of Kings Ordinary duly obtain Letters of administration to all and

Singular

singular the goods Chattels Rights and Credits of the said Paicala Ramasawmy Naick and that your Petitioner did thereupon possess himself of the said Two hundred and forty four Peices of Muslins and that though your Petitioner well knew the said Two hundred and forty four Peices of Muslins to be the Property of and belonging to the said Complainant yet your Petitioner did wrongfully and fraudulently hold and detain the same thereby intending fraudulently to deprive the said Complainant wherefore he the said Francis Lind did by his said Bill charge that your Petitioner did stand Justly and truly indebted unto him the said Francis Lind for and on account of the said Two hundred and forty four Peices of Muslins so charged to be by your Petitioner wrongfully and fraudulently detained from him the said Complainant as aforesaid in the full and just Sum of Eight hundred and Sixty one Star Pagodas Twenty Eight fanams and forty Cash Current money of Madras or Sterling money of Great Britain at the rate of Eight Shillings for every

Pagoda

Pagoda the Sum of Three hundred and thirty four Pounds and thirteen Shillings or thereabouts, as would more fully Appear by an Account Current Copy whereof was said to be annexed to the said Bill and prayed to be taken as part of the said Bill - And the said Francis Lind by his said Bill did further say and charge that he had frequently and in an Amicable manner applied to your Petitioner either to deliver to him the said Francis Lind the said Two hundred and forty four Peices of muslins or to pay for the same the said Sum of Eight hundred and Sixty one Pagodas Twenty Eight fanams and forty Cash and that your Petitioner combining and confederating to and with Diver Persons then unknown to him the said Francis Lind but contriving how to defraud him had refused to deliver the said Two hundred and forty four Peices of muslins or to pay for them the said Sum of Eight hundred and Sixty one Pagodas Twenty Eight fanams and forty Cash which Actings and doings of your Petitioner were Contrary to Equity and Good conscience and to the great wrong and Injury of him the said Francis Lind in as much

much as he the said of the said Honble the Mayors Court He the said Francis Lind was remedeless in the Premises without the aid of the said Honoble the mayors Court He the said Francis Lind did therefore pray that your Petitioner should Answer certain Interrogatories in the said Bill contained and be further Decreed to pay and satisfy to him the said Francis Lind the said Sum of Eight hundred and Sixty one Pagodas Twenty Eight fanams and forty Cash with all Interest as then was or should thereafter become due thereon as also all Costs of Suit as by the said Bill and Copy Account Current Annexed and to which your Petitioner prays to refer in aid of this his Petition of appeal will fully and at Large Appear And your Petitioner Sheweth that to such Bill of the said Francis Lind your Petitioner did duly put in his Answer on Oath and did depose that he admitted it might be true as in the Bill was charged that the Complainant had a very Extensive dealings and Transactions with the said Paucala Ramasawmy Brauch in money matters as his

the

the said Complainants Dubash and did also admit that the said Complainant might have had dealings and transactions in the buying and Selling of muslins and that the said Complainant did employ & was engaged therein with the said Paucala Ramasawmy Naick and that the said Paucala Ramasawmy Naick might for any thing your Petitioner knows to the Contrary thereof have usually received the same and disposed thereof, but whether the said Paucala Ramasawmy Naick did from time to time dispose of such muslins according to the Complainants orders and directions or upon the Complainants account or for his the said Complainants sole benefit and advantage or for the mutual advantage of the Complainant and the said Intestate your Petitioner could not set forth — and your Petitioner further answering did say that he admitted that the said Paucala Ramasawmy Naick did depart this life Intestate, and at the time in the Complainants said Bill of Complaint mentioned but your Petitioner did say that he did not know that the said

Paucala

Paucala Ramasawmy Naick has at the time of his death in his custody or possession Two hundred and forty four Peices of muslins or any other quantity of muslin the property of and belonging to the said Complainant and your Petitioner did admit that he did on or about the 26th Day of may which was in the year of our Lord one thousand seven hundred and ninety duly obtain administration to all and singular the Goods and Chattels rights and Credits of the said Paucala Ramasawmy Naick and did also admit that he did as the Administrator of the said Paucala Ramasawmy Naick possess himself of Two hundred and forty four Peices of muslins which he found amongst the property of the said Paucala Ramasawmy Naick but did positively say that he did not know that the said Two hundred and forty four Peices of muslins or any part thereof were the property of and belonging to the said Complainant; but did admit that he held and did detain the said

Two

Two hundred And forty four Peices of muslins,
but denied that he did wrongfully & fraudulently
or with an intent fraudulently or otherwise to deprive
the Complainant thereof detain the said Twohundred
and forty four Peices of muslins or any part thereof
for your Petitioner said that he detained the same
not knowing to whom they or any of them actually
belonged until the said Complainant should
duly prove his the said Complainants property
therein and right thereto if any he had and your
Petitioner did say that upon the said Complainants
so doing he your Petitioner would be ready and
willing to deliver up the said muslins to the said
Complainants and your Petitioner did say that
until the said Complainants should prove the
said muslins to belong to him that your Petitioner
would not as he was advised and believed be
warranted as the Administrator of the said
Intestate to deliver up the said muslins or any
part of them to the said Complainant And your
Petitioner did say that he was advised and did
believe

believe that the said Complainants Bill of
Complaint being in the nature of an action
of detinue for the Recovery of the said
muslins that he the said Complainant
could not therefore recover the amount in
value of the said muslins in as much as your
Petitioner was ready and willing to deliver up
the said Twohundred and forty four Peices of
muslins to the said Complainant when he the
said Complainant should duly establish his
right thereto and that if your Petitioner was
to deliver up the said muslins before it was
well ascertained that the Complainant had
a right thereto and that they did not belong to
the Estate of the said Intestate he your Petitioner
would subject himself to be accountable to the
Creditors of the said Intestates Estate for wasting
the Goods of the said Estate for the due administra
tion and destribution whereof he was bound to
the said Honble Court in their Ecclesiastical
Capacity your Petitioner did further answer
that

that the said Two hundred and forty four Pieces
hundred and Ninety Nine Madras Pagodas for one fanams
of Muslins were not of the value of Two ^ and
Sixty Cash or any such sum or sums of money &c
and your Petitioner did say that the Charge of
Interest in the Account Current annexed to the
Complainants said Bill of Complaint contained
was unjust and unfounded and did say that for
the several causes and reasons in the said answer
set forth that your Petitioner was not indebted to
the said Complainant in the sum of Eight hundred
and Sixty one Pagodas Twenty Eight fanams and forty
Cash or in any other sum of money whatever and
your Petitioner did deny all and all manner of
Combination and confiderecy whereof he
was charged in and by the said Bill of Complaint
all which matters and things your Petitioner
did say he was ready to aver and prove as the
said Honble the mayors Court should direct and
award and therefore humbly prayed to be hence
dismissed with his reasonable costs and Charges in
such behalf most wrongfully sustained And your

Petitioner

Petitioner Sheweth that to such answer the said
Francis Lewis did reply that he would aver and prove
his said Bill to be true certain and sufficient in
the Law to be Answered unto and that the said
answer of your Petitioner was uncertain and insufficient
to be Replied unto yet for further Replication did say
that your Petitioner as administrator of the said &c
Pawala Ramasawmy Mauck Deceased did stand
justly and truly indebted unto him the Complainant
in the full and just Sum of Eight hundred and Sixty
one Pagodas Twenty Eight fanams and forty Cash
in manner and from as the same was charged &c
and set forth in his Complainants said Bill of
Complaint and did further say that notwithstanding
the evasive answer of your Petitioner that he your
Petitioner well know the muslin set forth in his the
Complainants said Bill to be his the Complainants
property and had theretofore frequently admitted the
truth so to be, and further that your Petitioners said
Intestate was Employed by him the said Complainant
in the sale and disposal thereof not for the mutual

benefit

benefit and Advantage of his your Petitioners said Intestate And the Complainant but for the benefit and advantage of him the Complainant only and that so your Petitioner had frequently confessed the truth to be and that so the same in fact appeared by your Petitioners own shewing for that altho your Petitioner evaded Admitting which in Equity and good conscience he ought not to have done, that the said muslins were the Property of him the Complainant yet that your Petitioner confessed the same to be in his your Petitioners possession and did not take upon him to say they were the property of your Petitioners said Intestate but on the contrary only pretended that he did not know to whom they actually belonged and further pretended that he was ready to deliver up the same to him the Complainant on his the Complainants proving the same to be his property and which the Complainant did say was a mere pretext framed for the purpose of giving a color to his your Petitioners litigious disposition and

fraudulent

fraudulent intentions And the said Complainant did say that your Petitioner having possessed himself of the said muslins as set forth in his the Complainants said Bill and having fraudulently converted the same to his your Petitioners own use and well knowing the premises yet refusing to deliver up the same to him the Complainant that therefore he the Complainant was thereupon warranted in bringing his action for the amount thereof upon the Account Current to his said Bill Annexed And which account Current the said Complainant did aver and said he would maintain and prove to be equitable and just And did therefore say that the principal sum in the said Account Current contained was the prime cost of the said muslins unjustly and fraudulently with held and detained by your Petitioner and by your Petitioner as aforesaid converted to his own use and that the other Items did involve the charges of merchandize arising from duties

on

on the said muslins paid by him the complainant together with an Interest upon the whole calculated from the perios on which he the complainant did demand the delivery of the said muslins from your Petitioner and his your Petitioners refusal to comply therewith and thereupon the said complainant did say that the said charge of Interest notwithstanding the assertion of your Petitioner to the Contrary was regular and Just and in conformity to usage and Custom in like cases and did further say that had he charged a profit on the said muslins which he had not done that he would have been warranted in so doing because that it was a maxim that no man has a right to set a value on anothers goods, and that every merchant is Entitled to a reasonable profit And the said complainant did by his said Replication further say that notwithstanding the insinuation of your Petitioner to the Contrary that the complainant had

not

not misconceived his action for that he was advised that actions of detinue appertain to Courts of Law and that they are tried by a Jury and determined by a verdict and therefore he did say that he could not have brought an action of detenue — and further he did say that he had brought his action against your Petitioner in conformity to the Rules and practice of the Honble the Mayors Court for the amount of Goods and not for the Goods themselves because that it was upon the former and not upon the latter that he the complainant could pray the Judgment and Obtain a Decree of the said Honble the mayors court all which matters and things the said complainant did say he was ready to aver maintain and prove as the said Honble the mayors court should direct and did humbly pray as in and by his said Bill he had already prayed — To which Replication of the said complainant your Petitioner did Rejoin and for Rejoinder did say that he your Petitioners did not as administrator of the said

Pavcala

Paucala Ramasawmy Naick Deceased or otherwise
Stand Justly or truly indebted unto the said
Complainant in the Sum of Eight hundred and
Sixty four Pagodas Twenty Eight fanams and
forty Cash or in any Sum of money whatever
though the said Complainant by his said Bill of
Complaint untruly Charged your Petitioner to
be indebted to him the said Complainant and
your Petitioner did say that there was no evasion
whatever Set forth or contained in the said answer
and that he did not well or at all know that
the muslins mentioned in the Complainants said
Bill of Complaint were the property of the said
Complainant nor had your Petitioner theretofore
or could he nor did he frequently or at all admit
that the said muslins or any part thereof were the
property of the said Complainant For your Petitioner
did say that he having found Two hundred and
forty four Pieces of muslins Amongst the property
of your Petitioners said Intestate he your Petitioner
must

must and did conclude therefrom that the
said Two hundred and forty four Pieces of
muslins were the property of his said Intestate
until the Contrary thereof should be duly
proved and the Complainants right thereto
if any he had established and your Petitioner
did say that he had not admitted or
Confessed nor did admitt or Confess that
his said intestate was employed by the said
Complainant in the Sale and disposal of
the said Two hundred and forty four pieces
of muslins nor that if his said intestate
had been employed by the same Complainant
to dispose of Two hundred and forty four pieces
of muslins and that he actually disposed thereof
upon the Complainants Sole Account that the
Complainant had aright to Credit for the amount
sales but your Petitioner did say that as no such
transaction had appeared on his said intestates
Books that he could not give the Complainant
any such Credit And your Petitioner did say
that

that when the said Complainant should
Establish that your Petitioners said intestate
sold Twohundred and forty four Peices of
muslin upon the said Complainants account
and what the same Amounted to that then
your Petitioner would be ready and willing there
=upon to give the said Complainant Credit to
that Amount out of a large Sum of money to wit
Ten thousand One hundred and Ninety Seven Pag.
Twenty Six fanams and fifty four cash thereand
at that time one and owing by the said
Complainant to your Petitioner as administrator
aforesaid And your Petitioner did say that if he
had admitted that the said Twohundred and forty
four peices of muslins were the property of the said
Complainant that he your Petitioner would have
admitted that which he did not know to be fact
and your Petitioner did say that his doing so
so far from being Conscientious would not only have
been in your Petitioner a flagrant act of injustice
towards the Creditors of his said entestate but would

have

have subjected your Petitioner to the Consequences
of a Devastavit And your Petitioner did say
that he did admit that he was in posession
of Two hundred and forty four peices of muslin
but that he could not therefore take upon
him to say that they were the property of
the said Complainant On the Contrary your
Petitioner did say that the Evidence of the
property of the said muslins was in favour
of the said intestates Estate by his being at the
time of his Death posessed thereof and which
right was now vested in your Petitioner and
could not be done away until the Complainant
should prove that he had an absolute and
Exclusive right thereto if any such right the said
Complainant had and which reasonable
Satisfaction the said Complainant had never
given nor offered to give to your Petitioner and
your Petitioner did not pretend but admitted
as the Truth was that he was ready to deliver
up the said Twohundred and forty four peices

of

of Muslin to the said Complainant on his proving them to be his Property And your Petitioner did say that the same was no pretext in your Petitioner and further that your Petitioners disposition was not litigious nor were his intentions fraudulent or as scandalously Charged in the Complainants said replication with a view thereby to injure your Petitioners reputation and your Petitioner did say that he did not possess himself of the said two hundred and forty four pieces muslins or of any part thereof in such manner as was charged in the Complainants said Bill of Complaint And your Petitioner did say that tho' the said Complainant had by his said replication Endeavoured to Change the nature of his said action from an action of detinue to an action of Trover and Conversion yet your Petitioner did say that so far from his your Petitioners having converted the said Two hundred and forty four pieces of Muslin or any part thereof to his own use the said

said muslins then were as in your Petitioners said Answer herein before mentioned forthcoming and ready to be delivered up to the said Complainant in his proving the same to be his property And your Petitioner did further say that notwithstanding the Complainants said assertion to the contrary the Account Current annexed to his said Bill of Complaint was totally groundless and without foundation and that the utmost that the said Complaint could insinuate was that he gave your Petitioners said intestate two hundred and forty four pieces of muslin to dispose of and your Petitioner did say that if the said Complainant so did and that the said muslins were not disposed of all the said Complainant could be entitled to or Expect from an Agent or Factor in such case would be to have the said muslins returned to him and your Petitioner did say that he was

advised

advised and did believe that the maxims Customs and Laws pretended to be discribed in the complainants said Replication were misapplyed and impertenant to the matters in Question — All which matters and things your Petitioner did say he would maintain and support And your Petitioner Sheweth that since having joined in the said Cause and Rules prased for the Examination of witnesses the said Complainant did Examine three Persons to wit Davesekamony Sedumberam and one Lopelam a Peon Which Davesekamony did Depose to the second Interrogatory that Paucala Ramasawmy Naick in his life time was Dubash to the complainant and that he was in the habits of buying and selling muslins and other wise transacting Business for and on account and for the benefit of the said Complainant, and further said that he did know that the said Paucala Ramasawmy Naick had in his posession Just

previous to and at the time of his Decease some Bales of cloth but this Deponent cannot say how many the property of and belonging to the said complainant and did say that your Petitioners said Intestate did so posses the same for the purpose of disposing thereof for and on Account of the Complainant And the said witness did further say that he know the fact so to be that your Petitioner did as Administrator of the said Paucala Ramasawmy Naick possess himself of the said Bales of cloth and that your Petitioner did hold and posses the same but this witness said that he did not know the prime cost of the said Bales of cloth or the Charges of merchandize thereon — And your Petitioner Sheweth that the same witness did depose to the last Interrogatory that a short time after the decease of the said Paucala Ramasawmy Naick, the Complainant sent one of his the witnesses People with a Note to your Petitioner as administrator to the Estate of the said Paucala

Ramsawmy

Paucala Ramasawmy Naick to demand of him the Bales in Question, and that your Petitioner returned for Answer that he could not send him the bales before the Accounts between the Complainant and the said Paucala Ramasawmy Naick were Adjusted, but that your Petitioner Acknowledged to have the Bales in his possession further this Witness did not depose and your Petitioner Sheweth that Didularamdid to the Second Interrogatory Depose that Paucala Ramasawmy Naick was in his life time Dubash to the Complainant And that he was in the habits of buying and Selling muslins and otherwise transacting Business for and on Account and for the benefit of the Complainant and Said that he the witness knew that the said Paucala Ramasawmy Naick had in his possession Just previous to and at the time of his decease a Bale of Muslins the property of the said Complainant and

and further said that he did so possess the Same for the purpose of disposing thereof for and on Account of the Complainant and the witness did further say that he know that your Petitioner as Administrator of the said Paucala Ramasawmy Naick possess himself of the said Muslin and that your Petitioner did hold and possess the same, But the witness said that he did not know the prime Cost thereof or the Charges on merchandize thereon such as Duties of Custom and more he did not depose, and your Petitioner Sheweth that the Last witness Lopelam Peon to the Same Interrogatory did depose, that Paucala Ramasawmy Naick was in his life time Dubash to the Complainant and But he was in the Habits of buying and Selling Cloth, and otherwise Transacting Business for and on Account and for the Benefit of the Complainant, But did not know within the

Said

said Paucala Ramasawmy Naick had in his profession just previous to and at the time of his decease a Bale or part of a Bale of muslin the property of and belonging to the said Complainant, yet the Witness said that he had heard and believed the fact to be, that your Petitioner as administrator of the said Paucala Ramasawmy Naick posses himself of some Bales of Cloth belonging to the Complainant and that your Petitioner did hold and possess the same But the witness knew not the Prime costs of the said Bales of Cloth nor did he know what was the Amount of duties of Custom thereon and to the last Interrogatory the same Witness did say that sometime ago Mr. Lind the Complainant did send him the witness together with one Latchamana With a note to your Petitioner desiring him to deliver over to the Witness and the said Latchamana the Bales of Cloth in question Whereupon your Petitioner did return a verbal message to the Complainant that he would not deliver the said Bales of cloth until the Accounts were adjusted between the Complainant and himself as administrator to the Estate of the said Paucala Ramasawmy Naick and more the said Witness did not depose And your Petitioner sheweth that he did not Examine Evidence in the Suit nor was it as your Petitioner conceived necessary he should because your Petitioner required no more to do the Complainant Justice provided he was entitled to any relief by his Suit than that he should establish such right your Petitioner having no Interest to act unjustly in the premises he acting only as administrator and in no other right and your Petitioner sheweth that in such state the Cause came on to be heard in the said Honble the Mayors Court on the Twenty fifth Day of

of November in the year one Thousand
Seven Hundred and Ninety four
when the said Court did think fit
to order and Decree that your Petitioner
should pay out of his own proper money
unto the Complainant the said Francis
Lind the full Sum charged in the account
Current To wit Eight Hundred and Sixty
one Pagodas Twenty Eight fanams and
forty Cash together with all such Interest
as then was or thereafter should become
due thereon until full payment should
be made together with all Costs of Suit
as by a Copy of the said Decree hereunto
annexed and prayed to be taken as part
of this your Petitioners Petition may
fully appear From which Decree of
the said Honble the mayors Court your
Petitioner did Appeal to the Honble the
Governor and Council of Fort Saint George
agreable

agreable to the Charter to which Petition
the said Complainant did put in his answer
and the said matter came on to be Argued
when the said Court of Appeals were
pleased to affirm the said Decree of the
said Honble the Mayors Court with Costs as
by a Copy of such order hereunto annexed for
the Inspection of your Majesty in Council
may fully appear By which order your
Petitioner Doth humbly conceive himself
greatly agrieved and oppressed and doth
therefore appeal to your Majesty in Council for
the following amongst other Reasons.

Firstly — Because that the said Decree of the said
Mayors Court doth give a certain Sum of money
in Lieu of the muslins whereas your Petitioner
doth say that the said Court had no Right to
Decree otherwise than a restitution of the
Goods not their Value had that Value even
been ascertained Which it was not for your
Petitioner hath shewn that the said Goods

came

came to your Petitioners hands legally and as the Administrator of Pawala Ramasawmy naick to whom they were it seems entrusted for sale as being the Complainants Servant and your Petitioner could know nothing of the Right of Property till the same should legally Established.

Secondly Because the prime Cost of the said Simuslins is no were Established by Evidence nor so much as an Attempt made to shew the market Price of similar muslins as a direction to the said Mayors Court in framing their Judgment in granting a Decree —

Thirdly — Because an Interest Account is made up on such presumed prime Cost whereas your Petitioner doth say that under the Circumstances of this case no Interest can or ought to be charged as the trust was voluntary in the Complainants part nor does it appear that your Petitioners Intestate was to receive any advantage for Executing the same and your Petitioner hath in his Pleadings shewn that

that he hath made no use or advantage of the said Goods on the contrary hath as of necessity as an administrator he was bound to do kept them to abide the Issue of the Complainants Suit and as is Established by the Complainants own evidence hereinbefore set forth

Fourthly Because your Petitioner hath in his Pleadings shewn that the Complainant is Charged to be indebted unto your Petitioner Intestate in a Sum of Ten Thousand Pagodas and upwards, and for Recovery of which Sum your Petitioner as Administrator aforesaid did institute his Suit against the said Complainant in the said Honble the Mayors Court and therefore your Petitioner doth say that the Complainant ought not to have had a Judgment against an Estate — much less against your Petitioner where he is charged to be so greatly indebted.

Lastly — your Petitioner doth say that the said Decree of the said Honble the Mayors Court is mistaken in as much as your Petitioner is thereby ordered to pay the amount thereof out of his own private monies and not out of the Estate of your Petitioners said —

Intestate

Intestate Paucala Ramasaumy Naick on the injustice of which sentince your Petitioner forbear to remark but trusts in the Equity and Interpretation of your most Excellent Majesty in Council to rectify all Errors and Imperfections of such a Decree

For all which Reasons and such others as shall be offered at the hearing your Petitioner humbly prays your majesty in Council will be pleased to reverse the said Decree of the Honble the mayors court and grant unto your Petitioner such further and other Relief in the Premises with his costs and Expences so wrongfully sustained as to the Wisdom of your majesty in Council shall seem meet.

And your Petitioner shall ever Pray

Signed John Wilkinson
Solicitor for appellant

Mayors Court at Madraspatnam

Tuesday the 25th Day of Novr 1794

Anno Domini 1794

Present

James Call Senior Alderman

William Webb

Benjn Roebuck and Andrew Ross Aldermen

Between Francis Lind a Junior Merchant in the Service of the united Company of Merchant of England trading to the East Indies under Presidency of Fort St George Complainant and Petty Tomboo Naick of Madras Inhabitant Defendant

This Cause coming on to be heard and Debated this day in the Presence of the attornies on both sides on Reading the Complainants Bill with Copy of an Account Current Annexed the Defendants answer Replication the Amended the amended Rejoinder the Interrogatories and Deposition

Deposition on the part of the Complainants On Hearing the pleadings made use of by the attorneys and an 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 Eight hundred and Sixty One Pagodas Twenty Eight fanams and Forty Cash /861. 28. 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 Out of his own proper money — Ff Cur Signed G E. Asken Dy. Regr. —

A True Copy
/Signed/ John Wilkinson
Solicitor for Appeal

Court

Court of Appeals @ Madraspatnam } for Saturday the 16th day of January Anno Domini 1796.

Between Petty Tomboo Naick of Madras Inhabitant administrator of Paucala Ramasawmy Naick Deceased Appellant and Francis Lind a Senior Merchant in the Civil Service of the united Company of Merchants of England trading to the East Indies under the Presidency of Fort St. George Respondent. —

This Cause coming on this day to be heard and debated before this Court by the Attornies on both sides upon hearing the Petition of appeal and Answer and the Several Exhibits of the Hon'ble the Mayors Court together with the Decree of the said Court given in this Cause on Tuesday the 25th day of Novr. Anno Domini 1794 upon due Consideration had

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.—

Hur

(Signed) J Webbe Clk

a true Copy

(Signed) John Wilkinson
Solicitor for appellant

To

To the Kings most Excellent Majesty in Council

Between Petty Tomboo Naick administrator of Paucala Ramasawmy Naick Deceased Appellant And Francis Lind Respondent

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

This Respondent admits that he did on or about the time in the Appellants Petition of appeal for that purpose setforth Exhibit and file a Bill of Complaint in the mayors Court of Madraspatnam stating the several matters and things and praying Relief as in the Appellants said Petition of appeal the same are recited and this Respondent admits that to his said Bill of Complaint the appellant did Exhibit and file his Answer in substance and in manner and form as insirted on in and by his said Petition of Appeal that to the Appellants said Answer this Respondent: did Exhibit and file his Replication and that

Filed in my Office the 11th May 1796
J. Webbe Clk

that thereto the Appellant did file a Rejoinder; and thereon issue did join and Rules did pass for the Examination of Witnesses, and Witnesses were Examined accordingly on the part of this Respondent and this Respondent admits that the Appellant may have truly recited the depositions of the said witnesses and this Respondent admits that at the time in the Appellants said Petition of appeal for that purpose set forth the said Cause did come on to be heard before the said mayors Court, and that the said mayors Court did think fit to Order and Decree and did accordingly Order and Decree that the appellant should pay out of his own proper monies to this Respondent the Sum by him sued for together with all Interest due and to grow due and all Costs of Suit and this Respondent Admits that from the said Decree of the said mayors Court the appellant did appeal to the Honble the Governor and Council of Fort Saint George and this Respondent having Exhibited and filed his Answer to the said Appeal the Same came on to

to be argued, when the said Court of Appeals were pleased to affirm the said Decree of the said mayors Court with Costs But this Respondent doth not admit that the Appellant is thereby aggrieved or that he has any Cause of Appeal therefrom.

And in Answer to the appellants first Reason for Appeal this Respondent humbly Submits to your Most Excellent majesty in Council that the said mayors Court had a right to Decree in manner form as they had done, that the Detention of the property by the Appellant as an Administrator after the same had been regularly Demanded by this Respondents as the proprietor thereof And Knowing as the Appellant Certainly did that it was not the property of his Intestate was sufficient to charge him with the amount of such property by him so unlawfully detained out of his own pocket for this Respondent humbly Shews that it appears by the Appellants Answer to this Respondents said Bill of Complaint he admits that this Respondents might have had dealings and Transactions in the Buying and Selling of muslins, and that this

Respondent

Respondent did Employ and was Engaged therein with his the Appellants Intestate whomight for ought he the Appellant Knew to the contrary have usually received the same and disposed thereof and although he pretends that he cannot admit that the two hundred and forty pieces of muslins Charged in this Respondents said Bill of Complaint were in his Intestates possession at the time of his Decease yet he admits that as the administrator of his said Intestate he did possess himself of the identical number of two hundred and forty Pieces of muslins on Obtaining Letters of Administration of his Estate and Effects, and that the same were in the possession of his said Intestate at the time of his Decease and although he also says that he did not Know that they were the property of this Respondent yet he has not attempted to Shew that either by the Books of his said Intestate by his writers or Servants or Otherwise that there were any Appearance Warranting Even a Surmise that they were the property of his Intestate, on the Contrary he did in and by his said Answer pretend that on this Respondents proving his property therein, that he the Appellant was ready to deliver up the same and this Respondent Submits to your most Excellent Majesty in Council as a further proof of the restitude of the said Decree of the said Mayors Court that if the said Mayors Court had Decreed a Restitution of the property after the same had lain at the pleasure of the Appellant for nearly four years, it could have been of little Value, and he would have been left to Enjoy the Satisfaction of having led this Respondent through a Vexatious litigation and at last have Effected with infinity Every injury to his property and further this Respondent Submits to your most Excellent majesty in Council that it was not very possible to ascertain the muslins left in the possession of the Appellants Intestate in his life time and another litigation might have been the consequence, had the said Mayors Court Decreed as the Appellant Conceives they Ought to have done and

and this Respondent further submits that he did as certain the Account of the said muslins as far as the nature of the case and the circumstances connected therewith would admit of for this Respondent says he did charge no more then the Prime Cost of the said muslins, and the Charges of Merchandize thereon, and that it was not in his power to Examine Witnesses to the quantity of the muslins, the same being in the possesions of the appellant, and this Respondent humbly submits that the appellant when he saw the Amount charged in this Respondents said Bill of complaint ought to have Controverted the same, but he has not Examined witnesses either to that or any other point in the cause, or he ought in the first Instance to have delivered up the said muslins to this Respondent which he this Respondent was well satisfied to have recived, and by which he might have made very Considerable profit and this Respondent further humbly submits to your most Exellent Majesty in Council that it is a mere pretext in the Appellant to say that he could not know any thing of the Right of Property in this Respondent until the same should be legally Established for in that case no one could obtain a restitution of Property left in the possesion of a deceased person in his life time without commencing a Suit at Law

To the Appellants Second Reason for appeal this Respondent humbly shews to your most Excellent Majesty in Council he did Establish the amount of the muslins so far as the state of the case and the Circumstances Connected therewith would admit of and this Respondent says it was impossible for him to have shewn by Evidence the Market price of similar muslins, as to that End he must have produced the muslins in question, and so have drawn the Estimate price by Comparison, and it Appears by the appellants own shewing that he with held the said muslins from this Respondent, and that he still has the same in his possesion and therfore the appellant shews that

that this Respondent ought to have performed an impossibility, and which was occasioned by his the Appellants Conduct in the premises—

To the Appellants third Reason for Appeal this Respondent admits the Trust Regarding the muslins was Voluntarily on his part, and if the Appellant had delivered the said muslins to this Respondent upon his application for that purpose, this Respondent would not have made any Charge of Interest But this Respondent submits to your most Excellent majesty in Council that the said third Reason for appeal of the Appellant doth Evince his litigious spirit, for he therein seems to admit Every thing charged in this Respondents said Bill of Complaint and set forth in his said Replication and which is supported by the Testimoney of Topiliam who shews that the Appellant did well Know that the said muslins did belong to this Respondent previously to any Bill having been filed Against him on account thereof for the said Topoline to the last Interrogatory says that

that a short time after the decease of the Appellants Intestate this Respondent did send him together With one Letchemy with a note to the Appellant to deliver over to them the Bale of Cloth in question, that thereupon the Appellant did send a Verbal Message to this Respondent that he would not deliver the said Bale of Cloth until the Accounts were adjusted between this Respondent, and himself as Administrator as aforesaid, and therefore this Respondent Submits that the said mayors Court in Decreeing as they have done Interest upon the Prime costs and charges of merchandize of the said muslins, and the said Court of appeals in confirming the said Decree have done no more, than Common Justice—

To the Appellants fourth Reason for appeal this Respondent Submits to your most Excellent majesty in Council that the Appellant was very Irregular in introducing any matter or thing in the Pleadings that by his own Shewing has not any reference to the matter in question, and Equally so

in

in bringing the same forward in his Petition of Appeal, the appellant has filed his Bill of Complaint in the said mayors Court for the Sum Stated in his said fourth Reason, and having sworn to the Debt has held this Respondent to Bail as he has himself has Shewn, and the same is now Pending in the said Court of Appeals and this Respondent Submits that if the Appellants was not Convened at the time he filed his Answer to this Respondents said Bill of Complaint that the matter in question was Seperate and distinct from the matters and things contained in the Bill of Complaint by him brought against this Respondent as alluded in and by his said fourth Reason of Appeal, he would by his said Answer to this Respondents said Bill of Complaint have claimed a set off for the Amount and have filed a Cross Bill for the Balance by him pretended to have been due and owing from this Respondent and which is the usual Course and this Respondent Submits to your most Excellent majesty in Council that if the Appellants doctrine was to prevail there would be no End to a Suit for a Defendant would only have to file a Bill as Judgment was about to be had to prevent it passing, and therefore this Respondent Submits that the said Decree of the said mayors Court was not premature According to the practice of the said Mayors Court, and According to the practice of Every other Court, and that the same is just in its Operation Against the personal Monies of of the Appellant and further this Respondent Submits to your most Excellent majesty in Council that the Decree ought not to have been as the Appellant would insinute Against the Estate of the Deceased but Against the Appellant personally inasmuch as that the same have been Accasioned by the misconduct of the Appellant who well Knows that the Estate of his Intestate is insolvent and that if the Decree had gone Against the said Estate that it would have been the same as if there had not been any Decree as this Respondent would not have derived a benefit of one Pagoda on Account thereof

For

For all which Reasons and such others as may be Offered at Hearing this Respondent most humbly prays that your most Excellent Majesty in Council will be pleased to Affirm the said Decree of the said mayors Court, that the Appellants said Petition of Appeal may be dismissed with Costs and that this Respondent may have such Other Relief in the premises as to your most Excellent majesty in Council shall seem meet.—

(Signed) Emanuel Samuel
Solicitor for Respondent

To

To the Right Honble Lord Hobart
President and Governor &c.a in Council
Fort Saint George

In the Honble
the Court of Appeals

Between Cauncaparoo Venca=tasha moodeliar by his Attorney Paulo de Payvas Complainants and Vanagram Nellatomby Defendant

The humble Petition and Appeal of the Defendant abovenamed

Sheweth

That some time on or about the fifth day of October which was in the year of Christ one thousand seven hundred and ninety three the abovenamd Complainant by his Attorney abovenamed did Exhibit and file a Bill of Complaint in the mayors Court of madraspatnam against your Petitioner for the recovery of the sum of seven hundred and forty nine Pagodas Eighteen fanams and nineteen Cash pretended

Filed in my Office the 15th December 1794
Robert Clerk
Clk

pretended to be due and owing unto him the Complainant upon a mortgage Bond Executed by your Petitioner on the twenty Second day of may and year of Christ one thousand Seven hundred and Eighty Seven a Copy of which said mortgage Bond together with the Copy of an Assignment and an Account Current were to the Complainants said Bill Annexed.

And your Petitioner Sheweth unto this Honble Court that to the Complainants said Bill of Complaint your Petitioner did Exhibit and file his Plea and Answer that for Plea your Petitioner did Shew that all matters in controversy and difference between your Petitioner and the Complainant had been Submitted to Arbitration and that the Bond in question had been included therein, that the arbitrators mutually chosen by and between your Petitioner and the Complainant for the purpose of Settling such difference and controversy not being able to agree in the premises did chose an umpire and that such umpire did on the sixth day of August one thousand Seven hundred and Ninety three make and publish his award in writing and thereby direct that on Account of a certain Bond and for and on Account of the Bond in question your Petitioner should pay unto the Complainant the Sum of four hundred and twenty five pagodas, and that thereupon he the Complainant should deliver up to your Petitioner the Bill of Sale therein mentioned and that the Complainant should pay unto your Petitioner the two several Sums of two hundred and fifty three Pagodas and two hundred and Seventy five Pagodas making together the Sum of five hundred and twenty Eight pagodas whereby a balance appeared due to your Petitioner Amounting to the Sum of One hundred and three Pagodas and your Petitioner did Shew that the said Award was or ought to be in the possession of Ernest William Fallow=field Esquire to which Award your Petitioner did crave reference and did plead the same in Bar to the Complainants said Bill of Complaint and for Answer to the Complainants said Bill of Complaint your Petitioner did say the particulars of the transactions between him and the Complainant would Appear

by

and

by an Account Current to his said Plea and Answer annexed and that by the said Account Current a Balance would appear in favor of your Petitioner Amounting to the Sum of two hundred and four Pagodas thirty five fanams and Seventy five Cash and your Petitioner Sheweth unto this Honble Court that to your Petitioners said Plea and answer the Complainant did Exhibit and file his Repliciation and therein and thereby did admit the arbitration in your Petitioners said Plea setforth and that the Submission to arbitration was dated the tenth day of October One thousand Seven hundred and Eighty five, but the Complainant did deny that an award was made thereon Suffecient in Law or Equity to Bar the present action, and after stating a Variety of Matters altogether foreign to the matter in ifsue attempting to Shew that he had assisted your Petitioner did say that such matters induced him to Submit to arbitration, but did also say that no regular award was given in the premises which fact he did further say was demanistrated by the inability of your Petitioner to produce the same, and the Complainant did annex to his said Replication a

a Variety of Copies of Bonds and a Copy of an Account Current in no wise pertinant or relevant to the matters in ifsue and your Petitioner Sheweth unto this Honble Court that before ifsue Joined in the Cause and before he had filed his Rejoinder therein to wit on the Eighteenth day of march now last past your Petitioners attorney did obtain leave accordingly as will more fully and did pray leave to decline Acting and at large Appear by a Copy of the Extract of the minutes 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 his Petition and Appeal may Appear and your Petitioner further Sheweth that on the first day of april following upon the affidavit of the Court Serjeant your Petitioners said attorney did Accordingly decline acting for your Petitioner and on the same day the attorney for the Complainant did pray that ifsue might Join in the Cause and ifsue did Join Accordingly as will more fully and at large appear by the Copy of the Extract of the minutes of the said mayors Court hereunto annexed

for

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 by which means your Petitioner humbly Sheweth he was precluded from filing his Rejoinder and issue having thus Joined Exparte contrary to the course of the said mayors Court rules did pass for the Examination of witnesses and that witnesses were Examined both on the part of your Petitioner and the Complainant That on the part of the Complainants motoo did depose to the hand writing of the Subscribing Witnesses to the Execution of the Bond in question and Severam moodeliar proves that the Assignee did pay to the Complainant as Assignor the Sum of Seven hundred and forty nine Pagodas and odd as a Consideration for the Assignment of the Bond in question and that one Camalapah was present and says that the reason which induced the Complainant to make the Assignment was his having been pressed by his Creditors to pay off their several Claims — Sanacy moodeliar nother Witness on the part of the Complainant deposes in part to the irrelevant matter in the Complainants said Replication set forth. proves the hand writing of your Petitioner to sundry Exhibits and states his Knowledge of Circumstances that took place thirty three years ago — Chengleroy moodeliar another Witness on the part of the Complainant deposes to the same points and nearly in the same words as Senay moodeliar Except when deposing to the fourth Interrogatory for they therein contradict eth other Cundapah another Witness on the part of the Complainant deposes that your Petitioner some time ago left in his Custody sundry Jewells and household furniture and that the same doth now remain in his the Deponents possession — Venctachellum another Witness on the part of the Petitioner proves that the arbitration was Entred into and that he was one of the arbitrators and that on award was made by the umpire chosen by the arbitrators and then Enters into a long detail of Circumstances regarding the same states his reason for not Signing the said award which he says was made partially but

but does not shew how and in what instance Moodookistna Moodeliar another Witness on the part of the Complainant proves the Arbitration and award and although meant to support the Testimoney of Vendachellum contradicts him pointedly and positively in every point of the long detail of Circumstances above alluded to, and your Petitioner Sheweth that the Witnesses produced on his part did fully Establish his said plea — Periandan the first Witness on the part of your Petitioner proves the Submission to Arbitration Entered into by your Petitioner and the Complainant that he the Deponent was one of the Arbitrators he then proves the award of the umpire and Shews that it was ratified by three of the Arbitrators, he further proves that the Complainant was made Acquainted therewith and that he Appeared to be perfectly satisfied Veras awmy Naick on the part of your Petitioner and one of the Arbitrators corroborates the Deposition of Periandan — Appoo Moodeliar proves that he has also Moodeliar one of the Arbitrators Who had Signed the award was absent — Sashyer the umpire also Examined on the part of your Petitioner proves the award by him made and that it was so made after a full investigation of the matters therein set forth and your Petitioner Sheweth unto this Honble Court that Publication did pass in the above cause and that thereupon your Petitioner did Except to the 6th additional Interrogatory beginning With the Words "did or did not the said Cauvy Aparoo Venatash Moodelly by Petition apply to the Clerk of the Justices" and Ending With the Words "and did he or did he not Write the Same in your presence set forth the particulars fully and at large and the truth declare" And to the Deposition taken thereon, because the same was not in issue and your Petitioner did also Except to a Petition Exhibited by the Complainant with his said third additional 6th Interrogatory and to the deposition taken thereon because the same was not in issue

And your Petitioner Sheweth unto this Honble Court that upon the proceedings had that the said Cause was then set down for hearing and that the same did come on to be heard before the said Mayor's Court

on

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 by which means your Petitioner humbly sheweth he was precluded from filing his Rejoinder and issue having thus Joined Exparte contrary to the course of the said mayors Court rules did pass for the Examination of witnesses and that witnesses were Examined both on the part of your Petitioner and the Complainant That on the part of the Complainants mootoo did depose to the hand writing of the Subscribing Witnesses to the Execution of the Bond in question and Severam moodeliar proves that the Assignee did pay to the Complainant as Assignor the Sum of Seven hundred and forty nine Pagodas and odd as a Consideration for the Assignment of the Bond in question and that one Comalapah was present and says that the reason which induced the Complainant to make the Assignment was his having been pressed by his Creditors to pay off their several Claims—Danacy moodeliar nother witness on the part of the Complainants deposes in part to the irrelevant matter in the Complainants said Replication Setforth: proves the hand writing of your Petitioner to sundry Exhibits and states his Knowledge of Circumstances that took place thirty three years ago—Chengleroy moodeliar another Witness on the part of the Complainant deposes to the same points and nearly in the same words as Danacy moodeliar Except when deposing to the fourth Interrogatory for they therein contradict eich other Cundapah another Witness on the part of the Complainant deposes that your Petitioner sometime ago left in his Custody sundry Jewells and household furniture and that the same doth now remain in his the Deponents possession—Venctachellum another witness on the part of the Petitioner proves that the arbitration was Entered into and that he was one of the arbitrators and that on award was made by the umpire chosen by the arbitrators and then Enters into a long detail of Circumstances regarding the same states his reason for not Singing the said award which he says was made partially

Cut

on the Second day of December And year of Christ one thousand Seven hundred and ninty four when the said mayors Court was pleased to order and Decree and did accordingly Order and Decree that your Petitioner do pay unto the complainant the full and just Sum of Seven hundred and forty nine Pagodas Eighteen fanams and nineteen cash together with all such Interest as then was or should thereafter become due thereon also all Costs of Suit as by Copy of the said Decree hereunto Annexed for the inspection of this Honble Court to which your Petitioner begs leave to refer and prays the same may be taken as part of this his Petition of appeal the Original being ready to be produced when required may appear—

By Which said Decree of the said mayors Court your Petitioner doth conceive himself much aggrieved and doth therefore appeal therefrom to this Honble Court for the following Amongst other reasons.—

First— Because your Petitioner did plead an award given upon a Submission to arbitration of all matters in difference between him and the complainant, that to the said Plea the complainant did reply and did thereby admit the Plea well pleaded and your Petitioner did by a due course of Evidence prove the said award to have been duly made and Executed, and therefore according to the first principles of Law and Equity the said mayors Court ought to have allowed your Petitioners said Plea to stand good as an Encouragement of those amicable means which are intended to prevent strife and litigation and which the Legislative has sanctioned by a clear and pointed Act.

Secondly— Because although the complainant in and by his Replication has attempted to impeach the said award yet Vendachellum Moodeliar the only Witness who is brought forward upon the Occasion has merely stated that he would not sign it, because he conceived he thought it was partial and he has not attempted to shew in what particular part or in what manner it was partial and his testimony is positively contradicted in detail by the deposition of Moodoo Kistna a Witness

also

also produced on the part of the Complainant and Evidently meant and intended to support the Evidence of Vencatachelum Moodeliar which he has effectually Destroyed so that the said award stands in full force and Validity unprejudiced and unimpeached and therefore as your Petitioner is advised in full Bar to the Complainants said Bill of Complaint.

Lastly Your Petitioner humbly submits to this Honble Court that the Exceptions by your Petitioner taken to the Evidence adduced on the part of the Complainant and to the Petition Exhibited therewith are well founded and that such Evidence and Petition are inadmissible the oral part thereof being irrelevant impertinent and not put in issue by the pleadings and the written Testimony that is the Petition no Evidence Whatever, but it certainly tends to shew the practices that were made use of by the Complainants to injure and Oppress your Petitioner in the premises.

For all which Reasons and such others as may be offered at the hearing your Petitioner most humbly prays that the said Decree of the said Mayors Court may be reversed and that your Petitioner may have such other General Relief in the premises, as to 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 18th. day of March Anno Domini 1794.

Present

Wm. Chr. Michell Esqr. Mayor

James Call & John Milford

Aldermen.—

Mr. Alderman Rofs takes his Seat upon the Bench

Canneaparoo Vencatasha Moodelly by his Attorney Paulo de Payvas

vers

Vanagram Nellatomby.—

Mr. Hall Attorney for the Defendant prays leave to decline acting for Want of money and Instructions Ordered Accordingly. unless Cause be Shewn to the Contrary by next Court Day and it is further Ordered that the attorney do Serve his Client with a Copy of this Minute of which Service Affidavit is to be Made.—

A True Extract

/Signed/ George Taylor Regr.

A true Copy

/Signed/ James Stuart Hall

Solicitor for Appellant

Extract

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 1st. day of April Anno Domini 1794.

Present

Henry Chichley Michell Esqr. Mayor—

Josias Dupre Porcher and Andrew Rofs—

Aldermen.

Canneaparoo Vencatasha Moodeliar by his attorney Paulo de Payvas, vers

Vangaram Nellatomby.—

Affidavit of William Harbert of Service of Notice of Mr. James Stuart Hall Attorney for the Defendant having prayed leave to decline acting—Sworn to in Court read and filed this day—Ordered that Mr. James Stuart Hall be permitted to decline acting—Mr. George Chalmer Attorney for the Complainant prays that ipse may Join and a Day pass for the Examination of Witness in this Cause.—

Ordered Accordingly.—

A True Extract

/Signed/ George Taylor Regr

A true Copy

/Signed/ James Stuart Hall, Sclr. for appt. Mayors

Mayors Court
at Madraspatnam

Tuesday the 2d. day of December
Anno Domini 1794.

Present
James Call Esqr. Senr. Aldermen
Andrew Ross & Alexr. Cockburn
Aldermen

Between Canneaparoo Veneatasa
Moodeliar by his attorney Paulo de
=Payvas of Madras Inhabitant
Complainant and Vengarum Hellatom=
=by of the same place Inhabitant
Defendant.

This Cause Coming on to be heard and debated this day in the presence of the attornies on both sides On Reading the Complainants Bill with Copies of a mortgage Bond a Bill of Sale on Assignment and an Account Current annexed, the Defendants Plea and Answer with Copy of an Account Current annexed, The

Replication

Replication with Copies of four Exhibits annexed, The Interrogatories and depositions on the part of the Complainant with four Exhibits Annexed, The Interrogatories and Depositions on the part of the Defendant with Exhibits Marked A and B annexed on Hearing the Pleadings Made use of by the attornies and on due Consideration had thereon This Court doth think fit to order and Decree and doth accordingly Order and Decree that the Defendant do pay unto the Complainant the full and Just Sum of Seven hundred and forty nine Pagodas Eighteen fanams and Nineteen Cash Pags. (749-18-19) together with all such Interest as now is, or shall hereafter become due thereon also all Costs of this Suit.

Hur (Signed) G. E. Askin
Dy Regr.

a true Copy.
(Signed) James Stuart Hall
Solicitor for Appellant

To

To the Right Honble Lord Hobart

President and Governor &c. in Council

Fort Saint George

In the Honble the
Court of Appeals

Between Cannea paroo Vencatasa
Moodelly ar by his attorney Paulo
De Pay vas complainant and
Vanagaram Nellatomby Defendant

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

This Respondent by his said attorney for
answer to the said Petition of appeal or unto so
much thereof as he is advised is material for him
to make answer unto answereth and saith that he
admits to have on the fifth day of October which was in
the year of Christ one thousand seven hundred and
ninety three Exhibited and filed his Bill of complaint
in the mayors court at Madraspatnam against the
said Defendant for the recovery of the sum of Seven
hundred and forty nine Pagodas eighteen fanams
and

Filed in my Office
the 7th February 1795
Robert Clerk
Clk

and Nineteen Cash Current money of madras
Charged to be due and owing to this Respondent
upon and by virtue of a certain mortgage Bond
executed by the Appellant at the time which in
and by the said Appellants Petition and appeal
is mentioned Copy whereof together with an
Assignment and an Account Current are to this
Respondents said Bill of complaint annexed and
thereby refered to

To Which said Bill of complaint this
Respondent admits that the Appellant did
Exhibit and file his Plea and Answer. That for
Plea the appellant did shew that all matters in
Controversy and Difference between him and this
Respondent had been submitted to arbitrator who
had finally deceased thereon and that the Bond in
question had been included thereon the Substance of
which said Plea and Answer being set forth in
the Appellants Petition and appeal this
Respondent by his said attorney craves leave to
refer thereunto and prays he may have the full
benefit

benefit thereof

To Which said Plea and Answer this — Respondent admits that he did Exhibit and file his — Replication and therein did admit that on the Sixth day of October Which was in the year of Christ one thousand Seven hundred and Eighty eight, a Certain Cadjan Writing or Bond was entered into between him and the Appellant Wherein they did bind — themselves in a penalty of fifty Pagodas to Robert maunsel Esquire then one of the Justices of the Peace of Fort Saint George to Submit Certain matters in Deference between them to the determination of four persons in the said Bond named But this Respondent in his Replication by his said attorney did deny that an award was made thereon Sufficient either in Law or equity to Bar the present action or to preclude him by his Assignee and attorney from suing in the said Mayors Court as this Respondent said thereafter would fully and particularly be shewn, And in order to support a right of action on the Bond Copy whereof is annexed to the Bill of Complaint This — Respondent

Respondent in his Replication by his said attorney prayed leave to Set forth the Several Transactions — which had exested between him and the Appellant, and the many pecuniary loans which this — Respondent had made to him and from whence this Respondent said it would appear that the said Plea and Answer filed by the Appellant Exhibited on of the most litigious defences that ever was offered to any Court of Judicature — This Respondent in his Replication by his said attorney said that in the year one thousand Seven hundred and fifty nine the Appellant intermarried with his Sister, on Which Account he rendred him many Services and Supplied him by at times with various Sums of money, That particularly in the month of September, and year of Christ one thousand Sevenhundred and Sixty two This Respondent did in Order to put him in away of providing for himself and family lend and advance him the Sum of Three hundred Pagodas Current Money of Madras, to Secure the — Repayment whereof the Appellant did Execute a

Bond

Bond to this Respondent for that sum of with Interest at and after the rate of twelve per Cent per annum, as by the said Bond Copy of the Translation Whereof is to the said Replication annexed for the inspection of the Mayors Court marked A relation being thereunto had This Respondent said would more fully Appear And this Respondent by his said attorney did further state that with the money so advanced the appellant set up a Shop but Owing to his extreme imprudence he did not succeed in business and was sometime afterwards arrested and put in Jail by one of his Creditors, From Whence he was released by this Respondent Who first became Bail for him and afterwards discharged the debt Amounting to the Sum of fifty Pagodas to Secure the repayment whereof the appellant did enter into one other Bond or written obligation wherein he Acknowledged to have Borrowed from this Respondent the Sum of fifty Pagodas for the purpose of discharging a debt touching the Court, and Which he engaged to repay on demand, as by the said Bond true

true Copy whereof marked B to the Replication annexed This Respondent said Would more fully Appear And this Respondent by his attorney in his said Replication further said that on Account of the Bond entered into as aforementioned by the Defendant in September one thousand seven hundred and Sixty two he only received one hundred Pagodas in Cloth and the balance thereon due remained unsettled till the fourteenth of October one thousand Seven hundred and Sixty five at Which period this Respondent in Order to Serve and Accommodate the Appellant Agreed, to overlook the interest and to take a fresh Bond for two hundred Pag.s payable at twenty Pagodas yearly Which Bond was Accordingly executed by the Appellant and the other Which bore date in September one thousand Seven hundred and Sixty two Cancelled, And this Respondent did in his said Replication further Set forth and state, that the Appellant in Order to answer his own inequitious and fraudulent purposes had in the Account to his Plea and Answer annexed dated the Bond on the fifteenth of May one thousand Seven hundred and Sixty five Wherefore to direct the said Appellant and to Shew the

the falsety of the date, this Respondent did in his Replication
annex a copy thereof Marked C and to which he
prayed a reference might be had, and this Respondent
by his attorney further said that so far from the
Defendant discharging any part of the last or his former
Bond for fifty Pagodas that he was under the Nessity
of lending him Various other sums of Money, as well as
Supplying him the Appellant with many articles of
House hold Goods, All which Sums as well as house hold
Goods are still unaccounted for, and this Respondent by
his attorney further Setforth That he paid thirty Pagodas
to Chocapah Chitty in Whose Service the Appellant was,
and who had confined him for refusing to account for
a Sum which he had Recvid for him equal to that
Amount, The said Appellant did also Recvie for this
Respondent the sum of Sixteen Pagodas eighteen fanams
and forty Cash from a weavers, But instead of
Accounting to this Respondent for the same he appropriated
it to himself and this Respondent in his said Replication
did further Setforth That in this manner he Continued
to Supply the Appellant untill the month of May and

year

year of Christ one thousand Seven hundred and Eighty Seven
without receiving any part of the money which at different
times had been advanced, at that period the Defendant
having again occasion for a loan of four hundred and twenty
five Pagodas he applyed to this Respondent for the same
offering to secure the repayment thereof by a mortgage of his
house, and this Respondent by his attorney in his said
Replication further said that on the faith of this Security
he advanced the said sum and recevid from the Defendant
the Mortgage Bond and Choultry Bill of Sale upon
which the present action is brought And this Respondent
did in his said Replication by his said attorney further
Setforth that having for such a Series of years liberally
assisted the Appellant he expected that in this last
Transaction he would have acted faithfully towards him
But when this Respondent came to demand payment
of the said Bond the Appellant refused to discharge
it, or to permit the mortgaged premises to be sold in
satisfaction thereof which circumstance induced this
Respondent to submit the points in dispute to arbitration
and accordingly penalty Bond was Granted to Robert
Maunsel the then Sitting Justice. But that the matter

in

in dispute were never determined by him in Consiquence
of Which much Confusion arose, and no regular Award was
given by the parties reciprocally Chosen Which fact is
Clearly demonstrated from the enability of the appellant
to produce it and which he would have found no difficulty
in doing if it had been made According to the Submission
for then it would have been delivered to him with the
Signature of the Justice Confirming it And this Respondent
in his said Replication did further State that having traced
and marked out the different Transactions Which
existed between him and the appellant prayed leave in
further illustration of the Subject to annex thereunto an
Account Current with the Appellant Where independant
of the said Mortgage Bond now the cause of action the
Appellant Appears to stand indebted to him in a balance of
one thousand four hundred and nine Pagodas thirteen
fanams and forty five Cash Which Sum However was
this Respondents intention to press him for payment
of, his Object for so many years past having been to
assist his Wants and relieve his Necessities, and this
Respondent did in his said Replication further State that the
Items Contained in the debit side of the Account Current
to

to the Appellants Plea and Answer Annexed were all of them
false and unfounded. And first this Respondent said
that he was entirely ignorant of the several Items in the
said Account mentioned under date the first of July
one thousand Seven hundred and Sixty five, for that the
said Appellant never did sell, or in any other manner
provide him with such Articles. This Respondent further
said that in the year one thousand Seven hundred and
Sixty one his mother went to Pondecherry and was
attended by the Appellant and an Opportunity at that
time offering to purchase some of the materials of the
Houses which had suffered during the Siege she availed
herself of it and bought a quantity of Palmiras and other
things, In making this purchase the Defendant lent his
Assistance but the Articles were bought and paid for by
her, and this Respondent in his said Replication did
further deny that he ever took away any Joys or House
hold furniture belonging to the Appellant as has been
unjustly Charged in and by the Plea and Answer and
Account Current thereunto annexed This Respondent
said that he had heard and that he would be able to
prove the very Articles Which the Appellant had

Charged

Charged him with under date the tenth of December one thousand Seven hundred and Eighty four were delivered by the appellant himself to one Condapah his relation — And this Respondent in his said Replication did Contend that the several Bonds executed by the — Appellant and which he had Credited this Respondent with in his Account Current did fully refute the Charges in the Dr. side thereof. For that it Could not be supposed that if this Respondent stood indebted to him in the month of July one thousand Seven hundred and Sixty five in the Sum of three hundred and thirty one Pagodas ten fanams and Seventy Cash that he would in October following have Executed a Bond for two hundred Pagodas — without liquidatory or in any Wise advating to the said Sum of three hundred and thirty one Pagodas ten fanams and Seventy Cash This Respondent in his said Replication said it was true that the Defendant had dated the Bond on the fifteenth of may one thousand Seven hundred and Sixty five to answer his own purposes. But that the real date was October as Would Appear by a reference to the said Bond Copy Whereof was thereunto Annexed,

and

and this Respondent in his said Replication further said that it was extraordinary the Appellant should allow the Bond of Fifty Pagodas to be Kept out against him or that he should be under the Necessity of borrowing in the year one thousand Seven hundred and Eighty Seven upon the Mortgage of his house a further — Sum of four hundred and Twenty five Pagodas at a time when this Respondent According to the appellants Statement stood indebted to him in so Considerable a balance, and Lastly this Respondent by his attorney in his said Replication Stated that as the Assignee of a — Bond received it Subject to the same equity Which the Assignor held in it. That it become Necessary to Shew by the aforegoing detail of facts that the same was duly assigned over and that independant of the said mortgage Bond the Defendant Stood indebted to the Assignor in in the sum of one thousand four hundred and nine Pagodas thirteen fanams and thirty five Cash being the balance of an Account Current Copy of Which is to the said Replication annexed. —

To Which Replication this Respondent

admits that no Rejoinder was filed and that for want

thereof

thereof issue was Joined in the Cause but previous
thereto. to wit on the Eighteenth day of march This
Respondent admits the Appellants Attorney did pray
leave to decline acting for want of Money and Instructions
and which was Ordered Accordingly unless Cause
could be Shewn to the Contrary In the Mean time
the Appellants said Attorney was ordered to Serve
his Client with Copy of the minutes of which
service an Affidavit was ordered to be made and this
Respondent for further Answer admits that on the
first day of April following the Court Sejeant having
made oath of the Service of the minute upon the
Appellant and no Cause having ben Shewn he was
permitted to decline acting and this Respondent
admits that on the same day this Respondents
attorney did pray that issue might join in the Cause
and issue did join Accordingly as appear by an Extract
of the minutes of the said Mayors Court Copy Whereof
is to the said Petition and Appeal annexed. But this
Respondent denies the Appellant was by any means
precluded from filing his Rejoinder: for by his own Shewing
it

it appears that he gave no Instructions to his Attorney
on that behalf but totally abandoned his Cause who in
Consequence thereof had permision to decline acting and this
Respondent further saith, that issue having Joined According
the Course and pratise of the said Mayors Court rules prajsed
for the Examination of Witnesses and that Witnesses were
Examind, as well on the part of this Respondent as on
that of the Appellant. That on the part of this Respondent
Mostiah Moodelly being produced as an evidence deposed
and said that the Appellant did on the twenty Second day
of May in the year of Christ one thousand Seven hundred and
eighty Seven borrow from this Respondent a Certain Sum of
money and that the appellant did execute his Bond for
the same and did mortgage the Bill of sale of his the
appellants house for Securing the Repayment thereof and
he further deposed that his deceased Brother was one of the
Subscribing Witnesses to the said Bond and that having
looked at the Cadjan Writing produced to him at the
time of his Examination purporting to be a mortgage
Bond or Obligation for the principal Sum of four hundred
and twenty five Pagodas said that the name Nellanan
placed as a Subscribing Witness thereto was of the proper
hand

hand writing of his said Brother. To the third Interrogatory Sevaram Moodelly did depose that Pauls De Payvas the Complainant and Assignee of the Bond upon which the present Action is brought did pay unto Canneaparoo Vencatasa Moodelly the Assignor the Sum of Seven hundred and forty nine Pagodas and odd fanams for assigning over the Bond upon which the present Suit is brought and of the premisses therein mentioned to be mortgaged and the said Witness further deposed that he and a person called Comalapah were present when the said money was paid. And this Respondent further saith that Senassy Moodelly another Witness on his part deposed and said, that he was not related or Connexed either to this Respondent or the Appellant but that he was of the same Cast. That this Respondent and the Appellant were Brothers in Lauto each other, That he knew that the Appellant did some time in the year of Christ one thousand Seven hundred and Sixty one attend and accompany this Respondents Mother to Pondicherry where she bought a quantity of Palmiras

Teek

Teek wood and some House hold Furniture with money borrowed by this Respondents Mother at Pondechery and which was repaid afterwards by this Respondent That the said Palmiras and other materials were afterwards sent to Madras and delivered to this Respondent And this Respondent further saith that the matter stated in the Replication were further supported by the Testimony of this witness who to the fifth Interrogatory Deposed and that since the Appellants Connection with the family of this Respondent he had great assistance rendered him. This Respondent having advanced him the Appellant the Sum of two or three hundred Pagodas to enable him to keep a Bootique and fifty Pagodas to release him from Jail and also discharged a debt of thirty Pagodas due by the Appellant to one Chocapah Chitty and Twenty Pagodas on Account of Salt Pans rented by the Appellant and he further deposed that having looked at the Cadjan Writing produced and Shewn to him at the time of his Examination marked **B** and **C** purporting to be two Bonds for the principal Sum of fifty Pagodas and two hundred

Pagodas

Pagodas and bearing date respectively the twelfth day of August one thousand Seven hundred and Sixty four and fourteenth day of October one thousand Seven hundred and Sixty five he said he was acquainted with the Character and manner of hand writing of the Appellant and that the Name Nellatomby Set and Subscribed at the foot of the said Cadjan writing was of the Appellants proper hand writing To the Sixth Interrogatory the said Sinafsey further deposed. That he Knew that the Appellant did in the month of may and year of Christ one thousand Seven hundred and Sixty eight receive from this Respondent Several articles of household furniture Consisting of a Chest a Couch a Cot and some Materials for building a house. and this Respondent did Continue to relieve the wants and Supply the Necessities of the said Appellant by giving him Rice, Cloths and other Necessaries for his use — And this Respondent by his said Attorney further saith that Changleroy a Witness on the part of the Respondent in every regret Confirmed the Testimoney given by the said Senefsey and in a full and ample manner Supported some of the Circumstances alledged and set forth in the said Replication — And this Respondent by his said attorney saith that Cundapah Moodelly another Witness on the part of this Respondent, deposed that the appellant did deposite with him about ten years ago Sundry Jewels and household furniture and that the same are now in his posession and Which to every intent and purposes does away the Charge he has made against this Respondent of having taken away in his absence Joys moneys and household Furniture It Appearing from the said Testimony that the appellant had deposited them with another person — And this Respondent by his said attorney further saith that Venctachellum a Witness on the part of this Respondent being produced deposed that he was sometime in the year of Christ one thousand Seven hundred and Eighty Eight Chosen by this Respondent as an arbitrator in Conjunction with the said other Arbitrators to Examine and enquire into the Matters in difference and that they were

two

two or three years in doing so that such delay arose in
Consequence of some of the arbitrators living about from
madras. That he and the other arbitrators did not agree
respecting the Matters Submitted to them and that
they differed in Opinion because the arbitrators chosen
on the part And behalf of the Appellant wished to
give a Partial award - That one Rashiah was
afterwards chosen an umpire in Consequence of such
dis'agreement between the arbitrators to decide the same
and that the said umpire did proceed to make an
award in favor of the Appellant Concerning such
Matters in difference and that he was required
to sign his name to such Award by the Umpire
but that he refused to do so Conceiving the said
Award was given on partial grounds -
And this Respondent by his said attorney further
saith that notwithstanding the Appellant had
alledged that the pretended awards were not in
his posession yet to this Respondents Surprise
a Letter was sent to his attorney on the Seventeenth
of July being many Weeks after issue had Joined
in the words and figures following "George Chalmer Esq.

attorney

"attorney for the Complainant, Sir I have this day
"delivered into the Examiners office the Exhibits of
"which the accompanying are true Copies in order
"that they may be Examined to I therefore give you
"this Notice in order that you may Cross Examine if
"you think proper I am Sir your very Obedient Servant
"J Stuart Hall attorney for Defendant Fort Saint George
17th "July 1794."
And this Respondent by his said attorney further
saith that as the Appellant in delivery in the said
Exhibits in the manner which he did and at that
Stage of the Suit manifestly shewed an intention
of taking an unfair advantage of this Respondent to
having in no part of the pleadings of this Suit
Accounted for the Manner in which they came
into his posession this Respondent in order therefore
to do away or at least to Counteract the impression,
which they were meant to convey did as the
appellant had done deliver in to the Examiners
office a Petition addressed to the then Clerk of the
Justice relating to the Business of the said award,
and in order to prove the hand Writing of the said

Clerk

"as more fully and at large appears by a letter
"written by the Exceptants' Attorney to this Respondents
"Attorney Copy Whereof was to the said Answer annexed
"for the inspection of the said Honble Court-
" For all which matters and things this Respondent
"insists that the matters excepted to were neither impertinent
"or irrelevant and therefore this Respondent prayed that
"the said Exception might be overruled with Costs
And this Respondent admits that upon
the proceedings had that the said Cause was then Set
down for hearing and that the same did come on to be
heard before the said Mayors Court on the Second day
of December and year of Christ one thousand Seven
hundred and ninety four When the said mayors Court
were pleased to order and Decree and did accordingly
order and Decree that the Appellant should pay
unto this Respondent by his said attorney the full
and just Sum of Seven hundred and forty nine Pag.s
Eighteen fanams and nineteen Cash together with
all such Interest as then was or should thereafter
become due thereon also all Costs of Suit. And this
Respondent

Respondent denies that the Appellant is aggrieved
by the Decree of the said mayors Court or that
he has any Just Cause or Reason for appealing
therefrom.

And for Answer to the first Reason adduced
and given by the Appellant as Cause of appeal
from the Decree of the said mayors Court This
Respondent by his said Attorney saith that if he had
not replied to the said Plea and answer, It would
have been a tacit admission on the Part of this
Respondent of the truth of the several matters therein
Set forth and must have ended in the dismission of
the Bill of Complaint had the Cause been Set down
to be heard on Bill and Answer - And this
Respondent by his said Attorney for further
answer saith that when an award has all the
qualities Necessary to Constitute a good award that
it may then be pleaded and will operate as a
bar to an action brought on matters relating thereto
But it is totally different where Corruption or
partiality is shewn on the part of the arbitrators as
is manifest in the present Case. Then the question

being

Clerk of the Justice he did Exhibit Interrogatories to Moodookistna a Witness on the part of this Respondent who deposed as follows "That an Order was given respecting the Sale of the House in question by Mr. Thomas Chase Clerk to the Justices and that the said House was knocked down to the highest bidder. That this Respondent did by Petition apply to the Clerk of the Justices to have a Bill of Sale granted to him for the person who bought the said house, and that he the Defendant was the bearer of the Petition and that he hath looked at the Paper writing produced to him at the time of his Examination and says the same is the Petition which he presented and that the Endorsement thereon is of the proper hand writing of Mr. Thomas Chase, and that he wrote the same in his presence" And this Respondent by his said attorney further admits that several Witnesses having been examined on the part of the appellant that Publication did pass in the Cause after which the appellant did file Exceptions as by him is mentioned in his said Petition and

and Appeal To which said Exceptions this Respondent did put in his Answer and to the first Exceptions" This Respondent for Answer said that the "Matters therein Excepted to were in issue and tended "to Controvert and disprove the Plea set up by the "Defendant in bar to the present Suit, namely an "Award of one Valembaukum Shashayer and which "award was said to be in the Custody of Ernest William "Falleyd one of the Justices of the Peace that the said "Interrogatory and Deposition so Excepted to went to "shew that the said Award, so far from being confirmed "in Manner as the said Exceptant had averred it to "be that the decision was in favor of the said "Canneaparoo Venkatasa Moodelly

"And for Answer to the Second Exception this "Respondent said that the Petition delivered in with "the third additional Interrogatory was in issue "and was introduced for the purpose of Controverting "two Papers or Exhibits purporting to be an award "and penalty Bond irregularly delivered in by the "Exceptant into the Examiners office after issue had "joined instead of the Registry of this Honble Court

as

being Opened The Court before which it is tried will decide upon the Merits of the Suit without adverting to what the arbitrators did - And this Respondent by his said attorney further saith that Pursuing this rule he did in order to Shew that the said award was improperly Made enter in his Replication into a detail of the Various transactions which existed between the Appellant and him from the year of Christ one thousand Seven hundred and fifty nine to the period when he Executed the Bond upon which the present Action was brought clearly Shewing from thence that during the intervening times the Appellant had been principally Maintained and Supported by the said Canneaparoo Vencatasa Moodelly and that independant of the Bond Assigned over the Appellant stood indebted to him in a further Sum of one thousand four hundred and nine Pagodas thirteen fanams and forty five Cash And this Respondent by his said attorney further Saith that notwithstanding the particular explanation of Circumstances in the

said

said Replication contained and which tended Clearly to Shew the Corruption and partiality of the arbitrators the Appellant did not put in a Rejoinder But abandoning his cause allowed issue to Join thereby admitting in their fullest extent the Several Matters Set forth in the said Replication

And this Respondent by his said attorney for answer to the Second Reason saith that it was altogether unnecessary for Vencatachellum Moodelly to point out the particular Circumstances of the partiality on the part of the arbitrators when it was so Clearly demonstrated by the Circumstances Stated in the Replication the Documents annexed thereto and by the Witnesses examined in Support thereof And this Respondent by his said attorney further saith that the award produced by the Appellant has not the Signature of the Justice of the Peace and which Circumstance is in itself proof of the insufficiency of it The Signature of the Justice having been at all times Considered as Necessary to give force and Validity to Such awards

And

And this Respondent saith that neither the Petition addressed to Mr. Thomas Chase nor the Evidence adduced in Support thereof are irrelevant or impertinent as the Appellant had asserted in his said appeal The Subject of the said Petition being to Shew that the Justice of the Peace so far from Sanctioning the said award authorized the sale of the mortgaged Premisses otherwise It is not to be presumed that the said Mr. Thomas Chase would have written what he did on the back of the said Petition —

For all which matters and things and such other as may be adduced at the hearing this Respondent humbly prays that the Decree of the said mayor's court may be affirmed with Costs —

(Signed) George Chalmer
Solicitor for Respondent

Court

Court of Appeals } Saturday the 16th day of January
Madraspatnam } Anno Domini 1796.

Between Vanagaram Nellatomby of Madras Inhabitant Appellant and Canneaparoo Vencatasa Moodeliar by his Attorney Paulo de Payvas of Madras Inhabitant Respondent —

This Cause coming on this day to be heard and debated before this Court and upon due Consideration of the Petition of Appeal together with the Decree of the Honble the Mayors Court given in this Cause on Tuesday the 2d day of December Anno Domini 1794. and it appearing to the Court that the matter in dispute is between two natives and that the Plaintiff in the said Mayors Court has made use of the name Paulo de Payvas as his Assignee only for the purpose of wading the Charter This Court doth think fit to order and Decree and doth

Accordingly

accordingly Order and Decree that the said Decree of the Honble the Mayors Court dated the 2^d day of December Anno Domini 1794 be reversed and that each party do pay his Costs in both Courts —

Hur,

(Signed) J. Webbe Clk

To

To the Right Honble Robert Hobart commonly called Lord Hobart

President in Council
Fort Saint George

In the Honble the Court of Appeals

Between Mean Ahomed by his Attorney Budder Ul Dien Complainant, and, Antonio de Souza of Madras Merchant And Inhabitant, Defendant —

The humble Petition and Appeal of the above named Complainant —

Sheweth

That your Petitioner did on the ninth day of December which was in the year of Christ One thousand Seven hundred and ninety four by his said Attorney Budder Ul Dien file in Court a certain Bill of Complaint against the abovenamed Defendant for the recovery of the principal Sum of twelve thousand and five hundred Star Pagodas Seven fanams and ten Cash, Amounting together With Interest thereon to the Sum of Twenty Six Thousand nine hundred and

Filed in my Office the 2^d March 1795 Robert Clerk Clk

and Saty Seven Star Pagodas forty one fanams and that an order of Court did thereupon pass for the said Antonio de Souza to be Summoned—

That on the Sixteenth day of the said Month of December the said Antonio De Souza Appeared to the said Bill of Complaint by his Attorney Mr. John = = Wilkinson the Summons having been returned served. Whereupon your Petitioner did by his Attornies in Court pray that the said Defendant might give Bail upon Oath being made to the Debt which prayer of your Petitioner the said Court was then pleased to grant

That on the said Sixteenth day of the said Month the said Defendant did file a Petition together with an Affidavit of one Letchemana Pillah praying that your Petitioner might be ordered to give Securities for Costs, to which prayer your Petitioner by his said Attornies did Object and did pray that he might be allowed time to Answer the said Petition, which prayer of your Petitioner the said Court was pleased to grant and to allow = = until the third of February then next following to Answer the said Petition

That

That on Tuesday the third day of the Month of February of the present year Mr. John Wilkinson the Attorney for the said Defendant prayed leave to declare acting which was Ordered = = Accordingly and Mr. James Stuart Hall appeared as attorney for the said Defendant in the room of Mr. John Wilkinson— And your Petitioner sheweth that he did on the said third day of February file his Answer to the said Petition of the Defendant and the said Attorney for the Defendant prayed that the Matter of Petition might then come on to be argued, to which prayer your Petitioner did by his said Attornies object, for that the said prayer of the Attorney for the Defendant to that effect was subversive of and contradictary to the Constant practice of the said Mayors Court in such Cases observed, but which said Objection on the part of your Petitioner the said Mayors Court did think fit to overrule, and did Order that the said Matter of Petition should come on to be argued on the said third day of February, and that the same did = = accordingly

Accordingly come on to be Argued by and before the said Mayors Court. When the said Mayors Court did think fit to Order that your Petitioner should be restrained from proceeding Against the said Defendant until he should have given Securities to Answer such Costs as might be finally given Against your Petitioner in the said Suit.—

That on the tenth day of the said Month of February the said Defendant did by his said Attorney at Law acquaint the said Mayors Court that as your Petitioner had not given Securities for Costs Agreably to the Order of the said Court on the said third day of February he therefore prayed that your Petitioners Bill might stand dismissed Costs, to Which prayer of the Defendant your Petitioner did by his said Attornies at Law object as being altogether unreasonable as the said Defendant could Suffer no injury in as much as your Petitioner was restrained from proceeding in the said Suit until he should have given Security for Costs and the said Mayors Court was then pleased to allow your Petitioner a further time of one Week to find

Security

Security for Costs, and to order that in default thereof the Bill of Complaint of your Petitioner should stand dismissed with Costs And your Petitioner by his said Attornies did thereupon pray that the before named Budder Ul Deen the Attorney of your Petitioner might be allowed to make oath to the Debt due to your Petitioner by the said Defendant, and for the recovery whereof your Petitioner had fieldd his Bill in order to entitle your Petitioner to hold the said Defendant to Bail in the said Suit, for that if your Petitioner were to be restrained from taking out the necessary Procefs to secure his Debt and Costs until he had given Security on the next Court day as was ordered, the said Defendant in the interim might depart the Jurisdiction of the said Mayors Court, and your Petitioner might be thereby deprived of all remedy under his Bill and further that the said Attornies of your Petitioner had heard that the said Defendant was about to depart for Bombay to Which Motion on the part of your Petitioner the Attorney for the Defendant Objected as the said Mayors Court had ordered all proceedings

to

to be staged Security be given for Costs and which said Motion on the part of your Petitioner the said Mayors Court was also pleased to over rule—

That on Tuesday the Seventeenth day of the said Month of February the said Attorney for the Defendant acquainted the Court that as your Petitioner had not given Security for Costs agreable to the Order of the said Mayors Court of the said tenth day of February He therefore prayed that your Petitioners Bill might stand dismissed with Costs to which Prayer on the part of the Defendant your Petitioner did by his said Attornies object and did acquaint the said Mayors Court that your Petitioner did by his said Attornies on Thursday the twelfth day of the said Month of February offer to the said Attorney for the Defendant Duncoo Chunia Kistnamah Chitty Sheveram Ramasawmy Bramny Meer Ally Golaum Rhazzer, Nagapah Moodelly and William John Charter Housekepers of Madras as Securities for Costs to be incurred in the said Cause and that they did then pray leave to offer Duncoo Chunia Kistnamah Chitty and Sheveram Ramasawmy Bramny two out of the said Persons Inhabitants and Housekeepers of Madras as Securities for the Costs to be incurred by the Defendant in the said Cause, and thereupon the said Attorney for the Defendant did acquaint the said Court that the Attornies of your Petitioner did not furnish him with the Names of any two Men as the Securities meant to offered, but that the said Attornies of your Petitioner did offer six or seven Names in one paper for the Defendant, as they observed, to take his Choice and the attorney for the Defendant did suggest to the Attornies of your Petitioner that they should have offered two Persons Agreable to the practice of Court in the matter of Bail and the said attorney for the Defendant did further Object to the parties then offered, as Duncoo Chunia Kistnamah Chitty was by the Records of the said Mayors Court, and the Court of Sessions and insolvent person, and the other person namely, Sheveram Ramsawmy Bramny, was totally unknown to

to the Defendant— and the said Mayors Court did think fit to Order and did accordingly order that as they had on the said tenth day of February granted as a matter of indulgence a further period of one Week to your Petitioner to find Securities for Costs, and your Petitioner not having offered Securities satisfactory either to the Defendant or the Court and not having brought his Securities into Court the Bill of Complaint of your Petitioner against the said Defendant should stand dismissed with Costs—

By Which said Order of the said Mayors Court your Petitioner doth think himself greatly aggrieved and doth therefore appeal therefrom for the following among other Reasons.

First..... For that the demanding of Security in the present Instance is oppressive and not warranted by the practice and determinations of the said Mayors Court in similar Cases.

Secondly..... That in the Affidavit of the said Letchimana Pillay, filed together with the Petition of the said Defendant on the said Sixteenth day of December nothing is alledged against your Petitioner so as to induce the Mayors Court to vary the Practice which had long obtained therein, nor is any thing further stated than that your Petitioner was a resident at Porto Novo which place the said Deponent took upon himself to Swear was without the Jurisdiction of the said Mayors Court—

Thirdly..... That Nothing has been alledged or charged by the said Defendant against your Petitioners said Attorney the said Budder Ul Deen, who hath declared himself in his said Answer to the said Petition of the said Defendant filed as aforesaid on the said Sixteenth day of December to be not only an Inhabitant but an House keeper of Madras, and which said declaration of the said Budder Ul Deen hath never been denied or attempted to be disproven wherefore your Petitioner saith that as it hath been held, and hath been supported by the Constant decisions of the said Mayors Court that in all Suits instituted by Attorney the attorney being on the spot, that he shall be considered responsible for all Costs attending the Suit: your Petitioner therefore doth presume to urge that as there

there was nothing offered which tended to take your Petitioners case out of the common course, the said Order of the said Mayors Court of the said third day of February requiring Securities for Costs is as to your Petitioner Arbitrary and Oppressive and as a president in its Consequences highly injurious—

Fourthly..... That as the said Order of the said third day of February prohibited your Petitioner from proceeding against the said Defendant until your Petitioner should have found Security in conformity thereto, your Petitioner submits that the said Order of the said Mayors Court of the said tenth day of February in confining your Petitioner to the limited period of one Week for the purpose of procuring the required Security restricted your Petitioner in such a way, that it was in the power of the Defendant to defeat any good End that might have been derived thereby, an advantage in this Case, of which the Defendant actually availed himself.

Fifthly..... That the said proceedings of the said Mayors Court of the said tenth day of February were further in their operation extremely hard upon your Petitioner, in as much as he was thereby denied that right which he is advised every Suitor is by Law entitled to namely, that of holding a Defendant to Bail on a sufficient Affidavit of the debt being made—

Sixthly..... That as your Petitioner did in pursuance of the said order of the said Mayors Court of the said tenth day of February offer the names of several respectable Persons Inhabitants and Housekeepers of Madras as Securities for the Costs, and as it is the Custom of the said Mayors Court in other Cases where Securities are required, to demand of the Party so required to find Securities, that he give in or offer the same to the said Court, advertising the opposite Party of the same, and in the Event of no written Exceptions to the said Securities so offered or given in being filed within Four Days therefrom, that the same shall be considered as sufficient—and in the present Instance no Exception against the said Securities offered by your Petitioner appear to have been exhibited, and the only Objection offered against one

one out of Six of the said Securities, by the Attorney for the Defendant was altogether unfounded and unsupported; and at all events there were five others whose Credit and sufficiency were in no wise attached, and as to the said Court being satisfied or dissatisfied with the said Securities, it could argue, it should seem little as to the justice of the measure of the dismissall of the said Bill, as it could not be supposed to depend on the Opinion of the said Court as to the sufficiency thereof; the said Court not being acquainted with the names of the said Securities until the moment it was called on to decide on the admissibility thereof; and it does not appear that the said Court have assigned any Reason other than what they obtained from the Attorney for the said Defendant. which was the mere unsupported Allegation of the said Attorney for the said Defendant.—

For all which Reasons and such others as may be offered at the Hearing your Petitioner Most Humbly prayeth that he may be no longer restrained from proceeding against the said Defendant, and that your Honble Court will be pleased to reverse the said Orders of the said Mayors Court as to the Security Required of your Petitioner, and as to the Dismissal of your Petitioners said Bill of Complaint, which your Petitioner Submits are inconsistent with Law and Reason and are greatly Arbitrary and Oppressive, and that your Honble Court will be pleased to Order the Costs incurred thereby and by this Appeal to be paid by the said Defendant.—

/Signed/ Robert Williams
for Self &
Emanuel Samuel
Solicitors for Appellant

Extract

Extract from the Minutes of a Court held at the Town Hall on Tuesday the 9th. day of December Anno Domini 1794.

Present

James Call Esqr. Senior Aldermen

Andrew Ross & William Abbott

Aldermen

Bill Mean Ahomed by his Attorney Budder=

=ul deen. filed this day—

Antonio de Souza to be Summoned.—

A True Extract

/Signed/ J. E. Atkin

Dy Regr

Extract from the Minutes of a Court held at the Town Hall on Tuesday the 16th. day of December Anno Domini 1794

Present

James Call Esqr. Senior Aldermen

Andrew Ross & James Daly

Aldermen

Mr. Alderman Roebuck takes his seat upon the Bench—

Mean Ahomed by his Attorney Budder ul Deen

vers

Antonio De Souza

Summons returned Served— The Defendant appears by his Attorney Mr. John Wellbrinson The Attorney for the Complainant prays that the Defendant may give Bail upon Oath being made to the Debt. Ordered Accordingly the Attorney for the Defendant prays that the Power of Attorney under which the Complainant has brought his Action may be delivered into Court— Ordered Accordingly Petition of the Defendant together with an Affidavit of Lechmah Pilla Lwan to in Court read and filed this day praying that the Complainant may be Ordered to give Securities for Costs to which the Attorneis for the Complainant objects and pray that they may be allowed time to answer the Petition ordered that the Complainant be allowed until the 3d. February next to Answer the said Petition.—

A True Extract

/Signed/ J. E. Atkin

Dy Regr

Extract

Extract from the Minutes of a Court held at the Town Hall on Tuesday the 3d. day of February Anno Domini 1795.

Present

Benjamin Roebuck Esqr. Mayor

Andrew Ross and Joseph Greenhill

Aldermen

Mr. Alderman Call takes his Seat upon the Bench

Mean Ahomed by his Attorney Buddun ul Deen

vers

Antonio De Souza

Mr. John Wilkinson Attorney for the Defendant prays leave to dulini acting Ordered Accordingly.

Mr. James Stuart Hall appears as Attorney for the Defendant in the room of Mr. John Wilkinson.

Answer of the Complainant to the Defendants Petition for Security for Costs filed this Day.

Mr. James Stuart Hall attorney for the Defendant prays the matter of Petition may come on to be Argued - to which the Attornies for the Complainant Object for that the prayer of the Attorney for the Defendant to that effect is Subversive of and contradictory to the Costant practice of the Court in such Cases Observed. Ordered that the Petition and Answer do come on to be Argued. Petition Affidavit and Answer Read The Petition and Answer thereto Comming on to be determined this day in the presence of the Attornies on both sides on hearing the Arguments made use of by the Attornies and on due Consideration had thereon It is Ordered that the Complainant be restrained proceeding in this Cause untill he shall have given Securities to Answer such Costs as may be finally given against the said Complainant in this Suit.

A True Extract

/Signed/ J. E. Atkin Dy Regr.

Extract from the Minutes of a Court held at the Town Hall on Tuesday the 10th. day of February Anno Domini 1795.

Present

Benjamin Roebuck Esqr. Mayor

Andrew Ross & Alexr. Cockburn

Aldermen

Mean

Mean Ahomed by his Attorney Budder ul Deen

vers

Antonio De Souza

Mr. James Stuart Hall Attorney for the Defendant acquaints the Court that as the Complainant has not given Securities for Costs Agreeably to the Order of Court of last Court day He therefore prays that the Complainants Bill may stand dismissed with Costs to which Messrs. Williams and Samuel Object as being altogether unreasonable as the Defendant can suffer no injury in as much as the Complainant is restrained from proceeding in this Suit untill he shall have given Security for Costs — Ordered that the Complainant be allowed a further time of one Week to find Security for Costs and indefault thereof that the Bill of Complaint do stand Dismissed Messrs. Robert Williams and Emanuel Samuel Attornies for the Complainant pray that the above named Budder ull Deen the Attorney of the said Complainant may be allowed to make Oath to the Debt due to the said Complainant from the said Defendant and for the Recovery Whereof the

the said Complainant hath filed his Bill in order to entitle the Complainant to hold the Defendant to Bail in the said Court, for that if the said Complainant were to be restrained from taking out the necessary Process to secure his Debt and Costs until he hath given Security on the next Court day, the said Defendant in the Interim may depart the Jurisdiction of this Honble Court, and the said Complainant may be deprived of all remedy under his Bill, and the Attornies of the said Complainant have heard that the said Defendant is about to depart for Bombay to which Mr. James Stuart Hall Attorney for the Defendant Objects as the Court have ordered all proceedings to be Stayed untill Security be given for Costs — Ordered that the motion be overruled —

A True Extract
(Signed) G. E. Aitken
Dy Regr

Extract

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 17th day of February Anno Domini 1795

Present

Benjn Roebuck Esqr Mayor

Andrew Ross & William Abbott

Aldermen

Mean Ahomed by his Attorney Budder ul Deen

vers

Antonio De Souza

Mr Hall Attorney for the Defendant acquaints the Court that as the Complainant has not given Securities for Costs Agreeable to the Order of Court of last Court day He therefore prays that the Complainants Bill may Stand Dismissed With Costs.. to which Messrs Williams and Samuel Attorneys for the Complainant object and Acquaint the Court that they did on thursday last the 12th Instant offer to the Attorney for the Defendant Suncoo Chinna Kistnamah Chitty Shevinen Rama Sawmy Braminy Meer Ally Golam Khazzer Nagapah Moodelly and William John Chater House Keepers of Madras as Securities for the Costs to be incurred in the above Cause and they Now pray leave to offer Suncoo Chinna Kistnamah Chitty and Severam Rama Sawmy Braminy two out of the said Persons Inhabitants and House keepers of Madras as Securities for the Costs to be incurred by the Defendant in the said Cause and therefore the Attorney for the Defendant acquaints the Court that the Attornies for the Complainant did not furnish him with the names of any two men as the Securities meant to be offered, but they did offer Six or Seven names in one paper for the Defendants as they observed to take his Choice; the Attorny for the Defendant did Suggest to the Attornies for the Complainant that they should have offered two persons agreeable to the practice of Court in the matter of Bail and the Attorney for the Defendant objects to the parties now offered as Suncoo Chinnah Kistnamah Chitty is by the Records of this and the Court of Sessions an insolvent person and the other person is totally unknown to the Defendant The Court having last Court day granted as a matter of Indulgence a further period of one Week to the Complainant to find Securities for Costs and the Complainant not having offered Securities Satisfactory either to the Defendant or the Court, and not having brought his Securities into Court It is Ordered that the Bill of Complaint do stand dismissed with Costs.

A True Extract

(Signed) G. E. Askin

Dy Regr

To

To the Right Honble Lord Hobart.

President in Council

In the Honble Fort St. George

Court of Appeals

Between Mean ahomed by his attorney Budder ul Dien complainant and Antonio De Souza Defendant

The Answer of the Defendant abovenamed to the Petition and appeal of the abovenamed complainant

This Respondent admits that the Petitioner did on or about the time in his Petition of appeal setforth by his attorney the above named Budder ul Dien Exhibit and file a Bill of complaint in the mayors court at madraspatnam against this Respondent for the purposes in the appellants said Petition of appeal stated and that Summons issued thereon and that thereupon this Respondent did by his attorney in court appear thereto and this Respondent for further answer says he also admits that the appellant did by his attorney in court pray that this

Filed in my Office the 23d March 1795.

J Webbe Clk

this Respondent might give Bail and that the said court did grant the same—

And this Respondent admits that he did file a Petition and affidavit in the said mayors court for the purposes in the appellants said Petition of appeal setforth and this Respondent also admits that the appellant did Object to the prayer of this Respondents and did pray for and obtain time until the third of February then next Ensuing to answer the said Petition —

And this Respondent admits that James Stuart Hall did appear in the stead of this Respondents former attorney in court. that the appellant did on the same day file an Answer to this Respondents said Petition in the said mayors court that your Petitioners said attorney did thereupon pray that the said Petition and Answer might come on to be heard immediately and that the appellants said attorney did make the Objections as setforth in his said Petition of appeal and this Respondent also

admits

admits that the said mayors Court did then order that the appellant should be restrained from prouding against this Respondent until he should give Securities for Costs.

And this Respondent further Answering Says he admits that he did as setforth in the appellants said Petition of appeal inform the said mayors Court that the appellant had not given Security for Costs agreeably to the said Order of the said mayors Court of the third day of February and did pray accordingly and this Respondent admits that the appellant might thereto have made the Objection in his said Petition of appeal for that purpose setforth and that the said mayors Court did allow the appellant another week to find Security and in default thereof did order that the said appellants Bill of Complaint should be dismissed with Costs and this Respondent admits that the appellant did thereupon pray as in and by his said Petition of appeal the same is setforth and this Respondent also admits that to such the prayer of

of the appellant his this Respondents attorney in Court did object as in the appellants said Petition of appeal the same is recited and that thereupon the said mayors Court were pleased to over rule the said prayer of the Appellant

And this Respondent admits that on Tuesday the Seventeenth day of the said month of February his attorney in Court did state the several matters and things and thereupon pray as in and by the appellants said Petition of appeal the same is setforth and this Respondent admits that to this Respondents said prayer the appellant did object upon the Grounds in his said Petition of appeal mentioned and this Respondent admits that he did by his attorney in Court reply thereto and offer the several points stated by the appellant in his said Petition of appeal and did object to the persons offered by the appellant as his Securities for the reasons shewn by the appellant in and by his said Petition of appeal and this Respondent admits that the said mayors Court

did

did think fit to order and did accordingly
order that as they had on the said tenth day
of February granted as a matter of Indulgence
a further purisd of one week to the appellant
to find Security for Costs, and the appellant
not having offered Satisfactory Security either
to this Respondent or to the Court and not having
brought his Securities into Court the Bill of
Complaint of the appellant Against this Respondent
should stand dismissed With Costs But this
Respondent doth not admit that thereby or by reason
thereof the appellant was or is any wise aggrieved
or that he has any manner of Cause or reason
to appeal therefrom to this Honble Court and
this Respondent in answer to the appellants
first Reson or Cause of Appeal says

That the demanding Security of the
Appellant in the present Instance is warranted
by the Determination and practice of the said
Mayors Court at least in principle for this
Respondent

Respondent says that upon the Departure of
a Complainants out of the Jurisdiction the said
Mayors Court upon motion of the Defendant
have upon various occasions granted an order
for Security for Costs as may appear by the Cause
of Burke & Porcher and this Respondent says
he is advised that When the Complainant
does not come within the Jurisdiction of the
Court but brings a Bill by his Attorney as in
the present instance is the Case the Attorney is to
be answerable for the Costs and therefore the Attorney
ought to be a person capable of paying such Costs
in Case the Complainants Bill should be dismissed
otherwise it would be in the power of every
litigious and Evil disposed person to go, or
remain out of the Jurisdiction of the Court
and appoint an insolvent person as his
Attorney so that when the Bill should be
dismissed the Defendant would not know
where to look for the reimbursement of the
heavy Costs he might have been put to and

the

and the Complainant would benefit in his own
wrongs in the matter before this Honble Court
the Complainants Attorney was Shewn in the said
mayors Court to be insolvent and he was therefore
as to the question of Costs, as if no Attorney had
Existed and the Complainant living out of the
Jurisdiction of the Court it was Judged both Equitable
and just that a Security for Costs should be
given before the Complainant should be allowed to
proceed further in the Suit he had instituted and
this Respondent Submits to this Honble Court that
the Jurisdiction of the said mayors Court is
Extremely limitted as to Natives of India and
the Complainant and his Attorney are both
Natives, if they remove a few miles out of
Madras they are in safety no process can Ever
touch them; but it is not so with Europeans or
those who have the rights of Europeans and
live under and subject to the British Laws as
to them the Jurisdiction of the Court Extends all
over the peninsula foreign Settlements alone
Excepted

Excepted and they may be arrested any where and
thereupon this Respondent further Submits to this
Honble Court that the Security demanded was
not appropriate, but was demand which reason
pointed out and Justice requried the Appellant
had prayed Bail upon Oath being made to the
Debt and had the proceedings gone on he would
have obtained Bail Accordingly it was therefore
only fair upon the special circumstance of the case
and so this Respondent Submits to this Honble Court
that whilst the Complainant obtained Security
he should grant it also in Conformity to the legal
maxim that he who would have Equity should
do Equity — The Suit in question is not brought
upon Bond nor any Specialty whatever nor upon
a note of hand Settled Account nor is there any
thing Shewn in the first instance to give a Color
to the Appellants Demand other than the
Complainants own dixit a circumstance as this
Respondent humbly imagines that furnished on
additional reason why the Complainant should
give

give Security for Costs —

To the Appellants Second Reason this Respondent says there was no necessity as the Appellant would seem to infer to urge any thing against him it was Sufficient to Shew the fact that he was resident at porto novo which is well known to be out of the Jurisdiction of the said mayors Court, and so is Every other part of the Carnatic as to — Native Indians unless they should be resident in any of the Honble Companys Factories or within fourteen miles of Madras and this Respondents is advised that the Sheriff is Regulated accordingly in serving the process of the said mayors Court and Porto Novo is one hundred miles from — Madras and belongs to His Highness the Nabob and this Respondent says as he has herein before said that the said Mayors Court have in the — present Case acted upon the principle that has governed their Decesion in the Case of Burke — v Porcher and in other Cases similar numbers of which this Respondent is advised are upon the records

records of the said Mayors Court.

To the third Reason of the Appellant this Respondent says notwithstanding the Assertion to the Contrary in the Appellants said third Reason Contained that Sufficient had been proved Against the Appellants said Attorney to Shew that the Appellant ought to have given Security for Costs before he could be allowed to proceed further inasmuch as it was Shewn that his said Attorney was an insolvent person and in the most indigent Circumstances and therefore the fact of his being an Inhabitant or an house Keeper of Madras as insisted on by the Appellant in his said Petition of appeal was very immaterial — and this Respondent says in further proof of the insufficiency of the — Complainants said Attorney that it appears by the Records of the said mayors Court that he is now in the Sheriffs Custody not having given Bail to an Action brought Against him and this Respondent humbly submits that

that a person constituted as the attorney of man for the purpose of instituting a Suit in a Court of Justice ought to be suffucent as well as responsible for all Costs admitting the Suit of the Complainant to resident out of the Jurisdiction of such Court might institute such Suit in his own name without an attorney as the Defendant would in both Cases be Equally remedileſs and this Respondent humbly Submits to this Honble Court that if the appellants Case was actually taken out of the common Course as he would Suggest the fact to be, this Respondent has herein above offered Reasons to Justify the act, but this Respondent humbly trusts he has Shewn the fact is otherwise and that his the appellants Case is govened upon a principle that have formed the basis, Circumstances Considered of Similar Judgments given by the said mayors Court and thereupon this Respondent Submits to this Honble Court that the order of the said mayors Court of the third day of February is not as the appellant has asserted it to be either arbitrary or appreſsive and this Respondent further submits to this Honble Court that this is not the period to impeach the said order of the said mayors Court of the said third day of February in so much as that the appellant did not appeal therefrom to this Honble Court as he ought to have done had he conceived it to be arbitrary and appreſsive and that he was aggrieved thereby when the order was made, but on the contrary the appellant did acquiesence in the Justness thereof in so much as he did join issue thereon with this Respondent and further when on the tenth day of the said month of February this Respondent did pray the said order of the third day of February the appellant did object thereto, and say that the said prayer of this respondent was made unreasonable as this Respondent could suffer no injury in as much as the appellant was restrained from proceeding in the Suit until he should have given Security for Costs, and he the appellant did therefore pray a further time and one week was granted accordingly by the said mayors Court and therefore this Respondent humbly

humbly submits to this Honble Court that the appellant is desirous of reversing an order to which he had previously consented and from which order he has not appealed

To the fourth Reason of the appellant this Respondent says that although the order of the tenth day of February did confine the appellant to one Week yet it appears from the appellants own shewing that the said mayors Court had before granted him time from the third to the said tenth day of February and that from the tenth to the Seventeenth following was an Extension of the order of the said mayors Court of the third of the said month of February as an indulgence to the appellant and as neither the appellant nor his said attorney for him could in that time find Securities it shews that their credit was not so very Extensive nor was his the appellants attorney so very respectable as the appellant has Endeavoured to Establish

To the fifth Reason of the appellant this Respondent says that on the third day of the month of February as hereinbefore stated the appellant was restrained from proceeding in the Cause until he should find Security for Costs and therefore the order of the tenth day of the said month of February by which the appellant was refused the Bail he then required of this Respondent and which the appellant complains of as a hardship was actually no more than what the Court were bound to do as this Respondent says he is advised that no one rotation Court can make void the act of another rotation Court and that such is the Established Rules of the said mayors Court and thereupon this Respondent says that had the said mayors Court on the said tenth day of February granted the said prayer of the appellant regarding the matter of Bail against this Respondent it would virtually have been a rescinding of the said order of the said third day of February by which the appellant was restrained from all proceedings in the Cause and to which order the appellant did consent as herein above setforth and the premises considered

considered this Respondent doth submit to this Honble court that the said prayer of the appellant on the said tenth day of February was very irregular

To the Sixth Reason of the appellant this Respondent says that the mode adopted by the appellant in offering his security was altogether irregular and the statement he has given regarding the practice of the said mayors court in similar cases Equally incorrect for this Respondent says that in matters of Bail the persons to become Bail are offered to the party requiring that Security and if he refuses them and does not Except to them in four days they are taken by the court upon their swearing/ and which the appellant has omitted to add/ that they are worth double the sum sued for after all their just debts are satisfied and in the case where security is required for costs as no particular can be specified the persons becoming security Enter into a recognizance which they sign, but both in the one case and the other only two persons are offered, or it is considered as no offer and the reason is obvious for if a party were to offer twenty persons as Bail or Security and all of them unknown to the adversary or known to be insolvent and as he could not know whom in that case the party offering them might select it would be requisite on his part to make Enquiries and bring affidavits as to the circumstances of Every individual so offered which would be almost impossible and this Respondent further says that only two Securities were or could have been offered to the said mayors court by the Appellant Notwithstanding the suggestion of the Appellant to the contrary to wit Sunka Chinna Kistnamah Chitty and Sheveram Rawmasawmy Brahmin and this Respondent says that the objection made by his attorney in court were founded in truth and this Respondent further says that Even had the said Securities been unexceptionable yet the said persons did not appear in the said mayors court which had therefore nothing to go upon but the assertion of the appellants attorney in court and which the said mayors court have

have taken Notice of in their said order and this Respondent says that the dissatisfaction Expressed by the said mayors Court in their said order regarding the said two Securities named by the appellant arose probably from a Conviction with which the mind of the Public at large is impressed to wit, that the said Doncoo Chunia Kistnamah Chitty was a bankrupt.—

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 order of the said mayors Court of the seventeenth day of February last past, and that the appellants Petition of Appeal may be dismissed with Costs.—

/Signed/ James Stuart Hall
Solicitor for Respt.

Court

Court of Appeals
Madraspatnam

Saturday the 16th day of January
Anno Domini 1796.

Between Mean Ahomed by his attorney Budder Ul Deen Appellant and Antonio DeSouza 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 Bill of Complaint of the Honble the Mayors Court together with the order of the said Court given in this Cause on Tuesday the 17th day of February Anno Domini 1795 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 17th day of February Anno Domini 1795 be

reversed

reversed and this Court doth further think fit to order and doth Accordingly Order that the appellant do give Security either himself or by his attorney by executing Jointly with one other person a Bound to the Rigester of the said Mayors Court for the Sum of Forty Pounds or that he do Lodge in the said Mayor's Court the Sum of Forty Pounds to answer the Amount of Costs (to the Defendants) should his Bill of Complaint be dismissed, and It is further Ordered that all Proceedings be stayed untill such Security be given or the said Sum of Forty Pounds be Lodged as aforesaid — and it is further ordered that each Party do pay his own Costs in both Courts.

Hur,

(Signed) J. Webbe clk

To

To the King's Most Excellent Majesty in Council

Between Mean Ahomed by his attorney Budder ul Dien Complainant and Antonio De Souza of Madras merchant Inhabitant Defendant —

The Humble Petition and appeal of the above named Defendant

Most humbly Sheweth.

That the above named Complainant by his said attorney did some time on or about the ninth day of December which was in the year of our Lord one thousand seven hundred and ninety four Exhibit and file in the mayors Court of Madras a Bill of Complaint against your Petitioner for the recovery of the sum of twenty six thousand nine hundred and sixty seven Pagodas forty one fanams and seventy five Cash pretended to be due and owing to him by your Petitioner — That thereupon a Summons did

Filed in my Office the 28th January 1796
J. Webbe clk

I sue

Issue forth of the said mayors Court Commanding your Petitioner to Appear thereto and your Petitioner did appear Accordingly on or about the Sixteenth day of the said month of December that upon such the appearance of your Petitioner the Complainant did pray that your Petitioner might give Bail on oath being made to the Justices of the Debt and which prayer of the Complainant was granted by the said mayors Court as a matter of Course.

And your Petitioner Sheweth unto your Most Excellent majesty in Council that on the said Sixteenth day of the said month of December your Petitioner did Exhibit and file a Petition in the above Cause in the said mayors Court and did therein and thereby Set forth that meanahamed the Complainant was a resident at Porto Novo out of the Jurisdiction of the said mayors Court and had no habitation or Estate of any kind as your Petitioner had heard and did believe within the Jurisdiction thereof and your Petitioner did therefore pray that the said Complainant might be restrained

restrained from proceeding in his said Suit against your Petitioner until he should have given such Satisfaction and Security as the said mayors Court should adjudge necessary to answer your Petitioners Costs of Suit in the Event of any being finally given against the said Complainant in your Petitioners favor and your Petitioner did support the said Petition by the Affidavit of Letchumana Pillay in substance as follows that is to say that he the said Letchumana Pillay was personally acquainted with and well knew the Complainant meanahamed that he was a Settled Inhabitant then residing with his family as he had done for about twenty years last past at Porto Novo Pagodas as he the Deponent was advised and did believe without the Jurisdiction of the said mayors Court And that the said Plaintiff had not as he the Deponent did verily believe any Estate or Effects within the Jurisdiction of the said mayors Court that the Complainant did by his attorney in Court Object to the prayer of your Petitioners said Petition and did pray that he might be allowed

time

time to answer the said Petition and the said Mayors Court did accordingly order that the Complainant should have time allowed him for that purpose until the third day of February then next Ensuing as will more fully and at large Appear by the Copy of an Extract of the said minutes of the said mayors Court hereunto Annexed for the inspection of your most Excellent Majesty in Council to which your Petitioner humbly begs leave to refer and prays the same may be taken as part of this his Petition of appeal— and your Petitioner Sheweth unto your most Excellent majesty in Council that on the third day of February the Complainant did Exhibit and file in the said Mayors Court the Answer to your Petitioners said petition and did therein and thereby amongst other things say that he did not admit that the said Complainant was or had been without the Jurisdiction of the said mayors Court since filing his Bill against your Petitioner, and if he had been or then was without the said Jurisdiction the prayer of your Petitioners said Petition was Groundless and inadmissible for as much as the said Complainant had Commenced his said Suit against your Petitioner by his Attorney Budder Ul Deen, who then was, since had been a Housekeeper living within the Jurisdiction of the said mayors Court and therefore that the prayer of the said Petition could not as the Complainant did say he humbly conceived be granted, the same being in its Operation, and in its nature unwarranted by practise— and did therefore pray that your Petitioners said Petition might be dismissed with Costs— And your Petitioner most humbly Sheweth unto your most Excellent majesty in Council that he did by his attorney in Court pray that the said Petition and Answer might come on to be heard and Determined on immediately that thereto the Complainant by his attorney in Court did object pretending that the said Prayer of your Petitioner was subversive of and contradictory to the constant practice of the said mayors Court in such Case observed

observed and your Petitioner Sheweth that the said mayors Court taking the said ~~mayors Court taking the said~~ prayer of your Petitioner and the objection thereto into their Consideration were pleased to order that the said matter of Petition and answer should come on to be determined immediately and the same coming on to be argued accordingly the said mayors Court did think fit to order and did accordingly order that the Complainant should be restrained — from proceeding in the Cause until he should have given Security to answer such Cost as might be — finally given against the said Complanant in the said Suit as by the said order of the said mayors Court, Copy whereof is 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 and admitted as part of this his Petition and appeal may more fully and at large appear

And your Petitioner Sheweth unto your most Excellent majesty in Council that on the tenth day of the

the said month of February he did by his attorney in Court state to the said mayors Court that the Complainant had not given Security for Costs agreeably to the order of the said mayors Court of the third day of February, and did therefore pray that the Complainants said Bill of Complaint might stand Dismissed with Costs. That thereto the Complainant did object the same being as he did pretend altogether unreasonable as — your Petitioner he did say could suffer no injury, inasmuch as that he the Complainant was restrained from proceeding in the said Suit until he should have given Security for Costs and the said mayors Court taking the said Prayer of your Petitioner and the Complainants said Objection thereto into Consideration did think fit to allow to the Complainant a further time of one week to find Security for Costs and to Order that in default thereof the Complainants said Bill of Complaint should stand dismissed — That the Complainant did then pray that his said attorney the said Budder ul Deen might be allowed to make Oath to the debt sued for, in order to Entitle him to hold your Petitioner to Bail

in

in the said Suit, assigning as a reason for so doing that if he were to be restrained from taking out the necessary process to secure his debt and costs until he had given Security on the next Court day as was ordered your Petitioner in the interim might Depart the ~ Jurisdiction of the said mayors Court, and that then he the Complainant might be deprived of all ~ remedy under his said Bill — and the Complainants attornies in Court did further state that they had heard that your Petitioner was about to depart for Bombay — that to such the motion of the Complainant your Petitioner by his attorney in Court did object upon the principle that the said mayors Court had ordered all procedings to be stayed in the Cause until the Complainant had first complied with the Order of the said mayors Court and given Security for Costs and the said mayors Court taking the same into their Consideration were pleased to over rule the Complainants said motion as will more fully appear by the Copy of the Extract of the procedings of the said mayors Court hereunto

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 —

And your Petitioner humbly ~ Sheweth unto your most Excellent majesty in Council that on Tuesday the Seventeenth day of the said ~ month of February your Petitioners attorney in Court did acquaint the said mayors Court that as the Complainant had not given Security for Costs ~ Agreable to the Order of the said mayors Court he prayed that the Complainants said Bill of Complaint might stand dismissed with Costs, that thereto the Complainant by his attornies in Court did object and did state that he had by his said attornies on Tuesday the twelfth day of the said month of february offered to the attorney at Law of your Petitioner Sunka Chinna Kistnama Chitty Sheveram Ramasawmy Brahminy mer- -ally, Gulam Khazzer Nagapah moodelly and William John Chater House Keepers of

Madras

Madras as Securities for Costs to be incurred in the said Cause; and that they did then pray leave to offer Cunka Chinia Kistnamah Chitty and Sheveram Ramasaw = my Brammy two out of the said Persons Inhabitants and House Keepers of Madras as Securities for the said Costs to be incurred by your Petitioner in the said Cause — That thereupon your Petitioners Attorney in Court did shew that the Complainants said Attornies in Court had not furnished him with the names of any two persons as the Securities meant to be offered but did offer Six or Seven names in one piece of Paper for your Petitioner as was therein observed to take his Choice: that your Petitioners Attorney had suggested to the Attornies of the Complainant that they should have offered two persons agreeable to the practice of the Court in the matter of Bail and did Object to the persons then offered for that Chinna Kistnamah Chitty was upon the Records of the said Mayors Court and Court of Sessions an insolvent person and that the other person was totally unknown to your Petitioner and

and the said Mayors Court taking the premises into their Consideration after premising that they had on the last Court day granted as a matter of indulgence a further period of one Week to the Complainant to find Securities for Costs and the Complainant not having offered Securities — satisfactory either to your Petitioner or to the said — Court and not having brought his Securities into Court did think fit to order and did accordingly order that the Complainants Bill of Complainant should stand dismissed with Costs as by a Copy of the Extract of the minutes of the said Mayors Court thereunto 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 and admitted as part of this his Petition and Appeal may more fully and at large Appear —

And your Petitioner humbly Sheweth unto your most Excellent majesty in Council that on or about the Second day of the month of March which

was

was in the year of our Lord one thousand Seven hundrid and ninety five the Complainant did appeal from the said order of the said mayors court of the said Seventeenth day of February to the Court of Appeals at Madraspatnam aforesaid and after in part recting the matters and things hereinabove recited and setforth did say that he did conceive himself Aggrieved by the said order of the said mayors courts, and that he had therefore Appealed therefrom for the following Amongs other reasons

First for that the Demanding of Security in the present instance was oppressive and not warranted by the practice and determinations of the said mayors court in similar cases.

Secondly That in the affidavit of the said Letchamana Pillay filed together with the Petition of the said Defendant on the said Sixteenth day of December nothing was alledged against him the Complainant so as to induce the said mayors court to vary the practice which had long obtained therein nor was any thing further stated therein that he the Complainant was a Resident at Porto novo which plac the said Deponent took upon himself to swear was without the Jurisdiction of the said mayors court Third that nothing had been alledged or charged by your Petitioner Against the Complainants said attorney the said Budder ul Dein who had Declared himself in his said Answer to the said Petition of your Petitioner filed as aforesaid on the said Sixteenth day of December to be not only an Inhabitant, but an Housekeper of madras, and Which said dularation of the said Budder ul Dein had never been denied or attempted to be disproved wherefore the Complainant did say as it had been held and supported by the constant decesions of the said mayors Court, that in all Suits instituted by attorney, the attorney being on the Spot that he shall be considered responsible for all Costs attending the Suit the Complainant therefore did presume to urge that as there was nothing Offered Which tended to take his case out of the common course, the said order of the said mayors court of the said third day of February

February requiring Securities for Costs was as to him arbitrary and Oppressive, And as a precedent in its Consequences highly injurious—

Fourthly That as the said Order of the said third day of February prohibited him the Complainant from proceeding Against your Petitioner until he the Complainant Should have found Security in conformity thereto, the Complainant did Submit that the said Order of the said Mayors Court of the said tenth day of February in confining him the Complainant to the limited period of one Week for the purpose of procuring the required Security restricted him in such a way that it was in the power of your Petitioner to defeat any good end that might have been derived thereby, an Advantage in this Case of Which your Petitioner as the Complainant did say actualy availed himself—

Fifthly That the said proceedings of the said Mayors Court of the said tenth day of February were further in their Operation Extremely hard upon him the Complainant in as much as he was thereby denied that right Which he was advised Every Suitor was by Law Entitled to namely that of holding a Defendant to Bail on a Sufficient affidavit of the Debt being made.

Sixthly That as he did in pursuance of the said Order of the said Mayors Court of the said tenth day of February offer the names of Several respectable persons Inhabitants and House Keepers of Madras as Securities for the Costs, and as it was the Custom of the said Mayors Court in other Cases where Securities were required to demand of the party so required to find Securities, that he gave in or offer the same to the said Court, advertising the opposite party of the same, and in the Event of no written Exceptions to the said Securities so offered or given in being filed Within four Days therefrom that the same shall be considered as Sufficient And in the present instance no Exception Against the said Securities Offered by him the Complainant appeared to have been Exhibited, and the only Objection offered Against one out of Six of the said Securities by the Attorney

Attorney for your Petitioner was altogether unfounded and unsupported And at all Events there were five others whose credit and Sufficiency were in no wise attached And as to the said Court being Satisfied or dissatisfied With the said Securities, it could argue it should seem the Complainant did say little as to the Justice of the measure, of the dismissal of the said Bill as it could not be supposed to depend on the Opinion of the said Court as to the Sufficiency thereof, the said Court not having been Acquainted With the Names of the said Securities until the moment it was called on to decide on the Admissibiley thereof and it did not Appear that the said Court had Assigned any Reason other than what they obtained from the Attorney for your Petitioner Which was the mere unsupported Allegation of the said Attorney for your Petitioner And your Petitioner Sheweth unto your Most Excellent Majesty in Council that upon the said Reasons and for Such

Such as might be offered at the hearing of the said Petition of Appeal the Complainant did pray that he might be no longer restrained from proceeding Against your Petitioner and that the said Court of Appeals would be pleased to Reverse the said Order of the said Mayors Court as to the Security required of him the Complainant, and as to the dismissal of his said Bill of Complaint Which he did submit were inconsistent with Law and Reason and greatly arbitrary and Oppressive and that the said Court of Appeals would be pleased to Order the Costs incurred thereby and by the said Appeal to be paid by your Petitioner.

And your Petitioner humbly Sheweth unto your Most Exellent Majesty in Council that to the Complainants said Petition of Appeal he did Exhibit and file his Answer in the said Court of Appeals And therein after Admitting the recital part of the Complainants said Petition of Appeal did say that he did not Admit that the Complainant was in any wise Aggrieved by the said Order of the

said

said mayors Court of the said Seventeenth day of
February or that he had any manner of Cause or
reason to Appeal therefrom to the said Court of Appeals
and in Answer to the Complainants said first Reason
or Cause of Appeal your Petitioner did say — That the
Demanding Security of the Complainant in the
Instance before the said Court of Appeals was warranted
by the Determination and practice of the said mayors
Court at least in principle for your Petitioner Petitioner
did say that upon the Departure of a Complainants
out of the Jurisdiction of the said mayors Court upon
the motion of the Defendant have upon Various
Occasions granted an Order for Security for Costs as
might Appear by the Cause of Burke v. Porcher and
your Petitioner did say he was advised that where
the Complainant did not come Within the Jurisdiction
of the Court but brought a Bill by his Attorney as
in the Instance before the said Court of Appeals was
the Case, the Attorney was to be Answerable for the
Costs and that therefore the Attorney ought to be a
person capable of paying such Costs in Case the
Complainants

Complainants Bill should be dismissed, otherwise
it would be in the power of Every litigious and Evil
disposed person to go or remain out of the Jurisdiction
of the Court and Appoint an insolvent person as his
Attorney so that When the Bill should be dismissed
the Defendant Would not know Where to look
for the reimbursement of the heavy Costs he might
have been put to and the Complainant Would
triumph in his own Wrongs — That in the matter
before the said Court of Appeals the Complainants Attorney
was in the said mayors Court shewn to be insolvent
and was therefore as to the question of Costs as if no
Attorney had Existed and the Complainant living out
of the Jurisdiction of the Court it was Judged both
Equitable and just that a Security for Costs should
be given before the Complainant should be allowed
to proceed further in the Suit he had instituted and
your Petitioner did Submit to the said Court of Appeals
that the Jurisdiction of the said mayors Court was
Extremely Limitted as to the Natives of India and the
Complainant and his Attorney were both Natives and
that

that if they remove a few Miles out of Madras they were in safety no process Could Ever touch them, but if was not so with Europeans or those who had the rights of Europeans and lived under And Subject to the Bretish Laws as to these the Jurisdiction of the Court Extended all over the peninsula foreign Settlements alone Excepted and they might be arrested any where and — Thereupon your Petitioner did further Submit to the said Court of Appeals that the Security demanded was not oppresive but was a demand which reason pointed out and Justice required — The Complainant had prayed Bail upon Oath being made to the debt And had the proceedings gone on he would have Obtained Bail accordingly it was therefore only fair upon the special Circumstances of the Case and so your Petitioner did Submit to the said Court of Appeals that whilst the Complainant Obtained — Security he should grant it also in Conformity to the legal Maxim that he who Would have Equity Should do Equity — The Suit in question was not brought upon — Bond nor any Specialty Whatever nor upon a Note of Hand

or

or Settled Account, nor was there Any thing Shewn in the first instance to give a Color to the Complainants demand Other than the Complainants own dixit as Circumstance as your Petitioner humbly imajined that furnished an Additional Reason Why the Complainant Should give Security for Costs.

To the Complainants Second Reason your Petitioner did say that there was no Necessity as the Complainant would Seem to infer to urge any thing Against him it was sufficient to Shew the fact, that he the — Complainant was Resident at Porto Novo which was well Known to be out of the Jurisdiction of the said Mayors Court And so was Every other part of the — Carnatic as to Native Indians unless they should be resident in any of the Honble Companys Factories or within fourteen Miles of Madras And your Petitioner did say that he was advised that the Sheriff was regulated According in Serving the process of the said Mayors Court And Porto Novo was one hundred Miles from Madras And belonged to his Highness the Nabob And your Petitioner did say as he had — hereinbefore

herein before said, that the said Mayors Court had in the present case Acted upon the principle that had governed there Decision in the case of Burke v Porcher and in other cases similar instances of which your Petitioner did say he was advised were upon the records of the said mayors court.—

To the Complainants third Reason or Cause of Appeal your Petitioner did say that notwithstanding the Assertion to the contrary in the Complainants said third Reason contained, that Sufficient had been proved Against the Complainants said Attorney to shew that the Complainants ought to have given Security for Costs before he could be allowed to proceed further inasmuch as it was shewn that his said Attorney was an insolvent person and in the most indigent circumstances, and therefore the fact of his being an Inhabitant and a House Keeper of madras as insisted on by the Complainant, in and by his said Petition of Appeal to the said Court of Appeals, was very immaterial And your Petitioner in further proof

of

of the insufficiency of the Complainants said Attorney did say, that it Appeared by the Records of the said Mayors Court that he was then in the Sheriffs Custody not having given Bail to an action brought Against him— And your Petitioner did Submit to the said Court of Appeals that a person Constituted as the Attorney of a man for the purpose of instituting a Suit in a Court of Justice ought to be sufficient as well as liable and Responsible for all Costs Attending the Suit, or the Complainant Resident out of the Jurisdiction of such Court might institute such Suit in his own name without an Attorney And the Defendant would in both Cases be Equally remediless— And your Petitioner did Submit to the said Court of Appeals that if the Complainants Case was actually taken out of the Common Course as he would Suggest the fact to be your Petitioner had hereinabove offered reasons to Justify the Act, but your Petitioner did humbly trust he had Shewn that the fact was Otherwise And that his the Complainants Case was grounded upon a principle that had formed the basis circumstances considered of

Similar

similar Judgments given by the said mayors Court and thereupon your Petitioner did Submit to the said Court of Appeals that the Order of the said mayors Court of the third day of February was not as the Complainant had Asserted it to be either arbitrary or Oppressive And your Petitioner did further Submit that that was not the period to impeach the said Order of the said mayors Court of the said third day of February, insomuch as the Complainant did not Appeal therefrom to the said Court of Appeals as he ought to have done, had he conceived it to be arbitrary And Oppressive and that he was Aggrieved thereby when the Order was made but on the contrary the Complainant did acquiesce in the Justness thereof insomuch as he did Join issue thereon with your Petitioner And further when on the tenth day of the said month of February your Petitioner did pray the said Order of the said third day of February the Complainant did Object thereto, And say that the said prayer of your Petitioner was unreasonable as your Petitioner could Suffer no injury

injury inasmuch as the Complainant was restrained from proceeding in the said Suit until he should have given Security for Costs, And he the Complainant did therefore pray a further time, And one Week was granted Accordingly by the said mayors Court And therefore your Petitioner did humbly Submit to the said Court of Appeals that the Complainant was desirous of Reversing an Order to which he had previously Consented, and from which Order he had not Appealed.—

To the Complainants fourth Reason of Appeal your Petitioner did say that although the Order of the tenth day of February did confine the Complainant to one Week yet that it Appeared from the Complainants own Shewing that the said mayors Court had before granted him time from the third to the said tenth day of february and that from the tenth to the Seventeenth following was an Extension of the Order of the said mayors Court of the third of the said month of February as an indulgence to the Complainant And as neither the Complainant nor his said

Attorney

attorney for him could in that time find Securities it shewed that his Credit was not so very Extensive, nor was his the complainants Attorney so very respectable as the complainant had Endeavoured to Establish.—

To the complainants fifth Reason of Appeal your " Petitioner Sheweth unto your most Excellent Majesty in Council that he did state that on the third day of the month of February as hereinbefore Stated the " complainant was restrained from proceeding in the Cause until he should find Securities for Costs and therefore the Order of the tenth day of the said month " of February by Which the complainant was refused the Bail he then required of your Petitioner and which the complainant Complained of as an hardship, was Actually no more then what the Court were bound to do as your Petitioner did say he was advised that no one Rotation Court could make void the act of another Rotation Court and that such was the " Established Rule of the said mayors Court. And thereupon your Petitioner did say that had the said mayors Court on the said tenth day of February granted the said prayer of the Complainant regarding the matter of Bail Against your Petitioner it would virtually have been a recinding of the said order of the said third day of February by which the " complainant was restrained from all proceedings in the Cause, and to which order the complainant did consent as hereinabove set forth and the premises considered your Petitioner did submit to the said Court of Appeals that the said Prayer of the Complainant on the said tenth day of february was very irregular.

To the complainants Sixth Reason of appeal your Petitioner did say that the mode adopted by the Complainant in Offering his Security was altogether irregular and the Statement he had given regarding the practice of the said mayors Court in similar Cases Equally incorrect for your Petitioner did say that in matters of Bail the persons to become " Bail were offered to the party requiring that Security and if he refused them and did not Except to them in four days they were taken by the Court upon

upon their Swearing and which the Complainant had omitted to add that they were worth double the Sum sued for after all their Just debts were satisfied, and in the Case where Security was required for Costs as no particular Sum could be Specified the persons becoming Security Enter into a recognizance which they sign, but both in the one case, and the other only two persons were offered, or it was considered as no offer, and the Reason was Obvious for if a party were to offer twenty persons as Bail or Security and all of them unknown to the Adversary, or known to be insolvent, and as he could not know whom — in that case the party Offering them might select, it would be requisite on his part to make Enquiries and bring affidavits as to the Circumstances of every individual so offered which would be almost impossible And your Petitioner did say that only two Securities, were or could have been offered to the said mayors — Court by the Complainant notwithstanding the Suggestion of the Complainant to the Contrary. to wit Bunka Chuna Kistnamiah Chitty and Sheveram Ramasaumy Brauniy and your Petitioner did say that the Objections made by his Attorny in Court were founded in truth — And your Petitioner did further say that Even had the said Securities been unexceptionable yet the said persons did not Appear in the said mayors Court which had therefore nothing to go upon but the Assertion of the Complainants Attorny in Court and which the said mayors Court had taken notice of in their said order and your Petitioner did say that the dissatisfaction Expressed by the said mayors Court in their said order regarding the said two Securities — named by the Complainant arose probably from a Conviction With Which the mind of the Public at large was impressed to wit that the said Bunka — Chuna Kistnamah Chitty was a Bankrupt.

And your Petitioner humbly Sheweth unto your Most Excellent Majesty in Council that your Petitioner did thereupon in and by his said Answer to the Petition and Appeal of the Complainant to the said Court of Appeals pray, that the said Court of Appeals would be pleased to affirm the said order of

of the said mayors Court of the said Seventeenth day of February. And that the Complainants said Petition and Appeal might be dismissed With Costs—

And your Petitioner humbly sheweth unto your most Excellent majesty in Council that the Complainants said Petition and Appeal and your Petitioners said Answer thereto having come on to be heard and determined by the said Court of Appeals on the Sixteenth day of January and present year of our Lord one thousand Seven hundred and ninety Six the said Court of Appeals was pleased to order and Decree and did Accordingly Order and Decree that the said Order of the said Mayors Court of the Seventeenth day of February And year of our Lord one thousand Seven hundred and ninety five should be annulled, that the Bill should be replaced on the file; and that all proceedings therein should be stayed, until the Complainant or his attorney With one other Surety do Execute a Bond in Forty Pounds Penalty to the Rejister Rejister of the Mayors Court to pay Costs, in Case Costs might be awarded Against the Complainant or his said Attorney do lodge the said Sum of forty Pounds for that purpose in the hands of the said Rejister And it was further Ordered that each Party should pay his own Costs in the said Court of Appeals as by Copy of the said Order and Decree of the said Court of Appeals hereunto Annexed for the inspection of your Most Excellent majesty in Council to which your Petitioner humbly begs leave to refer and prays the same may be taken as part of this his Petition And Appeal may more fully and at large Appear.

By Which said Order and Decree of the said Court of Appeals your Petitioner doth conceive himself much Aggrieved, and doth therefore appeal therefrom to your most Excellent majesty in Council for the following Amongst other Reasons—

First. Because the mayrs Court have by the Charter constituting them a Court of Record a right given to them to form such Rules and Regulations as may be Deemed most Conducive to the Ends of

of Justice and your Petitioner Sheweth unto your Most Excellent majesty in Council that it is a rule of practice of the said mayors Court that a Complainant Who either resides out of Jurisdiction thereof, or who at the time of instituting a Suit afterwards departs from such Jurisdiction do if required by the Defendant give good and Sufficient Security for Costs in the Event of his failing to Obtain a Decree thereon, and that on refusing to give such Security his said Suit will be dismissed and your Petitioner humbly Submits being so Advised that the said Court of Appeals have it not in their power to alter the Rules And regulations of the said mayors Court And further humbly Submits that although in the present Case the Complainant residing out of the Jurisdiction of the said mayors Court brought his said Suit by his Constituted attorney Who resided Within the Jurisdiction yet as it fully Appeared to the said mayors that he was insolvent and actually in

Jail

Jail for Debt that it was the same as to a Security for Costs, as if no Attorney had been Appointed and came Within the Spirit of the said Regulations of the said mayors Court And therefore your Petitioner humbly Submits to your Most Excellent majesty in Council that the said Decree of the said Court of Appeals is Erroneous in its principle and tends to deprive your Petitioner of that Substantial Justice granted to him by the said Decree of the said mayor's Court

Secondly ... Because your Petitioner upon his Appearance to the Complainants said Bill of Complaint was required to give Bail upon Oath being made to the debt, and therefore as such Security was required of him it became more Equitable under the matters set forth in your Petitioners first Reason for Appealing to your Most Excellent majesty in Council that a Security Should also be granted to your Petitioner And your Petitioner further Sheweth that the Jurisdiction of the

mayors

Mayors Court is very much confined as to natives and therefore if the Suit had been allowed to procud to a hearing, and that thereon the said mayors Court had dismissed the Complainants said Bill of Complaint your Petitioner would have been remidiless as to the Costs by him incurred in the Vexatious Litigation for that the Complainants said Attorney on the decision of the Cause would only have had to remove fourteen miles from Madras to be out of the verge of the process of the said mayors Court And your Petitioner further Sheweth that if the said Suit had gone on and he had found it Necessary to bring a Cross Bill he could not have Obtained An Answer thereto on the Oath of the Complainant Who being out of Jurisdiction of the said Mayors Court, no proces thereof could have been Served on him and as it was upon those Just and reasonable Considerations that the said Mayors Court proceeded in giving their said decretal Order the said Court of Appeals ought to have confirmed the Same

Thirdly

Thirdly Because the Complainant did himself admit the prayer of your Petitioner to the said mayors Court to be Conformable to the practice thereof and to Justice in so much as that he did file an Answer thereto and Join issue thereon, and although he did Object to the immediate hearing thereof before the said mayors Court yet it does not appear that he did make or that he could have made any reasonable Objection thereto, and the more particularly as the Complainant had a time of Six Weeks to bring in his Answer to the said Petition — And your Petitioner further Submits to your most Exellent majesty in Council that the Complainant did not Object to the order made on the said Petition and Answer by the said mayors Court as unjust, as he has not as he might have done Appealed therefrom, nor did he Object to the Order of the said mayors Court of the Seventh day of the same month further than was necessary to bring forward a prayer for the indulgence of further time to Comply therewith,

and

and although by such prayer he procured an Extension of such indulgence to the Seventeenth of the said month of February and pretended then to offer two persons as the Security required, yet the persons so offered were not produced to the court, and Even if they had been produced, one of them was Known to the court at the time to be a Bankrupt the said mayors court for those and for other Reasons Judged that the Complainant meant merely to delay and harrass your Petitioner, and therefore thought fit and right to carry their said order of the third and Seventh day of February into Effect and dismiss the Complainants said Bill of Complaint.

Fourthly. ... Because the said mayors court had given to the Complainant Every indulgence he had required to comply with their Rules and do Justice to your Petitioner, and as he had Neglected to do so the more suspending of the proceedings would have been an admission on the part of the court that their Rules were improper and

and Without Efficacy and giving the Complainant an Opportunity to keep the said Suit hanging over the head of your Petitioner so long as he might think proper which your Petitioner is advised is Contrary to the practice of Every court of Justice Which in Cases Where a Suit has gone on to the Joining of issue and then lies dormant for a length of time allows of the Defendants moving to have the Complainants Bill dismissed, and if the Complainant do not Comply with the Order of court thereon it will stand dismissed Accordingly and your Petitioner thereupon submits to your most Exellent majesty in Council that the said court of Appeals ought not to have reversed the said Decretal order of the said mayors court.

And your Petitioner humbly submit to your most Exellent majesty in Council that the Sum of forty Pounds by the said Decree of the said court of Appeals directed to be given by the Complainant as Security for Costs as bearing no manner of proportion to the probable Costs that would be incurred in the said mayors court

Court in case the said Cause were to proceed to a hearing the said Order of the said Court of Appeals went to withhold from your Petitioner that substantial Justice to which he stood Entitled and your Petitioner further submits that the said Court of Appeals did admit the order of the said mayors Court regarding a Security for Costs to be right as to its general principle inasmuch as the said Court of Appeals have ordered that the Complainant do either give Security for Costs in the penalty of forty Pounds or that he do deposit that sum, and as the said Court of Appeals had not any matter before them upon which to form any Judgment of the Costs that might be incurred in the said mayors Court, And as the said mayors Court were Competent Judges thereof the said Court of Appeals on Reversing that part of the Order of the said mayors Court that went to the Dismission of the Complainants said Bill of Complaint ought not as your Petitioner humbly Submits to have touched on the Subject of the Security required by the

the said mayors Court for Costs as in fact it could not have been before the said Court of Appeals as a matter of grivance inasmuch as that the order relative thereto, had not been Appealed from within the time allowed by the Charter for an appeal to the said Court of Appeals — And your Petitioner is advised and thereupon humbly Submits to your most Excellent Majesty in Council that the said Order of the said Court of Appeals regarding a Security for Costs is irregular, and that on Account of such irregularity it could not be carried into Effect by the said mayors Court because it is not an order for any matter or thing to be done by or before the said mayors Court, but by And before the Rejister thereof in so much as it directs that the Complainant And one Security do Execute a Bond in forty Pounds penalty to the said Rejister to pay Costs in Case Costs Should be awarded against him, or that his said Attorney do lodge forty Pounds for that purpose in the hands of the said Rejister — And your Petitioner Submits that in the Case of Bail Ordered by the said mayors Court being

Deemed

Deemed Excepsive by the party Ordered to put in the same may be appealed from to the said Court of Appeals, who have power to mitigate the same, but as your Petitioner is Advised and thereon humbly Submits the said Court of Appeals have no power to alter the form of the Bail piece given in the said mayors mayors Court, nor to direct it to be taken by any Officer of the said mayors Court no otherwise than by the Court themselves, and that for the same reason the said Court of Appeals had not the power to alter the manner and form of giving Security to the said mayors Court, as by the said mayors Court the same had been required by them in the present matter And thereupon your Petitioner humbly Submits that the said Decree of the said Court of Appeals is irregular, and that as it cannot be carried into Effect by the said mayors Court it would prove the means of Enabling the complainant further to harrass your Petitioner and keep the litigation hanging over the head of your Petitioner And

Lastly

Lastly . . . your Petitioner humbly Submits to your most Excellent majesty in Council that for the several matters and things Set forth in the Answer of your Petitioner to the Petition of the Complainant, the said Court of Appeals ought to have affirmed the said Decretal Order of the said mayors Court.

For all which Reasons and such others as may be Offered at the Hearing of this your Petitioners Petition Appeal, your Petitioner most humbly prays that your most Excellent majesty in Council, will be pleased to Reverse the said Order and Decree of the said Court of Appeals of the Sixteenth day of January And present year of our Lord one thousand Seven hundred And ninety six and affirm the said order and Decree of the said mayors Court of the Seventeenth day of February and year of our Lord one thousand

Seven

Seven hundred And ninety five,
And that your Most Excellent
Majesty in Council will further
Vouchsafe to grant unto your
Petitioner such further and
other Relief in the premisis
as in the Wisdom of your most
Excellent Majesty in Council
may 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 9th day of December Anno Domini 1794—

Present
James Hall Esqr. Senior Alderman
Andrew Ross and William Abbott
Aldermen,

Bill Mean Ahomed by his attorney Budder ul deen
filed this day.—

Antonio De Souza to be Summoned.—

A True Extract
/Signed/ G. E. Afkin Dy Regr

a true Copy
/Signed/ J. S. Hall
Sol.r for appell.t

Extract from the Minutes of Court Held at the Town Hall
on Tuesday the 16th day of December Anno Domini 1794.—

Present
James Hall Esqr. Senior Alderman
Andrew Ross and James Daly.—
Aldermen—

Mr. Alderman Roebuck takes his Seat upon the Bench—

Mean Ahomed by his attorney Budder ul Deen
Ansers
Antonio De Souza,—

Summons

Summons returned. Served — The Defendant appears by his Attorney Mr. John Wilkinson the Attorney for the Complainant prays that the Defendant may give Bail upon Oath being made to the Debt Ordered Accordingly the Attorney for the Defendant prays that the power of Attorney under Which the Complainant has brought his action may be delivered into Court — Ordered Accordingly Petition of the Defendant together with an Affidavit of Lechamah Pilla Sworn to in Court read and filed this day praying that the Complainant may be Ordered to give Securities for Costs — to which the Attornies for the Complainant Objects and pray that they may be allowed time to Answer the Petition — Ordered that the Complainant be allowed until the 3d. February next to Answer the said Petition. —

True Extract

(Signed) G. E. Askin
Dy Regr

A true Copy

(Signed) James Stuart Hall
Solicitor for Appellant

Extract

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 3d. day of February Anno Domini 1795. —

Present

Benjamin Roebuck Esqr. Mayor
Andrew Ross and Joseph Greenhill
Aldermen,

Mr. Alderman Call takes his Seat upon the Bench.

Mean Ahomed by his Attorney Budder Ul Deen —

~~vers~~

Antoni De Souza.

Mr. John Wilkinson Attorney for the Defendant prays leave to decline Acting Ordered Accordingly Mr. James Stuart Hall Appears as Attorney for the Defendant in the room of Mr. John Wilkinson answer of the Complainant to the Defendants Petition for Security for Costs filed this day Mr. James Stuart Hall Attorney for the Defendant prays the matter of Petition may come on to be Argued to Which the Attornies for the Complainant Object for that the prayer of the Attorney for the Defendant to that

effect

effect is Subversive of and Contradictory to the
Constant practice of the Court in such Cases Observed—
Ordered that the Petition and Answer do come on to be
argued— Petition affidavit and Answer Read—
The Petition and Answer thereto coming on to be
determined this day in the presence of the attornies
on both sides on hearing the Arguments made use
of by the attornies and on Due consideration had
thereon It is Ordered that the Complainant be
restrained proceeding in this Cause untill he shall have
given Securities to Answer such Costs as may be
finally given Against the said Complainant in
this Suit.—

A True Extract
/Signed/ G. D. Ashin
Dy Regr

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

Extract

Extract from the Minutes of a Court held at the Town Hall
on Tuesday the tenth day of February Anno Domini 1795.—

Present

Benjamin Roebuck Esqr. Mayor—
Andrew Ross and Alexr. Cockburn
Aldermen.

Mean Ahomed by his attorney Budder ul Deen
vers
Antonio De Souza—

Mr. James Stuart Hall Attorney for the Defendant
acquaints the Court that as the Complainant has not
given Securities for Costs Agreably to the Order of Court
of last Court day, He therefore prays that the
Complainants Bill may stand dismissed with
Costs— To which Messrs. Williams and Samuel object
as being altogether unreasonable as the Defendant
can Suffer no injury in as much as the Complainant
is restrained from proceeding in this Suit until he
shall have given Security for Costs,— Ordered that the
Complainant be allowed a further time of one Week
to

to find Security for Costs and in default thereof that the Bill of Complaint do stand dismissed, Messrs. Robert Williams & Emanuel Samuels attornies for the Complainant pray that the above named Budder Ul Deen the Attorney for the said Complainant may be allowed to make Oath to the debt due to the said Complainant from the said Defendant and for the recovery whereof the said Complainant hath filed his Bill in order to entitle the Complainant to hold the Defendant to Bail in the said Suit for that if the said Complainant were to be restrained from taking out the necessary process to Secure his debt And Costs until he hath given Security on the next Court day the said Defendant in the Interim may depart the Jurisdiction of this Hon'ble Court and the said Complainant may be deprived of all remedy under his Bill and the attornies of the said Complainant have heard that the said Defendant is about to Depart for Bombay to which Mr. James Stuart Hall attorney for the Defendant objects as the Court have Ordered all Proceedings to be

Stayed

Stayed until Security be given for Costs Ordered that the motion be over ruled.—

A True Extract
/Signed/ G. E. Askin
Dy Regr

a true Copy
/Signed/ James Stuart Hall
Solicitor for Appellant

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 17th day of February Anno Domini 1795

Present

Benjamin Roebuck Esqre. Mayor
Andrew Ross and William Abbott
Aldermen,—

Mean Ahomed by his Attorney Budder Ul Deen

vers

Antonio De Souza.—

Mr. Hall attorney for the Defendant Acquaints the Court that as the Complainant has not given Securities for Costs agreeable to the order of Court of last Court day He therefore prays that the Complainants Bill may Stand Dismissed with

with costs – to which Messrs. Williams and Samuel attornies for the Complainant Object and acquaint the Court that they did on Thursday last the 12th Instant offer to the attorney for the Defendant Suncoo Chinna Kistnamah Chitty Sheveram Rama Sawmy Brammy Meer Ally Golam Khazzar Nagapah Moodelliar And William John Chatterton House Keepers of Madras as Securities for Costs to be incurred in the above Cause and they now pray leave to offer Suncoo Chinna Kistnamah Chitty and Sheveram Rama Sawmy Brammy two out of the said persons Inhabitants and House Keepers of Madras as Securities for the Costs to be incurred by the Defendant in the said Cause and therefore the attorney for the Defendant acquaints the Court that the attornies for the Complainant did not furnish him with the names of any two men as the Securities meant to be offered but they did offer six or seven names in one paper for the Defendant as they observed to take his choice the

attorney

attorney for the Defendant did suggest to the attornies for the Complainant that they should have offered two persons Agreable to the practice of Court in the matter of Bail – and the attorney for the Defendant Objects to the parties now offered as Suncoo Chinniah Kistnamah Chitty is by the Records of this and the Court of Sessions an insolvent person and the other person is totally unknown to the Defendant The Court having last Court day granted as a Matter of Indulgence a further period of one Week to the Complainant to find Securities for Costs and the Complainant not having offered Securities Satisfactory either to the Defendant or the Court and not having brought his Securities into Court It is Ordered that the Bill of Complaint do stand dismissed with Costs, –

A True Extract
/Signed/ G. E. Aspin
Dy Regr

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

Court

Court of Appeals
at
Madraspatnam

Saturday the 16th day of January
Anno Domini 1796.—

Between Mean Ahomed by
his attorney Budder ul Deen
Appellant and Antonio Defouza
of Madras Merchant Respond

This Cause coming on this day to be heard
and debated before the Court by the attornies on both
sides upon hearing the Petition and Appeal and
Answer and the Bill of Complaint of the Honble
the Mayors Court together with the Order of the
said Court given in this Cause on Tuesday the 17th day
of February Anno Domini 1795. 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 17th day of February Anno
Domini 1795. be annulled, that the Bill be
replaced

replaced on the file, and that all proceedings
therein be stayed until the Appellant or his
attorney with one other Security do Execute a Bond
in forty Pounds Penalty to the Rejister of the
Mayors Court to pay Costs, in case Costs may be
awarded against the said Appellant or his said
Attorney do lodge the said Sum of Forty Pounds for
that purpose in the hands of the said Rejister
and it is further Ordered that each Party do pay
his own Costs in this Court.—

Teste
/Signed/ J. Webbe Clk

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

To

To The Kings Most Excellent Majesty in Council

Between Mean Ahomed by his Attorney Budder ul Deen Complainant and Antonio De Souza of madras merchant Inhabitant, Defendant.

The Answer of the abovenamed Complainant to the Petition and appeal of the abovenamed Defendant—

This Respondent admits that he did on or about the time in the Petitioners said Petition of appeal set forth exhibit and file a Bill of Complaint in the mayors Court at Madraspatnam by his attorney the abovenamed Budder ul Deen against the said Petitioner for the purposes in the Appellants said Petition of appeal stated: and that a Summons issued thereon, and that thereupon the said Petition did by his attorney in Court appear thereto: and this Respondent also admits that he (this Respondent) did on such appearance of the said Appellant pray by his attorney in Court to hold the said Appellant

Filed in my Office the 19th July 1796
J Webbe Clk

Appellant to Bail on Oath being made of the debt: and that the said Court did grant the same and this Respondent admits that the said Appellant did file a Petition and affidavit on or about the time and for the purposes as in the said Appellants Petition and appeal set forth to which this Respondent by his Attorney in Court did object, and did pray for and obtain from the said mayors Court until the third day of February then next ensuing to answer the same and this Respondent admits that he did on the said third day of February exhibit and file his answer to the said Appellants said Petition in the manner and to the purport set forth in the said Petition of appeal, and that the said Appellant did thereupon by his attorney in Court pray that the said Petition and answer might come on to be heard immediately to which his (this Respondents) attorney in Court did make the objections set forth in the said Petition of appeal; and this Respondent admits that the said mayors Court did then order that this Respondent should be restrained from proceeding against the said Appellant until he (this Respondent) should give

give Security for Costs—

And this Respondent further admits that the said Appellant as setforth in his said Petition of Appeal did state to the said Mayors Court that this Respondent had not given the said Security and did pray that the Bill of this Respondent might be dismissed with Costs: that he (this Respondent) did object thereto as setforth in the said Petition and appeal and that the said Mayors Court did allow this Respondent the further time of one week to find the said Security, and in default thereof did order that this Respondents said Bill should be dismissed with Costs—

And this Respondent further answering saith that he admits that thereupon he (this Respondent) by his attornies in Court did pray as in and by the said Petition of Appeal the same is setforth, and that to such prayer of this Respondent the attorney in Court of the said Appellant did object and that the said Mayors Court were pleased to overule the said motion of this Respondent as stated by the said appellant—

and

And this Respondent admits that on Tuesday the Seventeenth day of the said month of February the said Appellant did by his attorney in Court state the several matters and things and did thereupon pray as in and by the said Appellants said Petition of Appeal the same is setforth and this Respondent admits that to the said prayer he (this Respondent) did Object upon the grounds in the said Petition of Appeal mentioned; and that the Appellant did reply to his said objections by his attorney in Court, and did offer the several points stated by the said Appellant in his said Petition of appeal; and did Object to the persons offered by this Respondent as Securities, as the same is stated by the said Appellant and this Respondent further admits that the said Mayors Court taking the same into their Consideration and premising as stated in the said Petition of Appeal; did think fit to order and did accordingly order that this Respondents said Bill of Complaint should stand dismissed with Costs.

And

And this Respondent admits that on or about the time stated in the said Appellants said Petition of Appeal he (this Respondent) did appeal from the said Order or decree of the said mayors' court to the Court of Appeals at madraspatnam, and after reciting in part the matters and things hereinabove recited did say that he did conceive himself aggrieved by the said order of the said mayors' court, and that he did appeal therefrom for the reasons amongst others as stated in the said Petition and appeal, and did pray that the said Court of Appeals would be pleased to reverse the same as to the Security, and did submit as stated in the said Petition of appeal that as to the dismission of the said Bill the same was inconsistent with Law and reason and greatly arbitrary and oppressive and did pray that the said Court of Appeals would be pleased to Order the Costs incurred thereby and by the said appeal to be paid by the said appellant as set forth in and by the said Petition and appeal: and this

this Respondent further admits as stated by the said Appellant, that to his said Petition of appeal the said Appellant did exhibit and file his Answer in the said Court of Appeals and that the said Appellant did therein deny this Respondent to be in any wise aggrieved by the said Order of the said mayors' Court, or to have any manner of cause or Reason to appeal therefrom to the said Court of Appeals: and this Respondent admits that the said Appellant did in his said answer to the several reason or cause of appeal set forth by this Respondent, state the several matters and things set forth in his said Petition of Appeal and did pray that the said Court of Appeals would be pleased to affirm the said Order of the said mayors' Court, and that this Respondents said Petition and Appeal might be dismissed with Costs.

And this Respondent further admits as stated in the Appellants said Petition of appeal that the said Petition of this Respondent and

and the Answer thereto came on to be heard by the said
Court of Appeals on the sixteenth day of January in the
present year one thousand seven hundred and ninety
six, and that the said Court of Appeals were taken
pleased to Order and did accordingly Order and decree
that the said Order of the said mayors Court of the
seventeenth day of February Which was in the year
of Christ one thousand seven hundred and ninety
five, should be annulled that the Bill should be replaced on the file and all
proceedings therein Stayed until this Respondent or his
attorney with one other security should execute a Bond
in forty Pounds penalty to the Register of the said
mayors Court to pay costs in case any costs
should be awarded against this Respondent or
that this Respondents said attorney should lodge
the said sum of Forty Pounds for the said purpose
in the hands of the said Register and that each
Party should pay his own costs in the said Court of
Appeals: but this Respondent denies that the
Appellant is, or could have been in any wise
aggrieved

aggrieved by the same, as stated in his said Petition
and Appeal and for Answer to the said Appellants
first reason or Cause of Appeal, this Respondent saith,
That although the right given to the
said Mayors Court of forming such rules and
regulations as may be deemed most conducive to
the ends of Justice as asserted by the said Appellant
be true in principle, yet, that such principle, and
the Application thereof to the Case of this Respondent
doth not hold, because the said Mayors Court, tho'
entitled to frame Bye laws and regulations for the
practice of the said Court is by the construction of the
Charter restrained to legal regulations: and therefore
the reasoning of the said Appellant falls to the
ground; for this Respondent saith he is advised that
the dismissal of his said Bill by the said
Mayors Court was illegal, arbitrary, and oppressive,
and a precedent in its consequences highly injurious:
and this Respondent doth deny that such dismissal
is warranted by the practice of the said Mayors
Court, as this Respondent humbly submits, have
been

been justified in dismissing or excluding any Suitor with such precipitation.

And this Respondent in further Answer to the said Appellants said first reason or cause of appeal, saith that in the said Affidavit of the said Letchmana Pillay filed together with the Petition of the said Appellant on the said Sixteenth day of December, One thousand Seven hundred and ninety four, nothing is alledged Against the said Budder ul Deen the attorney of this Respondent to induce the said Mayors Court to alter, vary or depart from their accustomed and long established practice; nor was anything therein stated against this Respondent which could or ought to operate to his prejudice in the premises

And this Respondent in further Answer to the Appellants said first reason or cause of appeal, humbly submits to your most Excellent Majesty in Council, that he is advised, that in a variety of adjudged cases it is holden, that

that, except in ejectment or actions Quit am, it was not usual to require security for Costs; for it was considered that such a proceeding might affect trade, and would be a means of clogging the course of Justice" so in the Case of Boswell versus Irish reported in the Second Volume of Burraws Reports page One thousand and twenty six, determined in the Court of Kings Bench in Trinity Term in the seventh year of the reign of your most Excellent Majesty, it was moved in the Behalf of the Defendant, that the Plaintiff being gone to reside abroad, and having left no Effects in England, might give Security for the Costs in case of Judgment for the Defendant; but the Court were clear that it was altogether contrary to rule, and had been denied over; and Mr. Justice Ashton said, that he had taken so many notes on the refusal of such motions, that he had ceased to take any more as being a point fully settled; Mr. Justice Yeats also mentioned a very strong Case where it was refused, though it

it Appeared that Peter Mingotte the Plantiff lived entirely in Italy, and never meant to come to England; he said it was clogging the course of Justice: and it was by the court resolved unanimously that the motion should be denied So in the case of Short versus Thing reported in the first Volume of Stranges Reports. Page Six hundred and eighty one. the Court said that as to staying proceedings till payment of Costs. it was never done, but where it Appeared the party was vexatious, or had run the Defendant to a great expence; and which this Respondent saith is not the present case; and this Respondent in Answer to that part of the Appellants said first Reason or Cause of appeal which respects the circumstances and situation in Life of this Respondents said attorney the said Budder ll Deen humbly submits to your most Excellent Majesty in Council that he is advised, it is a settled point. and has been so resolved in a variety of Cases, that proceedings shall not

not be stayed even in a Quitam Action merely on Account of the Plantiffs poverty: and therefore this Respondent humbly submits to your Excellent Majesty in Council that the said Decree of the said Mayors Court having been founded in Error, and being as to this Respondent highly arbitrary and oppressive, the said Decree of the said Court of Appeals was Considerably more favorable towards the said Defendant and now Appellant, than he had any right to expect, and the said first Reason or Cause of Appeal of the said Appellant, utterly unfounded, nugatory, and void—

And in Answer to the Second Reason or Cause of Appeal given by the said Appellant, this Respondent humbly submitts to your most Excellent Majesty in Council, that the practice of holding a Defendant to Bail on Oath being made to the Debt, has universally prevailed in the said Mayors Court: and this Respondent therefore did by his said Attornies in Court require that the said Appellant might be held to Bail in

pursuance

pursuance of the order of the said Mayors Court of the sixteenth day of December One thousand seven hundred and ninety four, herein before recited; but this Respondent humbly sheweth to your most Exellent Majesty in Council, that the same was then denied and refused to this Respondent by the said Mayors Court, as may fully Appear to your most Exellent Majesty in Council by the Copy of the proceedings of the said Mayors Court on the tenth day of February One thousand seven hundred and ninety five, and therefore the reasoning of the Appellant that Security should for that reason be granted, is evidently founded on a non entity, the said Appellant not having been held to Bail at any time by this Respondent: and this Respondent further humbly begs to submit to your most Exellent Majesty in Council, that in the case of De la Preave, versus Le Duc de Biron, fourth term Reports Page six hundred and ninety seven, the Court did adjudge that the Defendant could not require Security for

Costs

Costs until he, the Defendant, had put in Bails—

And this Respondent in further Answer to the Appellants said second reason of Appeal, doth deny that the said Appellant would have been remidiless, had the said Suit been allowed to proceed to a hearing and that the said Mayors Court had dismissed the said Bill, as to the Costs because this Respondent humbly sheweth to your most Exellent Majesty in Council, that nothing has been alledged or Charged by the said Appellant Against this Respondents said Attorney, the said Budder ul Deen, who hath declared himself in his said Answer to the said Petition of the said Appellant, to be, not only an Inhabitant, but an Housekeeper of Madras, as this Respondent did before state to the said Court of Appeals as one reason amongst others, why the said Decree of the said Mayors Court, should be reversed; and this Respondent sheweth to your most Exellent Majesty in Council, that the said declaration of the said Budder ul Deen hath never been denied, or attempted to be disproven; And

this

this Respondent also humbly submits to your most Excellent Majesty in Council that this Respondent did in his said reasons alledged as aforesaid set forth, that it had been held and supported by the constant practice and decisions of the said Mayors Court, that in all Suits instituted by attorney the attorney being on the spot shall be considered responsible for all costs attending the Suit: And therefore this Respondent humbly submits to your most Excellent Majesty in Council that the said Mayor's Court in dismissing this Respondents said Bill did depart from their own established rules of practice, and made a Precedent as to this Respondent highly oppressive, partial and injurious: And this Respondent humbly submits to your most Excellent Majesty in Council that the reasoning of the said Appellant respecting the Jurisdiction of the said Mayors Court over Indian Natives, and of the extent of the same, is not by any means a true and just statement of the powers of the said Court, for this

Respondent

Respondent Sheweth to your most Excellent Majesty in Council that by the Charter under which the said Court is constituted, its Jurisdiction Extends to all the places and factories subordinate to the Presidency of Fort Saint George: and no act of the Legislature subsequent to the Charter under which the said Mayor's Court is constituted, hath signified either expressly or by implication the extent or limitation of the Mayor's Court of Madras or Bombay.

And this Respondent in answer to that part of the said second Reason or Cause of appeal, Which states, That had the said Appellant found it necessary to have filed a Cross Bill against this Respondent he could not have obtained an answer thereto on the Oath of this Respondent" This Respondent humbly Sheweth to your most Excellent Majesty in Council that it hath been the invariable rule and practice of the said Mayor's Court in like cases to suffer the constituted Attorney

of

of the Original Complainant and Cross Defendant to make Oath to the Cross Answer, and that the said Appellant well knows the same, and that therefore his said reason or Cause of appeal is highly frivolous and unfounded; the said Attorney of this Respondent as the said Appellant did also well know (being then and now within the Jurisdiction of the said Court, and within reach of its Process. And this Respondent further humbly submits that the daily practice of the said Mayor's Court is in direct opposition to the said Appellants pretended reasoning, and further this Respondent humbly begs to shew that had the Petitioner considered it necessary at any time pending the said Suit in the said Mayors Court to have filed his Cross Bill, and had the said Petitioner shewn any good and substantial reason why it was necessary for the benefit of his Case to have obtained an Answer on Oath either from this Respondent separately or conjointly with the said Budder ul Deen his attorney, the same would have been complied with

with, as conformable to the practice of the said Court; and if this Respondent was not within the Jurisdiction at the time of filing such Cross Bill then would the said Petitioner have been able to have obtained an Answer from this Respondent by a Commission issuing out of the said Mayor's Court to such Commissioners as the said Mayor's Court might Approve, and before whom this Respondent must have been sworn to his Answer to such Cross-Bill as the said Petitioner might have thought proper to exhibit; and if the Answer so required was not filed and exhibit within such reasonable time as the said Mayor's Court might have thought proper to direct, then would this Respondent have been altogether restrained from proceeding in his Original Suit until the said Cross Answer should be exhibited; and if this Respondent was dilatory in proceeding in the said Suit allowed the same to remain dormant any great length of time, then might this Respondents said Original Suit, at the Prayer of the said Petitioner have

have been dismissed by the said Mayors Court for want of Prosecution: and this Respondent further begs to submit to your most Exellent Majesty in Council that the Objections of the said Appellant are altogether irrelevant unfounded and Supposititious, and ought not to have been introduced into his said Petition of appeal; for if the Appellant had filed his Answer to the Bill of Complaint of this Respondent, (but which it is his object to avoid) and had filed his Cross Bill in the said Suit, and found any difficulty in obtaining a Sufficient Answer thereto, then, and not till then, had he any right to urge such Objections: for if such were allowable, He might swell his proceedings to any extent in urging pretended difficulties that never had happened, and that never would or could occur. And this Respondent Sheweth that Such the Petitioners said Objections are further irrelevant and impertainent to the matter in question namely, whether, or not, the decision of the Mayors Court in

in dismissing this Respondents Bill was or was not just and right and this Respondent begs further to shew that no such Objections have ever been before the said Mayors Court, nor were any such Objections in the contemplation of the said Defendant when he, the then Defendant and now Petitioner entered his Appearance by his Attorney at Law in Court on the said Sixteenth day of December One thousand Seven hundred and ninety four to this Respondents said Bill of Complaint: and therefore this Respondent humbly prays the same may be expunged with costs from the said Petition of Appeal.

And this Respondent in Answer to the third reason or cause of Appeal Submitted to your most Exellent Majesty in Council by the said Appellant, doth deny to have admitted the prayer of the said Appellant to the said Mayors Court to be conformable to the practice thereof, and to justice, as asserted by the said Appellant: for this Respondent humbly Submits to your most Exellent Majesty in Council that he did object to the same by his Attornies

Attornies in Court, and did press the said Mayors
= Court to reject the same, as not being conformable
to its practice. And as highly injurious to this
Respondent. but that the said Objections of this
Respondent were over ruled by the said Mayors Court
and to that part of the Appellants said third
Reason Which insinuates that this Respondent
did admit of and Acquiesce in the said Orders of
the said Mayors Court of the said tenth day of February
One thousand Seven hundred And ninety five
inasmuch as he did not Appeal therefrom, this
Respondent most humbly submits to your most
Excellent Majesty in Council that however unreasonable
severe or unjustifiable this Respondent might have
thought them yet he considered it better tamely to
suffer and endeavour to bear up Against a certain
degree of Injustice and Oppression, than to incur
the inconveniences of a protracted litigation, and
the heavy expence attending an Appeal, a measure
Which this Respondent most humbly Sheweth

to

to your most Excellent Majesty in Council was evidently
wished for and looked up to by the Appellant as a
further means of Oppressing this Respondent,
and Which the whole tenor of the present Appeal
sufficiently evinces — And in Answer to the rest of the
said Appellants third reason or Cause of Appeal, which
states that this Respondent pretended to offer two
Securities, but did not produce them to the Court,
And that even if they had been produced one of them
was known to be then a Bankrupt, thereby meaning
to delay and harrass the said Appellant, this Respondent
humbly Sheweth to your most Excellent Majesty in
Council that the same is notoriously misrepresented
since it is admitted by the said Appellant himself
in the Pleadings in his said Petition of Appeal recited
and Set forth, that this Respondent did actually offer
to the said appellant his Choice of any two out of
six respectable persons, Inhabitants and Housekeepers
of Madras as his Securities the premises, Against one
only of Whom was any exception taken, and that
on a bare Assertion or Allegation of the said

appellant

Appellant or his attorney in court, unsupported by any one proof whatsoever and unfounded in fact wherefore this Respondent humbly submits to your most Excellent Majesty in Council that no imputation of vexation or a wish to put the Defendant to unnecessary expence can thence rest with this Respondent. Which as this Respondent is advised is the only Ground on which it has been usual to stay procedings untill Security be given for Costs and that on the contrary it evidently Appears (from the premises) to have been the intention of the said Appellant by every vexatious and litigious mode in his power to harrass and delay this Respondent, to put him to unnecessary expence in the prosecution of his Suit and unwarrantably to impede him in the recovery of a just debt. And this Respondent further most humbly Submitteth that the Assertion of the said Appellant that one of the said Securities offered by this Respondent was known to be a Bankrupt, without Adducing any proof thereof (which it would have been in the power of the said Appellant to have done, if the Copy of any record of the said Mayors Court could have been shewn to that effect, and which would have been more creditable and more to the purpose, than to have annexed the proceedings of the said Mayors Court of the ninth day of December one thousand Seven hundred and ninety four shewing that the said Appellant was Ordered to be Summoned (a matter of Course) in consequence of a Bill being exhibited Against him) is evincive that the said Mayors Court was inclined to admit Assertions where proofs ought to have been offered And this Respondent also sheweth to your most Excellent Majesty in Council that admitting it hath in some few cases been customary to stay procedings until Security was given for Costs, yet that in all the adjudged Cases as to the point at issue, there is not one to be found to effect this Respondent, no one case going

going to the dismission of the Complainants Bill nor hath the said Petitioner attempted to Addduce any one Instance of the dismission of a Bill for want of Security for Costs beyond that of the Case of Burke versus Porcher - and the cause in that case assigned to the Court was that the Costs of a former Suit, had not been paid, as by the Copy of the Exhibits Instruments annexed will Appear the Original of which under the Seal of the said Mayors Court will be produced as Evidence to your Most Excellent Majesty in Council at the hearing of the said Appeal, and of this Respondents Answer thereto, if it shall please your most Excellent Majesty in Council to admit the same. And therefore this Respondent Submits to your Most Excellent Majesty in Council that the said Order of the said Mayors Court was illegal, arbitrary, And Oppressive in the extreme, as to this Respondent and that the said Court of Appeals was and it justified in reversing the

Same

same And this Respondent further begs to Shew to your Most Excellent Majesty in Council that the limitation of time from one week to another for the providing of Securities, And which the said Appellant hath thought proper to term Indulgencies, was and were as this Respondent did and doth think greatly severe and oppressive, as it gave the Appellant and his Confederates the opportunity of preventing persons from coming forward as Security for this Respondent by threatening and alarming them with the danger of Costs being ultimately given in favor of the said Appellant, and of which opportunity the said Appellant and his Confederates did actually avail themselves.

And this Respondent Sheweth to your Most Excellent Majesty in Council that the first part of the said Appellants fourth Reason or cause of Appeal is, as this Respondent hath been advised, Answered by this Respondent in his Answer to the first, Second, and third Reason in the said Petition of Appeal contained, but this Respondent further

Sheweth

sheweth that the said Petitioner in the first part of his said fourth pretended Reason doth argue favorably for this Respondents case, for he doth therein set forth that Courts of Justice will not, untill a Suit has gone on to the joining of issue, and then lain dormant for a length of time allow of the Defendant moving to dismiss the Complainants Bill, and this Respondent in further Answer saith that he would have complied with the requisition of the Defendant and the Order of the said Mayors Court, even though he did think such requisition and Order not only unnecessary but unjust for the providing of Securities And did evince his inclination to comply with the same by not having appealed therefrom) had Sufficient time been allowed on that Account: And the poverty of this Respondents Attorney, And the absence of this Respondent who hath stated himself in his Bill of Complaint to have been impoverished and defrauded by the said Defendant to the Amount complained of and Charged

Charged in and by this Respondents Bill of Complaint) might have induced the said Mayors Court (as this Respondent doth humbly submit to your most Excellent Majesty in Council) to have considered it more consistent with Justice and mercy to have been less precipitate and severe in their decision against this Respondent: for this Respondent saith that if the intention of the said Mayors Court was to provide for the Defendant Security for Costs (under the Idea that this Respondent was bringing a groundless Complaint, And for which Idea, if any such were formed this Respondent doth deny the existence of any foundation) then the direction that proceedings should be stayed untit Security for Costs should be given, was amply Sufficient, but if the intention was to turn this Respondent out of Court, and exclude him altogether as a Suitor therein then the decision dismissing this Respondents Bill was consistent with such intention: and as to the keeping the said Suit hanging over the head of the said Defendant, the said Mayors Court, in their said decision did take great precaution to

provide

provide the remedy against such an Evil, even before the Evil could exist, for, so tender was the said Mayor's Court, that the said Defendant (whom this Respondent doth not deny to be a rich man) should not be troubled by the Complaint of this Respondent, that they would not allow this Respondents Attorney to hold the said Defendant to Bail, nor even require the said Defendant to put in his Answer to the said Bill, which might possibly have given the said Mayor's Court some further insight into the probable merits of the Case

And this Respondent in Answer to the residue of the said fourth reason or cause of Appeal humbly submits to your most Excellent Majesty in Council that the said Decree of the said Court of Appeals (notwithstanding what is alledged by the said Appellant does not go to the holding from the said Appellant any particle of Justice to which he might by any means be entitled; but on the contrary being founded, as this Respondent has already shewn to your most Excellent Majesty in Council, on the uniform practice of all the superior Courts, And being entirely consonant with the rules of Law and Equity, the said Appellant can in no wise pretend himself to be Aggrieved thereby, or that he hath suffered any loss or Damage in the premises; for this Respondent says the said Appellant is placed by the said Order or decree of the said Court of Appeals in a better situation than he was in at the Commencement of the Action by this Respondent; And that therefore in Law and Equity he ought not to oppose the same, and the said Court of Appeals having the premises regularly before them and being competent Judges thereof this Respondent submits to your most Excellent Majesty in Council that their said Decree ought therefore to be affirmed; And this Respondent doth deny that the said Order is irregular (as asserted by the said Appellant) for this Respondent submits to your most Excellent Majesty in Council that the Register of the said Mayor's Court as a legally authorized Officer of the same, is an organized part of the said Court, and therefore not only altogether competent to

competent to receive the said Security as appointed by the Order of the said Court of Appeals, but is in fact the proper person and the Officer to whom every thing which is not done in open Court is entrusted by the said Mayors Court; And this Respondent saith that the said Order of the said Court of Appeals is not (as stated by the said Appellant) an Order to be done by and before the Register, but to the Register. And this Respondent submits that whether the Security Bond were entered into to the Register of the Mayors Court as the first Officer of the Court, or to the Accountant, or to the Mayor as the head of the Corporation, though differing in form, would have been in substance and effect precisely the same; for this Respondent humbly submits to your most Excellent Majesty in Council, that in truth and in fact the Security is given to the Defendant, and must have been entered into for that purpose either before the Mayors Court and in Open Court, or to the Mayor himself as head of the

the Corporation, as this Respondent hath before stated, or to the Register as the Officer of the Court, (but not to the Court, for this Respondent humbly sheweth to your most Excellent Majesty in Council that such hath never been the practice of the said Mayors Court, nor is it specified by any one rule or order of Court that Security should be given to the Court itself. And had the said Defendant signified a wish or offered any reason why the said Security Bond should have been directed to be given to either one of the abovenamed persons in preference to the other, such a wish had it been signified, or such reason had it been offered, and considered as solid or essential, could not have been objected to by this Respondent or his Solicitors in Court; nor would the same as this Respondent doth presume have been rejected by the said Court of Appeals at Madraspatnam, which this Respondent doth submit as a farther instance of the weak unfounded, vexatious and litigious pretences of the said Appellant. And in Answer

to

to that part of the said fourth reason or cause of Appeal which avers the said Decree of the said Court of Appeals to be irregular. And that as it cannot be carried into Effect by the said Mayors Court, it would prove the Means of enabling this Respondent further to harrass the said Appellant. this — Respondent humbly begs leave to Observe, and submits the same to your Most Excellent Majesty in Council, that the same is wholly untrue, for that the said Court of Appeals professing in their Juridical Capacity a Superiority And controul over the said — Mayors Court, are fully Competent to over rule, Reverse or annul any Decree or order of the same whatsoever, and that the said Power so vested in the said Court of Appeals hath long been and now is productive of singular benefit in regulating the same: and — therefore this Respondent saith he is advised that the said Decree of the said Court of Appeals is strictly regular and in point. that the same can and may easily and in the common course of proceeding be

carried

carried into Effect. by the said Mayors Court, and that so far from giving any Opportunity to this — Respondent to harrass the said Appellant. the — Same hath been already shewn to be perfectly consonant with reason, equity. and law — And this Respondent humbly submits to your most Excellent Majesty in Council that the conduct of the said Appellant (who has shewn no reason to the Contrary) is that of a more caviller on words, forgetting the substance. — And this Respondent lastly most humbly submits to your most Excellent Majesty in Council, that the said Court of Appeals could not consistently have affirmed, nor ought they to have affirmed the said Decree of the said Mayors Court, as asserted in and by the last reason or cause of Appeal adduced by the said Appellant. —

For all Which Reason and such others as may be offered at the Hearing this Respondent most humbly prays that your most Excellent Majesty in Council — will

will be graciously pleased to affirm the said Order and Decree of the said Court of Appeals, of the Sixteenth day of Jany One thousand Seven hundred and ninety six, reversing the aforesaid Decree of the said Mayors Court of the Seventeenth day of February One thousand Seven hundred and ninety five, and that your most Exellent Majesty in Council will be further graciously pleased to punish the litigious and unjust conduct of the said Appellant with exemplary costs and that your most Exellent Majesty in Council will further vouchsafe to grant unto this Respondent such further and other relief in the premises, as to the wisdom of your most Exellent Majesty in Council may seem Meet.

[Signed] Robert Williams Jersey
& Emanuel Samuel
Solicitors for Respondent

Extract from the Minutes of a Court Held at the Town Hall in Tuesday the 16th Day of October Anno Domini 1792.

Present

Andrew Ross Esquire Mayor
James Call and James Daly
Aldermen

William Burke
vers
Josias Duke Porcher

The Attornies for the Defendant pray that all proceedings on the Bill of Complaint filed in this Cause on the 2d Instant by the abovenamed Complainant Against the abovenamed Defendant be stayed, till the several Bills of Costs incurred by the Defendant in Consequence of the former Suit be discharged, agreable to a Notice served by them on the Attorney for the Complainant: to which the Attorney for the Complainant objects And prays leave to refer to the Court whether he shall be obliged to shew cause Against the Defendants Notice of the 13th Instant, of a motion

to

to be made by him on this day as the same was not given four days previous to the same being notified to be made in Court conformable to the standing order of this Court, or whether the motion shall stand over till next Court day. The said Attorney informs the Court that the Complainant has not refused to pay such Bills of Costs as he may be answerable for, and that the difference respecting the payment arises upon Demands of Costs he does not conceive himself bound to Answer— The Attornies for the Defendant Object to any further time being allowed to the Complainant to Shew Cause Against this motion of this day, for that the question before the Court is relative to Costs on a Suit out of Court, and founded on the Order of this Court, when Leave was given to file the Present Bill of Complaint. And therefore no other Notice than a tender of the Bill of Costs duly taxed, And a demand of payment thereof was necessary and they further say that such tender and demand was Accordingly made on the 11th Instant, being five days Ago as the same Appears by a Letter from the Attorney of the Defendant to the Attorney of the Complainant the Attorney for the Complainant in reply thereto observes that his Letter proposed a mode of ascertaining the Amount of Costs to be paid by his Client, which was not attended to by the Attorney for the Defendant Ordered that the Attorney for the Complainant be allowed till next Court day to Shew Cause Against the above Motion.—

Mr. Alderman Hall dispenses to the Resolution of the Court Mr. Alderman Daly being indisposed withdraws. and Mr. Alderman Cockburn takes his Seat upon the Bench

As the discussion of a question about the Costs has been postponed till next Court day, the Attorney for the Defendant prays that the Cause be considered as dormant for one Week, and therefore that the period for filing a Demurrer, which is fixed for the 23d. be extended to the 30th Instant The Attorney for the Complainant observes that there is not any question postponed by the Court

Court respecting costs in this cause, but whether the proceedings shall be stayed till the costs demanded by the Defendant be discharged the decision of which motion having been deferred till next Court day, the present Prayer to stay proceedings for a further week goes to anticipate that Judgment which the Court have reserved to themselves for a future day. The Court having taken the same into Consideration it is ordered that the Motion to extend the time granted to plead or demur be over Ruled, And that the former Resolution be confirmed.—

A True Extract

/Signed/ George Taylor
Regr

a true Copy

/Signed/ Robert Williams
for Self &
Emanuel Samuel
Solicitors for Respt

Extract

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 30th. day of October Anno Domini 1792.—

Present

Andrew Ross Esquire, Mayor

Josias DuPre Porcher and Henry Buckley Mitchell

Aldermen.

Mr. Alderman Abbott takes his Seat upon the Bench.

Mr. Alderman Porcher being interested goes off the Bench

Mr. Alderman Call, Webb, Mitford, Roebuck Daly and Cockburn take their Seats upon the Bench.—

William Burke
vers
Josias DuPre Porcher

Letter received from the Clerk to the Court of Appeals, and Decree of the said Court, read ~~Extract~~

Extract from the Minutes of Court of the 17th. January 16th. and 23d. Instant, read.

Four Bills of Costs With Copy of the Correspondence between the Attornies for the Complainant and Defendant, and Letter from the Attorney for the Defendant to the Register, Read.

The Court take notice that only four Bills of Costs have been produced, instead of Five, as mentioned in one of the Letters from the Defendants Attorney to the attorney for the Complainant, Which the Attorney for the Defendant

Acquainted

acquaints the Court is a mistake. and that the Costs demanded by the Defendant are for the Amount of the four Bills now before the Court.—

The Court having taken the same into Consideration, it is ordered that the Complainant do pay the whole of the Costs included in the four Bills of Costs now before the Court, one being for Pagodas 260..13— paid by the Defendant to his Attorney for Fees in this Court, a Second paid by the Defendant to his Attornies in the Court of Appeals — both being in Consequence of Demurrer a third amounting to Ps 107..12— amounting to Pagodas 322..6— paid by the Defendant to the Complainant in consequence of the Demurrer to be refunded, and the fourth Amounting to Pagodas 287. paid by the said Defendant to the Complainant also in consequence of the Demurrer for Charges in the Court of Appeals to be also refunded.—

The Mayor dissents to the resolution of the Court being of Opinion that according to Law, and the practice of this and other Courts that the Party Demurring should be charged with all Costs Attending it.—

Messrs Aldermen Michell and Cockburn dissent to the resolution of the Court being of Opinion the Costs incurred in Consequence of the Demurrer, ought to be paid by the Party Who Demur.—

The Attornies for the Defendant pray that until the above Order be complied with that all proceedings in this Cause be stayed, to Which the Opposite Attorney objects because the Defendant was not entitled to demand payment of the Costs until this day. and that is not usual to stay proceedings until Costs are paid except in Cases of Vexation and other Demerit, The Court having taken the same into Consideration, it is ordered that all proceedings be staid until the Bill of Costs are Discharged.—

A True Extract
(Signed) George Taylor
Regr.

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 12th Day of February Anno Domini 1793.—

Present

John Mitford Esquire, Mayor.
James Call and James Daly
Aldermen,

Messrs Aldermen Webb. Ross, Michell Roebuck, Abbott. and Cockburn take their Seats upon the Bench.

William Burke
~~vers~~
Josias Dupre Porcher.

Extract from the Minutes of Court of the 4th December last read.

Petition and Affidavit filed the same day, read

Ordered that an Order be served upon the Attorney at Law of

of the Complainant to pay the Costs adjudged on the 30th day of October last Within one Month, and in default thereof that the Complainants Bill be dismissed.

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

A True Extract

/ Signed / George Taylor Regr

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 9th Day of April Anno Domini 1793 —

Present.

John Mitford Esquire, Mayor

William Webb and Henry Chichley Michell.

Aldermen.

William Burke

Josias Dupre Porcher.

Affidavit of Mr. Robert Williams one of the Attornies of this Court of Service of Orders of this Court of the 30th October and 12th February last, upon Mr. Henry DuRey the Attorney at Law of the above named Complainant, Sworn to in Court, Read And filed this day — The Attornies for the Defendant pray that this Cause may stand dismissed with Costs Agreably to the Order of this Court of the 12th February last Ordered Accordingly. —

A True Extract

a true Copy

/ Signed / Robert Williams

& Emanuel Samuel —

/ Signed / George Taylor Regr

Saturday the 23d day of January 1796

Present

The Right Honble Lord Hobart

Edward Saunders and Ernst William Fallofield

To the Right Honourable Robert Hobart commonly called Lord Hobart

President in Council

Fort Saint George

In the Honourable the Court of Appeals

Between John Bannerman a Captain in the Military Service of the united Company of Merchants of England trading to the East Indies under their Presidency of Fort Saint George — Complainant, and Charles Smart Mayor in the said Service Alexander Dirom, Mayor, and Martin Hunter Captain in his majestys Service, and James McCaskill a

Filed in my Office the 25th May 1795

J. Webbe Clk

a Lieutenant in the said Company's

Service Defendants.

Sheweth

The Humble Petition and Appeal of Charles Smart of Fort Saint Georgeone of the Defendants abovenamed

That the Complainant abovenamed did on or about the thirtenth day of March which was in the year of one thousand Seven hundred and ninety three exhibit his Bill of Complaint Against your Petitioner, and the other Defendants above named, in the Honorable the Mayors Court at Madraspatnam for an Account of certain monies therein mentioned, and for the discovery and relief thereby sought and prayed touching the same, and your Petitioner having on or about the Eleventh day of June in the said year Answered the said Bill of Complaint, And the said Complainant having replied to the said Answer, and your Petitioner rejoined to the said Replication Issue was joined in the said Cause, on the tenth day of December in the said year, as by an extract from the Minutes of the said Mayors Court which is hereunto Annexed to which your Petitioner humbly refers

will

will Appear And Rules did thereupon pass for the Examination of witnesses in the said Cause, According to the usual Practise of the said Mayors Court, and as a matter of Course, But your Petitioner Sheweth that no efficient proceeding was had or taken in the said cause on behalf of the said Complainant from the said tenth day of December One thousand Seven hundred and Ninety three, until on or about the twenty sixth day of March in the present year of our Lord one thousand Seven hundred and ninety five, on which day and not before the said Complainant produced Arthur Gibbings a Captain in the Service of the said united Company as a witness on his behalf in the said Cause as by the Notice of Mr. Thomas Parry the Examiner of the said Mayors Court of the production of the said Witness which is hereunto annexed for the further information of this Honble Court herein, will more fully Appear, and which said Arthur Gibbings was the first Witness who was Examined and the said Complainant having afterwards Examined Sundry other Persons as Witnesses on his behalf the said Mayors Court on the Motion of the said Complainant

by

by his attorney at Law did on the twelfth day of May in the present year of our Lord one thousand seven hundred and ninety five order that Publication should pass in this cause, notwithstanding that your Petitioner did by his attorney at Law, Object thereto and pray that he might be allowed the short period of one Week to Examine a material witness as by an Extract thereof from the minutes of the said Mayors Court which your Petitioner prays may be taken and received as part of this his Petition and Appeal, And to which he humbly refers will Appear, By which said order of the said Mayors Court of the twelfth day of may aforesaid, your Petitioner doth think himself greatly aggrived and doth appeal therefrom to this Honorable Court of appeals for the following Among other reasons.—

For that the said Complainant having in effect suffered this cause to lay dormant from the said tenth day of December One thousand Seven hundred And ninety three until the said twenty sixth day of March last past such delay so far from being imputable to your Petitioner, Did on the contrary afford reasonable ground to presume that the said

said Complainant meant to have abandoned the said cause and although the said Complainant afterwards thought proper to proceed therein by an examination of witnesses as before stated; the former delay occasioned by the Complainants own neglect instead of operating with the said Mayors Court as a reason for passing Publication should as your Petitioner humbly submits to this Honourable Court have induced the said Mayors Court to have extended the said rule for the Examination of witnesses to the moderate time of Eight days being all that your Petitioner desired, and which he was Reasonably and equitably Entitled unto.—

For all which reasons and such others as may be Offered at the hearing your Petitioner most humbly prays that the said order of the said Mayors Court of the twelfth day of may aforesaid may be reversed and that this Honble Court will be pleased to grant your Petitioner such

such further and other
relief in the premises as to this
Honourable Court shall seem
Meet.—

/Signed/ John White
Solicitor for appellant

Extract

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

Present

John Mitford Esquire Mayor
Andrew Ross & William Abbott
Aldermen

John Bannerman
vers
Martin Hunter and others

Issue Joined
Day is given the Parties till the 17th. Instant to
Examine Witnesses.

A True Extract
/Signed/ George Taylor Regr.

In the cause John Bannerman
AGST
Martin Hunter— Alexr. Dirom.
Charles Smart & James Mr. Corkill.

Sir

Sir

Arthur Gibbings Captain in the Honble
Company's Service
is produced as a Witness on the Part of the Complainant.

Fort St. George
the 26th March 1795.

I am
Sir
Your very Obt. Servant
[Signed] Thomas Parry

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 12th day of May Anno Domini 1795.

Present
Benjamin Roebuck Esqr. Mayor
Andrew Ross and James Daly
John Bannerman Aldermen

Charles Smart & others

Note from the Examiner to the Register read &
Setting forth

Setting forth that all the Witnesses have been Examined &
And have Signed their Depositions on the part of
the Complainant, And on the part of the Defendant
Charles Smart. — Barry Close, a Witness has been &
Examined and has Signed his Deposition — the —
Attorny for the Complainant prays that Publication
may pass in this Cause, to which the Opposite Attorney
Objects, and prays a further time of one week to Examine
a material Witness — Ordered that Publication &
do pass. —

Publication is passed in this Cause. —

A True Extract
[Signed] George Taylor Dept.

To

To the Right Honorable Robert Lord Hobart

President in Council of

Fort Saint George

Between John Bannerman

a Captain in the Service of the

united Company of Merchants

of England trading to the East

Indies under the presidency of

Port Saint George Complainant

and Charles Smart a Major in

the said Service Alexander Dirom

a Major and Martin Hunter a

Captain in his Majestys Service and

James Mr. Corkill a Lieutenant

in the said Company's Service Defendants

Filed in my office
the 13th June 1795.
J. Webbe
Clk

The Answer of the above named Complainant
to the Petition and Appeal of Charles Smart one of
the abovenamed Defendants.

This Respondent admits that
he did on or about the thirteenth day of March which
was

was in the year of our Lord One thousand seven hundred
and ninety three exhibit his Bill of Complaint in
the Mayors Court against the Appellant and others the
Defendants above named to the intent and purpose and
for the relief as in the Appellants said Petition of Appeal
the same is set forth And that after the proceeding had
thereon as in the said Petition of Appeal is stated issue
did join on the tenth day of December in the said year
and rules did pass for the Examination of Witnesses but
this Respondent doth not admit that no effucient proceedings
were taken or had in the said cause on behalf of this
Respondent from the said tenth day of December until the
twenty sixth day of March in the present year of our Lord
One thousand seven hundred and ninety five for this
Respondent submits to this Honble Court that the act
of passing rules in a cause is an effucient proceeding therein
as it gives the parties concerned notice that the said cause
is going on And this Respondent admits that it
might have been the said twenty sixth day of March
before this Respondent did proceed to examine Witnesses

and

and that Arthur Gibbings in the Petition of appeal
named might have been the first witness examined on the
part of this Respondents and that the notice from the
Examiner copy whereof is annexed to the Appellants said
Petition of Appeal was served upon the Appellants Attorney
in Conformity to practice in like cases — And this Respondent
admits that he did afterwards examine sundry other Witnesses
in the Cause And this Respondent admits that the said
Mayors Court did on the motion of this Respondents Attorney
in Court on the twelfth day of May in the present year of
our Lord one thousand Seven hundred and ninety five
order that publication should pass in the cause and
this Respondent admits that the Appellants Attorney
in Court might have Objected to the said motion and
prayed or further time of one Week to Examine a
material Witness But this Respondent doth not
admit that the Appellant is in anywise aggrieved by
the said order of the said Mayors Court or that he has
any cause of Appeal therefrom to this Honble Court
and this Respondent Says that the Appellant ought
to

to have stated the facts regarding the said order
of the said Mayors Court in a full and fair manner
in order that this Honble Court might have been
enabled to Judge of the grievance pretended to have
been sustained thereby and of the reasons upon which
the said order was founded — And this Respondent
says that the usual rules for the examination of
Witnesses After issue has Joined are as he is advised
that pass after
to the extent of six Weeks and that the rules of that
time are with the consent of parties and for their
mutual convenience and that those rules are
generally of two Weeks each unless one of the
parties should press for Publication and in that
case they are reduced to one Week and express that
in default of examination of Witnesses publication
do pass And this Respondent says that on the
thirty first day of the said month of March one
Week was granted for the Examination of Witness
on the Seventh day of April following a rule
of two Weeks was given on the Twenty first
of the same month a rule of one Week issued

and

And on the twenty eighth of the same month this Respondent did by his attorney in court pray that Publication might pass in this cause to which the Appellants attorney in court did object and pray a further time of one Week and the said Mayors Court did thereupon grant to the appellant the further time of one week as prayed by his attorney in court and at the same time did order that no further time should be given to him And yet on the fifth of May following the said Mayors court did grant a further indulgence of one week as will more fully and at large Appear by the Copy of the Extracts of the proceedings of the said Mayors Court hereunto Annexed for the inspection of this Honble Court the originals whereof are in this Respondents profession and ready to be produced if required And this Respondent Answering to the Appellants reason or cause of Appeal says

That he did not suffer his cause to lie dormant from the tenth day of December one thousand Seven hundred and Ninety three for that rules did continue to pass therein for the examination of Witness and that therefore the Appellant had no reason whereon to presume that this Respondent had meant to abandon his said cause And this Respondent says that the length of time by the Appellant stated to have elapsed from the period at which issue joined gave to him the Appellant the greater latitude for the Examination of his witnesses if he had any to produce to the Examiner for that purpose and this Respondent Submits to this Honble Court that as a Defendant may go on to examine his witnesses although the Complainant should neglect to do so on his part the length of time from the Joining issue in the present cause which the Appellant has had recourse to as favorable to the relief prayed for in and by his said appeal is in opposition thereto And this Respondent says that the Appellant would endeavour to make it Appear that upon the first motion of this Respondents attorney in court for the passing of publication in this cause publication did pass accordingly Whereas this

Respondent

Respondent Submits to this Honble Court that it stands upon the records of the said Mayors Court as Appears by the extracts taken therefrom hereunto Annexed and hereinbefore refferred to that a very considerable indulgence for the Examination of Witnesses was granted to the Appellant by the said Mayors Court and that he seemed to have been making Objections to the passing of publication and praying the further time of one Week merely for delay that on the twenty Eighth of april upon Publication being prefsed he Did make a prayer for a further time of one Week and the said Mayors Court did comply therewith a positive order that no further time should be given to him yet on the expiration of that period he prayed for and obtained the further indulgence of a Week and on the twelfth of May the said Mayors Court perceiving that their rules were not complied with that the Appellant by his attorneys in Court continued praying a further time of one Week and that the examiner had reported that all the witnesses produced by the parties the parties Complainant and Defendant had been examined and Signed their

Depositions

Depositions they did order that Publication should pass and this Respondent says that it would Appear that the Appellant by proceeding the Examiners report would convey the Idea that he had filed Interrogatories to more than one Witness And that as only one Witness had been examined there was one or more to be examined but this Respondent says he is advised that whenever Witnesses do not Appear for examination the Examiner reports Accordingly and that therefore at the time the said report was received in Court the Appellant had not even filed interrogatries to any other Witnesses than those to which a Witness had been examined and signed his deposition and this respondent says that those Causes and not that assigned by the appellant Operated with the said Mayors Court when they were pleased to order publication to pass in this Cause

For all which reasons and such others as may be offered at the Hearing this Respondent Most humbly prays that the said

Order

order of the said Mayors Court
of the twelfth day of May —
aforesaid may be affirmed and
that the Appellants Petition may
be dismissed with Costs —

/Signed/ James Stuart Hall
Solicitor for Respondt.

Extract

Extract from the Minutes of a Court Held at the Town Hall
on Tuesday the 31st. day of March Anno Domini 1795. —

Present

Benjamin Roebuk Esqr. Mayor,
James Call and Joseph Greenhill
Aldermen —

Mr. Alderman Ross takes his Seat upon the Bench

John Bannerman.

~~Vers~~

Charles Smart and others

Further day is given for the Parties till the 7th. april
next to Examine Witnesses.

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

A True Extract
/Signed/ G. E. Affleck
Dy Regr.

Extract from the Minutes of a Court Held at the Town Hall
on Tuesday the 7th. day of April Anno Domini 1795. —

Present

Benjamin Roebuck Esqre. Mayor —

William

William Webb Andrew Ross and
Alexander Cockburn
Aldermen—

John Bannerman
vers
Charles Smart and others.—

Further day is given the parties till the 21st Inst.
to Examine Witnesses in default of which publication will
pass in this cause.—

A True Extract
/Signed/ J. E. Atkins
Dy Regr

Extract from the Minutes of a Court Held at the Town Hall on
Tuesday the 21st day of April Anno Domini 1795—

Present
Benjamin Roebuck Esqre Mayor
James Call Andrew Ross and
James Daly Aldermen.

John Bannerman
vers
Charles Smart and others

Further day is given the parties till the 28th
Instant

28th Instant to Examine Witnesses in default of which
Publication will pass in this cause

A True Extract
/Signed/ J. E. Atkins
Dy Regr

Extracts from the Minutes of a Court Held at the Town Hall
on Tuesday the 28th day of April Anno Domini 1795—

Present
Benjamin Roebuck Esqre Mayor.
Wm Webb, Andrew Ross and
Joseph Grenhill Aldermen.—

John Bannerman
vers
Charles Smart and others

Further day is given the parties till the 5th May
next to Examine Witnesses.

A True Extract
/Signed/ J. E. Atkins
Dy Regr

Extract

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 5th day of May Anno Domini 1795.—

Present

Benjamin Roebuck Esqre Mayor.

Andrew Ross and Alexr Cockburn Aldermen.—

John Bannerman

~~vers~~

Charles Smart and others

Further day is given the parties till the 12th Instant to Examine witnesses in default of which publication will pass in this Cause.—

A True Extract

(Signed) G. E. Askin Dy Regr

A true Copy

(Signed)

James Stuart Hall

Solicitor for Respondt.

Court

Court of Appeals } Saturday the 23d day of January

Madraspatnam } Anno Domini 1796.—

Between Charles Smart a Mayor in the Military Service of the united Company of Merchants of England trading to the East Indies under their Presidency of Fort St George Appellant And John Bannerman a Captain in the said Service 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 together with the Order of the Honble the Mayors Court on Tuesday the 12th day of May Anno Domini 1795.— 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 oth Accordingly Order and Decree that the said Order of the Honble the Mayors Court do stand

Affirmed

affirmed and that the appellants Petition be hence dismissed with Costs.—

Hur

/Signed/ JWebbe clk

To

To the Right Honourable Robert Hobart commonly called Lord Hobart President in Council For St. George

In the Honourable the Court of Appeals.....

Between William Michell late of Nagore by his attorney Henry Richly Michell of Fort Saint George by his attornies Thomas Stephens and William Cockell of the same place Merchants Complainant & Stephen Towns late of Madras a Captain in the Service of the Honourable united Company of Merchants of England trading to the East Indies Defendant.—

The Humble Petition and appeal of the said complainant by his attornies above named—

Filed in my Office the 1st June 1795. JWebbe clk

That your Petitioner did on or about the thirty first day of December which was in the year of our Lord one thousand seven hundred and ninety four file & Exhibit his Bill of complaint in the Honourable the Mayors Court of Madraspatnam against the above named Defendant for the recovery of the sum of Four thousand

thousand six hundred and twenty seven Pagodas, thirty five fanams and thirty Cash current money of Madras, being a balance of Cash due to your Petitioner upon a certain Promissory note stated in the Account Current which is to the said Bill annexed to which Bill of Complaint the said Defendant did on the tenth day of march last past, file his Plea and Answer and for Plea thereunto said that the said Bill of Complaint was brought in the name of the above named Thomas Steptens and William Cockell as Attornies to Henry Pichly Michell the attorney of the said Complainant William Michell without alledging that they were the substituted attornies of the said Henry Pichly Michell or that this Power of Attorney contained a power of Substitution. Which the said Defendant said he was advised ought to have been shewn and the said Defendant did therefore Plead the want of certainty in the said Bill of Complaint in abatement thereof. and your Petitioner further sheweth that the said Defendant by his Answer to the said Bill of Complaint did admit that he might have executed the

the promissory note upon which the said Suit was brought But denied that he was by reason thereof indebted in the Sum charged by your Petitioner For that when the said defendant so executed the said Promissory note he was as he alledged acting in the Capacity of Agent for the interest of John Knworthy Esquire resident at Cuddalore, William Webb, and Charles Smart Esquires and one Venkiah Braminy of Madras inhabitant and in that relation had undertaken to pay the said sum assigned and promised in the said note. and the said defendant in his said Answer further said that your Petitioner knew that he the said defendant was acting at the time of the purchase of the Paddy or Grain alluded to in the said note in the mere Capacity of an Agent to the said John Knworthy William Webb and Charles Smart and Venkiah Braminy and that your Petitioner did Bargain for and sell the said Paddy or Grain to him the defendant on their Credit. and that the same was consigned and delivered to the said John Knworthy William Webb Charles Smart and Venkiah Braminy with the knowledge of your Petitioner and that the

Proceed

monies arising from the resale thereof were Received by
the said John Kinworthy William Webb Charles Smart
and venkiah Bramniy. and that the said defendant
further said that your Petitioner as Considering the purchase
of the said Paddy or Grain to have been on Account of the
said John Kinworthy William Webb Charles Smart and
and Venkiah Bramniy did after the Expiration of the
time whereon the said Promissory note become due
Apply to two of the said principles namely to John
Kinworthy and william Webb to pay the same and
that such Application if it did not act as a desclaution
of every claim on the defendant on Account of the said
note was an allowance on the part of your Petitioner of
the said John Kinworthy William Webb Charlesmart
and venkiah Bramniy being principals. and your
Petition further Sheweth unto this Honourable Court
that he did on or about the fourteenth day of April last
Reply to the said Plea And Answer Wherein your
Petitioner said that the defendant having admitted
that he executed the Promissory note upon which
the suit was brought the same was a full admission
of

of the debt and of the action being well brought and that
therefore the defendants Plea in abatement was altogether
futile and your Petitioner did further state that acting
for Mr. Thomas Cochburn late Commissary General
of Grain and Provesions he received directions to
dispose of a quantity of Paddy then under his charge
which circumstance coming to the knowledge of the
defendant he Applied to your Petitioner and proposed
to purchase the whole being ninety three Garce and
one quarter at the rate of forty two Pagodas, and
Seventeen fanams, Amounting altogether to the sum
of three thousand Nine hundred, and fifty one Pagodas,
thirty two fanams. and Sixty Cash and Which said Sum
the said defendant Agreed to remit or pay to the said
Thomas Cochburn in ten days after the Bargain was
concluded. That confiding in the Assurance of the said
defendant your Petitioner delivered the said rice to
the said defendant And for payment thereof
Received his said promissory note And your Petitioner
denied that the said Defendant did by the said
Note undertake to pay the said Sum of three
thousand

three thousand nine hundred and fifty one Pagodas thirty two fanams and Sixty Cash on Account of the said John Kneworthy William Webb Charles Smart and Venkiah Braminy or that your Petitioner did conclude the bargain with the said defendant in that Capacity as in his said Plea and Answer was untruly alleaged For that the said Promissory note was in the words and Figures following to wit Received off William Michell Esqr. "Ninety three and one quarter Garce of Paddy at "12 Star Pagodas 17 ℔ Garce Amounting to three thousand "nine hundred and fifty one Pagodas thirty two fanams "and 60 Cash which I promise to remit to Thomas Cockburn "Esqr. at Madras on Account of Wm. Michell Esqr. in "ten days from the date hereof Nagore 23d. September 1793 "Star Pagodas 3951.32..60 S. Towns: and your Petitioner further said that the money was not remitted to the said Thomas Cockburn According to the tenor of the said Obligation nor paid although numerous Applications were on that behalf made. In consequence whereof the said Thomas Cockburn called upon your Petitioners attornies the said Henry Chichley Michell, Thomas Stephens

and

and William Cockell, to give Security for the payment thereof Which the said Henry Chichley Michell Thomas Stephens and William Cockell Accordingly did. and your Petitioner further Stated that in the hope of being relieved from personal responsibility he applied to the Government of Fortsaint Gorge who determined that he should be held responsible for the Grain so sold, and delivered to the said Defendant. and Which your Petitioner said would more fully Appear by a letter written by the said Thomas Cockburn and Addressed to the said Messieurs Michell Stephens. and Cockell copy whereof is to your Petitioner's said Replication Annexed, and is in the words and figures "following to wit Messrs. Michell Stephens and Cockell, "Gentlemen Government having determined that Mr. "Michell shall be held responsible for the sum of "Pagodas 3951.32.60. I am directed to call upon you for "payment of the Amount I am Gentlemen your most "Obedient Servant Thomas Cockburn Acting Cy Gd Pr. "Madras 20th January 1794. And your Petitioner "further Sheweth that after your Petitioner had "so replied to the said Defendants Plea and answer

The

the said Defendant by his attorney at Law on the
fourteenth day of April last past prayed the said
Mayors Court that your Petitioners attorney might
deliver in by the following Court day the Original
letter or Power of attorney granted to Henry Chichley
Michell as also the Original letter or Power of attorney
granted to Henry Chichely Michell as also the orygional
letter or Power of attorney from Henry Chichley Michell
to the said Thomas Stephens and William Cockell
Substituting and Empowering them to act in the
premises on behalf of the said William Michell To
Which prayer your Petitioners attorney then Objected
For as much as the defendant if it was necessary to have
been done ought to have moved for the production
of the Powers before he put in his Answer And your
Petitioner further sheweth that although his said
Objection we founded on the practise of the said Mayors
Court established in a recent case by a full Bench of
aldermen When the production of Powers had been
denied under circumstances similar to the present
yet the said mayors Court regardless of their

former

former decision directed that the defendants prayer
should be complied with as by the said order Copy
whereof is hereunto Annexed and which your Petitioners
pray may be admitted as part of this his Petition and
Appeal relation being thereunto had will more fully
Appear And your Petitioner further Sheweth that in
Compliance with the said order the letters of attorney
so prayed for together with the written instructions
of the said William Michell upon his departure
from this Country great part of which is in his own
hand writing and directs the institution of the present
Suit was on the twenty first day of April aforesaid
delivered into the said Mayors Court and your Petitioner
Sheweth that upon the production of the said Powers
the attornies for the defendant prayed that as the
letters of attorney delivered into Court conveyed no
authority to prosecute the present Suit that the Bill
of Complaint might be dismissed with Costs and
the said defendant further objected to the paper
writing purporting to be the written instructions
of your Petitioner alledging that the Power of

attorney

attorney constituted the authority upon which the suit was brought and upon which the defendant was arrested These Powers were therefore (as the defendants alledged) the only matter upon which the Court was to judge and determine and that they were either good in themselves, or defective. If good they stood of course and if defective It was not altter or any other subsequent communication between the parties constituent and attornies that could supply the defect and your Petitioner sheweth that the consideration of the suffeciency of the said Powers being ordered to come on before a full Court the same was Accordingly heard on tuesday the nineteenth day of may now last past when the said Mayors Court having taking the same into consideration was of Opinion that the Powers were insuffecient and did therefore order that your Petitioner said Bill of Complaint should be dismissed with costs, three of the Judges of the said Mayors Court out of six dissenting to the resolution, and order of the said Court being of Opinion that the powers which had been produced were suffecient to maintain the Action, as by the said Decretal order copy whereof is hereunto annexed for the inspection of this

this — Hon'ble Court relation being thereunto had will morefully Appear From which said decretal order your Petitioner doth Appeal to this — Hon'ble Court of Appeals conceiving the same to be erroneous and that your Petitioner is much Aggrieved thereby for the following Amongst other reasons —

First — For that notwithstanding it is usually the Practise of the said Mayors Court for suitors residing out of the jurisdiction of the said Court, to institute their suits therein by constituted Attornies yet such Practise being contrary to the uniform usage and course of the Courts in westminster Hall, and of all other Courts of British Judicature, and it answering no good or salutary purpose, and it not being necessary upon legal principles, for suitors to prosecute their claims by constituted Attornies, such the Practise of the said Mayors Court, should as your Petitioner humbly submits to this Honourable Court, be wholly disregarded, as so far from promoting any beneficial end, it tends to clog the course of Justice. In so much, that was such practise to prevail, no Creditor

residing

residing out of the Jurisdiction of the said Mayors Court, having Claims upon a debtor Subject to the Jurisdiction of the said Court, could institute a Suit therein, unless such Creditor had previously procured some person resident here to act as his Agent, or Substitute, for which purpose the Law knows of no compulsory Process, and should the Creditor fail in procuring such Substitute which is a very possible case, he would in such event, According to the doctrine of the Mayors Court, be left without remedy for the Recovery of his debts, and which would Amount to a denial of Justice, and furthermore for that any Person residing out of Great Britain being either a British Subject, or alien Friend having a demand upon any one residing within Great Britain, has a right directly in his own Name, by his attorney at Law to institute his Suit, in any of the Courts in Westminster Hall, having Jurisdiction of the Subject matter, and it is never required or expected that such Suitor should have such a representative, as a constituted Attorney before the Court, and it is reasonable to presume that if the Law required such form, a considered such representative as

as essential to give efficacy to the Suit. The Judges who preside in Westminster Hall would not dispence Therewith, And who so far from countenancing any Attempt that might in any wise tend to retard, or defeat the Administration of Justice, would not until very lately so much as compel Suitors residing out of the Kingdom, and prosecuting Suits in Westminster Hall, to give Security for the Costs which the defendant might incur, in the event of the Plaintiff being non Suit But the Courts have of late in some degree relaxed from this rule, Because they found that English Subjects who Sued in most of the foreign Countries in Europe were under the necessity of giving Security for Costs, and that the Process of our Courts would not reach persons residing abroad, in case an Execution issued for the Costs.

Secondly Because the Defendant having Answered your Petitioners said Bill of Complaint, and thereby admitted the Execution of the aforesaid Promissory Note and your Petitioner having replied thereto, the merits of the Suit were fully put in issue, and must have rested soley upon the said Promisory Note, Whereby the said

said Defendant stands Prima fecia, indebted to your Petitioner and not upon the said Powers of Attorney Which partakes not of the essence of the suit and can at most be considered, but as Surplusage; whereupon your Petitioner Submits to this Honourable Court that the mode Adopted by the said Mayors Court whereby the said Court was pleased to dismess your Petitioners said Bill of Complaint without paying any regard to the merits of his case, which were and are of Record in the said Court is wholly unwarrantable in Law, or Equity, and has no Precedent to authorize such extraordinary Procedure, and furthermore that the Defendant by having Answered the said Bill of Complaint, and laying by until your Petitioner had replied to the said Answer, did wave his right if any he had, to Oyer of the said Power, and did thereby fully recognize a right in your Petitioner to procute for the recovery of his said demand in manner as he hath done

Thirdly ... Because the letter of instructions from your Petitioner upon his departure from this Country addressed to the said Messrs Michell, Stephens, & Cockell and which have been as aforesaid delivered into the said Mayors Court Conveys full and sufficient authority for the institution of the present Suit / was any other authority than the said defendants Promissory note necessary / the said letter of instructions / so far as relates to the present Suit, being Conceived in the words and figuers following" to wit as deputy to Mr Thomas = Cockburn Commissary General Grain and Procesions, "I resolvd Store Paddy at the place to Captain Stephens Towns "Vizt 93½ Madras Garce, which he assured me was to "Supply a part of Contract of Grain to be delivered to the "Company and told me Mr William Webb would pay the "Amount thereof to Mr Cockburn at Madras a mode "I prefered to receiving the Cash here, the letter from Captain "Towns on the Subject well clearly demonstrate the transaction "the receipt of the Paddy also Accompanies the papers "I request you would immediately enter a prosecution "Against Captain Towns if he makes further delay which "letter of instructions coupled With the said Power of Attorney furnishes a full clear, and indisputable Authority upon Which to have instituted the present Suit if any Authority byond the defendants said Promissary note was requisite or essential.

Fourthly

Fourthly ..... Because that the said Mayors court by having dismissed your Petitioners said Bill of complaint in the stage in which his said cause then was — Without paying any regard whatever to the merits or taking them into consideration, has departed from all regular procedures and afforded the defendant a mode of getting rid of the present suit, hitherto unprecedented by any legal adjudication and totally subversive of the right, and remedy which your Petitioner as a Suitor, seeing in a court of Justice for recovery of his just debt, is entitled unto, and which decision of the said mayors court was it to stand, would not only be ruinous to the concerns of your Petitioner individually, But to many other Persons who have been led to consider powers such as are now objected to Sufficiently formal, and and who not adverting to the changes of Terms — occasioned in Agency Houses by deaths and removals have left the country impressed with the belief that their Powers would continue to have all their operation, such persons must be left without any one to represent them in India or to present their Properties from being carried off by Insolvent or unprincipled debtors as would be the case of your Petitioner were the principles upon which the present decision is made to prevail —

For All Which reasons and such others as may be adduced at the hearing your Petitioner humbly prays that the said Decretal order of the said — Mayors Court of the nineteenth day of May one thousand seven hundred and ninety five May be Reversed with costs to be paid by the said Defendant and that your Petitioners said Bill of complaint may be retained, and that this Honble court will be pleased to grant your Petitioner such other relief as in their wisdom shall seem meet —

[Signed] George Chalmer
& John White
Solicitors for Appellant

Extract

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 11th day of April Anno Domini 1795.

Present

Benjamin Roebuck Esqr. Mayor

Andrew Ross and William Abbott.

Aldermen,

William Michell by his attorney Henry Chichly Michell by his attorneys Stephens & Cockell

vers

Stephen Towns

Mr. Emanuel Samuel Attorney for the Defendant prays that the Complainants Attorney may deliver into Court by next Court day the Original Letters or Power of Attorney granted by the above named Complainant to Henry Chichley Michell, as also the Original Letters or Power of Attorney from Henry Chichley Michell to Stephens and Cockell Substituting and impowering them the said Stephens and Cockell to Act in the Premises on the behalf of the said Complainant to which Mr. George Chalmer Attorney for the Complainant Objects because the Defendant ought to have moved for the production of the Powers before he put in his Answer in Order that he might at that time have made his Objections thereto Ordered that the Complainant do by next Court day deliver into Court the Letters or Powers of Attorney Prayed for.—

A True Extract

/ Signed / George Taylor Regr.

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 19th Day of May Anno Domini 1795.

Present

Benjamin Roebuck Esqr. Mayor

James Call and Andrew Ross

Aldermen

Messrs. Aldermen Daly Abbott Lochburn and Grimhill take their Seats upon the Bench

William Michell by his Atty Henry Chichley Michell by his Attorneys William Cockell and Thomas Stephens

vers

Stephen Towns

Extract

Extract from the Minutes of Court of the 21st April Last Read Ordered that the Paper purporting to be a letter of Instructions be received Power of Attorney Read

The Court having taken the same into consideration are of Opinion that the Powers of Attorney delivered in by the Complainants are insufficient. It is therefore Ordered that the Complainants Bill of Complaint do stand dismissed with Costs to be paid by Cockell and Stephens.—

Messrs. Alderman Ross Daly and Cockburn Dessent to the Resolution of the Court being of opinion that the Powers which have been produced are sufficient to maintain the action.—

A True Extract

/Signed/ George Taylor Regr.

To

To the Right Honorable Robert Hobart commonly called Lord Hobart President in Council Fort Saint George

In the Honorable the Court of Appeals

Between William Michell late of Nagore, by his attorney Henry Chichly Michell of Fort Saint George, by his attornies Thomas Stephens and William Cockell, of the same place Merchants Complainant and Stephen Towns, late of Madras, a Captain in the Service of the Honorable united Company of Merchants of England trading to the East Indies, Defendant—

Filed in my office the 22d June 1795—
J. Webbe Clk

The Answer of the abovenamed Defendant to the Petition and Appeal of the abovenamed Complainant by his said alledged attornies Thomas Stephens and William Cockell—

This Respondent doth admit that the said Petitioner

Petitioner on or about the thirty first day of December
now last past might have filed and Exhibited his Bill
of Complaint in the honorable the Mayors Court of
Madraspatnam Against this Respondent, and for the
Recovery of the Sum mentioned in his said Petition,
and on Account of a certain Promissary note; and
this Respondent doth admit that to the said Bill
so filed and Exhibited by the said Petitioner this
Respondent did on the day and date mentioned in the
said Petition file his Plea and Answer and did Plead
and Set forth therein the said matters and things
in substance as recited in the said Petition, and this
Respondent doth also admit that on or about the
fourteenth day of April now last past the said Petitioner
did file his Replication unto this Respondents said Plea
and Answer, and did reply therein in substance and
in effect as stated in his said Petition, and this
Respondent doth further admit that on the said
fourteenth day of April he did by his attorney at
Law pray the said mayors Court that the said Petitioners
attorney

attorney might deliver into the said Court at or previous
to the Court day next ensuing the said fourteenth day
of April the Original letter or power of Attorney granted
to Henry Michell as also the Original letter or Power
of Attorney from Henry Chichley Michell to the said
Thomas Stephens and William Cockell substituting
and empowering them to act in the Premisses on the
behalf of the said William Michell, and this
Respondent also admits that the Attorney of the said
Petitioner did Object to the said prayer so prefered to the said
Mayors Court on the behalf of this Respondent desiring
oyer of the said letters of Attorney and that the Attorney
of the said Petitioner did urge in opposition thereto
that this Respondents Attorney ought to have moved
for the production of the said letters or Powers previous
to his having filed his said Plea and Answer if he
had intended any benefit to himself from oyer
of the same And this Respondent doth admit
that the said mayors Court did direct that the
prayer of this Respondents Attorney should be
complied with notwithstanding the Objection
urged

urged by the Petitioners said Attorney. But this
Respondent doth not admit, for he is advised to the
Contrary, that the said Objection Stated by the Petitioners
said Attorney was founded on the Practice of the said
Mayors Court, and although the said Petitioner hath
mentioned in his said Petition that in a recent Case
the Productions of Powers had been denied as the Petitioner
hath alleged, under Similar Circumstances, this
Respondent saith that he is by no means informed thereof
but if such Case did exist this Respondent is advised
that the same could not in any wise establish or
Amount to what is usually termed Practise as referring
to Courts of Judicature in General, or preclude the said
Mayors Court from acting in a new Case on a principal
proper and peculiar to the Case itself, and this Respondent
saith that there is nothing produced or Shewn in the
said Petition to Convince this honorable Court that the
said Mayors Court in Compliance with the Prayer of
this Respondents said Attorney Concerning the
Production of the said Letters of Attorney have Con-
regardless of any former Decision or have departed from

the Practise obtaining therein, Save and except the bare
and unsupported Assertion of the said Petitioner. But this
Respondent admits that the Petitioners said Attorney did
deliver into the said Mayors Court on or about the twenty
first day of the said month of April Certain Letters of Attorney
from the said William Michell and the said Henry
Chickley Michell together with a Certain paper writing
purporting to be the Instructions of the said William Mich
-ell on his Departure from this Country, but this
Respondent doth not admit if the said Instruction
should be Considered as directory of the Institution of the
Suit brought against this Respondent by the said
Complainant, by his said alleged Attornies, that the
said Instructions Convey any Power to the said Thomas
Hopkins and William Cockell to institute or maintain
Suit on the behalf of the said William Michell
whether Separately Considered, or Coupled or Connected
with either or both of the said Letters of Attorney as aforesaid:
and this Respondent doth therefore humbly Contend that
the Attornies of this Respondent were altogether warranted
and authorised, after the Production of the said Powers or

Letters

the Operation thereof. For the said Petitioner hath stated, that no Creditor residing out of the Jurisdiction of the said o" mayors Court, having Claims and debts Subject thereto, could institute a Suit in the said Court, unless such Creditor had Previously procured some person resident here, to act as his Agent: and Should he fail in procuring such Agent, or Substitute, he would be left without remedy for the Recovery of his debt: so that the only Grivance stated by the said Petitioner in the Case which he has fancied is, that he must find an Agent or Substitute by the o" restrictive usage of the said mayors Court, before he Can Commence his Action or before he can prosecute it to any Issue. But in the more mild Operation of the Courts in westminster Hall, if this Respondent has rightly understood the said Petitioner the Creditor out of the o" Jurisdiction who would prosecute his debtor within o" it may pursue him in his own name, and the o" British Subject expatriated, and the Alien Friend is entitled to all the Conveniences of the Practice of o" westminster Hall, according to the Petitioners Data of prosecuting his debtor in a direct and immediate o"

Course that is by first making himself Acquainted with an Attorney practicing in the said Courts, and there o" procuring two Sureties to Answer the Costs of Suit, but this Respondent Saith, that he is advised, the practice of the said Courts of Westminster Hall and the said mayors Court, in respect to Suits brought on the Authority of Others, are essentially and virtually the same o" notwithstanding the difference insisted on by the said Petitioner, and the Preference demanded in favor of the former Courts. For this Respondent hath been o" informed, that in the Courts in Westminster Hall, when the Creditor Sues by the Attorney at Law, Without the Intervention of a third Person to instruct and o" entertain him, (as in the Case of a Constituted Attorney) the said Attorney at Law must produce his warrant of Attorney at the time of filing his Declaration against the Defendant, and if any difficulty Should Appear therein the said Courts will not allow him to proceed: And if the said Attorney at Law Should be o" immediately entertained, either by a Constituted Attorney of the said Creditor, or an Attorney not resident in London the

said

First ..... Because a party prosecuting in auter Droit must always Shew a power by which he is authorised to act, not only to evince that he has a right to pursue the debt of another but that he pursues it in the way in which he is Authorised, so as to discharge himself and this — Respondent humbly Contends that the said Powers of attorney from the said william michell and the said Henry Chichley Michell, produced by the said Thomas Stephens and william Cockell, the alleged Attornies of the said william michell, through the medium of their Court attorney in the said mayors Court are not in themselves, or in conjunction with the said Instruction of the said William Michell, sufficiently Authoratative to warrant the said Thomas Stephens and william Cockell to hold Suit against this Respondent and the said Mayors Court being of Opinion that the said powers are insufficient in disinssing the said Bill with Costs, has acted in direct Conformity to Law. and although the said Petitioner hath Cited in his behalf, the Course and usage of the Courts of Westminster Hall, yet as he has attempted to Shew the Custom and Practice of the said mayors Court to be Counter to the usage of the said Courts. no — Argument this Respondent humbly Contends, Could be deduced from the discordance of the Practise in the said Courts in favor of the said Petitioner: for the said mayors Court hath as much Right to make Rules of Practise for itself, as any of the said Courts of Westminster Hall, so that the said rules be not in Opposition to the Existing Law and this Respondent is advised, that so far from any argument ab inconvenienti being to be concluded from the usage — which has obtained in the said mayors Court, of Suitors — being Suffered to Sue by their Constituted Attornies that the said usage in the said Mayors Court is in great — furtherance instead of being a Clog in the Course of Justice and the Case of extreme hardship as Submitted to this — honorable Court by the said Petitioner in his said first Cause or Reason as resulting from the Practise of the said mayors Court, this Respondent cannot but consider as a much more Convenient Situation, than the said — Petitioner would frame for himself, from what he has digested of the Customs of the Law Courts of Great Britain, and from the deductions he has drawn from the

letters of attorney on the part of the said Petitioner to pray that the Bill of the said Petitioner might be dismissed with costs and for the Reasons assigned by the said Attorneis in the said prayer as further stated by the said Petitioner in his said Petition: and this Respondent doth admit that on Tuesday the nineteenth day of may, now last past, the said Powers and all matters in Relation thereto, were considered by the said mayors Court, and this Respondent doth admit that the said mayors Court having taken the same into consideration was of Opinion that the said Powers were insufficient: and did therefore order that the Petitioners said Bill should be dismissed with costs: but this Respondent doth deny that three of the Judges of the said mayors Court, out of six, did dissent to the Resolution and order of the said Court or that the same doth Appear by the Copy of the Decretal order annexed to the Petitioners said Petition, as stated by the said Petitioner, and this Respondent saith that it doth appear by the Copy of the said order of the said Court, that four of the Judges of the same did hold Opinion that the Powers produced on the part of the Petitioner were insufficient and that three did pronounce in favor of their sufficiency but this Respondent humbly contends that it is sufficient for this Respondent that the said Powers were holden to be incomplete by the Majority of the Judges of the said Court and that the Circumstance of three of the Judges of the said Court having dissented from the Opinion of the said Majority can have no weight or influence on this Honorable Court which is to form and pronounce a Judgment in the premisses of themselves, and from the matters and things before them, and not on a reference to the Opinions of the Judges or to any particular Judges of the said mayors Court, and this Respondent humbly contends that the said Decree of the said mayors Court so far from being Erroneous in its principle or injurious in its Effect towards the said Petitioner, as charged in his said Petition, that the same is right and just Consonant to the rule of Law, and Agreable to Judicial practice for the following Amongst other Reasons.

First

urged by the Petitioners said Attorney. But this
Respondent doth not admit, for he is advised to the
Contrary, that the said Objection Stated by the Petitioners
said Attorney was founded on the Practice of the said
Mayors Court. and although the said Petitioner hath
mentioned in his said Petition that in a recent Case
the Productions of powers had been denied as the Petitioner
hath alleged, under Similar Circumstances, this
Respondent saith that he is by no means informed thereof;
but if such Case did exist this Respondent is advised
that the same could not in any wise establish or
Amount to what is usually termed Practise as referring
to Courts of Judicature in General, or preclude the said
Mayors Court from acting in a new Case on a principal
proper and peculiar to the Case itself. and this Respondent
saith that there is nothing produced or shewn in the
said Petition to convince this honorable Court that the
said Mayors Court in Compliance with the Prayer of
this Respondents said Attorney Concerning the
Production of the said letters of Attorney have ben
regardless of any former Decision or have departed from
the

the Practise obtaining therein. Save and except the bare
and unsupported Assertion of the said Petitioner. But this
Respondent admits that the Petitioners said Attorney did
deliver into the said mayors Court on or about the twenty
first day of the said month of April Certain Letters of Attorney
from the said William Mickell and the said Henry
Chichley Mickell together with a Certain paper writing
purporting to be the Instructions of the said William Mick
-ell on his Departure from this Country, but this
Respondent doth not admit if the said Instruction
should be Considered as directory of the Institution of the
Suit brought Against this Respondent by the said
Complainant, by his said alleged Attornies, that the
said Instructions Convey any Power to the said Thomas
Hopkins and William Cockell to institute or maintain
Suit on the behalf of the said William Mickell
whether Separately Considered, or Coupled or Connected
with either or both of the said letters of Attorney as aforesaid;
and this Respondent doth therefore humbly Contend that
the Attornies of this Respondent were altogether warranted
and authorised, after the Production of the said Powers or

letters

premisses in the behalf of the said Petitioner, and by reason thereof the said Thomas Hepkins and William Cockell in prosecuting on the behalf of the said Petitioner had shewn no right or title to call this Respondent in question, in the said mayors Court. For the said Thomas Hepkins and William Cockell have not nor do they pretend any Interest in the said note other than as attornies of the said William michell on whose behalf they filed the said Bill of Complaint: and therefore notwithstanding what is alledged to the Countrary by the said Petitioner in the said Second Reason, so far from the power of attorney not partaking in the Essame of the suit, that this Respondant is advised, that it forms the only and Sole Grounds which the said Thomas Hepkins and William Cockell had of bringing and maintaining action Against This Respondent, for they do not Sue as Indorsees or joint Payees nor appear, from the Bill or the Instrument it self, to have any Interest in the said Promissary note and if the said power should therefore be regarded as Surplusage, as contended by the said Petitioner, it is evident

evident and clear that the said Thomas Hepkins and William Cockell have no more right to prosecute thereon, than any Strangers who might have found the same unindorsed. and this Respondent humbly contends, that the said mayors Court, in dismissing the Bill of the said Petitioner did pay every regard, which was necessary to the merits of the base for the said Power of Attorny contained all the merits of the base as appliable to the said Thomas Hepkins and William Cockell. and the said mayors Court, in cluding on the said power, and deeming it insufficient, did virtually pronounce the whole Proceedings had on the said Suit null and void, the same depending wholly on the said power and this Respondent Saith that the mere answering to the said Bill did not recognise any right in the said Petitioner, by his said alleged Attornis, to prosecute for the Recovery of the said Demand; but on the Contrary, this Respondents said Plea, Accompanying the said Answer, is in direct Contradiction of any recognition on the part of the said Respondent of the Petitioners right of action Against this Respondent,

by

by the said Thomas Stephens and William Cockell, though calling and stiling themselves the Attornies of the said Petitioner.—

Thirdly.— Because the powers of attorney, produced on the part of the said Petitioner, by his said Attornies the said Thomas Stephens and William Cockell, nor the Instructions purporting to be addressed to the said Messieurs Michell Stephens and Cockell, do either seperately, or conjointly convey any power or authority to the said Thomas Stephens and William Cockell to prosecute the said suit against this Respondent in the said mayors court, on the behalf of the said William Michell for the said Original power of attorney is addressed to Messieurs Michell Arnold and Bowden, one of whom was dead, and the other in England, at the time when the said Henry Chichly Michell constituted the said Thomas Stephens and William Cockell attornies to act on his behalf, and the said power contains not any authority nor purports to impart any authority to the said Thomas Stephens and William Cockell to act in the

the part of any other person or persons than of the said Henry Chichly Michell Muchless does it impart or purport to impart to the said Thomas Stephens and William Cockell any specific authority to act in the behalf of the said William Michell and this Respondent saith, that he is advised, that if the said power of attorney had contained any words or signs, common to an authority, from the said Henry Chichley Michell to the said Thomas Stephens and William Cockell, purporting to authorise the said Thomas Stephens and William Cockell to act as attornies for the said William Michell yet by reason of the death of one of the parties named in the said power of attorney, it being a joint power to them all the said Original power determined by that event and that any act done by the said surviving parties, in contemplation of the said Power, would be null and void. And this Respondent saith that the said Instruction can add nothing to the said power of attorney, the same having determined long before the said Instructions were written, nor can the same instructions be regarded

regarded in the light of a new power Created Wanting and defficient as they are, in the essential forms of such an Instrument or if they were to be regarded as a power, that the said power must be considered as a joint power to Messrs Michell Stephens and Cockell and no Act but what is done by them all on the behalf of the Person in whose Stead they are placed can be held and deemed good and sufficient in law or equity. and the said Thomas Stephens and William Cockell have prosecuted the said Suit in the name of William Michell Without the said Henry Chubby michell named also in the said Instructions—

Fourthly Because the said mayors court having determined and decided on the Insuffiency of the powers produced by the said Thomas Stephens and William Cockell, have acted Consistantly With Justice in dismissing the said Bill for the said Bill appearing to the said Court as having been filed without authority. all Proceedings had thereon must of consequence have been as they have been deemed and holden vitiate and void as it would have been

been highly unjust and inequitable, and would have seemed Contrary to the practice of all Courts of Law and equity, if the said mayors Court had acted otherwise: as it would have been to have Sanctioned and Continued Wrong if the same should have been Successfully practiced in the begining, or from accident or negligence had been previously over looked, which could not be. besides this Respondent had put the powers of attorney in Question in his said Plea, and it would have been necessary and incumbent on the said alledged Attornies of the said William Michell, to have proved the Validity of the said powers, before they could have been intitled to a Decree Against this Respondent— and this Respondent therefore humbly Contends that the said mayors Court Could not have allowed the said Suit to have proceeded, When they were Convinced of the want of the authority of the said Complainant to prosecute the same to a final Issue. and this Respondent saith that the said Last Reason assigned by the said Petitioner, by his said Attornies for—

appealing

Appealing from the said Decretal Order of the said mayors Court, is in Confirmation of the Justice of the said mayors Court, in passing the said Order, in as much as it tacitly Confesses the Deficiency of the power, render which the said Attornies had prosecuted the said Suit, against this Respondent, but attempts to defered or to Obviat[illegible] de[illegible]y, in shewing an Inconveniency which mi[illegible] [illegible]owers [illegible] Similar nature, with th[illegible] [illegible]d in [illegible] said Suit, being quistioned and [illegible] But this Respondent humbly Contends, that the Inconveniences anticipated by the said Petitioner, would be nothing in Comparison of the mischief which might ensue, if a Contrary practice should be admitted, from persons leaving India, this they might find themselves either by incident, or misfortune or by Conveniance, represented by persons, in whom they never Confided, and who, last of all, they would have chosen or wished as their Representatives, they might find their property and fortunes squandered away and their Estates and persons held Responsible from

from acts which they neither Sanctioned recommended, or thought of, but the Law hath Ordained that no one shall act in the stead of another, but by his Express Consent Expressly Clearly and Solemnly given, and hath wisely prevented the Confusion, litigation, and evils which would result from persons obtreeding themselves unauthorised into the management of the affairs of Absentees.

For which Reasons and such others as may be offered at the hearing, this Respondent prays, that the said Decretal Order of the said mayors Court of the 19th Day of May now last past may be affirmed, and that the Petitioners said Petition may be Dismissed with Costs.

(Signed) James Stuart Hall
& Emanuel Samuel
Solicitors for Respondent

Court

Court of Appeals } Saturday the 23d. day of January
Madraspatnam } Anno Domini 1796.

Between William Michell late of Nagore by his attorney Henery Chichley Michell late of Fort St. George by his attornies Thomas Stephens and William Cockell of the same place Merchants Appellants and Stephen Towns late a Captain in the Military Service of the 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 Honble the Mayors Court together with the Order of the said Court given in this Cause on Tuesday the 14th. day of May Anno Domini 1795 upon due Consideration had of the matters therein severally Contained and of the Pleadings and arguments used by the Attornies on both sides This Court doth think fit to Order and Decree and doth Accordingly Order and Decree that the said Order of the Honble the Mayors Court do stand Affirmed and that the Appellants' Petition be hence dismissed with Costs.

Hear
(Signed) J. Webbe Clk

To

To the Right Honble Lord Hobart
President and Governor in Council &c
Fort St George

In the Honble
the Court of Appeals

Between Paulavatoo Minah
Chitty Complainant and Vencatachella
Chitty And Kistnama Chitty
Defendants

The humble Petition and Appeal of
the above named Defendants.

Shew

That the Complainant above named did
on or about the twelfth day of October and year of Christ
One thousand Seven hundred and Ninety three Exhibit
And file his Bill of Complaint in the mayors Court at
Madraspatnam Against your Petitioners for the recovery
of the Sum of Five thousand One hundred and Sixty three
Star Pagodas twenty five fanams And twenty Seven
Cash pretending the same had Arisen and grown due
upon a certain mortgage Bond or Obligation said
to have been Executed by your Petitioners

Filed in my Office
the 18th June 1795
J Webbe Clk

And

And your Petitioners shew that having
been served. With process to appear to And Answer
the Complainants said Bill of Complaint your
Petitioners did Accordingly Appear thereto And on or
about the fourteenth day of April in the said year of
Christ One thousand Seven hundred And ninety Four
did Exhibit and file their Answer and therein and
thereby did Amongst other things setforth that in the
year One thousand Seven hundred and Eighty One
your Petitioners did take and receive from the
Complainant the Sum of One thousand two hundred
Pagodas upon the mortgage of the Garden And premises
in the Complainants said Bill setforth And grant
unto the Complainant a Bond on Account thereof
and that at the Expiration of four months the
Complainant did inform your Petitioners that he would
advance them the further Sum of three hundred and two
Pagodas provided they would add the same to the
former Sum of one thousand two hundred Pagodas
With the Interest due thereon and grant a Bond for
the whole Amounting to the Sum of One thousand

five

five hundred and fifty Pagodas your Petitioners Agreeing thereto did receive the said Sum of three hundred and two Pagodas from the Complainant and adding the same to the former Sum of One thousand two hundred Pagodas with the Interest thereon did grant a Bond for the whole Amounting to the said Sum of One thousand five hundred and fifty Pagodas that shortly afterwards the Complainant did come to and inform your Petitioners that if they would permit him to draw a fresh Bond at the End of Every six months and add the Interest that might become due thereon he would let your Petitioners have any Number of years for the repayment of the money that your Petitioners did object to the proposition of the Complainant and did inform him that he Evidently meant to Exact Compound Interest from your Petitioners and that if he would go with them to their Neighbour they would take up the money them due to him and discharge his debt That the Complainant did thereupon assure your Petitioners that he meant not to Exact any Compound Interest from

from them that it was merely to avoid his Keeping an Interest Account, and that if your Petitioners should accede to his proposition he would at the Day of payment of his Debt by your Petitioners cut off all Compound Interest which should appear to have been charged by him on the Simple Interest of his said Debt and that relying upon the good faith and assurance of the Complainant as aforesaid your Petitioners did agree to grant him the Bond he required as aforesaid, and which your Petitioners did say the Complainant did thereafter induce your Petitioners five times to Renew during the Space of two years and an half, and that at the End of the said two years and an half which was on or about the month of August one thousand Seven hundred and Eighty four, Again Entertaining doubts of the Complainants abiding by his promise as abovementioned your Petitioner did refuse to grant any other Bond and the Complainant did not importune your Petitioners until the year of Christ One thousand Seven hundred and

Ninety

Ninety one when the Complainant making an Account
Current, and charging your Petitioners with Interest
upon Interest for Seven years that is to say from the
said year of Christ One thousand Seven hundred and
Eighty four to the said year of Christ one thousand Seven
hundred and ninety one, and tendering your Petitioners
the said Account copy whereof was annexed to
your Petitioners said Answer and prayed by them to
be taken as part thereof your Petitioners did say
would Appear, did demand from your Petitioners
a Bond for the whole Amounting to four thousand
one hundred and fifty one pagodas thirty six fanams
and thirty nine Cash that your Petitioners did object
to the granting of such Bond, but upon the "
Complainants assuring your Petitioners that he
meant not to take any advantage thereby, but
would as he had before promised them upon the
Settlement of Accounts receive from your "
Petitioners such Simple Interest only as would
be due on the Original Sums by him the "
Complainant
Complainant lent and Advanced to your Petitioners
did Execute the Bond in question, and your Petitioners
did say that in the month of October one thousand
Seven hundred and ninety three your Petitioners did
receive a Summons issuing out of the said Mayors Court
at the instance of the Complainant and learning that
he had brought an action for the Amount Principal
monies and Compound Interest by him charged as
aforesaid your Petitioners did complain to the Heads
of their Cast who did send for the Complainant and
Enquire into the particulars of the transaction in question
and the Complainants Offering to leave the Settlement of
the whole to the said Heads of the Cast Ninety two "
mutually given by the Complainant and your "
Petitioners to abide by, and perform such Award as
should be given by the said Heads of the Cast, and that
the Complainant did thereupon produce his Papers "
and Accounts to the said Heads of the Cast as arbitrators
as aforesaid, and that they thereupon did investigate
the matter and soon afterwards determine to give
their

their award, but that owing to one of the arbitrators having been taken Dangerously ill, the said award was postponed and the complainant having been informed as your Petitioners had heard and believed that all the compound Interest by him the Complainant charged as aforesaid would be cut off he did decline attending the said arbitrators and procured process upon his Bill to be again served on your Petitioners— And your Petitioners did further say that were they to be charged the regular Interest of Twelve per Cent per Annum upon the sum by them borrowed and received from the complainant they would then stand indebted unto the complainant in the sum of Two thousand Eight hundred and ninety two Pagodas two fanams and Seventy Cash as by an Account Current to their said Answer Annexed Would Appear and which said sum of two thousand Eight hundred and ninety two Pagodas two fanams and Seventy Cash they did say they were then ready and Willing and had at all times been ready and Willing to pay unto

unto the complainant

And your Petitioners shew unto this Honble Court that to your Petitioners said Answer the said complainant did on or about the twenty fourth day of June and year of Christ one thousand seven hundred and Ninety four Exhibit and file his Replication and did therein and thereby amongst other things state that your Petitioners notwithstanding any thing to the contrary thereof in their said Answer Contained were and stood justly and truly indebted to him in the full Sum of five thousand one hundred and Sixty three pagodas twenty five fanams and twenty Seven Cash, that he did not inform your Petitioners that he would advance them a further loan of three hundred and two pagodas but that your Petitioners did apply to the complainant to advance them such further loan which he the complainant had acquiesced in, merely to Accomodate your Petitioners and thereupon they Executed unto him their Bond for one thousand five hundred and fifty Pagodas, that he did not

Shortly

shortly or at any time after the Execution of the said
Bond goto or inform your Petitioners that if they would
permit him to draw a fresh Bond at the End of
Every Six Months And add the Interest that might
become due he would Let your Petitioners have any
Number of years for the Repayment thereof and did
submit to the said mayors Court that it was not
to be presumed that he would have proposed or allowed
to your Petitioners any such indefinite latitude for
the prayment thereof and positively denied that your
Petitioners did or could have Objected to such alledged
proposition none such having been made by him the
Complainant and further did say that upon his first
applying to your Petitioners to pay off their said Bond,
they did inform him that they would derive considerable
benefit to themselves from the use and application of
the said monies which they had so borrowed from
him and therefore requested him to accept a new Bond
and that he Accordingly did so, That your Petitioners
so Continued as the said Principal and interest

Monies

monies from time to time become payable and
ought of right to have been paid to him the
Complainant, to represent to him the great advantage
and profit Which arose to them by the Detention
and application thereof and to Execute fresh Bonds
therefor until at length he the Complainant having
had a pressing occasion for the said monies so to
him owing and it not being in his power without
materially injuring himself further to accommodate
your Petitioners he was compelled of necessity to
institute his present Suit That if instead of detaining
in their hands and applying to their own use and
profit the Interest of his the Complainants said
monies as the same from time to time became due
and payable your Petitioners had paid the same to
him he would have derived considerable advantage
from the application thereof but that your Petitioners
instead of so doing had thought it more conducive
to their Interest to Execute and Renew the said
Bond, they were not then to take advantage of
their own wrong in the detention of his the
Complainant

Complainants said monies that your Petitioners never did inform or propose to him, that if he would go with them to their neighbours House whosoever that neighbour maybe) they would discharge their debt, for that your Petitioners on the contrary thereof and as therein before shewn, did request that the said monies might remain in their hands, and that they would as alledged in their said Answer, Execute a Bond to him the Complainant including the encreased interest merely for the purpose of afterwards deducting such encreased interest from your Petitioners Bond when the day limited for the payment thereof should have arrived was an assertion so contrary to fact and to reason that the Complainant humbly trusted could have no further weight with the said mayors Court than to shew that your Petitioners were by manifest inconsistencies Endeavouring to Evade the payment of their Bond that he denied that he had rested satisfied during the interval from the year one thousand Seven hundred and Eighty four to the year one thousand Seven hundred and ninety one without making any demand upon your Petitioners respecting their Debt to him for that at the End and Expiration of each and every year during that period your Petitioners regularly renewed their Bond to him and further denied that he made out or tendered to your Petitioners the Account Current annexed to their said Answer and did say that the said Account Current had been made out by your Petitioners to promote their Views of Defrauding him in the premises and that as to the several matters and things in your Petitioners said Answer contained respecting the heads of Cast, that the same was unfounded in truth and impertinent and irrelevant to the matter in question he having Submitted his demand to the Determination of the said mayors Court and not to the decision of the heads of Cast.

And your Petitioners shew that to the Complainants said Replication your Petitioners did Exhibit and file their Rejoinder and in and by their said Rejoinder maintain to be

be true the several matters and things in their said
Answer contained and did deny that the Complainant
had at any time made Application to them for
payment of the said Monies or that they had informed
him that they would derive Considerable benefit from
the use and Application thereof, or that they did
request him the Complainant to accept of a new Bond,
on the contrary your Petitioners did say that it was the
Complainant who did from time to time under the
most delusive pretexts and assurances of giving your
Petitioners any length of time for payment of the said
Monies, and that of his remitting on the day of
payment, all Compound Interest that should
Accumulate thereon and that he did prevail upon
your Petitioners at the End of Every Six months to
Execute unto him a fresh Bond and your Petitioners
did say that they had set forth in and by their
Answer nothing but the truth, and did thereupon
humbly Submit that they had not shewn any inconsistency
or Endeavour to Evade the payment of the just monies,

as

as might have been due to the Complainant and
which they were then, as they had at all times been ready
to pay to him.

And your Petitioners shew 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
Accordingly on the part of the Complainant, and
on the Seventh Day of April the Complainants
Attorney in Court did pray that Publication might
pass and thereto your Petitioners Attorney in Court
did Object and pray a further time to Examine their
Witnesses and the said Mayors Court taking the
same into their Consideration did order publication
to pass as well more fully and at large appear by the
Copy Extract of minutes of the said Court hereunto
annexed for the inspection of this Honble Court and
prayed by your Petitioners to be taken as part of this
Petition and Appeal and your Petitioners shew unto
this Honble Court that on the fourteenth day of the
said month of April your Petitioners by their Attorney

in

in Court did file the usual Affidavits to Enlarge publication and did thereupon pray that publication might be Enlarged Accordingly but the Complainants Attorney in Court did Object thereto and did at the same time file his own Affidavit and pray a Week to shew cause Against the said prayer of your Petitioners which was granted as well more fully and at large by Copy Extract of minutes of the said Court hereunto Annexed for the inspection of this Honble Court to which your Petitioners beg leave to refer and pray the same may be taken as part of this their Petition and Appeal and your Petitioners shew unto this Honble Court that on the twenty first day of the said month of April the Complainant did file his own Affidavits of others and did rely on the matters therein Contained as Cause Why Publication should not be Enlarged and your Petitioners by their Attorney did Object thereto as insufficient and the said mayors Court taking the same into Consideration did think fit to order that the prayer for Enlarging publication should be over ruled as by Copy Extract

of

of the minutes of the said Court hereunto Annexed for the inspection of this Honble Court to which your Petitioners beg leave to refer and pray the same may be taken as part of this their Petition and appeal may Appear And your Petitioners shew that by reason of the premises they were deprived of the benefit of Evidence to support their Defence by them set up to the Complainants said Bill of Complaint and your Petitioners shew unto this Honble Court that the Witness produced on the part of the Complainant do in some degree contradict the Complainants Replication and themselves also, and in some degree support the answer of your Petitioners to the Complainants said Bill of Complaint for your Petitioners shew that Numboddy yagapah Chitty to the second Interrogatory shews that the first sum borrowed was twelve hundred Pagodas and fixes the period to be thirteen years ago, that the Next sum borrowed was three hundred Pagodas to discharge a debt due by your Petitioners and that the same was added that the said sum of one thousand

two

two hundred Pagodas and the Interest thereon and that your Petitioners did Execute a Bond for the whole payable in six months and that your Petitioners did from the year one thousand Seven hundred and Eighty two, to the year one thousand Seven hundred and Eighty four renew their said Bonds at different times and the said witness shews that the reason always assigned by your Petitioners were that they could not get a good Offer for their Garden And the said witness shews that between the years One thousand Seven hundred and Eighty four and one thousand Seven hundred and ninety one your Petitioners did frequently renew their said Bonds and that the Complainant did at length require further Security On Account of the Sum due to him by your Petitioners, and that your Petitioners did grant the same and the said witness after shewing as hereinbefore set forth that your Petitioners were unable to pay the Complainant the money due to him concludes his Deposition with declaring that your Petitioners did at the respective times in which they renewed their several Bonds represent to the Complainant that they would be greatly benefited and advantaged by suffering the money to remain in their hands — Tripliciane Narrain Chitty to the Second Interrogatory speaks to the same circumstances in nearly the same words as the preceding Witness with this Difference that he is more pointed as to the poverty of your Petitioners and in shewing it contradicts Mumbaddy yagapah Chitty, he says that When the Bond including the Sum of twelve hundred Pagodas and the Interest due thereon and the Sum of three hundred Pagodas became due, and Demand of payment was made your Petitioners did say they were not in a situation to discharge the same, and he also shews that at subsequent periods as the Different Bonds Executed, by your Petitioners became due and payment thereof Demanded from your Petitioners that your Petitioners did declare their inability to Comply therewith And the same Witness immediately afterwards Deposing to the third Interrogatory says that your Petitioners did at the different

times

times they renewed their Bonds say to the Complainant that they would be benefited and advantaged by his accepting of their renewed Bonds and suffering the money to remain in their hands and Eyapah Chitty to the same Interrogatories deposes to the same Circumstances as deposed to by Trepliane Narrain Chitty and in nearly the same words and they all say that on Executing the Bond your Petitioners did Express themselves very much Obliged to the Complainant for their Indulgence, Cambadoo Cundapah and yagapah deposing to the Bond in [illegible] say that your Petitioners did not Express themselves Obliged to the Complainant.—

And your Petitioners shew unto this Honble Court that the above Cause was set down for hearing upon the pleadings herein above set forth and the same Accordingly came on to be heard on Friday the fifth day of the present month of June when the said mayors Court was pleased to order and Decree and did Accordingly order and Decree that your Petitioners should pay unto the Complainant the full and Just Sum of Five Thousand one hundred and Sixty three Star Pagodas twenty five fanams and twenty Seven Cash together with all such Interest as then was or should thereafter become due thereon together with all Costs of Suit as by Copy of the said Decree hereto annexed for the inspection of this Honble Court to which your Petitioners beg leave to refer and pray the same may be taken as part of this their Petition and Appeal the Original being ready to be produced When required may Appear—

By which said Decree of the said mayors Court your Petitioners do Conceive themselves much aggrieved and do therefore Appeal therefrom to this Honble Court for the following amongst other Reasons

First... Because your Petitioners did shew in and by their said Answer upon oath that the reason which induced them to grant to the Complainant a renewal of their Bond Every Six Months for a Considerable number of years was on the assurance of the Complainant that at the final settlement of Accounts he would deduct such interest as should

appear

appear compound Interest pretending that he did not like to keep an Interest Account and that upon such considerations your Petitioners might pay him when Convenient and although in and by his said Replication he says that it is inconsistent to suppose he could Ever have given to your Petitioners an indefinite time for payment of the sum due to him, your Petitioners submit to this Honble Court that as they did allow to the Complainant the highest Rate of Interest that is say twelve per Cent per Annum and gave him a mortgage Security to his Entire Satisfaction and that when he conceived upon the original Sum lending on Account of the manner in which he obliged your Petitioners to renew their Bonds aforesaid to nearly three times the original Sum borrowed that the Security he formerly held was insufficient your Petitioners did on his requisition give him additional Security there is no reason on which to ground inconsistency and although the Complainant in and by the said Replication says that

says that upon his first Application for payment of the said money due on your Petitioners Bond they your Petitioners did represent to him the considerable benefit and great advantage and profit that arose to them from the use and application of the said monies so borrowed from the Complainant and therefore did require him to accept a new Bond yet your Petitioners humbly submit to this Honble Court that one of the Complainants Witnesses shews in the first part of his Deposition that the reason assigned by your Petitioners for not discharging their Bonds from time to time as they become due, were that your Petitioners could not dispose of their property that is to say the said mortgaged premises and another of this Complainants said witnesses says that the reasons assigned by your Petitioners on those Occasions were their inability to comply with his the Complainants demand and which could not have been the case had they derived so much advantage and profit as the

Complainant

complainants declares they stated to be the case
and that therefore the said assertion in the complainants
said Replication contained is unsupported your
Petitioners admit that the said Witnesses to the
last Interrogatory say that at the Respective times
when your Petitioners respective Bonds become due
and payment thereof demanded that your Petitioners
did declare the Advantage they derived from having
the use of the complainants money but your
Petitioners humbly conceive that the Depositions
of the said Witnesses to the said last Interrogatory
do contradict their Depositions given to the
preceding Interrogatories and your Petitioners do
therefore humbly submit to this Honble Court how
far the credibility of such Testimony can be relied
on and your Petitioners shew that they did in
and by their said Answer upon Oath shew that they
did request the complainant to go with him to the
House of a neighbour in order that they might be
Enabled to take up their said Bonds and collateral
Security and that the complainant declined so to do
and

and thereupon your Petitioners submit to this Honble
Court that it is apparent that the complainant
in pushing them as he frequently did for the
payment of their Bonds as they became due he was
taking an advantage of their distresses and Enabling
himself to receive interest upon Interest Every six
months and your Petitioners are therefore advised that
the said mayors Court ought to have taken the
premises into their consideration and have admitted
the tender in your Petitioners said Answer contained
that is to say the principal Sum advanced in the
year One thousand Seven hundred and Eighty two
and an Interest of twelve per cent from that time

Secondly Because the Rate of Interest is generally
calculated According to the risk ran by the lender and
in the present case the complainant were perfectly
Secured by a mortgage of Lands and yet received
the highest Interest allowed to be taken and your
Petitioners Shew unto this Honble Court that they
are advised that the act against usury is to
prevent an oppression of the distressed and that

it

it is the province of a Court of a Justice to guard and protect the poor debtor against the rich and powerful Creditor and your Petitioners Shew unto this Honble Court that they have now denied being indebted unto the Complainant but on the contrary have admitted the same nor have they denied that he is entitled to Interest for his money all they have ever contended for is that he ought not to recive from your Petitioners more than the highest Interest allowed by Act of Parliament that is to say an Interest of twelve pr Cent per Annum, and the more particularly as their has not been any interruption in the transaction between the Complainant and your Petitioners since the year one thousand Seven hundred and Eighty two the period when the first to and Amounting to the Sum of One thousand five hundred Pagodas was made to your Petitioners by the Complainant and which said Sum of One thousand five hundred Pagodas during the period from the appropriate manner

manner in which the Complainant has acted towards your Petitioners has Encreased to the Sum of Five thousand One hundred And Sixty three Pagodas twenty five fanams and twenty Seven Cash — and your Petitioners humbly Submit to this Honble Court that if such proceeding be sanctioned the benevolent Act of the Ligislature might easily be defeated for When a person in distress is obliged to borrow a Sum of Money on any terms for twelve Months, in order to Answer the purposes of an usurious lender and Save him harmless it is only necessary to make the Bond payable Every three or Six months and at the Expiration of that period to add the Interest to the principal and Obtain a new Bond for the Amount

Your Petitioners therefore humbly pray that the said Decree of the said mayors Court may be Reversed, that your Petitioners do pay the Sum of two thousand Eight hundred and ninety

two

two pagodas two fanams and
seventy cash as tendered in their
said Answer being the
Amount balance of principal
cent and advanced by the
Complainant to your Petitioners
together with the simple Interest
thereon of twelve per cent per
Annum, and that your Pet.rs
may have such other
as to this Honble Court shall
Seem meet.

/Signed/ James Edward Hall
Solr. to Petitioners

Extract

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 7th day of April Anno Domini 1795.

Present

Benjamin Roebuck Esq.r Mayor
William Webb Andrew Ross and
Alex.r Cockburn Aldermen

Palavatoo Niniah Chitty
Vencatachella Chitty (vas) & Kistnama Chitty

The Attorney for the Complainants prays that Publication may pass in this Cause to which the Attorney for the Defendant Objects, and prays a further time of one week to Examine Witness Ordered that Publication is passed in this Cause.

A True Extract
/Signed/ George Taylor Regr.

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

Extract

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 14th day of April Anno Domini 1795.

Present

Benjamin Roebuck Esqr. Mayor

Andrew Ross and William Abbott

Aldermen

Palavatoo Ninah Chitty ar

vers

venatachella Chitty & Kistnamah Chitty

Note from the Examiner to the Registe

read accompanying the Depositions in this Cause

Petition and affidavit of the said Defendants

with the affidavit of James Stuart Hall thier

attorney Sworn to in Court read and filed this day

praying that Publication may be enlarged for the

time of fourteen Days, to Which the attorney for the

Complainant objects and prays that he may be

allowed till next Court Day to Shew Cause

against the motion, and at the same time pray leave

to file his own affidavit affidavit of John White

Sworn to in Court read and filed the Court taking

the

the same into consideration it is ordered that the

Attorney for the Complainant be allowed till next

Court Day to shew cause.—

A True Extract

Signed George Taylor

Regr

a true Copy

Signed James Stuart Hall

Solicitor for appellant

Extract

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 21st day of April Anno Domini 1775

Present

Benjamin Roebuck Esquire Mayor

James Call — Andrew Ross and

James Daly — Aldermen!

Palavatoo Ninah Chittyar

vers

Vencatachella Chitty and Kistnamah Chitty

Affidavits of Palavatoo Ninah Chitty Choly Ninah Chitty Ponary Nellamooto Chitty and Audeapah Chitty to shew Cause why Publication should not be enlarged in this Cause Sworn to in Court read and filed this day — Petition and affidavits filed last Court day read Mr. James Stuart Hall attorney for the Defendants Objects to the affidavits as insufficient because there is nothing set forth in the affidavits that takes the case of the Defendants out of the Rules laid down in the Chancery Practice for enlarging Publication The Court having taken the same into Consideration it is ordered that the

prayer

prayer for Enlarging Publication be overruled —

A True Extract

(Signed) George Taylor Regr

A true Copy

(Signed) James Stuart Hall

Solicitor for appellant

Mayors

Mayors Court at Madraspatnam } Friday the 5th day of June Anno Domini 1795.—

Present

Benjamin Roebuck Esqre Mayor
Andrew Ross and John Mitford
Aldermen—

Between Palavatoo Minah Chetty of Madras Merchant Complainant and Venegatachella Chetty and Kistnama Chetty of the same place 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 the Translation of Mortgage Bond and Account Current Annexed, The Defendants Answer with Copies of two Accounts Current Annexed, The Replication, The Amended Rejoinder The Interrogatories and Depossitions on the part of the Complainant with Exhibits marked ABC & D and 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 do pay unto the Complainant the full and Just Sum of Five thousand one hundred and Sixty three Pagodas twenty five fanams and twenty Seven Cash/ Pagodas 5163„ 25. 27. together with all such Interest as now is or shall hereafter become due thereon until full payment is made also all Costs of this Suit.—

Hur /Signed/ G. E. Askin Dy Regr

A true Copy /Signed/ James Stuart Hall
Solicitor for Appellation—

To

To the Right Honourable Lord Hobart

President and Governor and Council &c.

Fort Saint George

In the Honourable the Court of Appeals } Between Venkatachella Chitty and Kistnamah Chitty appellants and Paulavatoo Nenia Chitty Respondent.

The Answer of the abovenamed Respondent to the Petition and appeal of the abovenamed Appellants.

The said Respondent admits that he did on or about the twelfth day of October which was in the year of our Lord one thousand Seven hundred and ninety three, Exhibit his Bill of complaint against the said appellants in the Mayors Court at Madraspatnam for recovery of the Sum of Five thousand one hundred and Sixty three Star Pagodas Twenty five fanams and Twenty Seven Cash to this Respondent owing upon the foot of the said appellants Mortgage Bond, and this Respondent admits that the said Appellants

Filed in my Office the 27th July 1795
J Webbe Clk

appellants did appear to the said Bill of complaint and afterwards to wit on or about the fourteenth day of April in the said year file their Answer to the said Bill of complaint setting forth the several matters and things in the said appellants Petition and Appeal contained And this Respondents admits that he having Replied to the said Answer, and the Appellants having Rejoined to the said Replication, Issue was joined in the said cause upon the aforesaid Proceedings on the Twelfth day of August in the year one thousand Seven hundred and ninety four as by the Extract from the Minutes of the said Mayors Court which is hereunto Annexed to which this Respondent humbly craves leave to refer relation being thereunto had will appear, and that Publication did pass in the said cause on the Seventh day of april in the present year of our Lord one thousand Seven hundred and Ninety five Whereby it appears that the said appellants had a period of Seven months and upwards to examine witnesses if any they had in support of the defence by them set up and this

Respondent

Respondent in answer to the several other matters and
things in the said Appellants Petition and appeal
detailed respecting the passing of Publication in the
said Cause and the Appellants application to the
said Mayors Court to enlarge Publication Saith he
is advised and humbly submits to this Honourable
Court That the same is foreign to the matter of the
said Petition and appeal for that the said Appellants
having acquiesed under the said Order of the
Mayors Court Without Appealing there from to this
Honourable Court the said Order hath of Course
become absolute and is not now open to discussion This
Respondent saith that in the said Appellants
Answer is contained the following Assertion to wit
"That this Respondent did not apply to the said
"Appellants respecting the said Original debt from
"the year One thousand Seven hundred and Eighty four
"to the year One thousand Seven hundred and ninety
"one at which time the Appellants alledge this
"Respondent made out an Account Current Charging
interest upon Interest
"interest from the said year one thousand Seven hundred
"and eighty four to the year One thousand Seven hundred
"and ninety one. and that the Appellants thereupon executed
"the Bond in suit And this Respondent thereupon Saith
"That so far from the Witnesses produced on the part of
"this Respondent in any wise controverting the justness
"of this Respondents demand they do support the same,
"and most clearly demonstrate that the aforegoing
Assertions in the said Appellants Answer contained
are mere fabrications, For that Manhady Yagapah
Chitty deposing to the Third Interrogatory says that the
Appellants did often between the year one thousand Seven
hundred and eighty four and one thousand Seven
hundred and ninety one apply to the Defendants to
discharge their Bond and that the Appellants did at different
times during that period renew their Bond of their own
accord. and in the year one thousand Seven hundred and
eighty five or one thousand Seven hundred eighty six
give further Security to this Respondent. and that the
Appellants on being applied to for the discharge of their
Bond represented to this Respondent that they would be
in

in A great degree benefited and advantaged by this Respondent accepting of their renewed Bond, from time to time and by suffering the money to remain in their hands, and that the appellants did express themselves highly obliged to this Respondent on his granting them such indulgence, and this Respondent saith that Triplicane Narrain Chitty by deposing that at the time when the said appellants first Bond became due they declared they were not in a situation to discharge it and that they did at the different times when they renewed their Bonds say they would be benefited and advantaged by this Respondent accepting of their renewed Bond do not as this Respondent submits in any wise contradict the Testimony of the said Manhaddy yagapah Chitty But strengthens the same; and it is further corroborated by the Testimony of Eyapah Chitty and other Witnesses.—

And this Respondent admits that the said Cause was set down for hearing and was accordingly heard before the said Mayors Court on the fifth day of June in the present year of our Lord one thousand Seven hundred and ninety five when the said Mayors Court did Order and Decree that the said appellants should pay unto this Respondent the Sum of Five thousand One hundred and Sixty three Star Pags Twenty five fanams and Twenty Seven Cash together with interest and costs of Suit of which Decree a Copy is to the appellants Petition and appeal annexed But this Respondent denies that the said appellants are agrieved thereby other than as they may conceive their being Decreed to pay their just debt agrievance This Respondent in answer to the first cause or reason by the said appellants in their said Petition and appeal assigned saith, That the motive which the appellants pretend to have induced them to renew their Bond from time to time namely the assurance of this Respondent that at the final Settlement of Accounts he this Respondent would deduct such interest as should appear Compound interest, Is as this Respondent humbly submits an evident

absurdity

absurdity. For that the execution of each Bond must have been and was considered by the appellants as a final settlement of Accounts to that period and such a solemn recognition of this Respondents right to the Interest money as precluded the Appellants from afterwards disputing the same, for otherwise including interest in the said renewed Bonds could have answered no end whatever — And this Respondent saith that if he had been inclined to state any unjust advantage of the Appellants in the premises He would long since have enforced payment of his monies or foreclosed the said Mortgage. For the first case if the appellants had not monies wherewith to discharge this Respondents demand, they must have procured the same upon an interest loan, and whether the said Appellants paid interest to this Respondent upon the old, or to a stranger upon a new loan cannot in the eye of reason make any difference to the said Appellants and this Respondent saith that if instead of renewing their Bond the said Appellants had paid off the monies thereupon owing this Respondent could have readily lent out the said monies at interest to other persons. And this Respondent saith that if he had proceeded to foreclose the said Mortgage the Mortgaged premises must have been peremptorily sold, and it is a well known fact that property at a Sheriffs sale seldom or never brings its full value, and this Respondent thereupon saith it is evident that the Appellants have been accommodated and benefited by the long forberance of this Respondent although they are now endeavouring to turn the indulgencies so granted them, to the wrong and prejudice of this Respondent and this Respondent saith that so far from his having closed his Accounts with the said Appellants at the End of every Six months from the thirteenth day of June in the year one thousand seven hundred and eighty one to the thirteenth day of September One thousand seven hundred and ninety one, being the day upon which the Bond in suit bears date It appears even of the Appellants own shewing by the Account Current annexed to their Answer that interest was turned into Principal only at the expiration of every year during

during the Period of Seven years. This Respondent denies that the mayors Court could consistently with the pleadings and proofs in this Cause, or the rules of Equity, have relieved the said Appellants from their said Obligation without doing this Respondent a manifest injury. And this Respondent saith he is advised it is a rule of Law, that when a Defendant sets up any matter in avoidance of his Bond, such matter must be proved, the Onus probandi laying upon the Defendant and this Respondent saith, that so far from the said Appellants having Established any one allegation in their Answer contained, as fact that the said Answer hath been disproved by the Witnesses produced on the part of this Respondent. This Respondent in answer to the Second cause or reason by the said Appellants assigned saith, that the rate of interest is fixed by the said Appellants Bond, and that as such interest does not exceed the rate of Interest allowed by act of Parliament the several matters in the said Appellants Petition and Appeal set forth

set forth respecting the Statute of Usury does not Apply to the matter in issue — The words of the Statute being — "That no Subject of his majesty "in the East Indies shall take directly or "indirectly for loan of any monies above the "Value of twelve Pounds for the forbearance of "One hundred pounds for a year, and so after "that rate for a greater or lesser Sum, or for a longer or shorter time — And this Respondent as to the several other matters and things in the said Appellants Petition and Appeal set forth saith he is advised that the same are unnecessary to be by this Respondent further or otherwise Answered unto —

This Respondent therefore humbly prays that this Honourable Court will be pleased to affirm the said Decree of

of the said Mayor's Court
And that the Appellants
said Petition and Appeal,
may be dismissed With
such costs as to this
Honourable Court may seem
meet.—

/Signed/ John White
Solicitor for Respondent.

Court

Court of Appeals—
at
Madraspatnam

Saturday the 13th day of January
Anno Domini 1796.

Between Vencatachella Chitty and
Kistnama Chitty of Madras Mer-
chants Appellants and Paulavatoo
Ninah Chitty of the same place
Merchant Respondent—

This Cause coming on this day to be heard
and Debated before this Court by the Attornies on
both sides 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 Friday the 5th
day of June Anno Domini 1795 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

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—

Hur

(Signed) J Webbe
clk

To the Right Honble Lord Hobart
President &c in Council
Fort St George

In the Honble
Court of Appeals

Between Triplicane Ninapa
Moodeliar by his attorney
Manapakum Tondroyah
Moodeliar by his attorney
Emanuel Luis Anderson
Complainant and Coannore
Mootu Moodeliar Defendant

The humble Petition and Appeal of the Defendant abovenamed

Sheweth

Filed in my Office the 27th July 1795.
J Webbe clk

Tht the Complainant abovenamed by his attornies as aforesaid did on or about the ninth day of September and year of Christ one thousand Seven hundred and ninety Exhibit and file his Bill of Complaint in the mayors Court at madraspatnam Against your Petitioner

for

for the recovery of the Sum of One thousand five hundred and Sixty three Pagodas Current, money of Madras pretending the same had arisin and grown due unto him the Complainants upon a certain mortgage Bond said to be Executed by your Petitioner and as by Copies of the said mortgage Bond and of two Several Assignments thereof to the Complainants said Bill of Complaint annexed and by him therein and thereby referred to the Complainant did say would Appear and your Petitioner Sheweth unto this Honble Court that being served with process to Appear to and answer the Complainants said Bill of Complaint, he did accordingly by his attorney in Court appear thereto, and on or about the fourteenth day of December and said year of Christ one thousand Seven hundred and ninety did Exhibit and file his Answer and therein and thereby did deny to be indebted unto the Complainant in the said Sum of One thousand five hundred and Sixty three Pagodas by him pretended to be

due

due and owing for or upon the Bond to his said Bill of Complaint annexed, and did further state that he never did Execute the said Bond and that having obtained Oyer thereof did declare that the Signature Coanore Mootu to the said Bond affixed as and for his Signature was not your Petitioners Signature, nor that he did Ever write or Subscribe the same and that the Signature Coanore Mootu to the said Bond affixed was a forgery and framed for the Evil purpose of defrauding him your Petitioner of his property Contrary to Equity and good Conscience and to the Law of the Land the right and benefit whereof your Petitioner did humbly pray might be granted to him in the same manner and to the same Extent and purpose as if the same had been by your Petitioner formally pleaded and your Petitioner Petitioner Sheweth that he did in and by his his said Answer further set forth that on or about the Time in

the

the said Bond setforth Court on or about the
Month of October and year of Christ one
thousand seven hundred Seventy two Your
Petitioner did Execute a Bond to the Complainant
Conditioned for the payment of the Sum of Three
hundred Pagodas together with an Interest
thereon at the rate of nine per Cent per annum
And your Petitioner did state that he did not
give any mortgage for Securing the payment
of the said Sum of three hundred Pagodas as
aforesaid That same time in the year of Christ
one thousand seven hundred and Seventy Eight
your Petitioner was sued in the said mayors Court
and was in Consequence thereof Arrested and
Committed to Jail, that thereupon he did apply
to the Complainant to become one of his Bail,
but who refused so to do, unless your Petitioner
would grant him some Kind of Security by way
of indemnity, that thereupon your Petitioner
did deposit with the Complainant the Title

Deeds

Deeds of a House the property of your Petitioner
Situated in Pedda Mauthe Pettah, and also
the title Deeds of a House at Pegue and that
the Complainant on obtaining posession of the
said Title Deeds did refuse to become Bail for
your Petitioner or to deliver up the Title Deeds
until your Petitioner should pay unto him the
Complainant the said Sum of three hundred Pagodas
due to him as aforesaid.

And your Petitioner Sheweth unto this
Honble Court that to your Petitioners said Answer
the Complainant did Exhibit and file his
Replication and therein and thereby setforth that
he would prove notwithstanding the false
Assertion of your Petitioner that the Original
Bond Copy Whereof was annexed to his said Bill
of Complaint was fairly Executed by your
Petitioner and that he would prove that the
Signature thereto Subscribed was of the proper
hand Writing of your Petitioner that the
Assertion of your Petitioner that the Signature

Coanare

Coanore Mootu Affixed to the said Bond was a forgery. was not only false but Scandalous and very improperly made use of by your Petitioner because the said mayors Court being a Civil Court could not take notice of the Charge of forgery and your Petitioner Should have confined himself in his Answer to the Simple denial of the said Bond being his Deed, Which the Complainant did state was all that was requisite in matter and form to put him the Complainant to a proof of the said Bond and the Sum of money Lent and paid thereon, Which the Complainant did say your Petitioner did not undertake to say he had not received, but that your Petitioner might be induced to deny his hand Writing and Signature from the Witnesses mentioned therein, and also the Person who drew out the said Bond being as the Complainant did pretend all Severally dead, and from the Circumstance of Candapah Chitty one of the Witnesses only Who had in fact attested the Execution of the said Bond not knowing how to write, and from a hope that by such necessity that the Complainant would not be able to prove the Execution of the said Bond and the Complainant did say that your Petitioner did not as he had falsly asserted Executed another Bond to the Complainant on or about the time of his Executing the Bond in question to wit on or about the month of October one thousand Seven hundred and Seventy two, Conditioned for the payment of the Sum of Three hundred Pagodas together with Interest at the rate of Nine per cent per Annum, Which Circumstance the Complainant did say was introduced by your Petitioner in his said Answer, to prejudice the Complainants demand on him for the payment of a larger Sum due on the Bond on Which the Complainants Action was founded and the Complainant did say that it was With the same unjust and unlawful View and purpose that your Petitioner had introduced the false Ground on Which your Pet.r did

did assert that the Complainant become possessed
of his your Petitioners Title Deeds of his House
situated in Shala Street in Pedda Naiks Pettah "
discribed in and by the mortgage Bond in question
and of the Title Deeds of a House in Pgiw and the
Complaint did in and by his said Repleation
further state that in order to shew in what manner
your Petitioner became indebted into the Complainant
he did say that in the year of our Lord one thousand
seven hundred and seventy two your Petitioners House
situated in Shala Street as discribed in the Bond
in question was mortgaged to one Shiva Cundapah
Chitty for the Sum of three hundred and five pagodas
and for Interest due thereon that the said Shiva
Cundapah Chitty for the Sum of three hundred and
five pagodas And for Interest due thereon that the
said Shiva Cundapah Chitty being importunate with
your Petitioner to pay off the same, and your Petitioner
also being at that time indebted unto sundry "
persons did repeatedly request of the Complainant
to

to pay off the said mortgage and to advance him
also a further Sum of Three hundred pagodas, and
to take up the said mortgage which the "
Complainant pretended your Petitioner represented
to be Equivolent to Cover and Secure the said Loan
that the Complainant attending to the said "
requests and Solicitations of your Petitioner did
at length Agree to take up the said mortgage
by him owing to Shiva Cundapah Chitty, and
also to lend him the said three hundred Pagodas
and that he desired your Petitioner to send him
an Account of what he was so indebted unto the
said Shiva Cundapah Chitty and also of the "
further Sum that he required him to lend him
That thereupon your Petitioner did send unto
the Complainant on Account of his said debt
to the said Shiva Cundapah Chitty With "
what he had paid on Account thereof, and of
the further Sum of three hundred Pagodas "
required by him in a memorandum in this

your

your Petitioners own hand Writing Copy of
translation of which the Complainant did say was
annexed to his said Replication and which he
prayed to be taken as part thereof, the Original
whereof the Complainant did state he was ready
to produce when properly called for

And your Petitioner sheweth that the
Complainant did thereupon in and by his said
Replication insinuate that the Sum required
by your Petitioner being in his opinion too
great, he did refuse to lend the full Amount
thereof to your Petitioner, and did agree to lend
him only the said Sum of Six hundred Pagodas,
and that your Petitioner agreeing thereto, he did
Execute unto the Complainant the Bond in question,
for the said Sum of Six hundred pagodas and that
the Complainant did lend and pay unto your
Petitioner, and on his account the said Sum of Six
hundred Pagodas according
Complainant did at the

Consideration thereof receive from your Petitioner
the Title Deeds of the House thereby mortgaged
and which your Petitioner had redeemed in
manner and by means thereof from the said
Sheva Lundapah Chetty and the Complainant
did in and by his said Repliation further
state that your Petitioner was sued some time
in the year of our Loard one thousand Seven
hundred and Seventy two by several of his Creditors,
that above that time your Petitioner borrowed
from one annekettoo Chetty Veerabadroo moodeliar
the Sum of Two thousand, and One hundred
Pagodas in order to raise money to Satisfy his
said Creditors, and for the Security of the
payment thereof your Petitioner did mortgage
to him a Box containing Rubies, that the
Veerabadra not being
with did require some
thereupon your Petitioner
plainant to be his Security
might arise upon

a

your Petitioners own hand Writing Copy of
ranslation of Which the Complainant did say was
annexed to his said Replication and which he
prayed to be taken as part thereof, the Original
Whereof the Complainant did state he was ready
to produce When properly called for

And your Petitioner Sheweth that the
Complainant did thereupon in and by his said
Replication insinuate that the Sum required
by your Petitioner being in his Opinion too
great, he did refuse to lend the full Amount
thereof to your Petitioner, and did agree to lend
him only the said Sum of Six hundred Pagodas,
and that your Petitioner agreeing thereto, he did
Execute unto the Complainant the Bond in question,
for the said Sum of Six hundred pagodas and that
the Complainant did lend and pay unto your
Petitioner, and on his account the said Sum of Six
hundred Pagodas accordingly, and that the
Complainant did at the same time, and in
Consideration

Consideration thereof receive from your Petitioner
the Title Deeds of the House thereby mortgaged
and Which your Petitioner had redeemed in
manner and by means thereof from the said
Sheva Cundapah Chetty and the Complainant
did in and by his said Replication further
State that your Petitioner was sued some time
in the year of our Loard One thousand Seven
hundred and Seventy two by several of his Creditors,
that above that time your Petitioner borrowed
from one Anneketto Charry Veerabadroo moodeliar
the Sum of Two thousand, and One hundred
Pagodas in order to raise money to satisfy his
said Creditors, and for the Security of the
payment thereof your Petitioner did mortgage
to him a Box containing Rubies, that the
said Anneketto Charry Veerabadra not being
Entirely Satisfied therewith did require some
further Security that thereupon your Petitioner
did request of the Complainant to be his Security
for any Dificiency that might arise upon
a

a Sale thereof being found Nessary, And that your Petitioner did offer to lodge in the Hands of the Complainant certain Jewells to Answer the said Eventual Defficiency Which the Complainant should undertake to be Answerable for unto the said Anne Kettoo Charry Verabadroo Moodeliar and did at the Same time to Wit on or about the Eleventh day of November One thousand Seven hundred and Seventy two Execute certain articles of Agreement to the Complainant for that purpose and did lodge in his hands the said Jewells as the same were therein Specified — that it did afterwards become Nessary to sell the said Rubies Which did not produce Suffficient to pay off your Petitioners Bond to the said Anne Kettoo Charry Verabadroo Moodeliar, and to make up the said Defeciency your Petitioner did request of the Complainant to allow him to sell a part of the said Jewells Which the Complainants did pretend your Petitioner did do himself and that from the produce thereof did fully Satisfy and pay off his debt to the said Anne Kettoo Charry Verabadroo Moodeliar and that the Complainant did thereupon deliver up unto your Petitioner the remainder of the Jewells and take his your Petitioners receipt for the Same at the bottom of the said articles of Agreement Copy of the Translation whereof the Complainant did say were annexed to his said Replication Which he did pray might be taken as part thereof and that the Originals were ready to be produced when called for and the Complainant did say that that was all the undertaking that he Entered into as a Security for your Petitioner and that the pretended Circumstance of the Complainants having offered to become Bail for your Petitioner in a Cause Wherein he said he was arrested was a mere fiction, nor did the said articles of Agreement mention any matter of a Bill of Sale being delivered as an inducement to the Complainant to become Bail and the Complainant said

said that your Petitioner never did before dispute the
Justness of the complainants demand on him, nor
deny his having given the Bond upon which the
complainants action by his attorney was founded. but
on the contrary did always acknowledge and confess
the same, and did frequently promise to pay and
discharge the amount Principal and Interest due
thereon. and that your Petitioner did frequently
Despair the complainants forberance under pretence of
his Expecting money from Pegue, and as an
inducement for the complainant to allow him such
indulgence did after the Execution of the Bond in
question, a considerable time Deposit in his the
complainants Hands the Bill of sale of a House at
Pegue not mentioned in the said Bond and that
your Petitioner did about three years ago by means
of one Patchapah moodeliar request of the complainant
to forgive him the Interest on the said Bond, and
take only the principal and that since the filing
of the complainants said Bill of complaint your

Petitioner

Petitioner did tender Seven hundred Pagodas in
ready Cash and his Bond for five hundred Pagodas,
and did request of the complainant to forgive him
the Balance and Withdraw the Suit which the
Complainants said Attorney did refuse—

And your Petitioner sheweth unto
this Honble Court that to the complainants said
Replication your Petitioner did Exhibit and file
his Rejoinder and did therein and thereby amongst
other things state that he your Petitioner never
did Execute the Bond to the complainants said
Bill annexed and upon Which he had falsly
grounded his right of Calling your Petitioner
in question before the said mayors Court and
further that the name Coavore mootiah to the
said Bond set and subscribed was not of his your
Petitioners hand Writing, nor did he Ever set and
Subscribe the same, and thereupon your Petitioner
did say he had a right to assert as in and by his
said Answer he had asserted the same to be a forgery

because

because your Petitioner did say he was advised notwithstanding the Assertion of the Complainant to the Contrary that the same was properly and pertinently introduced for that although the said Mayors Court had not Jurisdiction over so as to punish forgery as a Crime Against the Statute yet yet as it was the particular Jurisdiction of the said Mayors Court to take Cognizance of all fraud and to relieve Against the same, and as forgery was the greatest degree of Fraud whenever it was brought forward to give a Color to, and strengthen and support a question of omeum and turn the party Aggrieved thereby had a right to set forth the same and pray for that Relief which a Court of Equity had the power of granting and which your Petitioner humbly Conceived he had a right to claim, and therefore did humbly insist therein and your Petitioner did for further Rejoinder say notwithstanding the suggestion of the Complainant to the Contrary that in and by his said Answer he did confine himself to the simple denial

denial of the said Bond being his Deed because your Petitioner did say that the shewing the fraudulent Conduct of the Complainant in the premises and that he your Petitioner could not have been indebted in the Sum sued for which in and by his said Answer your Petitioner had denied, was tant amount to a Denial of having received the same, and your Petitioner did further say not withstanding the suggestion of the Complainant that he your Petitioner in denying the Signature to the said Bond to be of his hand writing was influenced by no other Consideration than to maintain the truth and thereby appose the unjust and fraudulent means pursued by the Complainant in the premises and did further say notwithstanding the artful pretext of the Complainant in his said Repluation contained be your Petitioner could not have Known that the several pretended Witnesses mentioned in the said Bond were all severally dead because your Petitioner said first that he did not

not Know they Ever Existed, and Secondly that it did not Appear by the said pretended Bond that any more than one person Ever did Sign as a Witness thereto who the Complainant Acknowledged Knew not how to write and Who your Petitioner Said never did in any manner Witness the Execution of the Said Bond as Executed by your Petitioner because as your Pet.r asserted he your Petitioner had before never did Execute the same And your Petitioner did say that notwithstanding the Denial of the Complainant he really did Execute a Bond to the Complainant at the time and for the purposes and in manner and form as in and by the Complainants said Answer the same was — particularly setforth and did further say that the means by which the Complainant possessed himself of his your Petitioners Title Deeds were true in — manner and form as the same was in your — Petitioners said Answer stated and setforth and your Petitioner did say that the several matters and things in the Complainants said Replication

Contained

Contained relative to your Petitioners transactions with Condapah Chitty And the distresses of your Petitioner and the means by him taken to Extricate himself therefrom And the Exhibits to the Complainants said Replication annexed were impertinent and irrelevant to the matter in question and therefore and by reason thereof your Petitioner did humbly pray the said mayors Court that the same might be Expunged from the Records and the more particularly as it tended to Swell the Expences of the present litigation and thereby to harrass and oppress your Petitioner Contrary to Equity And good Conscience — and your Petitioner Sheweth unto this Honble Court that — upon the pleadings aforesaid being had in the said Cause issue did Join therein and rules did pass for the Examination of Witnesses and that — Witnesses were Examined Accordingly on both the part and behalf of the Complainant as well as on the part and behalf of your Petitioner — and your Petitioner Sheweth unto this Honble Court

that

that Telsinga Moodeliar one of the Witnesses produced and Examined on the part and behalf of the Complainant did to the second Interrogatory depose that he was acquainted with the hand writing of your Petitioner and that he had been acquainted with it about twenty five years in consequence of his having seen your Petitioner write that he had looked at the Cadjan writing produced and shewn to him at the time of his Examination marked with the letter **A** purporting to be a Bond or Obligation from your Petitioner to the Complainant and that the Signature Coannore Mootoo in the malabar Character was of the proper hand writing of your Petitioner — To the second Interrogatory that he had looked at the Cadjan writing produced and shewn to him at the time of his Examination marked with the Letter **B** purporting to be a note from your Petitioner to the Complainants and that the whole of the said note was in the hand writing of your Petitioner to the fourth Interrogatory that he had

looked

looked at the Paper Writing shewn to him at the time of his Examination marked with the Letter **C** purporting to be an Agreement and receipt in the malabar Language from your Petitioner to the Complainant and that the Signature of your Petitioner thereunto Subscribed in the malabar Character was of the proper hand writing of your Petitioner To the fifth Interrogatory that he the Deponent did serve the Complainant as Cash Keeper in the month of October in the year of Christ One thousand Seven hundred and Seventy two and was present when your Petitioners Servant brought the said Cadjan note marked **B** and Delivered the same to the Complainant, that the Complainant did deliver the said note into the hands of your Petitioner and order him to take care and keep it safe amongst his the Complainants Papers. that the Deponent did in Obedience to the Complainants Order deliver into the hands of the Complainants Concioply

Nagaprah

Nagapah Moodeliar Sixhundred Star Pagodas
with directions to carry and pay the same to your
Petitioner as a Loan for Which the Bill of sale of
your Petitioners House was required as a Security,
that as soon as the said Nagapah Moodeliar
paid the Six hundred Pagodas into the hands of
your Petitioner, he your Petitioner in Company
with the said Nagapah Moodeliar went to
one Sheva Cundaph Chitty Who had a mortgage
on the your Petitioners House and on paying the
Sum of three hundred and forty Pagodas and a
quarter he your Petitioner redeemed the Bill of Sale
of the said House, and went to his House in
Company With the said Nagapah Moodeliar to
Which place he sent for one Moodoo Kistnaha pillay
a Conicopoly and caused him to draw a mortgage
Bond, for the Sum of Sixhundred pagodas and
brought the same with the Bill of Sale of his House
to the Complainant in Company with the said
Nagapah Moodeliar Where in the presence of
the said Nagapha Moodeliar and the Deponent
he

he Executed the said mortgage Bond To the last
Interrogatory that your Petitioner did sometime
ago borrow from Different Persons at Madras
several Sums of Money to the Amount of four
thousand and odd Pagodas and on your Petitioners
Creditors pressing and importuning him for the
payment thereof, he your Petitioner deposited in
the hands of one Verabadra Moodelly several
Bulses of Rubies Valued at two thousand and one
hundred pagodas Which he brought from Pegue
but he the said Verabadra Moodelly required your
Petitioner to bring some further Security as the said
Rubies would not produce Suffecients to satisfy
his Creditors, that in Consequence of Which your
Petitioner Solicited the Complainant to become
Security for him the said Verabadra Moodelly
for the remainder and for which purpose he
your Petitioner deposited in the hands of the
Complainants Some Jewells With an Agreement
being the Agreement marked C herinbefore alluded
to that on Which Condition the Complainant
became

became Security for your Petitioner accordingly
and gave an Agreement for that purpose to
Veerabadra moodely, who some time afterwards
did with the Consent of your Petitioner sell the
above mentioned Rubies for one thousand Seven
hundred Pagodas and odd, and the Complainant
did also sell with the Consent of your Petitioner
the Jewells which were deposited with him and
paid the Amount Sales to the said Veerabadra Moodelly
which was Seven Pagodas less than the Amount for which
he became Security that in Consequence of which the
said Veerabadroo moodelly did not return to the
Complainant the Agreement Executed by him and
that the Complainant still retained the Agreement
Executed by your Petitioner to him that Emanuel
Luis Anderson in this Suit did send for the said
Petitioner before he was sued and asked him if he
did mean to pay the principal Sum of Six hundred
Pagodas and Interest due to the Complainant, which
he your Petitioner promised to do in the Space of one
month by borrowing the Same from one Patchapah

Moodeliar

Moodeliar so soon as he returned from Tanjore that
one Colliga Roya Moodeliar did send for
Manapaukum Tondroyah Moodeliar the Complai-
=nants Attorney, and after having acquainted
him that your Petitioner was reduced to indigent
Circumstances, requested him to accept in discharge
of the Principal and Interest of the mortgage Bond
in question the Sum of Seven hundred Pagodas in
ready money and a Bond from your Petitioner for
the Balance to which the said Tondroyah moodeliar
would not Agree but offered to take a mortgage Bond
on your Petitioners House for the said Balance that some
time in the year One thousand Seven hundred and Eighty
two the Complainant directed his Conicoply vashelingam
Moodeliar to cast up the Interest of the mortgage Bond
Executed to the Complainant by your Petitioner, which
he did Accordingly that Principal and Interest due
thereon amounted up to that period to the Sum of one
thousand one hundred and thirty five Pagodas and on
half which Sum the Complainant insisted upon your
Petitioner to discharge without any further delay but

that

that your Petitioner Earnestly requested and prevailed on the Complainant to give him a further respite of Six months assuring him at the same time that he would be in cash within that period for he Expected a remittance of a certain Sum of money from Pegue in a short time, that your Petitioner did as a further satisfaction to the Complainant deposit with him two Bills of sale of his House at Pegue together with a list of the People who are in arrears to him together with a Book of accounts of his own debts and demands at Madras and its Environs that thereupon the Complainant gave the same into the hands of the Deponent with direction to keep them safe amongst his the Complainants Papers which gave the Deponent an Opportunity of perusing the above Account Wherein he found one Item of Six hundred Pagodas borrowed from the Complainant by your Petitioner on the mortgage of the Bill of Sale of his your Petitioners House —

And your Petitioner Shweth unto this Honble Court that Pallandachitty and Paupah Chitty two other Witnesses produced on the part and behalf of the Complainant did in like manner with the said Tellesingah Moodeliar Severally prove the said Exhibits marked A B and C and the said Pallecondan to the Length Interrogatory did depose that the Complainant did some time in the year of Christ One thousand Seven hundred and Eighty Nine request the Deponent to go to your Petitioner to demand payment of the mortgage Bond in question, that the Principal Sum was Six hundred Pagodas and that he did Demand payment thereof from your Petitioner, When your Petitioner said he was in Expectation of receiving money from Pegue, out of which he would discharge the same, but that which being delayed the Deponent was again sent to your Petitioner to demand payment of the said Bond who then told that he would discharge the same so soon as Conyveram Patchiapah moodeliar who was then at Tanjore should arrive at Madras and that your Petitioner did not make any objections to the debt,

debt, but acknowledged that it was due and your Petitioner Sheweth that the said Paupah Chitty to the Eleventh Interrogatory did depose that one Coliga Roya Moodeliar offered to pay to the Complainants Attorney the Sum of Seven hundred Pagodas and your Petitioner to grant a Bond for the Sum of five hundred Pagodas, but that the Complainants Attorney insisted that the Bond should be secured by Mortgage of the Bill of Sale of your Petitioners House— To the twelfth Interrogatory that Emanuel Luis Anderson the Transfer above named did Demand from your Petitioner the Amount of the Debt in question that your Petitioner replied he would borrow sufficient to discharge the Amount of the said debt from Patchapah Moodeliar and Earnestly requested not to be sued in Court and to the last Interrogatory that he the Deponent did demand payment of the debt in question, and that your Petitioner promised to discharge the same And your Petitioner Sheweth that Nagapah Moodeliar another Witness produced on the part and behalf of the Complainant did to the

sixth

Sixth Interrogatory depose that the Complainant did order him to receive the Sum of Six hundred Pagodas from his Cash Keeper and carry to your Petitioner, that Deponent did carry the money accordingly and pay it to your Petitioner, that your Petitioner took him to one Shiva Condapah Chitty, and by paying him the Sum of three hundred and forty Pagodas and a quarter your Petitioner redeemed his said Bill of Sale, that thereupon your Petitioner Executed a Mortgage Bond in presence of the Deponent and Telsingah Moodelly unto the Complainant for the Sum of Six hundred Pagodas and delivered the same with the Bill of Sale of his House to him, and to the last Interrogatory that he the Deponent did payment of the said Sum of money from your Petitioner and that your Petitioner did promise to discharge the same.—

And your Petitioner Sheweth that Vash Lingum Moodeliar another Witness on the part and behalf of the Complainant to the Seventh Interrogatory did depose that he did also Demand payment from

your

your Petitioner of the debt in question, which your Petitioner promised to discharge but that the Complainant having notwithstanding prefsed for immediate payment your Petitioner did Mortgage the Bill of Sale of his House at Pegue as a collateral Security for his said debt to the Complainant And your Petitioner Sheweth that Setturamiah and Periana two other witnefses produced on the part and behalf of the Complainant did also severally depose to their having demanded payment from your Petitioner of the debt in question, and of your Petitioners having promised to discharge the same and your Petitioner Sheweth that Colliya Roya to the tenth Interrogatory on the part and behalf of the Complainant did depose that your Petitioner did after Commencement of the present action request the Deponent to intercede with Complainants attorney to settle the business amicably and that he offered to pay the principal only being Six hundred Pagodas due on his mortgage Bond, that Deponent Observed it was not likely that the Complainants attorney would agree thereto and that he recommended

your

your Petitioner to give a Semple Bond for five hundred Pagodas, and to pay in ready money Seven hundred Pagodas, which your Petitioner consented to do, and that he the Deponent did speak to the Complainants attorney on the subject but that he did not consent to such Offer.—

And your Petitioner Sheweth unto this Honble Court that of the Witnefses adduced on the part and behalf of your Petitioner, Seven Witnefses namely Vyde Chitty Nenapah moodelly Petree Soobarayah Moodeliar, Mauryapen, Tanapah Moodelly Ramapadra Debash, and Pedda Reddy did to the Second Interrogatory depose that they Knew your Petitioner was some time in the year of Christ One thousand Seven hundred and Seventy Eight sued in the said mayors Court and arrested at the Suit of one Chindodripettah arnachellum Moodeliar, that your Petitioner did request the Complainant to become Bail and that the Complainant did refuse to become his Bail unless

your

your Petitioner Would deposit with him the Bills of Sale of his Houses at Madras and Pegue, that your Petitioner did in consequence deposit with the Complainant the said requried Bills of Sale but that the Complainant did not become Bail for your Petitioner nor return the Securities he obtained from your Petitioner and your Petitioner Sheweth that the said Sanapah moodelly Ramapadradebash, Pedda Reddy and another Witness Mootiah moodelly to the third Interrogatory did depose that they were well acquainted with the money Transactions which subsisted between the Complainant and your Petitioner, that your Petitioner was indebted unto the Complainant on a Bond in the Sum of three hundred Pagodas, but that your Petitioner was not otherwise indebted to the Complainant, nor that the Complainant did require the payment of any Sum of money from your Petitioner previous to the filing of his Bill of Complaint and your Petitioner Sheweth that Vyde Chetty, Petrie Soobroyah Moodeliar and Maurey apen did also in their Depositions to the said third Interrogatory corroborate the Evidence of the aforegoing Witnesses and further depose that your Petitioner did demand from the Complainant the Bills of Sale of his Houses deposited with him as aforesaid and that the Complainant did refuse to comply therewith unless your Petitioner should pay him the Complainant the Sum of three hundred pagodas which he declared your Petitioner stood to him indebted in—

And your Petitioner Sheweth that the said Munapah moodelly Sanapah moodelly Ramapadra, Mootiah moodelly, Pedda Reddy Vyde Chitty and Petrie Soobroyah Moodeliar to the fourth Interrogatory Deposing to the Signature pretended by the Complainant to have been affixed by your Petitioner to the Bond in question, say that they were well acquainted With the Character and manner of the hand Writing of your Petitioner, that they had inspected the Bond in question which had been shewn to them at the time of their Examination and that the Signature affixed thereto was not of the proper hand Writing of your Petitioner and your Petitioner Sheweth that

that the said Ramapada Podda Reddy and Vydee Chitty did to the fifth Interrogatory depose that they do Know of a Sum of one hundred and forty Pagodas having been borrowed by your Petitioner from Sheva Cundapah Chitty on the mortgage of the Bill of Sale of your Petitioners House at Madras and that the said money was repaid to the said Sheva Cundapah Chitty by your Petitioner —

And your Petitioner Sheweth unto this Honble Court that upon the Evidence as aforesaid being had publication did pass in the Cause and your Petitioner did take Exceptions to the Interrogatories and Depositions on the part and behalf of the Complainant and did in and by his said Exceptions setforth that your Petitioner did Except to the Interrogatories administered by the Complainant to Ninicapah Moodelly Annah Moodelly Colengaroy Moodelly, Nagapah Moodelly, Telsinga Moodelly and Pallicondan for that the said Ninicapah Moodelly Annah Moodelly Colengaroy Moodelly were Brother in laws to the Complainant and that the said Nagapah Moodelly, Tellsingah Moodelly

Moodelly and Pallicondan were Brothers to the Complainant and your Petitioner did Except to the Depositions taken upon the said Interrogatories so administered to the said persons for that by their Connexion with the Complainant they were to deeply interested in the Cause to be Enabled to give that impartial and unbiossed testimoney required by Law And your Petitioner Sheweth unto this Honble Court that to your Petitioners said Exceptions the Complainant did Exhibit and file his Answer and did therein And thereby setforth that the Exceptions taken by your Petitioner were in the whole groundless for that by such Exceptions it would Appear that the Complainant had Interrogated, one Ninicapah Moodelly also one Annah Moodelly whereas in fact the Complainant did say he had not put any Interrogatory to either of such Supposed persons, nor had Depositions under such names or either of them been given on the Complainants behalf in the Cause — and the Complainant did say that Collingaroy Moodelly was not the Brother in Law of Munnapaukum Tondroya

Londroya Moodeliar as was charged in the Exceptions
nor that Pally conda was the Brother of the Complainant
he in fact being only the Complainants Cousin and the
Complainant did say he admitted that Tellesingah
Moodelly and Nagapah Moodelly were his Brothers but
did submit to the said Mayors Court whether it did
thence follow that either from such Relationship or their
depositions considered their Evidence should not be
deemed and received as legal and Effectual Evidence
for so far as it should tend to the use of the Complainants
Case and did further say that if Relationship were
to be a bar to the admission of Evidence that your
Petitioner had Examined his own Brother
Ramapodra on his behalf, as also one Mootiah Moodelly
your Petitioners Sister son and who lived in your
Petitioners House, and who was, as the Complainant
pretended Entirely supported by your Petitioner —

And your Petitioner Sheweth unto this
Honble Court that the Complainant did also take
Exceptions to the Interrogatories and depositions on
the part and behalf of your Petitioner and did in and

by

by his said Exceptions state that he Excepted to the
second Interrogatory administered to Miniapah Moodelly
and to the Deposition taken by him thereon, and
also to the second and third Interrogatories
administered to Vyde Chitty and to the depositions
by him taken thereon because the said Miniapah
Moodelly and Vyde Chitty had Severally deposed
to Circumstances of Which they had no personal
Knowledge as was Evident from their depositions the
whole of Which were hearsay — That he also Excepted
to the second Interrogatory administered to Petrie
Soobaroya Moodeliar and to the Deposition by him
taken thereon for that the said Petrie Soobaroyah Moodeliar
in his answer to the first Interrogatory Deposed that
he had known the Complainant nine or Ten years
and that he had known your Petitioner Coamore
Mootoo Moodeliar fifteen years from Whence the
Complainant did shew that the said Petrie Soobaroyah
Moodeliar could not know of the Circumstance
supposed to have taken place between your Petitioner
and Chinnatreputtah Arnachellum Moodeliar at

whose

Whose Suit the Witness positively said your
Petitioner was arristed in the year of Christ one
thousand Seven hundred and Seventy Eight which
to the time that the Witness deposed formed a period of
near Seventeen years and that the Complainant
did further Except to the further part of the said
Second Interrogatory and to the deposition taken thereon
because the said Petrie Soobaroyah moodeliar did
not as was Evident therefrom depose from his
personal Knowledge but from hearsay and that the
Exceptant did Except to the third Interrogatory
administered to the said Petrie Soobaroyah moodeliar
and to the Deposition by him taken thereon, because
the Complainant did say that by his the witnesses
own shewing it Appeared that he had Known
the Complainant nine or Ten years and your
Petitioner fifteen years Whereas the Complainant
said that the Bond in question appeared to have
been Executed on the fifteenth Day of October one
thousand Seven hundred and Seventy two which to
the time the said Witness deposed formed a period of
Twenty

Twenty two years and upwards Wherefore and as the
said Witness did not particularly mention
when and on What Day he was present when
your Petitioner requested the Complainant to
deliver over the Bill of Sale of his House which was
deposited in the Hands of the Complainant and
of his the Complainants promise to Comply
therewith if your Petitioner would discharge his
Debt to the Complainant and of his the
Complainants informing the said Witness, that
the same was three hundred Pagodas, the
Complainant did say that the said Petrie
Soobaroyah moodeliar had not shewn any
reasonable ground for his knowledge of such
Circumstance and the more so as by his the Witness
=es own shewing it was Evident he was utterly
unacquainted With all money Transactions
between the Complainant and your Petitioner

And your Petitioner Sheweth unto this
Honble Court that to the Complainants said
Exceptions your Petitioner did Exhibit and file

his

his Answer and did therein and thereby state to the first Exception that hiarsay Evidence connected with positive and direct Evidence was allowable and was good Evidence — To the Second Exception that although Petrie Soobaroya had Deposed that he had Known the Complainant nine or ten years and your Petitioner — fifteen years it was not to be inferred that his Evidence was incorrect when he deposed to a fact regarding your Petitioner which occurred Seventeen years ago and your Petitioner did Submit to the said mayors Court that the said Petrie Soobaroyah had not as asserted by the Complainant Evidently deposed to matters of hearsay, but to matters within his own personal — Knowledge and to the third Exception that the answer thereto was Comprised in the Answer to the Second Exception of the Complainant for that part of the said third Exception which related to precise time was altogether irrelevant and irregular as your — Petitioner trusted the same might thereafter appear to the said mayors Court. —

And your Petitioner Sheweth unto this

this Honble Court that upon the pleadings aforesaid being had in the said Cause, the same was set down to be heard by the said mayors Court and the same coming on to be heard on the fourteenth day of July and year of Christ one thousand Seven hundred and ninety five, the said mayors Court was pleased to order and Decree and did accordingly order and Decree that your Petitioner should pay unto the Complainant the full and Just Sum of one thousand five hundred and Sixty three Pagodas together with all such Interest as then was or should thereafter — become due thereon, also all Costs of the Suit as by a — Copy of the said Decree hereunto annexed for the — Inspection of this Honble Court to which your Petitioner begs leave to refer and prays the same may be taken as part of this his Petition and Appeal may appear

By which said Decree of the said mayors Court your Petitioner doth conceive that he is much Aggrieved and doth therefore Appeal — therefrom to this Honble Court for the following — Amongst other Reasons —

First

First—Because your Petitioner did in order by his said Answer upon Oath to the Complainants said Bill of Complaint deny that he ever did Execute the pretended mortgage Bond upon which the Complainant did bring his action and having obtained Oyer thereof did also in and by his said Answer deny that the Signature to the said pretended mortgage Bond affixed was the Signature of your Petitioner and it therefore was incumbent on the Complainant to prove the Execution of the said mortgage Bond by the Testimony of the Subscribing Witness thereto, but which the Complainant did not do, nor did he prove that the said Subscribing Witness was dead, or that he was in remote parts so that his deposition could not be obtained, nor did the Complainant produce the person who is said to have drawn the said Bond which he ought to have done in order to have shewn that the same was actually drawn at the time that it is made to bear date, and that the same was not a fabrication of a Subsequent period and therefore your Petitioner humbly Submits to this

Honble

Honble Court that the Necessary proof was not brought forward to give Validity to the said pretended mortgage Bond, and that the same stands admitted as your Petitioner has declared it to be a fraud practised by the Complainant for the purpose of obtaining by such unjust means the payment of a Sum of money from your Petitioner which he never owed to the Complainant for your Petitioner says that the persons brought forward on the part of the Complainant as Witness to prove the Execution of the said mortgage Bond, are not such Witnesses as the Law requires upon such Occasions by their own shewing they are the Servants of the Complainant, the one his Linicopoly and the other his Cash Keeper and the former of them Nagapah Moodeliar to the fifth Interrogatory says that about the fifteenth of October one thousand Seven hundred and Seventy two to the best of his recollection the Complainant did Order him to receive the Sum of Six hundred Pagodas from his the Complainants Cash Keeper and carry the

Same

same to your Petitioner, that he did accordingly carry
and pray the said money to your Petitioner who did
then go with him to one Sheva Coondapah Chetty and
your Petitioner by paying to him three hundred and forty
and a quarter Pagodas redeemed the Bill of sale of his
your Petitioners House that had been mortgaged to the
said Coondapah Chetty, that your Petitioner then
returned to his own House where he sent for one
Moodoo Kistna Pillah a conicopoly and caused
him to draw out a mortgage Bond from your
Petitioner to the Complainant for the Sum of
Six hundred Pagodas that your Petitioner carried it
to the Complainant and Signed it in his the
Witnesses presence and in the presence of Tellesinga
Moodelly and that your Petitioner did then
Delivered to the Complainant this your Petitioners
Bill of Sale of his House. Tellesingah Moodelly Cath
Keeper to the same Interrogatory in order to
Corroborate the testimony of the preceding Witness
destroys his own testimony if it could have been
of any force for he deposes positively to a fact
that

that Even had it been true he would not have
Known it, of his own Knowledge for he says that
so soon as the said Nagapillay paid the said Sum
of Six hundred Pagodas into the hands of your Petitioner
he your Petitioner in Company With the said
Nagapillay went to one Sheva Coondapah Chettys
House Who had a Mortgage on your Petitioners House,
and on paying the Sum of three hundred and forty
Pagodas and a quarter he redeemed the Bill of
Sale of the said House and went to his House in
Company With the said Nagapah Moodelly to
Which place he sent for one Moodoo Kistnah pillay
a Conicopily and Caused him to draw a
Mortgage Bond for the Sum of Six hundred
Pagodas and brought the same With the Bill of
Sale of his House to the Complainant in Company
With the said Nagapah Moodeliar When in the
presence of the said Nagapah Moodeliar and the
Deponent he Executed the said Mortgage Bond
And your Petitioner humbly Submits to this
Honble Court that at the time that the said

Deposition

Deposition of the said Tellsingah Moodelly

doth carry on the face of it palpable perjury it shew

that to serve the Complainant in his fraudulo

purposes, he the said Witness was altogether regardl

of truth and your Petitioner begs leave to remark

that although the said Nagapillay and Tellsingah

pillah do depose to their being present at the Executio

of the said pretended Mortgage Bond they do not tak

any Notice of any person Subscribing as a Witness

thereto, nor that any person but themselves your

Petitioner and the Complainant were present at the

time and your Petitioner submits to this Honble Cour

that if the person who is said to have Subscribed

his name as a Witness to the Execution of the said

pretended Mortgage Bond was illiterate for that

there is only a Cross or Mark and not the name

of such Witness Subscribed thereto, and if the said

pretended Mortgage Bond had been actually

Executed in the presence of the said Nagapillay

and Tellsingah Moodelly it is to be supposed that

the Complainant would have obtained their

Signatures

signatures thereto and not the mark of an illiterate man, or at any rate he would have caused them to subscribe their names in addition thereto and thereupon your Petitioner submits to this Honble Court that his said Answer stands unrefuted, and that the said pretended Mortgage Bond is without any manner of proof whereby to establish its Validity

Secondly Because your Petitioner did in and by his said Answer upon Oath shew that having been sued in the said Mayors Court arrested and committed to prison he did apply to the Complainant to become Bail for him who did consent thereto upon the condition that your Petitioner would Delivir into his posession the Bills of Sale of his your Petitioners House by way of securing them the Complainant in the premises that your Petitioner did accordingly delivir the same to the Complainant who did then refuse to become Bail for your Petitioner or to returned to him the said Bills of Sale and which your Petitioner has fully supported by the deposition of Ramapadry

mariapen

Mariapen Sanapah Moodelly Pedda Reddy and
others to the second Interrogatory and Ramapadra
Sanapah Moodeliar and Pedda Reddy deposing
to the fourth Interrogatory say that the Signatures to
the said mortgage Bond produced to them at the
time of their Examination is not of your Petitioners hand
writing and the same Witnesses Deposing to the same
Interrogatory say that they are intimately acquainted
with the money transactions between the Complainant
And your Petitioner and that your Petitioner did
stand indebted unto the Complainant in the Sum of
three hundred Pagodas, but that the same was not
secured by any mortgage and many a pen to the same
Interrogatory says that he is not intimately Acquainted
with the money transactions between your Petitioner
and the Complainant, but knows that your Petitioner
did require the Complainant to return to him the Bills
of Sale of his House which the Complainant refused
to do, unless your Petitioner would pay him the Sum
of three hundred pagodas and Interest thereon which
he said was due to him from your Petitioner in

Answer

Answer to which your Petitioner Observed that
it was very improper in him the
Complainants to take an Advantage of his
having obtained the Bills of Sale of his your
Petitioners House in manner aforesaid — and
your Petitioner Submits to this Honorable
Court that the said pretended Bond bears
date in the year of Christ one thousand Seven
hundred and Seventy two, and the present Suit
was not brought until the year One thousand
Seven hundred and Ninety —

For all which Reasons
and such others as may
be Offered at the Hearing
your Petitioner most
humbly prays that this
Honble Court will be pleased
to Reverse the said Decree
of the said Mayor's Court
and that your Petitioner

may

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

(Signed) James Stuart Hall
Solicitor for Appellant

Mayors

Mayors Court at Madraspatnam } Tuesday the 14th day of July Anno Domini 1795.—

Present

S.L.

Benjamin Roebuck Esqre Mayor
Andrew Ross & Alex^r Cockburn
Aldermen

~~Mayor's Court~~

Between Triplicane Ninapa
Moodeliar by his Attorney
Manapaukum Tondroyah
Moodeliar by his Attorney
Emanuel Lewis Anderson of
Madras Inhabitant Complainant
and Coannore Mostu moodeliar
of the same place Inhabitant
Defendant.—

Mayors Court

This Cause Coming on to be heard and
Debated this day in the Presence of the Attornies
on both sides on reading Complainants Bill with
Copies of an Account Current translation of a
Mortgage

Mortgage Bond and two Assignments annexed, The Defendants Amended Answer, The Replication with Copies of the Translation of an article of Agreement and a Receipt annexed The Amended Rejoinder, The Interrogatories and Depositions on the part of the Complainant with Exhibits marked — A B C & D annexed, The Interrogatories and Depositions on the part of the Defendant 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 five hundred and Sixty three Pagodas / Pag.s 1563 — / together With all such Interest as now is or shall hereafter become due thereon until full payment is made also all Costs of this Suit. —

Hur

/ Signed / George Taylor Regr.

a true Copy

/ Signed / J. S. Hall Solr for appelt.

To

To the Right Honourable Lord Hobart

President &ca In Council

Fort Saint George

In the Honourable the Court of Appeals

Between Coannore Mootoo Moodeliar Appellant and Triplicane Nineapah Moodeliar by his Attorney Manapaukum Tondroyah Moodeliar by his Attorney Emanuel Luis Anderson Respondent. —

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

Filed in my Office the 31st August 1795 J Webbe Clk

The said Respondent admits that he did at the time in the Appellants Petition and Appeal mentioned by his Attornies above said file and exhibits a Bill of Complaint in the Mayors Court at Madraspatnam against the said Appellant for the recovery of the sum of one thousand five hundred and Sixty three Pagodas, owing upon the

foot

foot of the said Appellants Mortgage Bond and to which Bill of Complaint two Several Assignments of the said Bond were annexed, and this Respondent admits that to the said Bill of Complaint the said Appellant did at the time in the said Petition and Appeal mentioned file his Answer setting forth the Several matters and things in the said Petition and Appeal particularly stated and this respondent admits that to the said Answer he did by his said Attornies filed Replication and that the said Appellant did rejoin thereto as in the said Petition Appeal is also set forth, and thereupon Issue was joined in the said Cause; and that witnesses accordingly examined therein as well on behalf of this Respondent as of the said Appellant and that Tellesinga Moodeliar a Witness examined on behalf of this Respondent deposed to the hand writing of the said Appellant to the exhibits marked A B and C and that he grounded his Knowledge thereof upon the circumstance of his having oftentimes seen the Appellant write,

during

during a period of twenty five years and that the said Deponent did in all other respects depose to the tenor and effect in the said Petition and Appeal set forth With this variance that in the said Petition and Appeal it is stated that this Respondent after having received the Exhibit **B** from the Appellants Servant delivered the said Exhibit to the Appellant whereas the said Deponent deposed that this Respondent upon the receipt thereof delivered same to the Deponent, and not to the Appellant as has been mistated and this Respondent admits that Pallecondan — and Papah Chitty did also prove the Signatures of the said Appellant to the aforesaid Exhibits and that the Deponent Pallecondan — did assign as the reason of his knowledge thereof that he became acquainted With the hand writing of the Appellant in Consequence of the Appellant having been an Arbitrator, between the Defendant And his Brother and that upon that Occasion and at other times the Deponent frequently saw the Appellant Write and the said Papah Chitty did also depose and say that he had been acquainted with

with the hand writing of the Appellant about twenty Six years, and had frequently seen him write the said Deponents deposition to the Eleventh Interrogatory being mistated and garbled by the said Appellant this Respondent doth therfore state the same particularly as follows that is to say — That he the Deponent was in company in the — month of September one thousand Seven hundred and ninety with Collinga Roya Moodeliar and this Respondents Attorney Manapaukum Tondavarg Moodeliar when the said Colingaroya Moodeliar offered to pay this Respondents attorney the Sum of Seven hundred Pagodas in ready Money and the Appellant to grant a Bond for Five hundred — Pagodas but that this Respondents attorney insisted that the Bond for five hundred Pagodas should be secured by a mortgage of the Bill of Sale of the House now in question, but that the said — Collinga Roya Moodeliar would not on behalf of the Appellant agree thereto, and this Respondent saith that the said Collinga Roya Moodeliar to the Tenth

Tenth Interrogatory said that the Appellant after the commencement of the present suit in the Mayors Court requested the Deponent to intercede with this Respondents attorney to settle the business amicably and offered to pay only the Principal of Six hundred Pagodas due on his mortgage Bond upon which the Deponent observed that it was not likely this Respondents attorney would agree to such a — settlement and that the Deponent therfore recommended the Appellant to give a simple Bond for five hundred Pagodas and to pay in ready money Seven hundred — Pagodas upon receiving the Bill of Sale mortgaged to this respondent and that the Appellant agreed thereto, and then went away in order to raise the further sum of one hundred Pagodas which the Deponent said with the six hundred Pagodas — before mentioned, would complete the payment of Seven hundred Pagodas to be made in ready money and that the Deponent spoke to this respondents attorney on the Subject who did not consent to such offer — and this Respondent further saith that the deposition

deposition of the said Paupah Chitty to the " twelfth Interrogatory, is partially and unfairly stated by the said appellant for that the said " deponent doth therein declare, that he the Deponent was present was present so late as the month of August one thousand seven hundred and ninety when " Emanuel Luis Anderson the assignee of the " mortgage in question, and the appellant had a conversation touching the matter of this suit and that the said Emanuel Luis Anderson did then demand from the Appellant the amount of the debt " in question and that the Appellant thereupon replied that he would borrow sufficient to discharge the Amount of the said debt from one Patchapah Moodeliar and earnestly requested not to be sued, and to the last Interrogatory the said " Deponent deposed that he the deponent was present when the appellant promised to discharge the " principal and Interest of the said debt as soon as he should receive money from Pegue, which he the Appellant said he was in daily expectation of. and

Nagapah

Nagapha Moodelly another witness to the " sixth Interrogatory deposed that this respondent did order the Deponent to receive the sum of six hundred Pagodas from this respondents then Cash Keeper and to carry the same to the " Appellant that one Tellesinga Moodeliar was at that time this respondents Cash Keeper, that the deponent Accordingly carried the said money and delivered it to the Appellant, who took the Deponent to one Sheva Condapah Chitty with " whom the Appellant had mortgaged the Bill of Sale of his House. and that the appellant " thereupon paid the said Sheva Condapah Chitty three hundred and forty Pagodas, and a quarter, redeemed the said Bill of Sale, and returned with the Deponent to his the Appellants own House. and then sent for one Modi Kistna Pillay a " Conicoply and caused him to draw a mortgage Bond from the Appellant to this respondent for six hundred Pagodas and carried it to the " Complainant and signed the said Bond in the

the presence of the Deponent and of the said Tellisinga Moodelly and then delivered the said Bill of Sale to this Respondent as security for repayment of the said money That the Deponent had looked at the Exhibit **D**, and said that the same is the title Deed which was so delivered by the said Appellant to this respondent and upon which the present suit was brought, and that the Deponent by order of this Respondent at the time limitted in the said Mortgage Bond went to the Appellant and demanded payment thereof and which he promised to discharge. This Respondent further saith that notwithstanding seven Witnesses on behalf of the Appellant have come forward to prove that the Bills of Sale of the mortgaged Premises were deposited with this Respondent merely for the purpose of guarranting this Respondent Against any loss he might eventually sustain on becoming Bail for the said Appellant, as by the said Appellant is pretended, yet this respondent nevertheless submit to this Honourable Court that upon a

Survey

survey of the whole case it will appear that the Circumstance of the said Appellant having been held to Bail in a former Suit in the Mayors Court has been artfully caught at by the Appellant as a pretext upon which to found the concerted Scheme of eludeing the payment of the said Appellants Bond for that the very many witnesses by whose Testimoney the delivery of the said Bills of Sale is attempted to be established, does as this Respondent humbly submits to this Honourable Court afford strong reason to suspect that the said Witnesses have not deposed the truth, as it is not to be credited that such a number of Persons were or could in the common course of things have been present at the time when the alledged transaction to which they depose namely the delivery of the said Bills of Sale is pretended to have taken place; nor is it to presumed or believed that if the said Bills of Sale had not been actually and bonafide Mortgaged to this Respondent, but merely deposited for the purpose alledged by the said Appellant, the said Appellant would have

Executed

Executed a Mortgage Bond thereof, the validity of which Bond is incontrovertibly established both by Oral and Written Evidence that is to say, by the Witnesses produced on the part of this respondent and by the letter of the said Appellant addressed to this respondent, and which is in the words and figures following to wit "Pooratausy of Nandanah" year or September — 1772, The Amount of Bond to Sheva Condapah Chitty is Pagodas 305 —

Interest to the above from the 15th Auvany of Verody year or 25th August 1769 — to the 29th Pooratausy of Nandanah year or 9th October 1772 being 37½ months at the rate of 9 ℔ Cent ℔ Annum is Pagodas 85¼ Including the Amount of the Interest is Pagodas 390¼ in part of which paid Pags. 50 the remainder Pags. 340¼ — This is to Acquaint to Tomby Niniapah Moodeliar that the Amount due on the Bill of Sale of the House is Pagodas 340¼ and I moreover having an Occasion for 300 Pags. in all Pagodas 640¼ If the people who would lend money comes with the money in Company with Tomby Nagapan, whom

you

you will send I shall pay the money receive the Bond and send it afterwards, I will Execute Bond to the Owner of the money, you will send with all possible haste that it may reach here at the sunrising, and which letter though introduced into this respondents Replication in the mayors Court the said Appellant in his rejoinder hath not controverted or denied further than by Alledging that the same was impertinent to the matter in question and this respondent saith that four of the said Appellants said Witnesses having taken upon them to depose that the said Appellant was indebted to this respondent in Three hundred Pagodas, and that the Appellant was not otherwise indebted to this respondent and that this respondent did not require the payment of any sum of money from the Appellant previous to the filing of the present Bill of Complaint have with that degree of hardiness which hath dictated their aforegoing testimony deposed positively to matters which could not have lain within their certain Knowledge for as much as the said Appellant might have been indebted to this

respondent

respondent in various Sums of money and yet the
said Witnesses not have Known thereof Do in like
manner this Respondent might have made
frequent demands of payment upon the said
Appellant and the said Witnesses not have been
present or Known thereof, and which over readiness
in the said Witnesses to depose to whatever might
have been proposed to them doth as this Respondent
humbly submits entirely destroy their credit and
evince a predetermination on their part to carry
the said Appellant through the whole of the defence
which he has set up be it ever so repugnant to reason
and to truth. And this Respondent saith that the
aforesaid Observations do as he humbly conceives
apply to the whole of the Evidence brought forward
on behalf of the Appellant And this respondent admits
that Exceptions to Evidence adduced on both sides was
taken aswell by this Respondent as the said Appellant
But this Respondent saith that as the said Exceptions
could only go to the credit of the said Witnesses and not
to their Competency they were respectively overruled by
the

the said Mayor's Court

The said Respondent in Answer to the
First cause or reason by the said Appellant
assigned saith that though the said Appellant hath
denied the Execution of his Bond and consequently
the debt arising thereupon yet this Respondent
nevertheless saith That he hath in support of the
said Bond Adduced the best Evidence the nature
of the case would admit of which is all that the
Law requires, for in this respondents Replication
he hath shewn that aswell the subscribing witness to
the said Bond as the Person who drew the same are
respectively dead and the Appellants Letter addressed
to this Respondent at the time when the Appellant required
the said Loan from this Respondent, and also the payment
of the monies by the said Letter required is fully in
Evidence and that to secure the repayment thereof the Bond
in question was Executed, and there is Collateral Evidence
which proves demands of payment to have been lately
made upon the Appellant and his promise to discharge
the said Bond in consequence thereof and it is more
particularly

particularly established by the Evidence of Collinga Roya who is well Known to be a man of probity, and of the first respectability Amongst the Natives and to whose testimony full credit is due That the Defendant after the Commencement of the present action did request of him the said Collinga Roya to intercede with this Respondents Attorney to settle this Suit amicably and that the Appellant offered to pay the principal of Six hundred Pagodas due on his mortgage Bond and that the said Collinga Roya thereupon observed that it was not likely that the Respondents Attorney would agree to such a Settlement and that he therefore recommended the " Appellant to give a simple Bond for five hundred Pagodas and to pay in ready money Seven hundred Pagodas on receiving the Bill of Sale mortgaged to this Respondents and that the said Appellant consented so to do and went away in order to raise the further sum of one hundred Pagodas which together with the sum of Six hundred Pagodas above mentioned would complete the payment of Seven hundred Pagodas to be made in ready money and that the said "

Collinga

Collinga Roya spoke to this Respondents Attorney on the Subject who did not consent to such offer —

And as to the second cause or reason by the said Appellant in his Petition and Appeal Assigned This respondent saith he humbly conceives that the several matters of fact herein before stated and set forth do fully and " substantially refute the same and shew the defence set up by the Appellant to be without any formidation in truth and a mere fabrication to elude the payment of a just Debt Wherefore this respondent by his attornies aforesaid Humbly prays that the said Petition and Appeal may be dismissed and the said decree of the Mayors Court affirmed with examplary costs to be paid by the said Appellant —

/ Signed / John White
Solicitor for the Respondent

Court

Court of Appeals
Madraspatnam } Saturday the 23d day of January Anno Domini 1796.

Between Coannore Moatu Moodeliar of Madras Inhabitant and Triplicane Ninapah Moodeliar by his Attorney Manapaukum Tondroyah Moodeliar by his attorney Emanuel Lucis Anderson of the same place Inhabitant Respondent

This Cause coming on this day to be heard and debated before this Court and upon due Consideration of the Petition of appeal together with the Decree of the Honble the Mayors Court given in this Cause on Tuesday the 14th day of July Anno Domini 1795. And it Appearing to the Court that the matter in dispute is between two Natives and that the Plaintiff in the said Mayors Court has made use of the name Emanuel Lucis Anderson as his Assignee only for the purpose

purpose of evading the Charter This Court doth think fit to Order and Decree and doth Accordingly Order and Decree that the said Decree of the Honble the Mayors Court dated the 14. day of July Anno Domini 1795. be reversed and that each party do pay his own Costs in both Courts.

Hur

(Signed) J. Webbe Clk

To

To the Right Honble Robert Lord Hobart
Governor in Council
In the Court of Appeals } Fort Saint George
at Madraspatnam }

Between Myla Venkatasha
Moodelly of Madras Inhabitant
Complainant. and
William Moore of the same place
Inhabitant Defendant.

The humble Petition and Appeal of
the above named Defendant.

Filed in my office
the 6th July 1795
J Webbe Clk

That on the seventh day of may in the present year of our Lord one thousand seven hundred and ninety five the above named complainant did file and Exhibit a Bill of complaint in the Honble the mayors Court at madraspatnam against your Petitioner for the recovery of the Sum of two hundred and eighty one Star Pagodas twenty one fanams and Sixty Cash charged to be due and owing unto him by your Petitioner upon an Account Current drawing upon a Promissary note of hand and

a

a Letter Copies Whereof were annexed to the Complainants said Bill of Complaint and your Petitioner further Sheweth that a Summons did thereupon 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 thereto by his Attorney at Law and the usual Rules having passed for your Petitioner to Answer the same your Petitioner Sheweth that before such Answer could be prepared in time to be filed the said mayors Court did on the Twenty third day of June in the said year at the Instance of the Complainants Attorney pass a Decree that your Petitioner should pay unto the Complainant the full and Just Sum of Two hundred and eighty one Star Pagodas Twenty one fanams and Sixty Cash together with the Interest due or Which might grow due thereon as also all costs of Suit Which said Decree extract or order from the minutes of the said mayors Court is hereunto annexed for the inspection of this Honble Court and which your Petitioner prays may be admitted as part of this his Petition from Which said Decree and Extract or order of the said mayors Court your Petitioner doth

appeal

Appeal to this Honble Court as he conceives himself much Aggrieved and injured thereby for the following amongst other Reasons

First Because it is the Practise of the mayors Court to grant a further time of several Weeks according to the Circumstances of the Case for a Defendant to put in his Answer on a Prayer to that effect therefore your Petitioner humbly submits that no prejudice could have happened to the Complainant if the said mayors Court had granted a further time for your Petitioner to file his Answer

Lastly Because the said Complainant having filed his said Bill of Complaint in the said mayors Court for the recovery of the said Amount sued for in the said Bill and which was Charged to be due and owing on a Promisary Note of hand and on a Letter the said Promisary Note and the said Letter ought to have been proved at or Previous to the time of the said mayors Court passing their said Decree Against your Petitioner for the said mayors Court without the said Instruments being proved had nothing Before them Wherein they could Decree the Principale Sum to the said Complainant except the bare Assertion or allegation of the said Complainant and nothing Whatever whereby the said Court could be inabled to Decree the interest charged by the said Complainant to be due on Account of the same and your Petitioner is advised that the said Interest being in the Nature of Damage could not be assessed by the mayors Court without the execution of the said Note and Letter being previously in proof for from a proof of that Circumstance only the said mayors Court could have awarded any thing in the Nature of Damage Against your Petitioner 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 Honble Court will be pleased to set aside the said Decree Extract or Order of the said mayors

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/ G Payley
Solicitor for appellant

Extract

Extract from the Minutes of a Court Held at the Town Hall
on Tuesday the 16th day of June Anno Domini 1795

Present

Benjamin Roebuck Esquire Mayor
William Webb and Joseph Greenhill
Aldermen

Mr. Alderman Ross takes his Seat upon the Bench

Myla Vencatasha Moodelly

vers

William Moore

The Attorney for the complainant produces
to the Court a Certificate from the Rejister 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 John Wilkinson attorney for the
Defendant Objects, and prays a further time of one week
to file his Answer and prays that the Complainant may
by next Court Day deliver into Court the original Promissary
Note and a Letter Copies Whereof are annexed to the
Complainants Bill of Complaint Ordered Accordingly

and

and that a further time of One Week to Answer be allowed further Day is given the Defendant till the 23d. Instant to Answer the Complainants Bill indefault of Which Judgment will be given for the Complainant.—

Mr. White Attorney for the Complainant delivers into Court the Original Promissory note and Letter prayed for.—

A True Extract

(Signed) G E Askin

Dy Regr.

Extract

Extract from the Minutes of a Court held at the Town Hall on Tuesday the 23d. day of June Anno Domini 1795—

Present

Benjamin Roebuck Esqr. Mayor

Andrew Ross Alexr. Cockburn

Aldermen

Mylavencatasha Moodeliar

vers

William Moore

Mr. John White 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.—

If Appearing by the Records of this Court that the usual Rules have issued for the Defendants to Answer the Complainants' Bill which he has Neglected doing This Court doth therefore think fit to Order and Decree, and doth Accordingly Order and Decree, that the Defendant do pay unto the

the Complainant the full and Just Sum of Two hundred and Eighty One Pagodas twenty One fanams and Sixty Cash / Pagodas 281.. 21.. 60 / together with all Such Interest as now is or shall hereafter became due thereon untill full Payment is made also all Costs of this Suit

Mr. Wilkinson Attorney for the Defendant prays leave to decline Acting for want of money and Instructions The Court are of Opinion that Mr. Wilkinsons Application to decline Acting at this Period is very irregular and therefore that it be refused.—

A True Extract
/ Signed / G. E. Askin
Dy Regr

To

465

To the Right Honourable Lord Hobart

President and Governor in Council &c.
Fort Saint George

In the Honourable the Court of Appeals } Between William Moore of Madras Inhabitant Appellant and Myla Vencatasha Moodelly of the Samplace Inhabitant Respondent.—

The Answer of the abovenamed Respondent to the Petition and Appeal of the abovenamed appellant.—

The said Respondent admits that he did on or about the Seventh day of May in the Present year of our Lord One thousand Seven hundred and ninety five, exhibit his Bill of Complaint against the said Appellant in the Mayor's Court of Madraspatnam for the recovery of the Sum of Twohundred and Eighty one Pagodas Twenty one fanams and Sixty Cash, owing to this Respondent upon the said appellants Note of hand, and written Acknowledgment. And this Respondent Admits that the usual Rules allowed

Filed in my Office the 27 July 1795
J Webbe clk

the Complainant the full and Just Sum of Two hundred and Eighty One Pagodas twenty One fanams and Sixty Cash / Pagodas 281.. 21.. 60 / together with all Such Interest as now is or shall hereafter became due thereon untill full Payment is made also all Costs of this Suit

Mr. Wilkinson Attorney for the Defendant prays leave to decline Acting for want of money and Instructions The Court are of Opinion that Mr. Wilkinson's Application to decline Acting at this Period is very irregular and therefore that it be refused.—

A True Extract
/ Signed / G. E. Askin
Dy Regr

To

465

To the Right Honourable Lord Hobart
President and Governor in Council &c.
Fort Saint George

In the Honourable the Court of Appeals } Between William Moore of Madras Inhabitant Appellant and Myla Vencatasha Moodelly of the Samplace Inhabitant Respondent.—

The Answer of the abovenamed Respondent to the Petition and Appeal of the abovenamed appellant.—

The said Respondent admits that he did on or about the Seventh day of May in the Present year of our Lord One thousand Seven hundred and ninety five, exhibit his Bill of Complaint against the said Appellant in the Mayor's Court of Madraspatnam for the recovery of the Sum of Twohundred and Eighty one Pagodas Twenty one fanams and Sixty Cash, owing to this Respondent upon the said appellants Note of hand, and written Acknowledgment. And this Respondent Admits that the usual Rules allowed

Filed in my Office the 27 July 1795
J Webbe clk

allowed by the said Mayors Court for the said appellant to have Answered the said Bill of complaint if any Answer he meant to have filed thereto expired on the sixteenth day of June now last past, and this Respondent saith that no Answer having been filed thereto, He did on the said sixteenth day of June by his Attorney at Law pray the said Mayors Court that a Decree might then pass Against the said appellant for want of an answer. But that the said Court was thereupon pleased at the instance of the said Defendants Attorney at Law to extend the said Rules for answering to the Twenty third day of June aforesaid, and this Respondent saith that the said appellant Notwithstanding the indulgence so to him granted by the said Mayors Court, having failed to file his Answer to the said Bill of of Complaint, a Decree thereupon pass Against the said appellant in due course.—

This Respondent in Answer to the first Cause by the said Appellant Assigned saith it appears by the Extract from the Minutes of the Mayors Court and which is annexed to the said appellants

Petition

Petition and Appeal that the usual Rules for the said appellant to Answer the said Bill of complaint had run out and expired on the Twenty third day of June last, and it further appears by another Extract from the Minutes of the said Mayors Court which is hereunto annexed and to which this Respondent humbly refers that this Respondent on the sixteenth day of June was entitled to a Decree for want of an Answer

This Respondent in answer to the second cause by the said appellant Assigned saith, that the several matters therein alledged are merely calculated to mislead, and are wholly unfounded. For that the said Bill of complaint (as in all like cases) having been taken Against the said Appellant Pro confesso no further proof beyond the said appellants admission of the debt so owing to this Respondent was Necessary, or could have been given to, or received by the said Mayors Court in support of this Respondents said demand, and

as

as the said Petition and Appeal is a mere dilatory And Solely calculated to impede the Operation of Justice. This Respondent humbly prays that the said Petition and Appeal may be dismissed and the said Decree of the Mayors Court affirmed with examplary Costs to be paid by the said Appellant.

/Signed/ John White

Solicitor for Respondent.

Court

Court of Appeals
at
Madraspatnam

Saturday the 23d. day of January
Anno Domini 1796.

Between William Moore
of Madras Inhabitant Appellant
and Myla Venatasha Moodeliar
of the same place Inhabitant
Respondent.

This Cause coming on this day to be heard and debated before this Court by the Attornies on both sides upon hearing the Petition of Appeal and Answer and the Bill of Complaint of the Honble the Mayors Court together with the Decree of the said Court given in this Cause on Tuesday the 23d. day of June Anno Domini 1795 - 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

of the Honble the Mayors Court dated the 23d
day of June Anno Domini 1795. be reversed and
that the further time of one Week from this 23d day
of January Anno Domini 1796. be given the
Appellant to Answer the Respondents Bill of
Complaint in the Honble the Mayors Court and that
each party do pay his own Costs in this Court.—

H Cur

/Signed/ J. Webbe clk

Saturday

Saturday the 13th February 1796.

Present,
The Right Honble Lord Hobart
Edward Saunders and Ernst William Fallofield.

To the Honble Sir Charles Oakeley Bt.

President and Governor &c. in Council
Fort St. George

In the Honble the Court of Appeals }

Between Peter Walker late one of the Attornies of the Mayors Court of Madraspatnam Complainant and Charles Loyd of Madras Inhabitant Defendant.

The humble Petition and appeal

of the above named Defendant-

Sheweth.

That some time on or about the Twenty fifth day of May and year of Our Lord One Thousand

Filed in my office
the 8th July 1795
Chas N. White
Clk

thousand Seven hundred and Ninety two the Complainant above named did Exhibit and file his Bill of Complaint in the Mayors Court of Madraspatnam against your Petitioner for the Recovery of the Sum of Two thousand and Sixty four Pagodas and thirty two Fanams Current Money of Madras and therein and thereby setting forth that in order to Secure the Repayment thereof with Interest at and after the rate of Twelve per Cent per Annum, your Petitioner did enter into one Bond or written Obligation bearing date the Thirtieth day of October which was in the year of Our Lord One thousand Seven hundred and Eighty Eight wherein your Petitioners did Acknowledge to be held and firmly bound unto the Complainant in the Penal Sum of Four thousand Pagodas Current Money of Madras with Condition thereunder written that if your Petr his Heirs Executors Administrators or Assigns should well and truly pay or Cause to be paid

paid unto the Complainant his Heirs Executors Administrators and Assigns the full and Just Sum of Two thousand Pagodas on the thirtieth day of October and year of Our Lord One thousand Seven hundred and Ninety together with such Interest as should or might become due thereon then the said Obligation to be Void and of no effect otherwise to continue in full force and Virtue as by the said Bond or Obligation in the Complainants posession and ready to be produced the Complainant did say would appear and your Petitioner Sheweth the Complainant did state that there was then due for Principal and Interest on the said Bond the Sum of Two thousand and Sixty four Pagodas and thirty two fanams Current Money of Madras as by the Copy of a Account Current to the Complainants said Bill of Complaint annexed he did say would appear and which said Sum of Two thousand and Sixty four Pagodas and thirty two fanams the Complainant did

did in and by his said Bill pray might
be Decreed to be paid unto him by your &c
Petitioners with all such Interest as then
was or should thereafter become due thereon
also all Costs of the said Suit and your &c
Petitioner Sheweth unto this Honorable Court
that to the Complainants said Bill of &c
Complaint he did file and Exhibit his Answer,
wherein and whereby he did state that he
did at or about the time in the Complainants
said Bill setforth Execute to him a Bond
in the Sum of Two thousand Pagodas but
your Petitioner stated that such Bond was
not given for any Sum in which your &c
Petitioner at such time stood indebted to the
said Complainant but was given on Account
of one Zachariah Polack, who was Represented
to stand indebted to the said Complainant in the
said Sum, and who in conjunction with
the Complainant frequently and often &c
importuned your Petitioner to become security
for the same to remove from him the said
Complainant

Complainant the Difficulty and pain of &c
prosecuting his demand against the said
Zachariah Polack and the consequences which
might ensue and as your Petitioner &c
considered the said Zachariah Polack to be
in Indigent Circumstances and strugling
honestly and with great fortitude to support
a large family in Comisiration thereof and
at the prefsing Instances of the Complainant
your Petitioner suffered himself to be persuaded
to Execute a Bond intended Solely to secure
the Complainants debt against the said Zachariah
Polack in the event of his dying insolvent or
other Casualties and your Petitioner saith
that he was additionally induced to Execute
such Bond to the Complainant by reason that
the Complainant then was his Attorney at law
and had Various Causes and matters Business
in his hands to Transact for your Petitioner
wherefore he did not chuse to deny the favor
so Earnestly requested of him by the Complai-
=nant, to wit, to Execute such Bond on behalf
of

of his the Complainants Debtor the said Zachariah Polack who was stated to have been Indebted to the Complainant by reason of having undertaken to manage the Sale of an Europe &c Investment bought by him the said Complainant and in which he the said Zachariah Polack had been unfortunate in the Disposal of either by bad Debts or other the incidents of Trade - and your Petitioner Sheweth that he had no Connection or Interest whatever in the concerns and Transactions of the Complainant and his said Shop man the said Zachariah Polack but Executed the Bond on which the Complainant brought the said Action from the mere motive aforesaid and to Avoid further Prosecution on the subject from the Complainant who Represented to your Petitioner that it would not be reputable or agreeable for him the Complainant to sue the said &c Zachariah Polack and consequently make Public their Commercial Connexion but that it would be no disgrace to your &c

Petitioner

Petitioner to sue for the same should your Petitioner be Obliged at a future day to pay the Debt to him the said Complainant on his the said Debtors Account - but your Petitioner not needing the benefit of the above facts but relying on the Extinguishment of the Debt in manner as set forth in the Copy of an Account Current annexed to your Petitioners Answer which was made up by your &c Petitioner to the same date as one annexed to the Complainants said Bill of Complaint and which Copy of an Account was annexed to your Petitioners Answer which he prayed to be taken as part thereof, the Original Whereof together with the several Vouchers and Documents, therein mentioned were in the hands of your Petitioners Attorney at Law ready to be produced and proved when required and your Petitioner affirmed that he did at the request of the Complainant advise with him in his medical Capacity from the first day of January One thousand Seven

Seven hundred and Eighty five to the latter
end of March One thousand Seven hundred
and Ninety two being a space of Seven years
and three Months and that he would in
due time prove himself fully entitled to the
charge of One hundred Pagodas per annum
for such his advice to the Complainant in the
Capacity aforesaid, and for his attendance and
medicine therefore found him - and your
Petitioner further represented that the said
Complainant did in the year One thousand
Seven hundred and Eighty seven Employ
your Petitioner on a matter of the utmost
moment on his the Complainants behalf to
be Transacted with and which your Petitioner
did transact to effect with Sir Archibald
Campbell the then Governor of this Presidency
in Consideration whereof the said Complainant
did then promise to Credit your Petitioner
with a Sum of Five hundred Pagodas but
which he has omitted to do in his Account

Annexed

annexed to his said Bill of Complaint and
your Petitioner lastly saith that he is Justly
and truely Entitled to have from the Com=
=plainant every Credit he has taken in the
Account annexed to his Answer and to the
Balance struck thereon; and your Petitioner
Sheweth unto this Honble Court that to
your Petitioners said Answer the Complainant
did Exhibit and file his Replication wherein
and whereby he did admit that Zachariah
Polack in your Petitioners Answer named
having had sundry Dealings with the
Complainant and being thereupon consider=
=ably Indebted, an Account was stated
and a Balance struck in favor of the
Complainant amounting to Two thousand
five hundred and fifty one Pagodas Nineteen
fanams and Sixty eight Cash to which
the Complainant and the said Zachariah
Polack respectively put their signatures as
by the said Account Current in the posession
of the Complainant and ready to be

produced

produced when required he did say would
more fully appear and the Complainant did
admit that the said Zachariah Polack being unable
to discharge the same the Complainant did
at his request agree to Accept your Petitioner
as a Security for the payment of the said
Debt and thereupon to Exonerate the said
Zachariah Polack from all future Claims
and demands and that Commiserating the
situation of the said Zachariah Polack he gave
up a considerable part of the said Baland
which had been so struck to wit the Sum of
Five hundred and fifty one Pagodas Ninetun
fanams and Sixty eight Cash with the
Interest since the date of the Account and for
the remainder being the Sum of Two thousand
Pagodas he took the Bond upon which the
present Action was brought wherein your
Petitioner did condition to pay the Principal
Sum in two years from the date thereof, the
Interest in the meantime payable every
three

three Months at and after the Rate of
Twelve per Cent per Annum and the Com=
=plainant did say that the said Zachariah
being thus exonerated from all Claimes he
submitted to the said Mayors Court whether
the same was not a good and sufficient
consideration to bind your Petitioner for Pay=
=ment of the Bond which he had so executed
and the Complainant adverting to the
Debit side of the Account Current Copy
whereof was to your Petitioners Answer
annexed did pray leave to point out the
many inconsistencies and false charges which
he did pretend were therein contained, and
in order to Shew that the first Item of Six
hundred and Twenty three Pagodas was
improperly charged by your Petitioner and
that he had no right to set off the same
against his said Bond the Complainant
did pray leave to state that previous to and
after the Execution of the said Bond there

existed

existed sundry Dealings between the Com=
=plainant and your Petitioner by whom he
was Employed to Transact his Law busines
that on or about the Twenty Ninth day of
April which was in the year of Our Lord
One thousand seven hundred and Eighty
Nine an Account Current Explanatory of the
several Transactions was by the desire of each
party stated wherein a Balance of Pagodas
One hundred and Ninety five thirty three
fanams and Seventy five Cash appeared to
be due to the Complainant Copy of which
Account Current as taken from the Complainants
Books and under his signature was thereunto
annexed for the inspection of the said Mayors
Court the Original together with several Copies
of the Vouchers which tended to support the
same being said to be in the posession of
the Complainants Attorney at Law and
ready to be produced when required and
the Complainant did further say that on

Account

Account of Certain Objections that were
made by your Petitioner to some few Items
in the debit side of the Account Current
so stated by the Complainant a balance
was not settled upon or agreed to by your
Petitioner until the first of September in
the said year at which period after some
few Deductions had been made your
Petitioner admitted the Sum of One
hundred and Seventy six Pagodas instead
of One hundred and Ninety five Pagodas
thirty three fanams and Seventy one Cash
to be due to the Complainant which Sum
he promised spudily to discharge as well
as the Interest due upon his Bond and
which he had Covenanted as aforementioned
to pay regularly every three Months that
those promises were not fulfilled and that
he was put off untill the Month of February
in the following year at which time the
Complainant tired with his frequent broken
promises insisted upon Payment of what

was

was due to him in consequence of which your
Petitioner requested a Statement to be made
out and that he would grant an Acceptance
Payable in three Months from the date thereof
either in favor of the Complainant or any other
Person whom he might Appoint that in order
to Accommodate your Petitioner who pleaded
inability and want of means as his reason for
not discharging what was due by him the
Complainant agreed to Accept his Proposal &
Accordingly a statement was made out wherein
after charging Interest on the balance of One
hundred and Seventy six Pagodas settled on
the fourth of September as aforementioned being
the Sum of Eight Pagodas and thirty six fanams
and Eighteen Months Interest on the Bond being
up to the first of May the Total Sum of Five
hundred and forty four Pagodas and thirty six
fanams appeared due to the Complainant for
which Sum of Five hundred and forty four
Pagodas and thirty six fanams the Complainant
gave an Acceptance in favor of Mr. John Hunter of

of Fort Saint George Merchant who Acted
as an Agent for the Complainant in paying
away and receiving Money, And the
Complainant did say that considering the said
Acceptance for Pagodas Five hundred and
forty four and thirty six fanams as good he
made out a Statement and to the foot thereof
placed the following words "Received the above
by an Acceptance Payable at three Months
"Signed P. H." Which statement and receipt
the Complainant delivered to the Petitioner
having Caused the same to be first entered
in his Books from whence the Complainant
for the satisfaction and inspection of the said
Mayors Court had Transcribed and annexed
a Copy of it to the Complainants Replication
That on the first of May in the said year
your Petitioners Acceptance having become
due he was applied to by the said John
Hunter for Payment thereof, which application
although frequently repeated even up to the
Twelfth day of the said Month of May

Failed

of Six hundred and Twenty three Pagodds
fourteen fanams and Four hundred and
Twenty Pagodas appear as seperate and distinct
Payments on Account of the said Bond yet
he humbly trusted that the foregoing
narrative of Facts had clearly Demonstrated
that they were one and the same Transaction
that Four hundred and Twenty Pagodas of
the said Sum of Six hundred and Twenty
three Pagodas and fourteen fanams was so
much money Credited on Account of the Bond
and the residue on Account of other busines
as herein before was mentioned and that the
several Circumstances were further Corroborated
by the mode in which your Petitioner had
charged Interest on the said Sum of Six
hundred and Twenty three Pagodas and
fourteen fanams being from the Twelfth of
May the time when the draft was passed
and not when it became due which was on
the first of August being three months subsequent
thereto and the Complainant adverting to the
third and fourth Items in the said Account
Current under date the Twelfth and Thirty
first of May for the Sum of Two hundred and
fifty Pagodas each did say that your Petitioner
had there taken a most unfair and dishonest
advantage by availing himself of a small
inaccuracy of the Complainant in stating the
Payment to have been made on the thirty first
day of the said Month instead of the Twelfth
and at the same time omitting to mention
"as per Receipt" the Complainant however declared
that the Sum of Two hundred and fifty Pagodas
was the only Sum which was paid on Account
of the said Bond in the course of the said
Month or at any time subsequent to it and
did defy your Petitioner to prove otherwise
and the Complainant denied having given
your Petitioner any Receipt for the Sum of
Twenty five Pagodas Twenty two fanams and
forty Cash as by him was charged in the sixth
Item of his said Account Current that on the
Contrary by referring to the Exhibit C. delivered
in

in by your Petitioner in support thereof at the Prayer and instance of the Complainant it would appear that it was only a Request for him to Pay to Juggapah Chitty the Sum of Twenty five Pagodas Twenty two fanams and forty Cash but as no receipt was produced from the said Juggapah Chitty it might be fairly presumed that the money never was paid by your Petitioner and that the same was falsely charged by him and the Complainant adverting to the Extraordinary charge for Medical advice medicine and attendance from the beginning of the year One thousand Seven hundred and Eighty five to the end of March One thousand Seven hundred and Ninety two forming a period of Seven years and three Months did deny that your Petitioner had any right whatever to charge the Sum of One hundred Pagodas per Annum or any other Sum whatever and although your Petitioner might attempt hereafter to Shew that the Complainant had asked

asked advice from him yet the Complainant did say that if he did so, it was in consequence of the importunities and urgent Solicitations of your Petitioner who frequently Endeavoured to impress the Complainant with a belief of his being skilled in the practice of Medicine and thereupon had pressed his advice by way of giving some proofs of Gratitude for favors which he had frequently Acknowledged to have received from the Complainant in the line of his Profession and for which no compensation was made that the Complainant never would have supposed that any Pecuniary charge was intended to have been made Indeed that the Complainant would thereafter prove that when Indisposition rendered it necessary it was usual and Customary for him to apply to and obtain the Assistance of Gentlemen regularly bred to the Profession of Physic and Surgery who attended him regularly and to whom he always made a due Compensation for their Trouble and labour such being the

Fact

Fact it may be fairly concluded that the Complainant did not consider your Petitioner either as a Surgeon or Physician nor would he have agreed to Pay him a stipulated annual Sum nor did he think that Gentlemen regularly bred to Physic would have allowed their fair Practice to be injured or called in Question by the interference of such a Person as your Petitioner whose abilities as a Baker, that being his profession, they might not have disputed, but when attempted to be Shewn as a Physician or Surgeon they certainly had a right to call in Question and the Complainant further said that by your Petitioners own Act the said charge for Medical advice and attendance or at least the Greatest part thereof was done away for by referring to the Account Current Copy whereof was to the Answer annexed it would appear that the charge for Medical advice and Attendances commenced on the first of January One thousand Seven hundred

hundred and Eighty five again on the per Contra side a Bond was granted by your Petitioner for the Sum of Two thousand Pagodas on the thirtieth of October One thousand seven hundred and Eighty Eight being nearly three years subsequent thereto from which Circumstances it would be fairly inferred that your Petitioner when he Executed the said Bond meant thereby to extinguish all Claims on his part preceding it That the Complainant was advised that such was the Law and as by the said act your Petitioner had fully shewn that he did not conceive himself intitled to make any charge for medical attendance preceding the date of the said Bond it followed that the subsequent charges for the same were also done away the more Especially as your Petitioner could not produce any Agreement from the Complainant or by any proof that he Acquiesced therein that the s[illegible] also of Reasoning and the Law upon it[illegible]nt herein before

to the statements that were subsequently made the one under date the first of February in the year One thousand Seven hundred and Ninety when an Acceptance was taken in favor of the said Mr. John Hunter for the Sum of Five hundred and forty four Pagodas and thirty six fanams and the other under date the Twelfth of May when an Account being framed and a Balance struck in favor of the Complainant for the Sum of Six hundred and Twenty three Pagodas and fourteen fanams a Draft on Mr. Boyd was granted for as no Notice was taken upon those several statements of any charge for Medical attendance it might be reasonably supposed and fairly concluded on that the whole set off Amounting with Interest as charged by your Petitioner to the enormous Sum of One thousand Seven hundred and Eighty two Pagodas was a late invention of your Petitioner in Order to prevent the Complainant from recovering a Just

Claim and the Complainant positively denied having given your Petitioner a promise of Credit for the Sum of Five hundred Pagodas on Account of Secret Service as by him was stated and sworn to in his said Answer and the Account Current thereunto annexed That if it were true but which he by no means admitted that your Petitioner did really posses such weight and influence with Sir Archibald Campbell that he could Command any favor from him and that the Complainant having inconsequence thereof had some Eminent Piece of Service rendered to him had thereupon Promised the Sum of Five hundred Pagodas your Petitioner would surely in that case if he had felt a right to it have taken care to have that promise fulfilled before any final Settlement of Accounts would have been made but instead of that he not only Executed the Bond upon which the present Action had been brought but also Entered into the subsequent Arrangement herein

before

before mentioned without making any Provision for or Paying any attention to the said Pretended promise of Five hundred Pagodas which with Interest as charged by your Petitioner Amounted to the Sum of Seven hundred and Seventy eight Pagodas thirty seven fanams and forty Cash all which Circumstances the Complainant did say afforded strong and manifest Proofs by your Petitioner's own Shewing that no such Promise was ever made by the Complainant and that the charge itself was a Gross and flagrant imposition appearing upon the face of the Account Current It being also barred by the statute of Frauds, and the Complainant for further Replication did say that not recollecting to have received from your Petitioner a Bottle of Otta of Roses and for which he was charged the Sum of Twenty Pagodas in the Account Current to the said Answer annexed said that it was incumbent on your Petitioner not only to prove the Value but also the Sale and delivery thereof

to

to the Complainant or he could be allowed to set up the same against his said Bond and the Complainant did say that if your Petitioner had sent a Bread Bill into the Complainant that Credit would have immediately been given him for the Amount but the Complainant did say that your Petitioner so far from sending in any Bill took pains to assure your Petitioner that it was his intention to supply the Complainant for the space of two years with Bread without charging for the same and that he considered this as but a small Compensation for the trouble which the Complainant had been at in setting for the baking concern with Captain Stephen Towns who had held the same previous to him And the Complainant did say although no proof might be adduced in support of this assertion sufficient to do away the Claim for Forty two Pagodas Twenty one fanams and forty Cash yet the Complainant desirous of avoiding any thing which may appear

bordering

bordering on litigiousness having no written Argument from your Petitioner to that Effect consented that the same should be deducted from the Amount due on the said Bond provided the said Bill was proved to be Just and the Complainant from the aforegoing narrative of Facts trusted it would appear to the said Mayors Court that due Credit had been given your Petitioner for every Sum paid on Account of the said Bond and that the Account Current to the Answer annexed was full of Erroneous false and fictitious charges: in addition to the aforegoing Circumstances the Complainant did say that before he had recourse to coercive measures your Petitioner never attempted to dispute the Justness of the Debt or pretend to make any set off against the Bond on the contrary he was ever ready to Acknowledge the Justness of it and only craved a further Indulgence of time which your Petitioner could not conveniently grant that after he had lodged the Bond in the hands of his Attorney at Law and when a letter of demand had been sent from him requiring Payment of the Debt your Petitioner instead of Answering the same came to the Complainant and intreated him to Stop Proceedings and grant further time for Payment and the Complainant also did say he would be able to prove that after the Suit had been instituted a person was sent from your Petitioner to make proposals for the liquidation of the Debt but to which the Complainant did not agree the terms not being satisfactory And your Petitioner Sheweth unto this Honorable Court that to the Complainants said Replication your Petitioner did file his Rejoinder wherein and whereby your Petitioner did state that Notwithstanding the Complainants arguments to Shew that your Petitioner had no right to maintain the Several Items composing the Account Current annexed to his Answer to the Debit of the Complainant that he was well entitled in Law and Equity to maintain the same

same and every of them and first your Petitioner did deny that any final Adjustment of Accounts ever took place between him your Petitioner and the Complainant at either or any of the Periods stated in the Replication and as setforth in the several Pretended Accounts annexed to such Replication which Accounts did omit many charges due from the Complainant to your Petitioner as appeared from your Petitioners Books and as setforth in a further Account annexed to your Petitioners said Rejoinder Amounting to a Sum of Two hundred and seven Pagodas Twenty seven Fanams and Sixteen Cash in addition to the balance struck in your Petitioners Account annexed to his Answer and which Sum your Petitioner did Pray might be additionally carried to his Credit against the said Complainant making the Total of his Debt to your Petitioner a Sum of One thousand one hundred and fifty four Pagodas Twenty seven Fanams and Sixty six Cash wherefore and from Inspection of the several

several Dates of the Account thereto subjoined and comparing them with those annexed to the Complainants said Replication your Petitioner did say it would be manifest to the said Mayors Court that no adjustment of Accounts could have taken place between the Complainant and your Petitioner at any one of the periods as stated by the Complainants Attorney at Law from his the Complainants Books and which Books at all events supposing them even to have been Correctly kept by the Complainant which your Petitioner denied them to have been could not be in proof in this Cause nor a single Title read from them and therefore your Petitioner did object to the Extracts annexed to the Replication and did Pray the same might be Expunged from the Records the same being still less entitled to Credit than the Books themselves would be were it possible to admit them to be read that if the Complainant did actually settle Accounts at any period with your Petitioner he was bound

to

to Shew to the said Mayors Court your Petitioners
legal assent to such settlement which he had not
done nor could do your Petitioner did therefore
say he was intitled in manner as stated in his
said Answer to his Credits of Pagodas Six
hundred and Twenty three and fourteen fanams
of the Twelfth of May One thousand Seven
hundred and Ninety of Four hundred and
Twenty Pagodas on the first day of August
following also of the Two hundred and fifty
Pagodas of the Twelfth of May One thousand
seven hundred and Ninety one and the like
Sum of Two hundred and fifty Pagodas on the
thirty first of the same last mentioned Month
and your Petitioner did say that he was in
posession of an Original Receipt from Jaggoo
Chitty for the Sum of Twenty five Pagodas
Twenty two fanams and forty Cash Debiting
the Complainant under date the Thirty first
day of October One thousand Seven hundred
and Ninety one a true Copy whereof was
thereunto annexed your Petitioner did further
state that he had acted as a Chymist and
Physician for many years not only in India
but in other Countries as he would in due time
if needfull prove that he sailed in such quality
from the Isle of France by the written Permission
of the Government in May One thousand seven
hundred and Seventy three that he had similar
Acknowledgments from the Government of
Pondichery in the following Month of August
in the same year and that it was a matter well
known that he served in Quality of Head
Physician to the late Hyder alley khan when
Compelled to take service with him in the
year One thousand seven hundred and
Seventy Nine of which Service in such quality
and of the many essential Services and
kindneses he was thereby enabled to Shew to
the unfortunate Prisoners of the Detachment of
Colonel Baillie with Hyder he then held
many Voluntarily written Documents of and

Grateful

as also the Acknowledgement
Grateful Acknowledgment of a late Governor
of Madras Sir Archibald Campbell that such
his services were real and meritorious of which
last Document your Petitioner hoped the said
Mayors Court would think him Excusable
in there giving a Copy as it might tend
to Shew that your Petitioner had an honest
weight and influence with that respectable
Governor and that he thereby became enabled
to assist the Complainant in a manner to
have enduced him to agree to pay your —"
Petitioner the Five hundred Pagodas setforth
in your Petitioners Account to the Complainants
Debit in your Petitioners Answer "Fort St. George
"January 29th 1789 Ido hereby Acknowledge
"that Mr. Charles Loyd of Madras has during
"my Administration at this Place exerted his
"utmost Endeavours and abilities to render
"himself of Service to the Honorable Company
"by procuring every possible Intelligence from
"the Dominions of Tippoo Sultaun and other
Quarters

"Quarters - In Justice to Mr. Loyds Zeal and
"attachment to the welfare and Interest of this
"Government I take leave to commend his future
"Services should occasion require them. Signed
"Archibald Campbell" the Original of which
Certificate as also many Friendly and highly
Confidential Letters from the same Governor
were stated to in the hands of your Petitioners
Attorney at Law ready to be produced and
proved if required, that he your Petitioner
at that day in madras continued the practice
of Physick that he Chiefly Existed by that —
practice and that it was a fact notorious to
all the Settlement that he attended and for
many years past had so done in such Quality
many most respectable families; the family of
Chamier Sultaun amongst the People called
Armenians and generally the entire of such
families, a Practise, which were he a dangerous
or an Ignorant pretendor it could not in reason
be presumed he would have so long and so
Reputably

reputably have maintained himself in and
that too in a Place where the aid of Professional
men was of so easy attainment But on that
head your Petitioner did not intend to follow
the vicious, unmanly Precedent held out to
him in the Complainants Replication leaving
it to the Complainant to reconcile to his own
feelings the reflections he had Endeavoured to
insinuate against your Petitioner it being —
sufficient for your Petitioner to know as he would
prove that the Complainant did call on him
as a medical man and did receive his —
Prescriptions a fact which some what militated
against the Practise of his understanding
for many years last past if he did really believe
and consider of your Petitioner in the manner
he had, perhaps, been taught to speak in his
said Pleadings That with respect to the —
assertion of the Complainant that your Petr
pressed his medical advice and assistance
on him by way of giving some Proofs of
Gratitude

Gratitude for favors which he had frequently
Acknowledged to have received from the —
Complainant in the line of his profession and
for which no Compensation was made your
Petitioner to controvert this strange assertion
did say no further was necessary on the
part of your Petitioner than to refer to the
Items of the several Accounts, debiting, your
Petitioner annexed to the Complainant which
were swelled up by Business charged not even
omitting a single Pagoda whereby Business
could be charged That the same did not look
like a remission of Costs nor did it any —
where appear that the Complainant paid
your Petitioner for his medicine and attendance
which if not there shewn it would be a
subsisting Claim for the Laborer had never
yet been deemed undeserving his hire whatever
that be and if not ascertained he might resort
to his Quantum Merunt and Courts would
thereon Divine equity between the parties —
Lastly

Lastly and as your Petitioner had in his said Answer Sworn he again aversed that he did render the Complainant a Service with the said Sir Archibald Campbell for which he was to have been gratified by the Complainant with a Sum of Five hundred Pagodas as charged in his said Account Current annexed to his said Answer which Sum he never did receive and therefore as also from the want of recompence from the Complainant for your Petitioners medical Attendance and medicine found him as stated in your Petitioners said Answer and the several further matters therein before and in the said Answer setforth it was evident that no full and final Settlement of Accounts could ever have taken place between the Complainant and your Petitioner as insinuated in his said Replication and that the Complainant did stand Indebted unto your Petitioner so far from having the right he had assumed of calling on your Petitioners in the manner he had done

done before the said Mayors Court And your Petitioner Sheweth that upon such Proceedings issue did Join and Rules did pass for the Examination of Witnesses and the Witnesses were Examined on both sides and Publication passed thereon, and the said Cause came on to be heard before the said Mayors Court on the Twenty fifth day of June and in the present year of Christ One thousand seven hundred and Ninety three when the said Mayors Court was pleased to Order and Decree and did Accordingly Order and Decree, that your Petitioner should pay unto the Complainant the full and Just Sum of Two thousand and two Pagodas Ten fanams and forty Cash together with all such Interest as then was or should thereafter become due thereon with Costs of the said Suit as may more fully appear by a Copy of the said Decree hereunto annexed for the Inspection of this Honorable Court, the Original whereof is in your Petitioners posession and ready to be produced

produced at the hearing by which said Decree of the said Mayors Court your Petitioner does conceive himself greatly Aggrieved and doth therefore Appeal therefrom to this Honorable Court for the following amongst other Reasons-

First —— Because the said Mayors Court, in the said Order or Decree, doth not seem to have gravely estimated and weighed the Several Papers and Documents Exhibited in the ordinary Course of the suit, in favor and behalf of your Petitioner; and certain of which, being entitled as well from the Solemnity attached to them, as from the allowance and Acceptance of the opposite party, to the highest regard of the said Court, appear not to have had the either the Influence or Authority they should have challenged in the Adjudication of the Cause-

Secondly —— Because the said Court, in the Order as aforesaid, hath not attended to the body of Evidence, adduced on the part of your Petitioner the Defendant in the said Cause and as such Evidence was not marked by any legal Insufficiency or Exception, and went to the due and satisfactory Establish-ment of several particulars insisted on by your Petitioner, he believes, that if the same had been Deliberately Consulted, that they would have led to a different and contrary Judgement-

Thirdly —— Because the Evidence of the Complainant in the said Cause met, as he conceives, with an exparte consideration, being received only in so much as it advanced to the maintenance and support of the Complainants said Cause; and such parts of the same, as tended in his Judg-ment, to the Illustration of your Petitioners Right he doth not find, by any thing Apparent on the face of the said Decree, to have had the favorable Operation, Reasonably Expected from the nature of such Testimony-

Lastly

Lastly — Because certain Particulars, — Extracted from the Complainant's Books was Exhibited in the course of the Pleadings and were afterwards Examined to, and came in such way before the Court, — which were inadmisable in Law; and being inadvertently passed over at their Primary production, were suffered to remain for a certain time within the notice and Comprehension of the Court, and although your Petitioner's Attorney did at the final hearing in the said Cause, Protest against such matters being intertained by the Court, yet your Petitioner has reason to apprehend that the same did in some sort serve to the passing of the Decree issued thereupon —

For all which Reasons and such others as may be offered at the hearing your Petitioner Prays that the said Decree of the said Mayors Court may be reversed and that this Honorable Court will be pleased to grant him such other and further Relief in the Premises as in their Wisdom may seem — Most meet —

/Signed/ E. Samuel
Solicitor for Appellant

Mayors

Mayors Court at Madraspatnam } Tuesday the 25th day of June Anno Domini 1793

L.S.

Present
John Mitford Esqr. Mayor
William Webb and Wm. Abbott
Aldermen

Between Henry DuPuy one of the Attornies of this Honorable Court and Sloan Gibbons a Lieutenant in the Service of the Honorable English East India Company two of the Executors named in the last Will and Testament of Peter Walker deceased late an Attorney of this Honble Court Complainants and Charles Loyd of Madras Inhabitant Defendant

Mayors Court

This Cause Coming on to be heard and Debated this day in the presence of the Attornies on both sides on Reading the Complainants Complainants Bill with Copy of an Account Current annexed, The Defendants Answer with Copy of an Account annexed, The Replication with Copies of Two Exhibits annexed, The Amended Rejoinder with two Exhibits annexed The Bill of Revivor, The Interrogatories and Depositions on the part of the Complainant with Exhibits Marked A.B. & C. annexed, The Interrogatories and Depositions on the part of the Defendant On Hearing the Pleadings and Arguments made use of by the Attornies and on due consideration had thereon This Court doth think fit to Order and Decree and doth Accordingly Order and Decree that the Defendt. do pay unto the Complainant the full and Just Sum of Two thousand and Two Pagodas ten fanams and and forty Cash (Pags. 2002 .. 10 .. 40.) together with all such Interest as now is or shall hereafter become due thereon until full Payment is made also all Costs of this suit —

A true Copy (Signed) E. Samuel Solicitor for Appellant

Hur (Signed) G. E. Askin Dy. Regr.

To

To the Right Honble Robert Lord Hobart

Governor and President in Council of

Fort Saint George

In the Honble the
Court of Appeals

Between Henry DuPuy one of the Attornies of the Honorable the Mayors Court and Sloan Gibbons a Lieutenant in the Service of the Honorable English East India Company two of the Executors named in the last Will and Testament of Peter Walker deceased late an Attorney of the said Mayors Court Complainants and Charles Loyd of Madras Inhabitant Defendant

Filed in my Office
the 16th January 1796
J. Webbe Clk

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

These Respondents for Answer to the said Petition of Appeal or unto so much thereof as they are advised is material for them to make Answer unto Answer and say that they admit that their Testator the above named Peter Walker did on the Twenty fifth day of May One thousand Seven hundred and Ninety two Exhibit and file his Bill of Complaint in the Mayors Court at Madras aforesaid against the said Defendant, for the Recovery of the Sum of Two thousand and sixty four Pagodas and thirty two fanams Current Money of Madras, charged to be due and owing to the said Peter Walker in his life time, upon and by Virtue of a certain Bond or Obligation, executed by the Appellant at the time which in and by the said Appellant's Petition and Appeal is mentioned Copy whereof together with an Account Current are to these Respondents said Testators Bill of Complaint annexed, and therein and thereby referred to

To which said Bill of Complaint these

these Respondents admit that the Appellant did Exhibit and file his Answer Setting forth that the Appellant at the time in the &c Respondents Bill mentioned did Execute a Bond for said Sum of Two thousand &c Pagodas but that he did not Execute the same on his own Account but for and on Account of one Zachariah Polack who was represented to stand indebted to the Appellants in the said Sum, whose indigent Circumstances and inability to pay off the demand he had Commisirated, and therefore he had taken the debt upon himself, and these &c Respondents say that the other matter setforth and contained in the said Answer, and recited in the said Appeal - These Respondents Crave leave to refer thereunto and pray that they may have the full benefit and advantage thereof, To which said Answer these Respondents admit that their Testator did Exhibit and file his Replication and the said Charles Loyd having Rejoined issue did thereupon Join and Rules passed for the Examination of Witnesses but before any other proceedings were had in the said Cause these Respondents Testator the said Peter Walker &c departed this Life whereby the said Suit and proceedings therein became and stood abated, when these Respondents did file a Bill of Revivor in the said Mayors Court setting forth that the said Peter Walker did in his life time duly make and Publish his last Will and Testament in Writing, bearing date the &c Nineteenth of April last past, and did thereof Constitute and appoint these Respondents and Charles Walker late of Fort Saint George his Executors in India, and further setting forth that the said Peter Walker did further appoint John Walker of Kingsington Square London the Reverend William Walker in the Country Devio and the Reverend William Patt of &c Combe in the Parish of Gilles, The Executors of

of his said last Will and Testament in England, and further setting forth that these Respondents as two of the Executors of the said Will, had duly proved the same before the Honorable the Mayors Court in its ecclesiastical Capacity and had obtained Probate thereto as by the original of the said Will these Respondents said would more fully and at large appear, and thereupon these Respondents prayed that the said Suit and all Proceedings thereon so abated, might stand, and be revived against the said Chales Loyd, and that they might be put in like state and condition as the same were in at the time of the Abatement thereof which was Accordingly ordered - And these Respondts further Answering say that in support of the Bill of Complaint filed by their said Testator as well as to Controvert, the many extraordinary assertions in the Appellants

Appellants answer and Rejoinder contained These Respondents did Exhibit and file certain Interrogatories to Goorroomoolah Braminy and to Mr. John Hunter of Fort St. George, The former of whom setforth and Deposed, That he was in the service of these Respondents Testator Peter Walker deceased in the capacity of head Writer and manager of his business, before at and after the period when the present suit was instituted, That he knew by what means and for what particular consideration the Bond was passed for which the present Action was brought and that it was as follows, a Person named Zachariah Polack was indebted to the said Peter Walker for money lent and advanced to the said Zachariah Polack to the amount of Two thousand five hundred Pagodas and odd, for the Security of which he lodged with the said Peter Walker a Bond from his Highness Omdut Ul

Omrah for three thousand Pagodas, and being
presed by the said Peter Walker for payment
thereof, he the said Zachariah Polack offerd
in discharge of the said Bond in question
from the Defendant which was accordingly
Accepted by the said Peter Walker, and who
gave up the remainder of his demand
against the said Zachariah Polack, being
Five hundred and odd Pagodas, as he
Considered it more for his advantage to take
the Defendants Bond for two thousand
Pagodas than to run the risk of loosing the
whole, that at the time he the said Peter
Walker recewed the Bond in question
from the Defendant he delivered to the
Defendant the before mentioned Bond
from his Highness the Nabob Omdut Ul
Omrah for the Sum of Three thousand
Pagodas - The Defendant further said that
he was present at the Garden House of the
said Peter Walker when the Defendant
came

Came to him to speak to him, and that the
Defendant then told the said Peter Walker
that he was very much distressed by the said
Peter Walker having put his the Defendants
Bond into the hands of an Attorney at Law,
and that he the Defendant was not able to
pay the amount, in consequence of which the
said Peter Walker told the Defendant that he
must pay the money as he had Urgent
occasion for it to satisfy a demand made
on him by one Singanah Chitty, and the said
Gooroomoorty further said that he the said
Peter Walker also told the Defendant that he
Understood the said Singanah Chitty was the
Defendants friends, and that if he the Defendant
could satisfy the said Singanah for this demand
on the said Peter Walker, he the said Peter
Walker had no objection to give the Defendant
further time to pay the balance, the Defendant
then requested the said Peter Walker to allow
him one Week and at the expiration of that
time

time he would satisfy him; The Defendant further said that he was present when a message was brought by Zachariah Polack from the Defendant to the said Peter Walker, thanking him the said Peter Walker for not issuing a Warrant of Arrest against the Defendant, at which period the said Zachariah Polack did offer in discharge of the Dendants Bond in Question, to make over to the said Peter Walker his Garden, which he Valued at four thousand Pagodas if the said Peter Walker would Pay off a mortgage on the said Garden for one thousand Pagodas, and also assign over to the said Zachariah Polack two Houses belonging to the said Peter Walker in Black Town Valued at eight hundred Pagodas; and to the last Interrogatory the said Gooroo=moorty Deposed and said that the Defendant did not at any time deny the Justness of the demand in question, nor did he ever mention that he had any Claim whatever on the said

said Peter Walker, on the contrary he always promised that he would use his best endeavours to discharge the Amount of the said Bond, and that want of Money was the reason he had not done so before, and the Deponent further said that from his knowledge of all the Circumstances he was convinced that the demand in question was a just one; and these Respondents further answering say that John Hunter of Fort St. George Merchant being also Examined as a Witness on the part of these Respondents, Deposed and said that he was employed by the said Peter Walker, in the capacity of an Agent in the years One thousand Seven hundred and Eighty nine, One thousand seven hundred and Ninety, and One thousand seven hundred and ninety one, That it was usual for him the Deponent to Transact the said Peter Walker's pecuniary Concerns, That he did receive from the said Peter

Peter Walker either a Draft or a note from the Appellant, payable to him the Deponent or order That the said Draft or note was accepted by the Appellant, and that the amount thereof was five hundred Pagodas and odd, and the said John Hunter further said that he had heard from the said Peter Walker deceased that the said Note or draft was passed for the balance of some old Account betwixt him and the Appellant that he did when the said Draft became due make frequent applications for payment of the same to the Appellant, and that the same was paid by an order on Mr. Hugh Boyd -

To the third Interrogatory the said John Hunter deposed and said that he had looked at the Paper writing then produced and Shewn to him at the time of his Examination Marked with the letter A and said that he believed the same was the statement made out by the Appellant and

and the said Peter Walker upon the liquidation of Accounts in the aforegoing Interrogatories mentioned, The Deponent further said that he was employed to Negotiate a Draft therein mentioned on Mr. Boyd by these Respondents Testator, the said Peter Walker, and that the same became due at different periods the dates of which the Deponent said he did not recollect; That he did make different applications for the Payment thereof and that the amount was paid when it became due -

And these Respondents further say that with the View and purpose of establishing his pretensions to a medical Character the said Appellant did examine several Witnesses and amongst them one Shake who deposed that he had served these Respondents Testator in his lifetime in the Capacity of

of a Butler for the space of five years, That the said Peter Water was frequently very unwell, and some times considered to be dangerously so. That the Doctors who usually attended and prescribed for him were Doctor Baillie, Doctor Rudiman and Doctor Conolly, and that he received Medicine from the Company's Shop and advise particularly and Generally from the Doctors before mentioned; That he the Deponent did see the Appellant Charles Loyd also in the title of these Interrogatories named frequently attend at the house of the said Peter Walker on different occasions, but he did not know for what particular purpose that the Appellant did some times advise him to take certain medicine which he the Appellant prescribed, and which medicine these Respondents Testator did purchase at his own expence from the Company's

Company's Shop, and some times from one Juggapah and some times from Mr. Moss. That he did frequently by the Order and direction of their said Intestate go to the House of the said Appellant to bring from him Medicine for the use of the said Peter Walker, and that the said Appellant did supply him the Deponent with medicine for the use of the said Peter Walker which Cured a Boil which their said Intestate had on his Chin —

And these Respondents further say that Arnachellum a Dubash being examined to the same effect, deposed and said, that he had served the Appellant in the capacity of Dubash about Twenty years, and that he was by profession a Baker a Doctor and a Wine Merchant, That the said Appellant did administer advice and medicine to the said Peter Walker as a Doctor during his indisposition at different

times

times, but that he the Deponent did not
recollect the exact time he did so -

And these Respondents further
admit as stated in the appellants said Pe
of Appeal that Publication having passe
the said Cause was set down for hearing,
and afterwards came on to be heard befor
the said Honorable Mayors Court on th
Twenty third day of June One thousand
seven hundred and ninety three, when
said Court was pleased to Order and Dec
and did accordingly by Order and Decree
that the Appellant should pay unto the
Respondent the full and Just Sum of P
thousand and two Pagodas, Ten fanams
and forty Cash together with Interest an
Costs; as by the said Decree relation bein
thereunto had will more fully appear - ai
these Respondents deny that the appellan
is aggrieved by the Decree of the said
Mayors Court, or that he has any Just
Cause or Reason for appealing therefrom
or

on the contrary these Respondents humbly
Contend that the said Decree of the said
Mayors Court, so far from being Erroneous in
its Principles as charged by the said Appellant
that the same is in every respect fair, just and
equitable -

And for Answer to the Reasons urged
by the Appellant for appealing from the said
Decree of the said Mayors Court, These
Respondents say that the same are without
any legal or equitable Foundation and are
conceived in irrelevant and impertinent terms
Inasmuch as they tend to impeach the Decree
of the said Mayors Court without assigning
any Just or specific Cause or Shewing in any
one particular Instance that the evidence
produced before them was not duely weighed
and considered in the adjudication of the said
Cause -

To the Second Reason adduced by the
Appellant as Cause of Appeal, These Respondents
say

say that the said Mayors Court appear to have given all the attention to the Evidence adduced on the part of the Appellant which it seems to have been entitled to. And these Respondents although they admit that there was no insufficiency in the said evidence, so far as it went, yet they deny that it established in a due and satisfactory manner, any of the pecuniary charges in the said Account Current contained The Circumstances principally proven by the Appellants Witnesses, were that he had acted in the treble capacity of a Baker, Wine Merchant and Physician, and that he had given some medicine to these Respondents Testator; but the same Witnesses shew that it was usual for him when attacked by any serious indisposition to call in the advice and assistance of Regular Bred Surgeons, who were paid for their labour and attendance; and these Respondents further say that the boasted Evidence adduced on the part of the Appellant

Appellant shew nothing more than that he acted as a Doctor, and hence an inference has been drawn of his right to make an heavy and very exorbitant charge for medical advice, which these Respondents say is refuted by the acts of the appellant himself, The greatest part of the said charges having accrued for supposed advice and assistance previous to the granting of the said Bond upon which the present action is brought –

And for Answer to the third and last Reason these Respondents say that the matter therein set forth are Conceived in irrelevant and disrespectful terms tending to impeach the said Mayors Court and its members with partiality in the decision, which these Respondents humbly maintain was not the case –

For all which matters and things and such others as may be adduced at the hearing these Respondents humbly pray that the Decree of the said Mayors

mayors Court may be affirmed with Costs-

/Signed/ George Chalmer
Solicitor for Respondent

Court

Court of Appeals at Madraspatnam } Saturday the 13th day of February Anno Domini 1796

Between Charles Loyd of Madras Inhabitant Appellant and Henry DuRey late one of the Attornies of this Honorable Court and Sloan Gibbons a Lieutenant in the Service of the Honorable English East India Company two of the Executors named in the last Will and Testament of Peter Walker Deceased late an Attorney of this Honorable Court 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 Honorable the Mayors Court together with the Decree of the said Court given in this Cause on Tuesday the 25th

25th day of June Anno Domini 1793. upon due Consideration had of the matters therein severally Contained and of the Pleadings and Arguments used by the Attornies on both sides This Court doth think fit to Order and Decree and doth Accordingly Order and Decree that the said Decree of the Honorable the Mayors Court dated the 25th day of June Anno Domini 1793. be reversed and this Court doth further Order and Decree that the Appellant do pay unto Respondents the Sum of One thousand One hundred and thirty eight Pagodas two fanams and forty Cash / Pags. 1138 . 2 . 40 / together with all such Interest as now is or shall hereafter become due thereon from the 23. day of May 1792 and that each party do pay his own Costs in both Courts —

Clur

/ Signed / J. Webbe Clk

To

To the Kings most Excellent Majesty in Council

Between Peter Walker late one of the Attornies of the Mayors Court of Madraspatnam Complainant and Charles Loyd of Madras Inhabitant Defendant.

The Humble Petition and appeal of the above named Defendant —

Most humbly Sheweth

That some time on or about the Twenty fifth day of May and year of Our Lord One thousand seven hundred and Ninety two the Complainant above named did Exhibit and file his Bill of Complaint in the Mayors Court of Madraspatnam against your Petitioner for the recovery of the Sum of Two thousand and sixty four Pagodas and thirty two fanams Current Money of Madras and therein and thereby setting forth that in order to secure the Repayment thereof

Filed in my office the 26th February 1796 J. Webbe Clk

thereof with Interest at and after the rate of Twelve per Cent pir Annum your Petitioner did enter into one Bond or written Obligation bearing date the thirtieth day of October and year of Our Lord One thousand Seven hundred and Eighty Eight wherein your Petitioner did acknowledge to be held and firmly bound unto the Complainant in the Penal Sum of Four thousand Pagodas Current Money of Madras with condition thereunder written that if your Petitioner his Heirs Executors Administrators or assigns should well and truely Pay or Cause to be Paid unto the said Complainant his Heirs Executors Administrators and assigns the full and Just Sum of Two thousand Pagodas on the thirtieth day of October and year of Our Lord One thousand seven hundred and Ninety together with such Interest as should or might become due thereon that the said Obligation to be void and of no Effect otherwise to Continue in

in full force and virtue as by the said Bond or Obligation in the Complainants posession and ready to be produced the Complainant did say would appear - and your Petitioner sheweth the Complainant did state that there was then due for Principal and Interest on the said Bond the Sum of Two thousand and Sixty four Pagodas and thirty two fanams Current Money of Madras as by the Copy of an Account Current to the Complainants said Bill of Complaint annexed he did say would appear and which said Sum of Two thousand and Sixty four Pagodas and thirty two fanams the Complainant did in and by his said Bill Pray might be Decreed to be paid unto him by your Petitioner with all such Interest as then was or should thereafter become due thereon also all Costs of the said suit and your Petitioner Sheweth that to the said Complainants said Bill of Complaint he did file and Exhibit his answer wherein and whereby he did state that

that he did at or about the time in the Complai=
=nants said Bill of Complaint set forth Execute
to him a Bond in the Sum of Two thousand
Pagodas but your Petitioner stated that such
Bond was not given for any Sum in which
your Petitioner at such time stood Indebted
to the said Complainant but was given on
Account of one Zachariah Polack who was
Represented to stand Indebted to the said Com=
=plainant in the said Sum and who in conjunction
with the Complainant frequently and often
importuned your Petitioner to become Security
for the same to remove from him the said
Complainant the difficulty and Pain of prosecuting
his demand against the said Zachariah Polack
and the consequence which might ensue and
as your Petitioner considered the said Polack
to be in Indigent Circumstances and struggling
honestly and with great fortitude to support
a large family in consideration thereof and
at the pressing Instances of the Complainant

your

your Petitioner suffered himself to be persuaded
to Execute a Bond intended solely to secure the
Complainants debt against the said Zachariah
Polack in the went of his Dying Insolvent or
other casualties and your Petitioner saith that
he was additionally induced to Execute such
Bond to the Complainant by reason that the
Complainant then was his Attorney at Law
and had various Causes and matters of
business in his hands to Transact for your
Petitioner wherefore he did not chuse to deny the
favor so Earnestly requested of him by the Com=
=plainant to wit to Execute such Bond on the
behalf of his the Complainants Debtor the
said Zachariah Polack who was stated to have
been Indebted to the Complainant by reason of
having undertaken to manage the Sale of an
Europe Investment bought by him the said
Complainant and in which he the said Zachariah
Polack had been unfortunate in the disposal
of either by bad Debts or other the incidents of

Trade

Trade - And your Petitioner Sheweth that he had no connection or Interest whatever in the concerns and Transactions of the Complainants and his said Shop man the said Zachariah Polack but Executed the Bond on which the Complainant brought the said Action from the mere motive aforesaid and to avoid further Prosecution on the subject from the Complainant who Represented to your Petitioner that it would not be reputable or agreeable for him the Complainant to sue the said Zachariah Polack and consequently make Public their Commercial connexion but that it would be no disgrace to your Petitioner to sue for the same should your Petitioner be Obliged at a future day to Pay the Debt to him the said Complainant on his the said Debtors Account - but your Petitioner not needing the benefit of the above facts but relying on the Extinguishment of the Debt in manner

as

as setforth in the Copy of an Account Current annexed to your Petitioners answer which was made up by your Petitioner to the same date as one annexed to the Complainants said Bill of Complaint and which Copy of an Account was annexed to your Petitioners Answer which he prayed to be taken as part thereof the Original whereof together with the several Vouchers and Documents therein mentioned were in the hands of your Petitioners Attorney at Law ready to be produced and proved when required and your Petitioner affirmed that he did at the request of the said Complainant advice with him in his medical Capacity from the first day of January One thousand seven hundred and Eighty five to the latter end of March One thousand seven hundred and Ninety two being a space of Seven years and three months and that he would in due time prove himself fully entitled to the charge of one hundred

Pagodas

Pagodas per Annum for such his advice to the
Complainant in the capacity aforesaid and
for his attendance and medicine therefore
found him and your Petitioner further
Represented that the said Complainant did
in the year One thousand seven hundred
and Eighty seven Employ your Petitioner on
a matter of the utmost moment on his the
Complainants behalf to be Transacted with
and which your Petitioner did Transact
to effect with Sir Archibald Campbell the
then Governor of this Presidency in consideration
whereof the said Complainant did then promise
to credit your Petitioner with a sum of Five
hundred Pagodas but which he has omitted
to do in his Account annexed to his said
Bill of Complaint and your Petitioner
lastly saith that he is Justly and truly
entitled to have from the Complainant
every Credit he has taken in the Account
annexed to his Answer and to the balance
struck

struck thereon and your Petitioner most
humbly Sheweth unto your Most Excellent
Majesty in Council that to your Petitioners
said Answer the Complainant did Exhibit
and file his Replication wherein and
whereby he did admit that Zachariah Polack
in your Petitioners answer named having
had sundry dealings with the Complainant
and being thereupon considerably indebted
an Account was stated and a balance struck
in favor of the Complainant amounting to
Two thousand five hundred and fifty one
Pagodas Nineteen fanams and sixty eight
Cash to which the Complainant and the
said Zachariah Polack respectively put their
signatures as by the said Account Current
in the posession of the Complainant and
ready to be produced when required he did
say would more fully appear and the Complainant
did admit that the said Zachariah Polack
being unable to discharge the same the
Complainant

Complainant did at his request agree to
accept your Petitioner as a security for the
Payment of the said Debt and thereupon to
exonerate the said Zachariah Polack from
all future Claims and demands and that
commeserating the situation of the said
Zachariah Polack he gave up a considerable
part of the said Balance which had been so
struck to wit the sum of Five hundred and
fifty one Pagodas Nineteen fanams and
sixty eight Cash with the Interest since the
date of the Account and for the remainder
being the Sum of Two thousand Pagodas he
took the Bond upon which the present
action was brought wherein your Petitioner
did condition to pay the Principal Sum
in two years from the date thereof the Interest
in the mean time payable every three
Months at and after the rate of Twelve
per Cent per Annum and the Complainant
did say that the said Zachariah Polack
being

being thus exonerated from all Claims he
submitted to the said Mayors Court whether
the same was not a good and sufficient
consideration to bind your Petitioner for
payment of the Bond which he had so
Executed and the Complainant adverting to
the Debit side of the Account Current Copy
whereof was to your Petitioners Answer annexed
did Pray leave to point out the many
inconsistencies and false charges which he
did pretend were therein contained and in
order to Shew that the first Item of Six
hundred and Twenty three Pagodas was
improperly charged by your Petitioner and
that he had no right to set off the same against
his said Bond the Complainant did Pray
leave to state that previous to and after the
Execution of the said Bond there existed
sundry Dealings between the Complainant
and your Petitioner by whom he was
employed to Transact his Law business

that

that on or about the Twenty Ninth day of
April Which was in the year of Our Lord
One thousand seven hundred and eighty
Nine an Account Current Explanatory
of the several Transactions was by the
desire of each party stated wherein and
whereby a balance of Pagodas One
hundred and Ninety five thirty three
fanams and Twenty five Cash appeared to
be due to the Complainant Copy of which
Account Current as taken from the Com=
=plainants Books and under his signature
was thereunto annexed for the inspection
of the said Mayors Court the originals
together with several Copies of the Vouchers
which tended to support the same being said
to be in the posession of the Complainants
Attorney at law and ready to be produced
when required and the Complainant did
further say that on Account of Certain
Objections that were made by your Petitioner
to

to some few Items in the Debit side of the
Account Current so stated by the Complainant
a balance was not settled upon or agreed to
by your Petitioner until the first day of
September in the said year at which period
after some few deductions had been mad your
Petitioner admitted the Sum of One hundred
and seventy six Pagodas instead of One
hundred and Ninety five Pagodas thirty
three fanams and seventy one Cash to be
due to the said Complainant which Sum
he promised spedily to discharge as well as
the Interest due upon his Bond and which
he had Covenanted as aforementioned to pay
regularly every three Months that those
Promises were not fulfilled and that he
was put off untill the month of Febuary
in the following year at which time the
Complainant tired with his frequent broken
Promises insisted upon payment of what was
due to him in consequence of which your
Petitioner

Petitioner requested a statement to be
out and that he would grant an accep
payable in three months from the dat
thereof either in favor of the Complainant
any other Person whom he might appoint
that in order to Accommodate your Petitio
who pleaded inability and want of mon
as his reason for not discharging what was
due by him the Complainant agreed to
Accept his proposals Accordingly a statemen
was made out wherein after charging Peti
on the balance of One hundred and seve
six Pagodas settled on the first day of
September as aforementioned being the Sum
of Eight Pagodas and thirty six fanams and
Eighteen Months Interest on the Bond
being up to the first of May the Total Sum
of Five hundred and forty four Pagodas
and thirty six fanams appeared due to
the Complainant for which sum of Five
hundred and forty four Pagodas and thirty
six

six fanams the Complainant gave an
Acceptance in favor of Mr. John Hunter of
Fort Saint George Merchant who acted as an
Agent for the Complainant in Paying away
and receiving money and the Complainant
did say that considering the said Acceptance
for Pagodas Five hundred and forty four and
thirty six fanams as good he made out a
statement and to the foot thereof placed the
following words Received the above by an
Acceptance Payable at three Months (Signed)
P. W. which statement and Receipt the
Complainant delivered to the Petitioner having
caused the same to be first entered in his
Books from whence the Complainant for the
satisfaction and inspection of the said Mayors
Court had Transcribed and annexed a
copy of it to the Complainants Replication
That on the first day of May in the said
year your Petitioners acceptance having
become due he was applied to by the said
John

John Hunter for Payment thereof which
application although frequently repeated
even up to the Twelfth day of the said
Month of May availed nothing. for your
Petitioner again Pleaded utter inability to
discharge the same and earnestly intreated
that a fresh statement be made up for the
Amount of which he offered a draft on Mr.
Boyd Payable on the first day of August
following which was three months from
that date assuring the Complainant that it
would be punctually honored when due
and the Complainant stated that in order
to Accomodate your Petitioner he consented
thereto and Accordingly an Account was
stated wherein your Petitioner was Debited
for the amount of his Acceptance in favor of
the said Mr. Hunter being Pagodas Five
hundred and forty four and thirty six ~
fanams Interest thereon for three Months
Eighteen Pagodas and Twenty three fanams

also

also the Sum of Sixty Pagodas being three
Months Interest on the Bond entered into
as aforementioned making in all a Total
Sum of Six hundred and Twenty three
Pagodas and fourteen fanams for which Sum
your Petitioner gave a Draft on Mr. Boyd
Payable at three Months sight and as a
Voucher for the same received the Original
statement or account Current Marked with
the letter A and which at the Prayer and
Instance of the Complainant was delivered
by your Petitioner into the Honorable the
Court of appeals to which said Exhibit the
Complainant Prayed leave to refer and
Prayed that it might be taken as part of
his Replication and the Complainant did
state that when the said Draft become
due it was Presented to Mr. Boyd and
altho not immediately paid yet the ~
Complainant was so satisfied with the
arrangement that was made for that purpose

that

that Credit was thereupon given for such part of it as related to the aforesaid Bond being the Sum of Four hundred and Twenty Pagodas for eighteen Months the Just Interest due thereon and that altho your Petitioner had endeavoured to make the two first Items to wit the Sum of Six hundred and Twenty three Pagodas fourteen fanams and Four hundred and Twenty Pagodas appear as seperate and Distinct Payments on Account of the said Bond yet he humbly trusted that the foregoing Naviative of Facts had clearly demonstrated that they were one and the same transaction that Four hundred and Twenty Pagodas of the said Sum of Six hundred and Twenty three Pagodas and fourteen fanams was so much money Credited on Account of the Bond and the residue on Account of other business as hereinbefore was mentioned and that the several Circumstances were further

corroborated by the mode in which your Petitioner had charged Interest on the said Sum of Six hundred and Twenty three Pagodas and fourteen fanams being from the Twelfth day of May the time when the Draft was passed and not when it became due which was in the first day of August being three Months subsequent thereto and the Complainant adverting to the third and fourth Items in the said Account Current under date the Twelfth and thirty first days of May for the Sum of Two hundred and fifty Pagodas each did say that your Petitioner had there taken a most unfair and dishonest advantage by availing himself of a small inaccuracy of the Complainant in stating the Payment to have been made on the thirty first day of the said Month instead of the Twelfth and at the same time omitting to mention as per receipt the Complainant however declared that the Sum of Two

hundred

hundred and fifty Pagodas was the only Sum which was paid on Account of the said Bond in the course of the said Month or subsequent at any time to it and did defy your Petitioner to prove otherwise and the Complainant denied having given your Petitioner any Receipt for the Sum of Twenty five Pagodas Twenty two fanams and forty Cash as by him was charged in the sixth Item of his said Account Current that on the contrary by referring to the exhibit C. delivered in by your Petitioner in support thereof at the prayer and instance of the Complainant it would appear that it was only a request for him to Pay to Juggapah Chitty the Sum of Twenty five Pagodas twenty two fanams and forty Cash but as no receipt was produced from the said Juggapah Chitty it might be fairly presumed that the money never was paid by your Petitioner and that the same was falsely charged by him and the Complainant Adverting to the extraordinary charge

charge for medical advise medicine and attendance from the beginning of the year One thousand seven hundred and eighty five to the end of March One thousand seven hundred and Ninety two forming a period of Seven years and three months did deny that your Petitioner had any right whatever to charge the Sum of One hundred Pagodas per Annum or any other Sum whatever and although your Petitioner might attempt hereafter to Shew that the Complainant had asked advice from him yet the Complainant did say that if he ever did so it was in consequence of the importunities and urgent solititations of your Petitioner who frequently endeavoured to impress the Complainant with a belief of his being skilled in the practice of Medicine and thereupon had prefsed his advice by way of giving some proofs of gratitude for favors which he had frequently Acknowledged to have Received from the Complainant

Complainant in the line of his profession and for which no Compensation was made that the Complainant never would have suffered that any Pecuniary charge was intended to have been made indeed that the Complainant would thereafter prove that when indisposition rendered it necessary it was usual and Customary for him to apply to and obtain the Assistance of Gentlemen regularly bred to the profession of Physic and Surgery who attended him regularly and to whom he always made a due compensation for their Trouble and labour such being the fact it may be fairly concluded that the Complainant did not consider your Petitioner either as a Surgeon or Physician nor would he have agreed to Pay him a stipulated annual Sum nor did he think that Gentlemen regularly bred to Physic would have allowed their fair practice to be ~~usurped~~ or called in Question by the Interference of such a Person as your Petitioner whose abilities as a baker that being his profession they might not have disputed but when attempted to be shewn as a Physician or Surgeon they certainly had a right to call in Question and the Complainant further said that by your Petitioners own act the said charge for medical advice and attendance or at least the greatest part thereof was done away for by referring to the Account Current copy whereof was to the Answer annexed it would appear that the charge for medical advice and attendances commenced on the first day of January One thousand Seven hundred and eighty five again on the per Contra side a Bond was granted by your Petitioner for the Sum of Two thousand Pagodas on the thirtieth of October One thousand Seven hundred and eighty eight being nearly three years subsequent thereto from

from which circumstances it would be fairly inferred that your Petitioner when he executed the said Bond meant thereby to extinguish all Claims on his part preceding it that the Complainant was advised that such was the law and as by the said act your Petitioner had fully shewn that he did not conceive himself intitled to make any charge for medical attendance preceding the date of the said Bond it followed that the subsequent charges for the same were also done away the more especially as your Petitioner could not produce any agreement from the Complainant or by any proof shew that he Acquiesced therein that the said mode of reasoning and the law upon it also applied to the statements that were subsequently made the one under date the first day of February and year One thousand Seven hundred and Ninety when an Acceptance was

was taken in favor of the said Mr. John Hunter for the Sum of Five hundred and forty four Pagodas and thirty six fanams and the other under date the Twelfth day of May when an Account being framed and a balance struck in favor of the Complainant for the Sum of Six hundred and Twenty three Pagodas and fourteen fanams a Draft on Mr. Boyd was granted for as no Notice was taken upon those several statements of any charge for medical attendance it might be reasonably supposed and fairly concluded on that the whole set off amounting with Interest as charged by your Petitioner to the enormous Sum of One thousand and Eighty two Pagodas was a late invention of your Petitioner in order to prevent the Complainant from recovering a Just Claim and the Complainant positively denied having given your Petitioner a Promise of Credit for the Sum of Five hundred Pagodas

Pagodas on Account of Secrt. Service as by him was
stated and Sworn to in his said Answer and
the Account Current thereunto annexed that
if it were true but which he by no means
admitted that your Petitioner did really possess
such weight and influence with Sir Archibald
Campbell that he could command any favor
from him and that the Complainant having
in consequence thereof had some eminent piece
of service rendered to him had thereupon
promised the Sum of Five hundred Pagodas
your Petitioner would surely in that case if he
had felt a Right to it have taken care to have
that promise fulfilled before any final
settlement of Accounts would have been made
but instead of that he not only Executed the
Bond upon which the present Action had
been brought but also entered into the subsequent
Arrangement hereinbefore mentioned without
making any Provision for or Paying any
attention to the said pretended promise of

Five hundred Pagodas which with Interest
as charged by your Petitioner Amounted
to the Sum of Seven hundred and Seventy
Eight Pagodas thirty seven fanams and
forty Cash all which Circumstances the
Complainant did say afforded strong and
manifest Proofs by your Petitioners own
shewing that no such promise was ever made
by the Complainant and that the charges
itself was a grofs and flagrant imposition
appearing upon the face of the Account
Current It being also barred by the statute
of Frands and the Complainant for further
Replication did say that not recollecting to
have received from your Petitioner a Bottle
of Otter of Roses and for which he was charged
the Sum of Twenty Pagodas in the Account
Current to the said Answer annexed said
that it was incumbent on your Petitioner
not only to prove the Value but also the
Sale and delivery thereof to the Complainant

ere

ere he could be allowed to set up the same
against his said Bond and the Complainant
did say that if your Petitioner had sent a
Bread Bill into the Complainant that Credit
would have immediately been given him
for the amount but the Complainant did say
that your Petitioner so far from sending in
any Bill took pains to assure your Petitioner
that it was his intention to supply the Com=
=plainant for the space of two years with
Bread without charging for the same and
that he considered this as but a small compensation
for the trouble which the Complainant had
been at in settling for the backing concern
with Captain Stephen Towns who had held
the same previous to him and the Complainant
did say although proof might be adduced
in support of this assertion sufficient to do
away the claim for forty two Pagodas twenty
one fanams and forty Cash yet the Com=
=plainant desirous of avoiding any thing

which may appear bordering on litigiousness
having no written Agreement from your
Petitioner to that effect consented that the same
should be deducted from the Amount due
on the said Bond provided the said Bill
was proved to be Just and the Complainant
from the aforegoing narrative of Facts
trusted it would appear to the said Mayors
Court that due Credit had been given your
Petitioner for every sum paid on Account of
the said Bond and that the Account Current
to the Answer annexed was full of Erroneous
false and fictitious charges in addition to the
aforegoing circumstances the Complainant did
say that before he had recourse to Coercive
measures your Petitioner never attempted to
dispute the Justness of the Debt or pretend to
make any set off against the Bond on the
contrary he was ever ready to Acknowledge the
Justness of it and only craved a further
Indulgence of time which your Petitioner

could

could not Conveniently grant that after he had lodged the Bond in the hands of his Attorney at Law and when a letter of demand had been sent from him requiring Payment of the Debt your Petitioner instead of Answering the same came to the Complainant and intreated him to stop Proceedings and grant a further time for Payment and the Complainant also did say he would be able to prove that after the suit had been instituted a Person was sent from your Petitioner to make proposals for the liquidation of the Debt but to which the Complainant did not agree the terms not being satisfactory - and your Petitioner most humbly sheweth unto your most Excellent Majesty in Council that to the Complainants said Replication your Petitioner did file his Rejoinder wherein and whereby your Petitioner did state that notwithstanding the Complainants arguments to Shew that your Petitioner had no Right to maintain the several Items of

Composing

Composing the Account Current annexed to his Answer to the debit of the Complainant that he well entitled in law and Equity to maintain the same and every of them and first your Petitioner did deny that any final Adjustment of Accounts ever took place between him your Petitioner and the Complainant at either or any of the periods stated in the Replication and as set forth in the several Pretended accounts annexed to such Replication which accounts did omit many charges due from the Complainant to your Petitioner as appeared from your Petitioners Books and as set forth in a further Account annexed to your Petitioners said Rejoinder amounting to a Sum of Two hundred and seven Pagodas Twenty seven fanams and sixteen Cash in addition to the balance struck in your Petitioners Account annexed to his answer and which Sum your Petitioner did Pray might be additionally carried to his Credit

against

against the said Complainant making the total of his Debt to your Petitioner a Sum of One thousand one hundred and fifty four Pagodas Twenty seven fanams and Sixty six Cash wherefore and from inspection of the several dates of the Account thereto subjoined and comparing them with those annexed to the Complainants said Replication your Petitioner did say it would be manifest to the said Mayors Court that no adjustment of Accounts could have taken place between the Complainant and your Petitioner at any one of the periods as stated by the Complainants Attorney at Law from his the Complainants Books and which Books at all Events supposing them even to have been correctly kept by the Complainant which your Petitioner denied them to have been could not be in proof in this Cause nor a single title read from them and therefore your Petitioner did object to the Extracts annexed

annexed to the Replication and did Pray the same might be Expunged from the Records the same being still less intitled to Credit than the Books themselves would be were it possible to admit them to be read that if the Complainant did actually settle Accounts at any periods with your Petitioner he was bound to Shew to the said Mayors Court your Petitioners legal assent to such settlement which he had not done nor could do your Petitioner did therefore say he was intitled in manner as stated in his said Answer to his Credits of Pagodas Six hundred and Twenty three and fourteen fanams of the Twelfth of May One thousand seven hundred and ninety and of Four hundred and and Twenty Pagodas on the first day of August following also of the Two hundred and fifty Pagodas of the Twelfth of May One thousand seven hundred and Ninety one and the like sum of Two hundred and fifty Pagodas on the thirty first day of the same

same last mentioned month and your Petitioner did say that he was in posiession of an Original Receipt from Juggoo Chitty for the Sum of Twenty five Pagodas Twenty two fanams and forty Cash Debiting the Complainant under date the thirty first day of October One thousand seven hundred and Ninety one a true Copy whereof was thereunto annexed your Petitioner did further state that he had acted as a Chymist and Phijsician for many years not only in India but in other countries as he would in due time if needfull prove that he sailed in such Quality from the Isle of France by the written Permission of the Government in May One thousand seven hundred and Seventy three that he had similar Acknow=ledgements from the Government of Pondicherry in the following month of August in the same year and that it was a matter well known that he served in Quality of Head Physician to the late Hyder ally Khawn when compelled to take service with him in the year One thousand seven hundred and Seventy nine of which service in such Quality and of the many assential services and Kindnesses he was thereby inabled to Shew to the unfortunate Prisoners of the Detach=ment of Colonel Baille with Hyder he then held many Voluntarily written Documents of and Gratifull Acknowledge=ment as also the Acknowledgement of a late Governor of Madras Sir Archibald Campbell that such his services were real and meritorious of which last Document your Petitioner hoped the said Mayors Court would think him Excusable in his giving a Copy as it might tend to Shew that your Petitioner had an honest weight and influence with that Respectable Governor and that he thereby became Enabled to assist the Complainant in a manner to have induced him to agree to

to Pay your Petitioner the Five hundred
Pagodas setforth in your Petitioner Account
to the Complainants Debit in your Petitioners
Answer "Fort St. George January 29th 1789 I do
"hereby acknowledge that Mr. Charles Loyd of
"Madras has during my Administration at
"this Place exerted his utmost Endeavours and
"abilities to render himself of service to the
"Honorable Company by procuring every
"posible Intelligence from the Dominions
"of Tippoo Sultaun and other Quarters in
"Justice to Mr. Loyd's Zeal and attachment
"to the welfare and Interest of this Government
"I take leave to commend his future Services
"should occasion required them Signed
"Archibald Campbell" the Original of which
Certificate as also many Friendly and
Highly Confidential Letters from the same
Governor were stated to be in the hands of
your Petitioner's attorney at Law and ready
to be produced and proved if required that
he

he your Petitioner at that day in madras
continued the practice of Physick that he
Chiefly Existed by that practice and that it was
a fact notorious to all the settlement that he
attend and for many years past had so done
in such Quality many most respectable families
the family of Chamier Sultaun amongst the
people called Armanians and Generally the
inture of such families a practice which were
he a dangerous or an Ignorant pretender it could
not in reason be presumed he would have so
long and so Reputably have maintained himself
in and that too in a place where the aid of
Professional men was of so easy attainment
But on that Head your Petitioner did not
intend to follow the Vecious unmanly Precedent
held out to him in the Complainants Replication
leaving it to the Complainants to reconcile to
his own feelings the reflections he had endeavoured
to insinuate against your Petitioner it being
sufficient for your Petitioner to know as he
would

would prove that the Complainant did call on him as a medical man and did recive his prescriptions a fact which some what militated against the practice of his under=standing for many years last past if he did really beleive and consider of your Petitioner in the manner he had perhaps been taught to speak in his said Pleading that with respect to the asertion of the Complainant that your Petitioner presed his medical advice and assistance on him by giving some proofs of Gratitude for favors which he had frequently Acknowledged to have received from the said Complainant in the line of his profession and for which no compensation was made your Petitioner to controvert this strange asertion did say no further was necesary on the part of your Petitioner than to refer to the Items of the several Accounts Debiting your Petitioner annexed to the Complainant which were Swelled up by business charged not even

even omitting a Single Pagoda whereby busines could be charged that the same did not look like a remission of Costs nor did it any where appear that the Complainant paid your Petitioner for his medicine and attendance which if not there Shewn it would be a subsi=sting Claim for the laborer had never yet been Deemed undeserving his hire whatever that be if not ascertained he might resort to his Quantum merit and Courts would thereon Decree Equity between the parties - Lastly and as your Petitioner had in his said Answer Sworn he again avered that he did render the Complainant a service with the said Sir Archibald Campbell for which he was to have been gratified by the Complainant with a Sum of Five hundred Pagodas as charged in his said Account Current annexed to his said Answer which Sum he never did receive and therefore as also from the want of Recompence from the Complainant for your

Petitioner

Petitioner medical Attendance and medicine found him as stated in your Petitioners said Answer and the several further matters therein before and in the said Answer setforth it was evident that no full and final settlement of Accounts could ever have taken place between the Complainant and your Petitioner as insinuated in his said Replication and that the Complainant did stand Indebted unto your Petitioner so far from having the right he had asumed of Calling on your Petitioner in the manner he had done before the said Mayors Court and your Petitioner most humbly sheweth that upon such Proceedings issue did Join and Rules did pass for the Examination of Witnesses and Witnesses were Accordingly Examined on both sides and Publication passed thereon and the said Cause came on to be heard before the said Mayors Court on the Twenty fifth day of June and year of Our Lord One thousand Seven hundred and Ninety three when the said Mayors Court was pleased to Order and Decree and did Accordingly Order and Decree that your Petitioner should pay unto the said Complainant the full and Just Sum of Two thousand and two Pagodas ten fanams and forty Cash together with all such Interest as then was or should thereafter grow due thereon with Costs of the said suit And your Petitioner further Sheweth unto your Most Exellent Majesty in Council that from the said Decree of the said Mayors Court your Petitioner did appeal to the Honorable the Court of Appeals at Madras Patnam having considered himself greatly aggrieved thereby and for Cause of Appeal did say that the said Mayors Court in the said Order or Decree did not seem to have gravely estimated and weighed the several Papers and Documents Exhibited in the Ordinary course of the suit in favor and behalf

behalf of your Petitioner and certain of wch which being entitled as well from the w^t Solemnity attached to them as from the allowance and Acceptance of the opposite Party to the highest regard of the said Court did not appear to have had either the influence or Authority they should have challenged in the adjudication of the Cause, — And w^t Secondly that the said Court in the order as aforesaid had not attended to the body of evidence adduced on the part of your Petitioner the Defendant in the said Cause, and as such evidence was not marked by any legal Insufficiency or Exception and went to the due and satisfactory Establishment of sweral Particulars insisted on by your Petitioner he did believe that if the same had been w^t Deliberately consulted that they would have led to a different and contrary Judgment — And Thirdly that the evidence of the Complainant in the said Cause met as he conceived with an

an exparte Consideration being received only in so much as it advanced to the maintenance and support of the Complainants said Cause and such parts of the same, as tended in his Judgement to the illustration of your Petitioners right he did not find by any thing apparent on the face of the said Decree, to have had the favorable operation reasonably Expected from the nature of such Testimony —

And Lastly that certain particulars Extracted from the Complainants Books, were Exhibited in the course of the Pleadings and were after= =ward Examined to and Came in in such way before the Court, which were in admisable in Law and being inadvertently passed over at their primary production were suffered to w^t remain for a certain time within the notice and comprehension of the said Mayors Court and although your Petitioners Attorney did at the final hearing in the said Cause Protest against such matters being entertained by the

the Court yet your Petitioner had reason to apprehend that the same did in some sort serve to the passing of the Decree issued thereupon — And for all which Reasons and such others as might be offered at the hearing your Petitioner did pray that the said Decree of the said — Mayors Court might be reversed and that the said Court of Appeals be pleased to grant to your Petitioner such other and further — Relief in the Premises as in their Wisdom might seem meet —

And your Petitioner Sheweth unto your most Excellent Majesty in Council that to your Petitioners said Petition and Appeal the Complainants did Exhibit and file their answer and did therein and thereby amongst other things state in answer to your Petitioners first Reason for Appeal that the same was Conclude or conceived in irrelevant and — impertinent Terms in as much as it did tend to impeach the Decree of the said

Mayors Court without assigning any Just or specific Cause or shewing in any one particular Instance that the evidence produced before them was not duely weighed and considered in the adjudication of the said Cause —

And the said Complainants in answer to the second Reason adduced by your Petitioner as Cause of Appeal did say that the said — Mayors Court did appear to have given all the Attention to the Evidence adduced on the part of your Petitioner which it did seem to have been entitled to and the said Complainants did say that there was no insufficiency in the said evidence produced by the said Com= =plainants so far as it went and did deny that it Established in a due and satisfactory manner any of the pecuniary charges in the said Account Current contained and that the Circumstances principally proven by the said Complainants Witnesses were that your

Petitioner

Petitioner had acted on the treble Capacity of a Baker Wine Merchant and Physician and that he had given some Medicine to the said Complainants Testator but that the same Witnesses did Shew that it was usual for the said Complainants Testator when attacked by any serious indisposition to call in the advice and afsistance of Regular Bred Surgeons who were paid their labour and attendance and the said Complainants did further say that the boasted Evidence adduced on the part of your Petitioner Shewed nothing more than that your Petitioner had acted as a Doctor and thence an inference had been drawn of his right to make an heavy and very Exorbitant charge for medical advice which the said Complainants did say was refuted by the acts of the Petitioner himself the greatest part of the said charges having accrued for supposed advice and afsistance previous to the granting of the said Bond upon which the said Action were brought—

And for Answer to the third and last Reason the said Complainants did say that the matters therein setforth were conceived in irrelevant and disrespectfull terms tending to impeach the said Mayors Court and its members with partiality in the Decision which the said Complainants did humbly maintain was not the case

For which matters and things and such others as might be adduced at the hearing the said Complainants did humbly Pray that the Decree of the said Mayors Court might be affirmed with Costs. And your Petitioner humbly Sheweth unto your most Excellent Majesty in Council that the said Petition and Appeal of your Petitioner to the said Court of Appeals and the Complainants Answer thereto did came on

on to be heard and Determined by and
before the said Court of Appeals on the thirtieth
day of February in the year of Our Lord
One thousand seven hundred and Ninety
six when the said Court of Appeals was
pleased to Order and Decree and did Accor=
=dingly Order and Decree that the said
Decree of the said Mayors Court given in
the said Cause on the said Twenty fifth day
of June in the said year of Our Lord One
thousand seven hundred and Ninety three
should be reversed—

And your Petitioner humbly
Sheweth unto your most Excellent Majesty
in Council that the said Court of Appeals did
further Order and Decree that your Petitioner
should pay unto the said Complainants
the Sum of One thousand One hundred
and thirty eight Pagodas Two fanams and
Forty Cash together with all such Interest as
then was or should thereafter grow due thereon
from

from the Twenty third day of May which
was in the year of Our Lord One thousand
Seven hundred and Ninety two, and that
each party should pay his own Costs in both
Courts, as by the Copy of the said Order and
Decree hereunto annexed for the inspection
of your most Excellent Majesty in Council
to which your Petitioner humbly Craves leave
to refer and Prays that the same may be
taken as part of this his Petition and Appeal
may more fully and at large appear—

By which said Decree of the
said Court of Appeals your Petitioner does
humbly conceive that he is much aggrieved

And From which said Decree
of the said Mayors Court and Court of Appeals
your most humbly Appeals to your most
Excellent Majesty in Council for the Reasons
assigned in your Petitioners said Appeal to
the Court of Appeals at Madras as above
stated and for such other reasons as may

be

be offered at the hearing of this Cause and your Petitioners most humbly Prays that the said Decrees of the said Mayors Court and Court of Appeals at Madraspatnam may be reversed and set aside and that the Complainant be Ordered to pay all Costs of Suit—

/Signed/ E. Samuel
for Appellant

Court of Appeals—
at
Madraspatnam

Saturday the 13th day of February
Anno Dominis 1796

Between Charles Loyd of Madras Inhabitant Appellant and Henry Dupuy late one of the Attornies of this Honorable Court and Sloan Gibbons a Lieutenant in the Service of the Honorable English East India Company two of the Executors named in the last Will and Testament of Peter Walker Deceased late an Attorney of this Honorable Court 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 Honorable the Mayors Court together with the Decree of the said

Court

Court given in this Cause on Tuesday the 25th
day of June Anno Domini 1793 upon
due Consideration had of the matters therein
severally contained and of the Pleadings and
arguments used by the Attornies on both sides
This Court doth think fit to Order and
Decree and doth Accordingly Order and Decree
that the said Decree of the Honorable the Mayors
Court Dated the 25th day of June Anno
Domini 1793 be reversed and this Court
doth further Order and Decree that the Appellant
do pay unto the Respondents the Sum of One
thousand One hundred and thirty eight Pagodas
Two fanams and forty Cash/ Pags 1138 .. 2 .. 40/
together with all such Interest as now is or shall
hereafter become due thereon from the 23d day
of May 1792 and that each party do pay his
own Costs in both Courts —

Your /Signed/ J Webbe clk

A true Copy
/Signed/ E. Samuel
Attorney for Appellant

To

To the Kings most Excellent Majesty in Council

Between Henry Dupuy and Sloane Gibbons Executors named in the last Will and Testament of Peter Walker late one of the Attornies of the Honorable the Mayors Court of Madraspatnam Deceased Com=plainants and Charles Loyd of Madras Inhabitant Defendant —

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

Filed in my Office the 18th April 1796
J Webbe clk

This Respondents for answer to the Appellants Petition and Appeal to your most Excellent Majesty in Council or unto so much thereof as they are advised is material or necessary for them to make Answer unto, Answer and say That they admit, That sometime on or about the

Twenty

Twenty fifth day of May which was in the
year of Our Lord, One thousand seven hun-
and Ninety two their Testator the above na-
Peter Walker did Exhibit and file his Bill of
Complaint in the Honorable the mayors Co-
of Madraspatnam against the said Appe-
for the recovery of the Sum of Two thousan-
and Sixty four Pagodas and thirty two fan-
Current money of Madras charged to be due
and owing to the said Peter Walker in his
time upon and by virtue of a certain Bon-
or written Obligation Copy whereof is to the
Respondents said Testators Bill of Complain-
annexed and therein and thereby referred t-

To which said Bill of Complaint
these Respondents admit that the said Ap-
-lant did file and Exhibit his Answer alle-
that he the Appellant did at or about the
time in these Respondents said Bill of
Complaint mentioned execute to him a
Bond for the Sum of Two thousand Pag-

but that he did not execute the same on his
own Account, but for and on Account of
one Zachariah Polack who was represented to
stand indebted to these Respondents said
Testator in the said Sum, whose indigent
Circumstances and inability to pay off
the demand he the Appellant had Commise-
-rated and therefore had taken the Debt
upon himself, and these Respondents say
that the other matters set forth and contained
in the said Answer being recited in the said
Petition and Appeal to your most Excellent
Majesty in Council these Respondents Crave
leave to refer thereunto and pray that they
may have the full benefit and advantage
thereof —

To which said Answer
these Respondents admit that their Testator
did Exhibit and file his Replication and
the said Appellant having afterwards
Rejoined Issue did thereupon join and

Rules

Rules passed for the Examination of Witnesses but before any other proceedings were had in the said Cause these Respondents Testator the said Peter Walker departed this life whereby the said Suit and proceedings therein became and stood abated, when these Respondents did file a Bill of Review in the said Honorable the Mayors Court setting forth that the said Peter Walker did in his lifetime duly make and Publish his last Will and Testament in writing bearing date the nineteenth of April last past and did thereof constitute and appoint these Respondents and Charles Walker late of Fort Saint George his Executors in India, and further setting forth that the said Peter Walker did further appoint John Walker of Kingsington Square London, the Reverend William Walker in the county of Devon, and the Reverend William Catt of Combe in the Parish of Gillis. The Executors of his said last Will and Testament in England and further setting forth that these Respondents as two of the Executors of the said Will had duly proved the same before the Honorable Mayors Court in its Ecclesiastical capacity and had obtained probate thereto as by the original of the said Will these Respondents said would more fully and at large appear, and thereupon these Respondents prayed that the said suit and all proceedings thereon so abated might stand and be Revived against the said Charles Loyd, and that they might be put in like state and condition as the same were in at the time of the abatement thereof which was accordingly ordered, And for further Answer to the Appellants Petition and Appeal to your most Excellent Majesty in Council these Respondents say that in support of the

the Bill of Complaint filed by their Testator as well as to controvert the many extraordinary assertions in the Appellants Answer and Rejoinder contained these Respondents did Exhibit and file certain Interrogatories to Goorroomoorty Braminy and to Mr. John Hunter of Fort Saint George the former of whom setforth and Deposed; That he was in the service of these Respondents Testator Peter Walker deceased in the capacity of head Writer and manager of his business before, at and after the period when the present was instituted That he knew by what means and for what particular consideration the Bond was passed for which the present suit was brought and that it was as follows, a person named Zachariah Polack was indebted to the said Peter Walker for money lent and advanced to the said Zachariah Polack to the Amount

Amount of Two thousand five hundred Pagodas and odd, for the security of which he lodged with the said Peter Walker a Bond from his Highness Omdut ul Omrah for Three thousand Pagodas and being passed by the said Peter Walker for payment thereof he the said Zachariah Polack offered in discharge of the said Bond in question from the Defendant which was accordingly accepted by the said Peter Walker and who gave up the remainder of his Demand against the said Zachariah Polack being five hundred Pagodas and odd Pagodas as he considered it more for his advantage to take the Defendants Bond for two thousand Pogodas than to run the risk of loosing the whole, That at the time he the said Peter Waker received the Bond in question from the Defendant he delivered to the Defendant before mentioned Bond from his Highness Omdut ul Omrah

Omrah for the Sum of Three thousand Pagodas. The Deponent further said that he was present at the Garden house of the said Peter Walker when the Defendant came to him to speak to him, and that the Defendant then told the said Peter Walker that he was very much distressed by the said Peter Walker having put his the Defendants Bond into the hands of an attorney at Law, and that he Defendant was not able to pay the amount in consequence of which the said Peter Walker told the Defendant that he must pay the money as he had urgent occasion for it, to satisfy a demand made on him by one Singanah Chitty, and the said Gooroomoorty further said that he the said Peter Walker also told the Defendant that he understood the said Singanah Chitty was the Defts. friends, and that if he the Defendant could satisfy the said Singanah for this demand on the said Peter Walker he the said Peter Walker had no objections to give the Defendant further time to pay the balance, the Defendant then requested the said Peter Walker to allow him one Week, and at the expiration of that time he would satisfy him. The Deponent further said that he was present when a message was brought by Zachariah Polack from the Defendant to the said Peter Walker thanking him the said Peter Walker for not issuing a warrant of arrest against the Defendant at which period he the said Zachariah Polack did offer in discharge of the Defendants Bond in question to make over to the said Peter Walker his Garden which he valued at Four thousand Pagodas if the said Peter Walker would pay off a mortgage on the said Garden for one thousand Pagodas and also assign over to the said Zachariah Polack two houses

houses belonging to the said Peter Walker in Black Town Valued at Eight hundred Pagodas and to the last Interrogatory the said Gooroomorty deposed and said that the Defendant did not at any time deny the Justness of the demand in Question, nor did he ever mention that he had any claim whatever on the said Peter Walker, on the contrary he always promised that he would use his best endeavours to discharge the amount of the said Bond and that want of money was the reason he had done so not before, And the Deponent further said that from his knowledge of all the Circumstances he was convinced that the demand in question was a just one, and these Respondents further answering say that John Hunter of Fort St. George Merchant being also examined as a Witness on the part of these Respondents Deposed and

and said that he was employed by the said Peter Walker in the capacity of an Agent in the years One thousand seven hundred and eighty nine, one thousand seven hundred and ninety, and One thousand seven hundred and ninety one, That it was usual for him the Deponent to transact the said Peter Walker's pecuniary concerns, That he did receive from the said Peter Walker either a draft or a Note from the Appellant payable to him the Deponent or order, That the said draft or Note was Accepted by the Appellant, and that the amount thereof was Five hundred Pagodas and odd, and the said John Hunter further said that he had heard from the said Peter Walker deceased that the said Note or draft was passed for the balance of some old Account betwixt him and Appellant, That he did when the said Draft became due make frequent applications for

Payment

That he the Deponent did see appellant Charles Loyd frequently attend at the house of the said Peter Walker on different occasions but he did not know for what particular purpose, That the appellant did some time advise him to take certain medicine, which he the Appellant prescribed and which medicine these Respondents Testator did purchase at his own expence from the Company's Ship and some times from Juggapah and some time from Mr. Moss. That he did frequently by the order and Direction of the said Peter Walker go to the House of the said Appellant to bring from him Medicine for the use of the said Peter Walker, and that the said Appellant did apply him the Deponent with medicine for the use of the said Peter Walker which cured a Boil which the said Peter Walker had on his Chin -

And

And these Respondents for further Answer to your most Excellent Majesty in Council say that Arnachellum a Dubash being Examined to the same effect deposed and said that he had served the Appellant in the capacity of Dubash about Twenty years, and that he the Appellant was by profession a Baker, a Doctor and a Wine Merchant, That he the said Appellant did Administer advice and medicine to the said Peter Walker as a Doctor during his indisposition at different times but that he the said Arnchellum did not recollect the exact time he did so -

And these Respondents for further Answer to the Appellants Petition and appeal to your most Excellent Majesty in Council admit that Publication having passed the said cause was set down for hearing and afterwards came on to be heard by and before the said Mayors Court on the Twenty third

third day of June in the year of Our Lord One thousand seven hundred and ninety three when the said Court were pleased to Order and Decree and did Accordingly Order and Decree that the Appellant should pay unto these Respondents the full and Just Sum of Two thousand and two Pagodas, ten fanams and forty Cash together with such Interest as then was or should thereafter become due thereon with Costs of Suit - as by the said Decree copy whereof is hereunto annexed relation being thereunto had will more fully appear -

From which said Decree of the said Mayors Court these Respondents admit that the Appellant Charles Loyd, did appeal to the Honorable the Court of Appeals at Madras =patnam alledging the same to be erroneous and that he the Appellant was much aggrieved thereby for certain reasons by him adduced and setforth, and to which these Respondents Crave

crave leave to refer and pray the same may be taken as part and parcel of this their answer to your most Excellent Majesty in Council -

And these Respondents for further Answer to the Appellants Petition and Appeal to your most Excellent Majesty in Council - admit that to the said Petition and Appeal to the said Governor and Council of Madras they did Exhibit and file their Answer, and did therein endeavour to Shew that the Decree of the said Mayors Court was not founded upon erroneous principles, but that it was from the nature of the case, and the evidence adduced in support thereof fair, just and equitable, That on the Thirteenth day of February in the year One thousand seven hundred and ninety six, the said Petition and Answer came on to be heard when the said Court of Appeals at Madras =patnam were pleased to Order and Decree and did Accordingly Order and Decree that the said Decree of the said Mayors Court -

Given

third day of June in the year of Our Lord One thousand seven hundred and ninety three when the said Court were pleased to Order and Decree and did Accordingly Order and Decree that the Appellant should pay unto these Respondents the full and Just Sum of Two thousand and two Pagodas, ten fanams and forty Cash together with such Interest as then was or should thereafter become due thereon with Costs of Suit - as by the said Decree copy whereof is hereunto annexed relation being thereunto had will more fully appear -

From which said Decree of the said Mayors Court these Respondents admit that the Appellant Charles Loyd, did appeal to the Honorable the Court of Appeals at Madras = patnam alledging the same to be erroneous and that he the Appellant was much aggrieved thereby for certain reasons by him adduced and setforth, and to which these Respondents Crave

crave leave to refer and pray the same may be taken as part and parcel of this their answer to your most Excellent Majesty in Council -

And these Respondents for further Answer to the Appellants Petition and Appeal to your most Excellent Majesty in Council - admit that to the said Petition and Appeal to the said Governor and Council of Madras they did Exhibit and file their Answer, and did therein endeavour to Shew that the Decree of the said Mayors Court was not founded upon erroneous principles, but that it was from the nature of the case, and the evidence adduced in support thereof fair, just and equitable, That on the Thirteenth day of February in the year One thousand seven hundred and ninety six, the said Petition and Answer came on to be heard when the said Court of Appeals at Madras = patnam were pleased to Order and Decree and did Accordingly Order and Decree that the said Decree of the said Mayors Court -

Given

given on the said Twenty fifth day of June in the said year of Our Lord One thousand Seven hundred and Ninety three should be reversed, and the said Court of Appeals did further Order and Decree that the said Appellant should pay unto these Respondents the Sum of One thousand One hundred and thirty eight Pagodas Two fanams and forty Cash together with such Interest as there was or should thereafter become due thereon from the Twenty third day of May which was in the year of Our Lord One thousand seven hundred and ninety two, and that each party should pay their own Costs in both Courts as by the said Decree copy whereof is annexed to the Appellants Petition of Appeal, and to which these Respondents crave leave to refer relation being thereunto had will more fully appear-

And these Respondents humbly submit to your most Excellent Majesty in Council that these Respondents as the Executors of Peter Walker and not the Appellant are the Persons aggrieved by the Decree of the said Court of Appeals which went to reverse that granted by the Honble the Mayors Court and whereby these Respondents were ordered payment of the Sum of Two thousand and two Pagodas Ten fanams and forty Cash instead of One thousand One hundred and thirty eight Pagodas two fanams and forty Cash, as by the Decree of the said Mayors Court copy whereof is hereunto annexed relation being thereunto had will more fully appear, and in order to Shew in what manner they are aggrieved by the Decree of the said Court of Appeals these Respondents beg leave to submit to your most Excellent Majesty in Council that in the pleadings of this Cause It is admitted by the Appellant that he did execute the Bond upon which the present Action is brought on Account one Zachariah Polack

Polack who stood indebted to these Respondts Testator the said Peter Walker in a larger Sum, and who was thereupon exonerated, and it further appears that due credit had been given the Appellant for all monies actually paid on Account of the said Bond To wit the Sum of Four hundred and Twenty Pagodas and two hundred and fifty Pagodas, and these Respondents further say, that notwithstanding the Appellant has asserted that various other Sums were paid on Account of the said Bond To wit the Sum of Six hundred and Twenty three Pagodas and fourteen fanams and Two hundred and fifty Pagodas, yet it doth clearly appear from the exhibit marked A. produced by the Appellant in support of the said Item that it was granted for other matters and that only Four hundred and Twenty Pagodas was paid on Account of the said Bond and which is duly

Credited

credited the Appellant in the Account Current annexed to the Bill of Complaint filed by their said Testator, and with respect to the Item of Two hundred and fifty Pagodas which the Appellant has in his Answer to these Respondents said Testators Bill of Complaint credited himself twice for, These Respondents say that the Appellant has taken advantage of a small innacuracy in stating the payments of Two hundred and fifty Pagodas to have been made on the thirty first day of the said month instead of the Twelfth and at the same time omitting to mention as per Receipt And these Respondents further say that their said Testator having averred in his Replication that Two hundred and fifty Pagodas was the only Sum paid on account of the said Bond and having also explained every matter relative to the said Item of Six hundred and twenty three Pagodas, That it was incumbent on him the Appellant if

he

he could to have established that these Sums were seperate and distinct payments made on account of the said Bond by a due and legal course of evidence, and having failed to do so, it is conclusive proof that they are unfounded And these Respondents pray leave to submit to the particular consideration of your most Excellent Majesty in Council the several matters stated and setforth in the Replication put in by their said Testator to the Appellants Answer in the Mayors Court as also to the exhibit marked A Copy whereof is hereunto annexed the Original having been delivered in by the appellant in support of the said Item of Six hundred and Twenty three Pagodas and fourteen fanams and these Respondents further say that by comparing the said exhibit A with that signed E. W. Copy whereof is annexed to the Replication, as also to this their Answer It will appear clear and

Evident

Evident that the said Sum of Six hundred and Twenty three Pagodas was not a seperate and distinct Sum paid on Account of the said Bond as is alledged by the said Appellant but blended with other matters Four hundred and Twenty Pagodas being on account of the Bond, and which the Appellant is duly credited for in the account Current annexed to the Bill of Complaint all which circumstances are either directly proved or supported by the evidence of John Hunter and Gooroo = moorty Braminy -

And these Respondents further submit to your most Excellent Majesty in Council that they were further aggrieved by the Decree of the said Court of Appeals which directed that each party should pay their own Costs, in as much as these Respondents are advised that according to the rules both of Law and

Equity

Equity Costs should follow the Judgment whether that Judgment is given for the Sum actually sued for, or for a less and these Respondents submit to your most Excellent Majesty in Council that as a Defendant who pays into Court such part of a Debt as he admits to be due is also obliged to pay the Costs up to that time upon the same principles ought the Appellant to have been Answerable for the Costs attending this Litigation -

For all which Reasons and such others as may be offered at the hearing These Respondents pray that the Original Decree of the said Honorable Mayors Court may be affirmed and the Appellant directed to pay all the Costs attending this Litigation, and that these Respondents may

may have such other and further relief in the premisses, as to your most Excellent Majesty in Council shall seem meet -

[Signed] G. Chalmer
Solicitor for Respts.

Mayors

Mayors Court at Madraspatnam } Tuesday the 25th day of June Anno Domini 1793

Present

John Mitford Esqr. Mayor
William Webb & Wm. Abbott
Aldermen

Between Henry Dupuy one of the Attornies of this Honble Court and Sloane Gibbons a Lieut. in the service of the Honble English East India Company two of the Executors named in the last Will and Testament of Peter Walker deceased late an Attorney of this Honble Court Complainants and Charles Loyd of Madras Inhabitant Defendant—

This Cause coming on to be heard and Debated this day in the presence of the Attornies on both sides on Reading the Complainants Bill with copy of an Account Current annexed, The Defendants Answer with copy of an Account annexed The Replication with copies of Two Exhibits annexed, The Amended Rejoinder with Two Exhibits annexed, The Bill of Revivor. The Interrogatories and Depositions on the part and Complainant with Exhibits marked AB & C. annexed, The Interrogatories and Depositions on the part of Defendant on Hearing the Pleadings and arguments made use of by the Attornies and on due consideration had thereon this Court doth think fit to order and Decree, and doth Accordingly order and Decree that the Defendant do pay unto the Complainant the full and Just sum of Two thousand and two Pagodas ten fanams & forty cash (Pag.s 2002.. 10.. 40) together with all such Interest as now is or shall hereafter become due thereon until full payment is made also all Costs of this suit—

Hur (Signed) G. E. Askin
D.T.R.C.

a true Copy
(Signed) George Chalmer
Solicitor for Respondent

Dr

Charles Loyd Esqr. — Dr.

1789 Septr.	1st.	To amount of a Balance settled between us this day	176 " "
		To Interest from this day to 1st. February 1790 is 5 Months @ 12 ℔ Cent	836 "
1790 May	1st.	To Interest from the 31st. Octr. 1788 to this day on 2000 Pags. @ 12 ℔ Cent being 18 Months	360 " "
			54436 "

Fort St. George
1st. Feby. 1790

Received the above by an Acceptance payable in three Months

(Signed) P. W.

True Copy

(Signed) G. Chalmer
Solicitor for Respondt.

So

Exht. A

Dr. Charles Loyd Esqr. in Account current with Peter Walker Esqr. Cr.

May 1st.	To amount of your acceptance in favor of Mr. Hunter	54436 "	
Augt. 12th.	To 3 Months and 12 days Interest	1823 "	
Augt. 1.	To 3 Months Interest on your Bond	60 " "	
		623 14 "	
May 12	By your Draft on Mr. Boyd in my favor	623 14 "	
		623 14 "	

E. Excepted
Fort St. George May 12th. 1790
E. Excepted
(Signed) P. Walker
true Copy
(Signed) G. Chalmer
Solicitor for Respt.

To the Right Honble Lord Hobart

President and Governor &c. in Council.

Fort St. George

In the Honble the Court of Appeals }

Between Growapah of Madras Inhabitant Complainant and Henry Chichley Michell John De Fries Junior, Nagapah Chitty and Punjaram Sooboo Chitty Executors of Kare Kistna Chitty deceased Defendants -

The humble Petition and Appeal of the above named Complainant -

Sheweth - That your Petitioner did some time on or about the Twenty second day of May and year of Christ One thousand seven hundred and Ninety four Exhibit and file his Bill of Complaint in the Mayors Court at

Filed in my office the 10th August 1795
J. Webb Clk.

at Madraspatnam against the Defendants above named as Executors as aforesaid and did therein and thereby setforth that in or about the month of January One thousand Seven hundred and Eighty six one Senior Antonio Rodrigues then being Super Cargo and part owner of a certain Portugese Ship called the Nostra Signiora da Pentra De Fransa Marquis De Anjenga then lying at Anchor in Madras Roads and of which Antonio Francisco de Magattes was then Captain or Commander being in want of a large Sum of Money to purchase Cloths and other Articles of Merchandize as a Cargo for the said Ship which was about to proceed for Europe applied to your Petitioner to advance to him a Sum of Money for the purpose aforesaid - that your Petitioner consented to lend to the said Senior Antonio Rodrigues the Sum of Six thousand Two hundred

and

and fifty Star Pagodas to be secured to your Petitioner and on the terms particularly stipu=lated and mentioned in a certain Bond or Paper of Respondentia in your Petitioners said Bill therein after set forth and your Petitioner did state that at the time of advancing the said Sum of Six thousand Two hundred and fifty star Pagodas your Petitioner did require from the said Simiad Antonio Rodrigues that one Kare Kistnah Chitty the Testator of the Defendants hereinbefore named and who was then the Debash of the said Simiad Antonio Rodrigues should become bound to your Petitioner collaterally to secure the said Sum of Six thousand Two hundred and fifty star Pagodas with the Premium and Interest to accrue thereon and which was agreed to by the said Kare Kistnah Chitty who provided the merchandize for the said Simiad Antonio Rodrigues as aforesaid and accordingly the said security or under=taking

taking of Respondentia hereinbefore mentioned was entered into & Signed by the said Simiad Antonio Rodrigues as the principal therein, and likewise Countersigned by the said Kare Kistnah Chitty as security for the Performance of the terms of the said Paper Writing and which your Petitioner did in and by his said Bill of Complaint state to be in the words and figures or to the Tenor and effect following -

Madras 18th January 1786.

Principal Star Pags. - 6250.

Premium at 20 P Cent - 1250

Star Pags. - 7500

at 8 Shillings P Pag.a - 60,000 Shillings Sterling

One hundred and fifty days after the arrival at the Port and City of Lisbon the Ship N. Sen.re da Penta de Frans.a Marquis de Anjenga whereof is Captain Antonio Francisco de Magaltes which at present is at an=Anchor in the Port of Madras by the blessing of

of God bound to Lisbon to touch at any Sea Ports in this Coast of Coromandel or at any other if urgent necessity requires I Simiod Antonio Rodrigues Super Cargo of the said Ship by this my first letter of Risque the second and third not being paid shall pay to Mr. I Bowman Esqr. Elements Inn London of London in his absence who his powers may have the Sum of Sixty thousand Shillings Sterling money of Great Britain in Pounds According to the Reexchange that shall or may be between the markets of London and Lisbon the day this letter of Risque becomes due being the proceed of Six thousand two hundred and fifty star Pagodas which at the time of Executing this I have received of Mr. Goorvapah at the rate of Eight shillings Sterling per Pagoda with the Premium of Twenty per Cent makes the above sum which I have taken at Respondentia for the said Mr. Goorvapa and

and have applyed in Merchandize Laden on Board the said Ship Marked SAR for which said Premium of Twenty per Cent the said Mr. Goorvapah runs the Risque of the Sea fire Corsairs Enemies and false friends and on the Ships safe arrival at the said Port and City of Lisbon in form above mentioned payment of this letter of Risque will be made for which I mortgage the merchandizes which are Laden in the said Ship marked as herein before stated should any delay be made after this letter becomes due Interest According to Law is to be paid for which I bind myself my goods and shall in due time make prompt payment I advert that this Sum will be Transported to London in Bills of Exchange but if I should be obliged to Transport in money the said Mr. Groovapah is to run the Risque on his Account Simiod Antonio Raiz ind (L.S.) Care Kistnah Chitty

Chitty -

I am Witness to the above signatures.

J. Sundt

A true Translation as near as can be from the Original Portugese Language by Wm Lewcock Port. Interr -

And your Petitioner Sheweth unto this Honble Court that he did in and by his said Bill state that the said Original Paper writing or Bond of Respondentia was written in the Portugese Language and was in his posession ready to be produced to the said Mayors Court when the same should be required and your Petitioner did further state that at the time the said Original Paper writing or Bond of Respondentia was so signed by the said Kare Kistnah Chitty the same was fully explained to, and well understood by him and he well knew that his signature thereto was intended to be, and to operate as a Collateral security to your Petitioners for the said Sum of Six thousand Two hundred and fifty star Pagodas and Interest and for performance of the said Respondentia Obligation and that subsequent to such undertaking and Signing the said Care Kistnah Chitty acknowledged his said hand writing and signature and declared the purpose for which the same were respectively made as herein before set forth and your Petitioner Sheweth that he did in and by his said Bill further state that the said Ship sailed from Madras some short time after the Transaction before stated and arrived in due course at Lisbon being the Port of her destination as mentioned in the said agreement and that neither the said Semiod Antonio Rodrigues or any other Person or Persons on his behalf or on his account paid to John Bowman Esquire the Payee named in the said Respondentia

Respondentia Security or to his order or to your Petitioner or any other person or Persons on his behalf on his Account the whole of the said Sum of Six thousand Two hundred and fifty Pagodas and the premium and Interest due thereon at the your Petitioner and his Agents and several other Persons frequently applied to the said Semiod Antonio Rodrigues and to several other persons who appeared to act as his Agents or otherwise relative to the said Ship but your Petitioner acknowledged he had received at several times different Sums of Money on Account of the said Bond amounting in the whole to Four thousand Pagodas or thereabouts from several Persons acting as the Agents of the said Semiod Antonio Rodrigues and your Petitioner did state that the said Simiod Antonio Rodrigues had failed and become insolvent and unable to pay to your Petitioner the remaining part

part of the said Principal and Interest Moneys and also the said Premium so due in manner aforesaid and that your Petitioner in consequence thereof had caused many applications to be made to the said Care Kistnah Chitty for Payment thereof but that he evaded the same and soon afterwards died having previous to his Decease made and Published his last Will and Testament in Writing and thereof and therein nominated and Appointed Henry Chichely Michel John Defries, Nagapah Chitty and Tunjaram Soobo Chitty the Defendants herein before named Executors thereof who had afterwards duly proved the same on the ecclesiastical Side of this Honble Court and obtained thereout probate of the said Will and your Petitioner did further say that the said Care Kistnah Chitty was possessed at the time of his decease

of

of a large Real and Personal Estate consisting of Houses and Gardens and also of ready money and Securities for money Plate Jewells Merchandize & Household goods and other Effects to a very large amount and much more than sufficient to discharge all his Just Debts and which were all possessed collected and Received by the said Defendants & hereinbefore named as Executors of his said Will and that your Petitioner had & frequently by himself and others applied to the said Defendants to Pay to your & Petitioner the said Sum so due to your Petitioner on the said Respondentia Security but which they had refused to do and that your Petitioner had annexed to his said Bill of Complaint an Account Current between your Petitioner and the said Defendants as Executors as aforesaid and your Petitioner did in and by his said Bill

Bill of Complaint frame the necessary charges touching the Premises and thereon did exhibit Interrogatories and Pray that the Defendants might be Decreed to pay unto your Petitioner all such Sum and Sums of money as should appear to be due to your Petitioner on the Account aforesaid at the time of making a Decree herein, and that your Petitioner might have such further and other Relief in the premises as should seem meet to the said Mayors Court.

And your Petitioner Sheweth unto this Honble Court that to your Petitioners said Bill of Complaint the Defendants did on the fifteenth day of July and said year of Our Lord One thousand Seven hundred and Ninety four Exhibit and file their Plea and Answer and for Plea did say that the end of your Petitioners Bill was to Compel them the Defendants as Executors of the last Will and Testament of Care Kitnah

Kistnah Chitty deceased to pay unto your
Petitioner a Sum of Seven thousand One
hundred and Twenty three Pagodas seven
fanams and forty Cash thereby charged to be
due to him under and by Virtue of a certain
alledged Agreement suggested to have been
made and entered into by their Testator
with your Petitioner to secure to him the
payment of the Sum of Six thousand two
hundred and fifty Star Pagodas by the
Bill of Complaint charged to have been by
him sent to One Simod Antonio Rodrigues
Super Cargo of the Ship N. Senr.a da Cento
de Fransa Maraquis de Angeinga of the
Port and City of Lisbon in Portugal and
to have been secured to your Petitioner at the
period and on terms particularly stipulated
and mentioned in a certain Bond or
Paper of Respondentia by your Petitioner
alledged to have been entered into by the
said Simod Antonio Rodrigues to your
Petitioner

Petitioner and bearing date the Eighteenth
day of January in the year of Our Lord
One thousand seven hundred and Eighty six
together with the Premium and Interest
thereof the Defendants by Protestation not
Confessing or Acknowledging all or any of the
matters or things in the said Bill contained
to be true in such sort manner and form
as the same were therein and thereby charged
alledged or setforth and as to the Relief
thereby prayed touching such pretended
Agreement in the said Bill mentioned
did plead in bar and for Plea did say they
were informed and believed that by an
act of Parliament made in the Twenty
ninth year of the Reign of his Majesty
King Charles the second entitled an Act
for prevention of Fraud and perjuries it
was amongst other things enacted that
from and after the Twenty fourth day
of June One thousand six hundred and
Seventy

Twenty seven no action should be brought whereby to charge a Person upon any special promise to Answer for the Debt or default of another unless the Agreement upon which such action was brought should be in writing and the Defendants did aver that neither their said Testator nor any Person by him lawfully authorized did ever make or sign any contract or agreument in writing or otherwise to secure the payment of the said Sum of Six thousand Two hundred and fifty star Pagodas with premium and Interest to your Petitioner or of any part thereof or to any such effect as by the said Bill was suggested or any memorandum or Note in writing of any agreement whatsoever for or concerning the Payment thereof or of any part thereof to your Petitioner or to any other Person or Persons whomsoever and therefore the Defendants did Plead the said act of Parliament and

matter

matter aforesaid in Bar of your Petitioners said Bill of Complaint and of the Relief thereby sought touching such pretended Agreument 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 of Complaint and the Defendants for Answer to your Petitioners said Bill did say they did not belive that Simod Antonio Rodrigues in the said Bill named did on or about the Month of January in the year One thousand Seven hundred and Eighty six or at any other time whatever apply to your Petitioner to advance him a Sum of money for the purpose in your Petitioners Bill of Complaint mentioned or for any other purpose, nor that your Petitioner consented to lend the said Simod Antonio Rodrigues the Sum of Six thousand two hundred and fifty Pagodas or any Sum of money whatever to be secured

to

to your Petitioner at the period, and on the Terms in the said Bill mentioned but the Defendants did say that they had heard and believed it to be true that your Petitioners name was made use of as the Obligee of the said alledged Respondentia Bond merely as a Trustee for Major then Captain or Lieutenant John Orr in the Service of the united Company of Merchants of England Trading to the East Indies and who as the Defendants did say they verily believed was the person actually interested in the monies therein mentioned, and in the event of the suit - that they did not believe that at the time of advancing the said Sum of Six thousand Two hundred and fifty star Pagodas, if in fact it was advanced that either your Petitioner or any other Person required from the said Simon Antonio Rodrigues that the Defendants Testator should as charged by the said Bill become

become bound to your Petitioner or to any other Person whomsoever as Collateral Security or otherwise for the payment of the said Sum of Six thousand Two hundred and fifty star Pagodas, or any part thereof nor of the alledged premium or interest thereof or any part thereof but that if any such requisition was made they the Defendants did not believe that their said Testator in any wise acquiesced therein, and did deny that their said Testator Countersigned the said Respondentia Bond or written Instrument as a Security for the performance thereof but that if he subscribed his name thereto he did so merely as a Witness to the Execution thereof and not otherwise and that his name did no where appear throughout the said Respondentia Bond as a Co Obligor therein, and which they did say they Verily believed would not have been omitted had it been meant or understood by the parties interested therein

that

that their Testator should have in any wise
been bound thereby or for the discharge or
performance thereof, and thereupon the
Defendants did say they did not believe it
to be true as stated by your Petitioner that it
was explained to their said Testator or that
he well or at all knew or understood that his
signature thereto was meant or intended to
be, or to operate as a Collateral Security to
your Petitioner for the said Sum of Six thousand
Two hundred and fifty Pagodas and interest
or in any wise whatever for the performance
of the said Respondentia Bond or the Condition
thereof or otherwise than as a Witness to the
Execution of the said Bond or Written
Instrument as aforesaid and for further
Answer to the said Charge in your Petitioners
said Bill of Complaint contained that at
the time when the said Sum of Six thousand
Two hundred and fifty Pagodas is alledged
to have been by him lent to the said Siniod
Antonio

Antonio Rodrigues required and insisted
that the Defendants said Testator should
become security on behalf of the said
Siniod Antonio Rodrigues for payment thereof
and of the Premium thereof at the rate of
Twenty per Cent together with Interest
and further charging that their the Defendants
said Testator assented thereto, and Accordingly
signed the said alledged Respondentia
Bond they did say they were advised and
believed that it appeared by your Petitioners
own shewing that the said alledged
Principal Sum of Six thousand Two hundred
and fifty star Pagodas and the premium
thereof at the rate of Twenty per Cent and
interest was not at the risk and hazard
of your Petitioner and did therefore submit
to the said Mayors Court that the said
alledged Transaction was upon your Petitioners
own statement usurious and the Defendants
did therefore humbly pray the benefit of
the

the statute in such case made and provided as fully and Effectually as if they had pleaded the same and the Defendants did say that they had heard and believed that by a particular Regulation and usage at Lisbon with regard to Respondentia loans that money Runing at Respondentia upon Goods or Vessels from the East Indies to Lisbon must be paid off and discharged prior and in preference to all other Claims whatever and they did submit to the said Mayors Court that if your Petitioner or the said John Orr if an fact he was interested therein had suffered himself to be divested of his security in the said goods so by your Petitioner charged to have been Shipped upon Respondentia, the Defendants (whose Testator they did say never had as they verily believed any Interest or concern therein) could not be deemed or considered accountable or answerable in the premises - That the said Ship might for any thing

thing they knew to the contrary have sailed from Madras some short time after the alledged Execution of the said Respondentia Bond by the said Simod Antonio Rodrigues but not after the pretended Transaction in the said Bill stated so far as the same related to their Testator having as they did say untruly charged by the said Bill become security for the performance of the said Respondentia Bond on such Transactions having as they verily believed ever taken place with respect to their Testator that they could not set forth whether the said Ship did or did not arrive of her Port of destination nor whether the said Simod Antonio Rodrigues or any Person or Persons on his behalf or on his Account did or did not pay unto John Bowman Esq.r in your Petitioners Bill of Complaint and the said alledged Respondentia Bond mentioned or to his Order or to your Petitioners or any other

Person

Person or persons on his behalf the whole of the said Sum of Six thousand two hundred and fifty Pagodas and the premium and Interest charged to be due thereon, nor whether your Petitioner or his Agents if any he had did or did not apply to the said Simod Antonio Rodrigues or to several or any other Person or Persons acting as his Agents relative to the said Ship, nor whether the said Simod Antonio Rodrigues did or did not fail or become insolvent or unable to pay the Residue of the monies by your Petitioner charged to be due and owing to him they the Defendants being as they did say strangers to such pretended and alledged matters and Transactions and therefore they did humbly crave leave to refer your Petitioner for further information respecting the said Respondentia Bond to the said Simod Antonio Rodrigues the Sole Obligor thereof and upon whose Credit alone they did say they verily believed your Petitioner

Petitioner or the person actually interested in the said Respondentia Bond took the same that they did not believe that your Petitioner in the life time of their said Testator caused many applications or any application whatever to be made to their said Testator for payment of the said Monies in the said Bill mentioned or of any other part thereof but that they had heard that the said John Orr did make application to their said Testator in his life time for payment of the Residue of the monies by your Petitioner alledged to be owing upon the foot of the said Respondentia Bond, and that the said John Orr endeavoured to persuade and intimidate their said Testator into a Compliance with such his unwarranted demand but that the said Testator did uniformly refuse to Comply therewith always declaring that he the said Testator never

never Executed the said Respondentia Bond
or Written instrument nor in any wise became
bound for the discharge thereof and that he
the said Testator had no interest or concern
in the said alledged loan all which the
Defendants did say they verely believed to
be true and did humbly submit to the said
Mayors Court that it was not to be presumed
or Credited that their said Testator would
have become security for the said Simod
Antonio Rodrigues who was at the time when
the said pretended Security was alledged
to have been entered into a person scarcely
known to their said Testator and who was
then merely a Sojourner at the Port of
madras the subject of a foreign state and
then immediately about to proceed to Lisbon
in Portugal his native Contrary and
respecting whom as the Defendants did
say they verily believed their said
Testator might never after have expected
to

to hear any thing further and did say
that they never did as was untruly charged
by your Petitioners said Bill of Complaint
admit that their said Testator signed the
said Respondentia Writing as Security
to your Petitioner or that their said Testator
was or could have been induced to Sign the
same from a View of being Employed as
Dubash to the said Simod Antonio
Rodrigues in purchasing and providing
Merchandize or other things for the said
Ship, nor that he did derive or acquire
a very large or any propt or emolument
therefrom, if in truth he acted as the
Dubash of the said Simod Antonio
Rodrigues and the Defendants did positive-
ly say that they never did pretend or
alledge as by the said Bill was untruly
charged that your Petitioner ought to
deliver up the said Respondentia Bond
to them to be cancelled, or that your

Petitioner

Petitioner ought to release them therefrom
for that they did not conceive or believe that
their said Testator was in his life time or
that they the Defendants and as is Executors
be in any wise bound by the said Respondentia
Bond or the said alledged and pretended
undertaking or agreement and did deny
that your Petitioner did ever apply to them
or to any or either of them to pay off the
said monies so by him the and that they
knew not of your Petitioners proceedings in
the premises until that they received the
Summons of the said Mayors Court to appear
to and answer the said Bill of Complaint,
and the Defendant Henry Chichley Michell
for himself did say that the said John Orr
in the life time of the said Testator to wit
some time in the year One thousand
Seven hundred and ninety two speak to
him the said Defendant relative to the
said Respondentia Bond and request of
him

him to urge his the said John Orrs then
alledged Claim respecting the same with
the said Testator and he the Defendant
did thereupon at the instance of the said
John Orr mention the same to the said
Testator who with warmth expressed his
surprise and astonishment at being called
upon so unjustly (as he said) to answer a
demand, which he had never contracted,
and the said Defendant did say that he
believed he might have communicated
the same to the said John Orr who never
afterwards either by himself or your Petitioner
Ventured in the life time of the said
Testator to pursue any legal measures to
Establish the said Claim nor until Eighteen
Months after his Death, at the expiration
of which time your Petitioner thought
proper and as the Defendants did say they
verily believed the instigation of the
said John Orr to Exhibit his present Bill

of

of Complaint against them. and the Defendants did say that they did humbly conceive and believe that by comparing the said Original Respondentia Bond with the Copy thereof which had been artfully introduced in the body of the said Bill of Complaint the said Bond would appear to carry upon the face of it, a very different aspect from that which was attempted to be conveyed by the said Copy so introduced into the Bill, for that by the said Copy your Petitioner would insinuate as if the said Testator had subscribed his name upon the right of the said Respondentia Bond, and immediately under the signature of the said Sinod Antonio Rodrigues whereas upon a reference to the said Original Bond it would appear that the said Testator if he signed the said Bond at all subscribed his name upon the left side thereof where all Persons as Witnesses attesting the Execution thereof

usually subscribe their names, and in further confutation of the said Claim so by your Petitioner set up against the Estate of the Defendants said Testator they did say that their said Testator was a man of very Extensive mercantile dealings and strictly regular in all his Transactions and of great Credit and respectability, that they had carefully Examined and inspected the Books of accounts of their said Testator and that they had not discovered the least intricacy confusion so irregularity in the said Accounts and that they had not been able to discover the smallest trace of any entry or item in thier said Testators Books or otherwise relating in any wise to the said Respondentia Bond either in the name of Orr, Growapah or any other Person or Persons and some entry of which they did say they verily believed would have appeared in some of the Books of the said Testator if he had

had considered himself as having ban in
any wise bound thereby and the Defendants
did say that it appeared by the Account
Current annexed to your Petitioners Bill
of Complaint whereby he had thought proper
to debit them the Defendants as Executors
aforesaid that one money had been by him
received on account of the said Bond since
the first day of June One thousand Seven
hundred and eighty seven which was a
period of Seven years and upwards and
that notwithstanding they did repeatedly
advertise in Public Print in the Madras
Courier and desire that all Persons having
Claims upon them as Executors aforesaid should
furnish their Claims yet no Claim or demand
whatever was brought forward either by
your Petitioner or by any Person on his
behalf upon the foot of the said alledged
Respondentia Claim, or otherwise howsoever
and which the Defendants did say they
verily

verily believed would have been done if the
said demand had been a just one, from all
which Circumstances the Defendants did
say they verily believed the demand set
up and endeavoured to be Established against
them as Executors aforesaid was altogether
unfounded and the Defendants did say
that your Petitioners said Bill of Complaint
did as they humbly conceived contain
sundry aggravating charges foreign to the
subject matter of the present suit and
unwarrantably reflecting upon them as
Executors aforesaid, and particularly charging
that they derived great benefit to themselves
by withholding the Estate and Effects of the
said Testator in their hands, which they
did say was Totally unfounded in truth, the
whole of which conduct of your Petitioner
in the premises did as they did humbly
submit deserve the strongest reprehension
of the said Mayors Court and your Petitioner

Sheweth

Sheweth unto this Honble Court that to the
Defendants said Plea and answer your
Petitioner did Exhibit and file his Replication
and did therein and thereby setforth that the
Plea of the Defendants was ill founded for
that your Petitioner had brought his suit upon
a Respondentia Bond to which the Defendants
Testator affixed his name as a party Obligor
thereof and it was in faith and confidence
that he was thereby bound unto your Petitioner
collaterally to pay the amount by the said
Respondentia Bond secured, that your
Petitioner did lend and advance to Simiad
Antonio Rodrigues the Sum in the said
Bond setforth, that it was understood expressed
and Declared by the Defendants Testator
(that he did so affix his Signature)
at the time of affixing his said signature
to the said Respondentia Bond in faith
and Testimony that he was thereby bound
for the payment of the Sum of Six thousand
Two hundred and fifty Pagodas in the said
Respondentia

Respondentia Bond setforth together
with premium and Interest thereon and
your Petitioner did say notwithstanding
the suggestion of the Defendants to the
contrary that the said Simiad Antonio
Rodrigues did apply to your Petitioner
to lend him the Sum of money and for
the purposes in your Petitioners Bill
setforth and that your Petitioner did lend
and advance the same to be secured in
the manner in your Petitioners said
Bill of Complaint setforth and your
Petitioner did say that the suggestions in
the Defendants answer contained that
your Petitioners name was made use of
in the Respondentia Bond merely as
a Trustee for Major then Captain
Lieutenant John Orr in the Defendants
answer named, and the matters
connected therewith were impertinent
and

and irelevant and unnecessary to be
replyed unto by your Petitioner for your
Petitioner did say he was advised that the
Defendants were merely to Defend the
suit brought by your Petitioner against
them as Executors as aforesaid and to Shew
if it lay in their power so to do, that the
money for the balance of which your
Petitioner had brought his suit was not
lent and advanced in the manner in
your Petitioners said Bill setforth, and
that their Testator did not become security
for the payment thereof, and your Petitioners did
say that the name of the said John Orr
with whom your Petitioner has long
lived as a Dubash or confidential servant
ought not to have been introduced in
the Defendants said answer, as the said
Roffpondentia Bond was in the name of
your Petitioner and that it was your Pet.
alone

alone, who was inabled to give a
discharge on account thereof and your
Petitioner did say that notwithstanding
the assertion of the Defendants to the
contrary their Testator did countersign
the said Bond in security for the
performance thereof and that it was
in consideration of his becoming security
for the payment of the Sum specified
in the said Bond that the same was
lent and advanced by your Petitioner
to the said Sinnod Antonio Rodrigues
and that the same was so meant and
intended by the parties and so expresly
declared by the Defendants Testator
and your Petitioner did say that the
said Bond was read and explained
to the Defendants Testator and that
the reason why his name was not
introduced in the body of the said
Bond

Bond was intirely owing to the ignorance of your Petitioner in Legal matters and from a belief and assurance that the Defendants Testator signing the same was sufficient to all intents and purposes to bind him to the performance thereof that the Defendants Testator never did sign the said Bond as a Witness but as a Principal as a Co Obligor with the said Simiod Antonio Rodrigues, that he well knew his said signature was intended to operate to that effect and that he declared such to be the true and intent and meaning of his affixing the same to the said Respondentia Bond at the time of his affixing the same and your Petitioner did say that the said Simiod Antonio Rodrigues did insist upon the Defendants Testator becoming security for the payment of the said Sum by your Petitioner lent and advanced

advanced to the said Simiod Antonio Rodrigues together with the Premium thereon because your Petitioner had made that the express condition upon which he would lend and advance the same declaring that he would not lend it upon any other and the Defendants Testator assented thereto, and Accordingly signed the same - And your Petitioner did say that the contract in question was not in any wise usurious, for that had the Ship of which the said Simiod Antonio Rodrigues was Super Cargo been lost and the cargo with it your Petitioner could not in that case have come upon the Defendants Testator, but your Petitioner did say that he was Totally unacquainted with the said Simiod Antonio Rodrigues and with his Character and Circumstances and upon those considerations he Judged it prudent

prudent to have that security for his money
which had nothing to do with, but on the
Contrary altogether independant of the
risque of the Sea and your Petitioner
did thereupon deny that the Defendants
could have derived any benefit from
the statute even had they pleaded
the same, which they had not done
but had insisted therein by way of answer
which your Petitioner did say he was
advised was irregular because the statute
of usury is to be distinctly pleaded and
not set forth by way of Answer and your
Petitioner did say that he knew not nor
did he ever hear of any custom of the
Port of Lisbon as set forth by the Defendants
in their said answer but had heard and
believed the fact so to be, that the said
Simiod Antonio Rodrigues had taken
upon Respondentia much larger Sums
than

than the Goods Shipped were sufficient
to answer and your Petitioner did further
say that he did give a power of Attorney
to John Orr and then about to depart for
Europe to recover the amount of your
Petitioners Claim on the said Simiod
Antonio Rodrigues and that the said
John Orr did exert his utmost endeavours
so to do, and in pursuance thereof did
himself go to Lisbon, but he was Totally
unable to recover any further or other
Sum than as given Credit for in the
Account Current to your Petitioners Bill
annexed and your Petitioner did say
notwithstanding the aserteon of the
Defendants to the contrary that their
Intestate was considerably interested
in the Transactions and dealings of the
said Simiod Antonio Rodrigues regarding
the matter in question for that the

Defendants

Defendants Testator did act as Dubash to the said Simod Antonio Rodrigues and did furnish him with Goods by which means he did derive very great Emolument and advantage that the Defendants Testator upon the first requi= =sition of the said Simod Antonio Rodrigues to become Security as aforesaid did decline it that thereupon the said Simod Antonio Rodrigues did say that if he did not become Security, he the said Simod Antonio Rodrigues would employ some other Dubash in his Business and purchase the Goods he might want of some other Person, and not from him the Defendants Testator and that thereupon the Defendants Testator agreed to become and did accordingly become Security as aforesaid and that after having become Security as aforesaid he did intreat the said Simod Antonio Rodrigues to grant him some security on account thereof and thereupon the said Simod Antonio Rodrigues did inform the Defendants Testator, that he the Defendants Testator had in his Godowns Madeira Wines sufficient for his Security and your Petitioner did say that he had heard and believed that the said Madeira Wine did remain in the said Godowns of the Defendants Testator, at the time the said Simod Antonio Rodrigues did sail for Lisbon, and long afterwards as Security as aforesaid and your Petitioner did say notwithstanding the pretended ignorance of the Defendants to the contrary, that he did receive from the said Simod Antonio Rodrigues through the means of John Bourman in your Petitioners Bill named the Sum therein stated to have been received from

Sum

him that your Petitioner did apply to the said Simiod Antonio Rodrigues and to his Agents regarding the matter in Question that the said Simiod Antonio Rodrigues did become insolvent and unable to pay the same in the said Respondentia Bond setforth, that your Petitioner had received the said Sum of Four thousand Pagodas and no more; and that the remaining balance was still due and owing to him and your Petitioner did say as he had hereinbefore said that he did lend and advance the Sum in the said Respondentia Bond setforth but that he did not lend and advance the same upon the sole security of the said Simiod Antonio Rodrigues but upon the Security of the Defendants said Testator and that had not the Defendants Testator become security Jointly with the said

Simiod

Simiod Antonio Rodrigues your Petitioner would not have lent and advanced the said Sum to the said Simiod Antonio Rodrigues or any part thereof and your Petitioner did say that he did cause several applications to be made to the Defendants Testator in his life time by his your Petitioners Attorney the said John Orr for payment of the said monies but that he did always evade payment thereof and your Petitioner did say as he had before shewn that the Defendants Testator was actually interested in the loan in question, and he might have been further and otherwise concerned therein than had as yet come to the acknowledge of your Petitioner and your Petitioner did further say that he verily believed that the said Simiod Antonio Rodrigues was a Person well known to the Defendants Testator

and

and to his connexions, who your Petitioner did say had long had mercantile concerns with the Portugese at the Port of Madras and that he was well assured that the Defendants Testator did expect the return of the said Simod Antonio Rodrigues to the Port of Madras, unless there had been some collusion between them which had not yet come to the knowledge of your Petitioner and your Petitioner did say that the Books of the Defendants Testator to which they have appealed will Shew for it is therein stated that the Defendants Testator was well acquainted, and had large concerns and connections with the said Simod Antonio Rodrigues for a considerable length of time previous to the Execution of the said Respondentia Bond and that the Arguments urged by the Defendts and

and the conclusions drawn therefrom in order to Shew that their Testator never signed the said Respondentia Bond as security for the payment thereof, but that he merely signed the same as a Witness to the Execution thereof were impertinent and irrelevant —

And your Petitioner Sheweth unto this Honble Court that to your Petrs said Replication the Defendants did Exhibit and file their Rejoinder and did therein and thereby deny that their said Testator did affix his name to, or Execute the said Respondentia Bond as a Co-Obligor thereof, or that it was in faith and confidence that the Defendants Testator was bound as collateral Security or otherwise to pay the moneys in the said Respondentia Bond mentioned or any part thereof that your Petitioner lent or advanced to the said Simod Antonio Rodrigues

Rodrigues the Sum in the Said Bond
setforth that they did also deny that it was
understood expressed or declared by their
Testator that he was bound for the payment
of the Sum of Six thousand Two hundred
and fifty Pagodas in the said Respondentia
Bond mentioned or of any part thereof or
of the premium or interest thereof or any
part thereof and they did also deny that the
name of the said John Orr had been
improperly introduced into their answer for
that they did verily believe for the reasons in
their answer mentioned that the said John
Orr was in fact the person actually interested
in the issue of the suit and which they did
say was strongly evinced from the demand
by him made upon their Testator both
personally. and through the intermediate
Agency of the Defendant Henry Chichley
Michell and the Defendants did submit

to

to the said Mayors Court that their said
Testators uniform denial of the Justness
of such demand and the said John Orrs
long Acquiescence under such denial
did strongly militate against the said
demand abstractedly from the unlaw-
fulness and illegality thereof and that
if the said Bond was as stated read
and explained to their Testator it must
have appeared from the reading thereof
to have been merely a Respondentia Bond
from the said Simon Antonio Rodrigues
to your Petitioner, their Testators name
being no where inserted therein, it was
evident that he subscribed his name
thereto as a Witness, to the Execution thereof
and not otherwise, and so the Defendants
did insist upon the fact to be, and did
say that it appeared by the said
Bond that the said Simon Antonio

Rodrigues

Rodrigues Sealed the same and it did thereby also appear that the Defendants Testator did not seal the said Bond which they did say he would have done had he been Considered as a party Executing the same and the Defendants did deny that the said Simon Antonio Rodrigues did insist upon or that he had any grounds to desire or expect their Testator would become Security for the payment of the said monies or that your Petitioner did make that the condition upon which he would lend or advance the same or that their the Defendants Testator did in any wise assent to such pretended condition, and they did humbly insist that the said alledged Transaction with respect to the said pretended loan was of your Petitioners own Shewing upon the face of his said Bill of Complaint usurious and that his said Replication was a confirmation of such usury for that he did therein alledge that he Judged it prudent to have security for his money which had nothing to do with, but on the contrary altogether independant of the risk of the Sea whereas the Defendants did humbly submit to the said mayors Court that it was the Respondentia Lender bearing the risk of the Sea which Justified his taking an Interest and Premium for the loan beyond the legal Interest allowed by statute and did thereupon humbly insist upon the said statute in that case made and provided and and prayed they might have the benefit thereof as fully and effectually to all intents and purposes as if they had specially pleaded the same and the Defendants did say that such Custom as

as in their answer was mentioned with regard to Respondentia loans did prevail at Lisbon and that the said John Orr being there upon the spot should have availed himself of such custom and did deny that their said Testator was interested in the Transactions or Dealings of the said Sinnod Antonio Rodrigues either regarding the matter in question or otherwise and did say that their said Testator did not act as the Debash of the said Sinnod Antonio Rodrigues and positively say that their said Testator never did become Security to your Petitioner for the payment of the said monies notwithstanding the Various assertions and Repetitions in your Petitioners said Replication in that respect contained and they did also deny that the said Sinnod Antonio Rodrigues did any wise Counter secure their said Testator against the

the pretended security nor had the said Sinnod Antonio Rodrigues any right so to do well knowing that their the Defendants said Testator was not in any wise bound for the payment of the said alledged Respondentia loan that they know not whether your Petitioner did or did not receive from the said Sinnod Antonio Rodrigues the monies in the said Bill mentioned nor whether your Pet.r did or did not apply to the said Sinnod Antonio Rodrigues or to his Agent respecting the matters in Question nither could they set forth whether the said Sinnod Antonio Rodrigues did become insolvent or not and that if your Petitioner actually lent and advanced the said monies in his said Bill mentioned he did not so lend or advance the same or any part thereof upon the security of their the

the Defendants Testator and the Defendants did deny that there was any collusion between their Testator and the said Simod Antonio Rodrigues, or that the said Simod Antonio Rodrigues was well known to their said Testator, nor was it stated in the Books of Account of the Defendants That the Defendants Testator was well acquainted and had large concerns and connections with the said Simod Antonio Rodrigues -

And your Petitioners Sheweth unto this Honorable Court that thereupon issue did join and Rules did pass for the examination of Witnesses and one Witness was Examined on the part of your Petitioner who did fully substantiate the several matters and things in your Petitioners said Bill of Complaint and Replication contained -

And your Petitioner Sheweth unto this Honble Court that upon the Pleadings had the said Cause was set down for hearing and the same did Accordingly come on to be heard before the said Mayors Court on the Twenty eighth day of July last past when the said Mayors Court was pleased to Order and Decree and did accordingly Order and Decree that your Petitioners said Bill of Complaint should be dismissed with Costs as by the Copy of the said Decree hereunto annexed for the inspection of this Honorable Court to which your Petitioners 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 Mayors Court your Petitioner doth conceive himself much aggrieved and doth therefore appeal therefrom to this Honble Court for the following amongst other Reasons -

First ——— Because the said Mayors Court in dismissing your Petitioners said Bill of

of Complaint have acted contrary to Law in so much as that the said Mayors Court did decide contrary to evidence and your Petitioner is advised that all Courts are bound by the Evidence before them and that they legally cannot, nor ought to Depart therefrom -

Secondly ~~~~ Because your Petitioner did support his said Bill by the Testimony and in the fullest and most complete manner for your Petitioner did produce Joachim Sundt the subscribing Witness to the Execution of the said Respondentia Bond and who Transacted the matter relative thereto between the parties interested therein and bound thereby and the said Joachim Sundt doth in his Deposition positively declare that he saw Simiod Antonio Rodrigues and Kare Kistnah Chitty the Defendants Testator Execute the said Respondentia Bond, that the said Kare Kistnah Chitty did not affix his name to the said Respondentia Bond

Bond as a Witness thereto but as a Principal bound thereby and that he the Witness did set and subscribe his name as a Witness to both the said Signatures and upon reference to the Original Respondentia Bond it may appear that the said Joachim Sundt in Subscribing his name as a Witness to the Execution thereof thus expresses the same - I am Witness to the above Signatures" which your Petitioner humbly submits to this Honble Court is sufficiently conclusive of itself to Shew that the said Kare Kistnah Chitty was not as the Defendants pretend merely a Witness to the Execution but as the said Joachim Sundt has Declared the fact to be a principal bound thereby for your Petr further submits to this Honble Court that had the said Kare Kistnah Chitty signed his name to the said Bond merely as a Witness the said Joachim Sundt would only have subscribed his name without any

any remark thereon, and certainly not that he was a Witness to the above Signatures and therefore your Petitioner humbly submits to this Honble Court that it was clearly proved both by the subscription of the said Joachim Sundt to the said Respondentia Bond and the Testimony by him given touching the same that the said Care Kistnah Chitty the Defendants Testator did not sign the same as a Witness to the due Execution thereof but as a Principal bound thereby - and the said Joachim Sundt did also prove the consideration for which the said Respondentia Bond was Executed; that he saw the Sum of about Five thousand Pagodas paid by your Petitioner to the said Simiad Antonio Rodrigues and that afterwards your Petitioner did inform him that he had paid the remainder for which the said Respondentia Bond was Executed he also says that the said moneys was so delivered by the Joint Security of the said Simiod Antonio Rodrigues and the said Kare Kistnah Chitty the Defendants Testator that your Petitioner did refuse to lend the said money unto the said Simiod Antonio Rodrigues unless he could procure some Person resident in Madras as a Collateral Security for the repayment thereof and that thereupon the said Simiod Antonio Rodrigues did propose the said Kare Kistnah Chitty for that purpose - and the said Joachim Sundt also proves that the said Kare Kistnah Chitty did at first refuse to sigh the said Bond but that upon the said Simiod Antonio Rodrigues saying that he would get some one else to do it, he the said Kare Kistnah Chitty did sign the same and the said Joachim Sundt has proved in the best manner the case would admit of that Kare Kistnah Chitty was benefited by the

the said Money by your Petitioner lent and advanced upon the said Respondentia Bond for the said Joachim Sundt deposing to the last Interrogatory says that when the said Kare Kistnah Chitty did refuse to sign the said Bond, the said Simod Antonio Rodrigues did tell him that he had given him a great Deal of trouble as the said Bond had ben drawn out in consequence of his the said Kare Kistnah Chittys promise to become Security for what money he might take up, and for which he was to be supplied with Goods by the said Care Kistnah Chitty, that thereupon the said Care Kistnah Chitty consented to sign the said Respondentia Bond on condition that the said Simod Antonio Rodrigues would take Goods through his means and the said Joachim Sundt doth further prove how and in what manner he came to a knowledge of the several matters and things by him deposed that he understood the

the portugese and Malabar Language and was an Acquaintance of the said Simod Antonio Rodrigues and that the said Simod Antonio Rodrigues did not understand Malabar and that your Petitioner did not understand Portugese -

Thirdly — Because it is proved by the Testimony of the said Joachim Sundt that it was upon the confidence that the said Kare Kistnah Chitty had become jointly bound with the said Simod Antonio Rodrigues for the payment of the said Sum of money secured by the said Respondentia Bond that your Petitioner did lend and advance the same, and that he would not have lent and advanced it otherwise, and that those facts were fully understood by the said Kare Kistnah Chitty at the time he did execute the said Respondentia Bond and your Petitioner submits to this Honble that being altogether ignorant of any European Language or the manner or form in which

Deeds

Deeds are Executed and trusting and confiding in the integrity of the said Kare Kistnah Chitty who was well acquainted with the English and Portugese Language and the manner and form in which Deeds are Executed it was the more incumbent on the said Kare Kistnah Chitty the Defendants Testator to have acted fairly and uprightly towards your Petitioner, but the said Kare Kistnah Chitty did take advantage of the trust and confidence reposed in him by your Petitioner and did also take advantage of his own knowledge to attempt a fraud on your Petitioner by signing the said Respondentia Bond not immediately under the signature of the said Simod Antonio Rodrigues but in that place where the Witnesses usually sign to the Execution and your Petitioner submits to this Honble Court that it is not of consequence in what particular part of a Bond the Obligor subscribes his name so that proof can be had to substantiate the necessary facts that are required to give Validity to the Deed, and that although the name of the said Kare Kistnah Chitty does not appear in the body of the said Respondentia Bond yet having Executed the same he is bound thereby and the omission of his name in the body of the said Respondentia Bond is rectified by the practice of the Courts of Equity, and such omission was occasioned by the same Circumstances on the part of your Petitioner and the like advantage taken on the part of the said Kare Kistnah Chitty the Defendants Testator as hereinabove set forth regarding his the said Kare Kistnah Chitty's signature to the said Respondentia Bond -

For all which Reasons and such others as may be offered at the hearing of this your Petitioners Petition and Appeal your Petitioner most humbly prays that this Honorable Court will be pleased to Reverse the said

said Decree of the said Mayors
Court and grant unto your
Petitioners such further and
other Relief as to this Honble
Court shall seem meet –

/Signed/ J. Stuart Hall
Solicitor for Appellt.

Mayors

Mayors Court at Madraspatnam Tuesday the 28th day of July Anno Domini 1795.

Present

Benjamin Roebuck Esq.r Mayor
James Call William Webb
Andrew Ross John Mitford
James Daly William Abbott
Alex.r Cockburn & Jos. Greenhill
Aldermen

S.L.

Between Growapah of Madras Inhabitant Complainant and Henry Chichley Michell and John De Fries of Fort St. George Merchants and Nagapah Chitty and Punjaram Sooba Chitty of Madras Inhabitant Executors of Care Kistnah Chitty deceased Defendants –

Mayors Court

This Cause coming on to be heard and Debated this day in the presence of the Attornies on both sides on Reading the Complainants Bill with Copy of an Account Current annexed. The Defendants Plea and Answer. The Amended Replication

Replication The Amended Rejoinder The Interrogatories and Depositions on the part of the Complainant with one Exhibit annexed

On Hearing the Pleadings made use of by the Attornies and on due Consideration had thereon This Court doth think fit to Order and Decree, and doth Accordingly Order and Decree that the Complainants Bill do stand dismissed with Costs —

Hur

(Signed) G. E. Askin
Dy. Regr.

A true Copy
Signed J. Stuart Hall
Solicitor for Appellant

To

683

To the Right Honorable Lord Hobart
President and Governor &c. in Council
Fort St. George

In the Honorable the Court of Appeals

Between Grouwapah of Madras Inhabitant Appellant and Henry Chichley Michell John Defries Junior Nagapah Chitty and Punjaram Sooboo Chitty Executors of Kare Kistnah Chitty deceased Respondents —

The Answer of the above named Respondts to the Petition and Appeal of the above named Appellant —

Filed in my Office the 30th October 1795
J. Webbe Clk

The said Respondents admit that the Appellant above named did on or about the Twenty second day of May in the year of Our Lord One thousand seven hundred and Ninety four Exhibit and file his Bill of Complaint against these Respondents as Executors aforesaid in the Mayors Court at Madraspatnam setting forth the several

several matters and things and for the Relief in the said Appellants said Petition and Appeal particularly mentioned and these Respondent do also admit that they did on the fifteenth day of July in the year aforesaid file their Answer to the said Bill of Complaint and that the Appellants Replied to these Respondents said Answer, and they having Rejoined to the said Replication as in the said Appellants Petition and appeal is particularly stated and setforth issue did join and that Rules having passed for the Examination of Witnesses Joachim Sundt was Examined as a Witness on behalf of the said Appellant and these Respondents say that to the Interrogatories exhibited to the said Joachim Sundt and to the Depositions of the said Joachim Sundt taken thereto these Respondents did on the Twelfth day of May One thousand seven hundred and Ninety five take Exceptions and object to their being received in evidence upon the hearing of the said Cause the same being as

as these Respondents were advised contrary to Law, and these Respondents say that the said Appellant on the Ninth day of June in the said year file his Answer to the said Exceptions and thereby insist upon the benefit of the said Depositions but which the Appellants have not thought proper to state in their said Petition and appeal and these Respondents admit that upon the aforesaid proceedings the said Cause was set down for hearing, and that the same was afterwards heard before a full Court when the said Mayors Court was pleased to over rule the exceptions, so taken by these Respondents, but these Respondents, do nevertheless humbly insist, upon the benefit thereof and these Respondents admit that the said Mayors Court did order and Decree that the said Bill of Complaint should be dismissed with Costs. The said Respondents in answer to the several causes and reasons by the said Appellant in their said Petition and Appeal setforth as grounds

grounds of Appeal say they humbly Conceive and are advised that the said Decree is agreeable to equity and Justice and therefore do humbly pray that the same shall be affirmed and that the said Petition and Appeal shall be dismissed this Honorable Court with Costs -

/Signed/ John White
Solicitor for the Respondent

Court

Court of Appeals at Madraspatnam

Saturday the 13th day of February Anno Domini 1796

Between Growapah of Madras Inhabitant Appellant and Henry Chichley Michell and John De Fries of Fort Saint George Merchants and Nagapah Chitty and Punjaram Sooboo Chitty of Madras Inhabitants Executors of Carekistnah Chitty deceased Respondents -

This Cause coming on this day to be heard and debated before this Court and upon due Consideration of the Petition of Appeal together with the Decree of the Hon'ble the Mayors Court given in this Cause on Tuesday the 28th day of July Anno Domini 1795, and it appearing to Court that the matter in dispute is between two Natives for that Henry Chichley Michell and John De Fries of Fort St. George Merchants against whom the suit is brought are the Executors of Carekistnah Chitty a Native - This Court doth think fit to

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to Order and Decree and doth Accordingly Order and Decree that the said Decree of the Honble the Mayors Court dated the 28th day of July Anno Domini 1795 be reversed and that each party do pay their own Costs in both Courts

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(Signed) J. Webbe Ath

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