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Appeals against Judges Court decisions

in Vol 30

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Block 7

Rack No.

Shelf No.

Serial No. 30

General No. 12090

Monday the 18th day of July 1796

Pres.

The Right Honble Lord Hobart

Edward Saunders and E. M. Fallofield,

The Attorney General having been requested to State his opinion upon the Subject of Native Administrators to native estates the Court resolve to record at his Suggestion the following Minute, —

Native Administrators to Native Estates

The C[illegible] of Shallavaukum Trevengada Pillay Administrator of Veerapermaul Pillay against Paukum Singanah Chitty came on to be heard at the last Setting of the Court of Appeals but the Court ordered is to be post poned – on a doubt whether Native Administrators to native Estates do not come under that Clause of the Charter of 1753 which precludes one native from suing an other in the Mayor's Court without his Consent – as there are other Suits of the same description to be brought on at the next Setting and as in some of them this Clause of

the Charter is pleaded in bar of the action
shall briefly state the Arguments adduced by
torneies on both sides and having done this offer
ch remarks as have occurred to myself —

The reasoning in favor of the right of
ative Administrators to native Estates to Sue a
ative indebted to the Estate without his Consent
ms to be this —

That the Charter authorizes the Mayors
grant Probates of Wills of Natives and letters of
dministration to the Estates of such as die Intestate
d therefore virtually excepts Executors and
dministrators from the General restriction that
ing so excepted they are entitled to sue in the
Mayors Court for the recovery of debts due from
atives to the Estate — That the right to grant
ch probates or Letters of Administration and the
ht of native Executors or Administrators to the
tates of natives to commence Suits in the Mayors
rt against natives as well as Europeans appears
m the General letter of the Court of Directors / 13th
March

March 1761 Para 154 / which states the Opinion
standing Counsel — "That the Mayors Court may
"and ought to grant Probate of a Will or lett
"Administration to a native Indian being nat
"Executor or being entitled According to the la
"England to such Administrator in order to e
"him to follow and recover the Assets of the
"or Intestate against persons resident within
"Jurisdiction and paying or retaining such
"within the local limits of the settlement" Tha
this Construction of the Charter native Admin
have been for thirty years past considered a
excepted from the general restriction Viz.
native shall not sue another in the Mayo
without his Consent — That this restriction
a previledge conferred on the natives whi
be directly or indirectly waved That when an
native applies for Administration to the E
a native he waves his previledge and Subj
himself to the Suits of every native who h
on the Estate. the bond he executes and th

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he takes Amounting to a renunciation of his
previledge and that therefore as he becomes
liable to the native Creditors so must the native
Debtors became liable to him and this the rather
as the Mayors Court having the right to grant
such administrator have also the right to arm
the administrator with the means of performing his
duty fully and not partially by enabling him to
call to account not Europeans only but every Person
indebted to the estate of whatever description he may
be,— on the otherside it is argued that admitting
the Court pofsefses sufficient Authority to grant
Administrator to natives the inference drawn
from it does not follow that native Administrators
are excepted from the general restriction that a
natives taking on himself the burthen of Admini
stration is a voluntary act of his own but that
such act can not oblige or bind another who had no
will or part therein That the Charter ought to be
taken and considered together and not by parcels
that on a view of the two Clauses giving to the Mayors
Court

Court Civil and ecclesiastical authority it would
clearly appear the Charter had it in contemplation
to exempt Indian natives from the Jurisdiction
of that Court and had so done in expreſs terms
with regard to civil causes - That the opinion of
the Companys Council went only to the power of
granting letters of administration to native Estates
to enable the administrator to bring Suit against
persons <u>resident</u> within the Jurisdiction which
expreſsion would seem to refer particularly to
Europeans and in no respect to natives - That this
opinion will bear as fair interpretation that we
consider it otherwise would be to arrest the expreſsive
from its true meaning and impute to it a Construction
of the charter repugnant and inconsistent with
the nature of things namely that it transferred to
a representative a right which it denied to the person
represented and that to allow natives in right of
representation to sue natives in the Mayors
Court without their Consent while natives in their
own right were expreſsly excluded from such a
remedy,

remedy and to refer this allowance to a fair construction of the Charter is to charge it with absurdity for that things repugnant and, contradictory cannot be co-existent.—

I have extracted these arguments from the pleadings in Two Causes and have endeavoured to do Justice to the reasoning of the adverse attornies both seem to agree that the Mayors Court has authority to grant administration of the Estates of natives and both agree that this authority rests on the Construction put upon the Charter by the Companys Council in 1764. But they disagree as to that Councils meaning the one contending that it takes native administrators out of the General restriction the other that it still leaves them under it. my Judgment leads me to differ from them in that point in which they both agree — that the Mayors Court has authority to grant letters of administration to the Estates of native Indians — That passage in the Charter of 1753. which relates to the Subject of Administration is transcribed Verbatim from the Charter of 1727. and during the Subsistance of this latter Charter it does not seem to have once entred into the contemplation of the Mayors Court to extend the Ecclesiastical laws of England to the natives of India though in respect to the Civil laws it did not labour under the restriction imposed upon it by the Charter of 1753. natives were then at liberty to sue each other in the Mayors Court without the Consent at present required but yet the Court does not seem to have interfered in the management of a deceased natives property nor was it until Six years after the grant of the last Charter that they entertained any idea of an Authority to interfere In June 1759. the Mayors Court addressed a letter to Government requesting they would refer this question to the Court of Directors "whether "they may grant Probate of a Will or Letters of "Administration to a native of India where the "deceased was likewise a native of India — "It may be

be matter of Surprize why this question was not put until after the lapse of thirty two years but it is still more Surprising in my mind why it should be put at all for they could not be ignorant that administration is but the Substitute of a will and that the great mass of Indian Native are by their religion and their Laws precluded from making wills Hatheds Code of Gintoo Laws was not then published but a Court of Law surrendered by natives who had been in all their civil concerns Subject to its authority for several years could not be in a state of ignorance on so important a Subject and it seems some what absurd that they should ask whether they may not grant Probate of a will which they knew could not be legally made. But the Companys Council considered the queation in a different point of view from what it appears to me and gave it as his opinion that they not only may but ought to grant Probate of the Wills of natives upon what principle this opinion was formed I am at a loss to know - not I think upon the words of the Charter for they seem to refer wholly to the Estates of Europeans - the preamble to the authority vested in the Mayors Court in Ecclesiastical matters mens thus - whereas it frequently happens that the effects and Estates of Persons dying in the East Indies are wasted and embezzled and their debts contracted there remain unpaid for want of a proper authority vested in some person or persons residing in the East Indies to take care of the same - the want of persons residing in the East Indies to take care of the effects could not be the case of natives that want was felt only in the case of Europeans whose friends and relations resided in Europe and therefore had it not in their power to protect property lying at such a distance as the East Indies and hence it was thought expedient to enable the Mayors Court to commit administrator to persons residing in the East Indies to save the property from waste and embezzlement - the whole passage seems to refer to Europeans dying in

in the East Indies whose situation it seems to
contrast with that of Persons dying in Europe
and that situation calling for a remedy the Charter
parks their property their Creditors and their families
on the same footing with those of persons dying
in Europe by placing them under the protection
of the laws of England - which laws the Court of
Directors declared in 1732 - and again in 1755.
two years after the present Charter was granted -
"were never calculated for the native Indians -"
and that the natives were not intended to be bound
at least by the Ecclesiastical laws appears from
this that in the Charter of Bengal which has
been drawn up with more Caution than that of
1753, the authority given to the Supreme Court
to Grant Probate of wills and Letters of Administration
to the Estates of Intestates is limitted to those instances
where the Testator or Intestate is a British Subject -
For these Reasons I think that the opinion by
which the Mayors Court has suffered itself to be
guided since 1761, was hasty and undigested and
that

that no authority expressed or implied to grant
administrator to native Estates can be collected
from the letter or the spirit of the Charter -
But as that authority has been exercised and
as there are now Causes in appeal for and
against native Administrators to native Estates
it is necessary to enquire whether in right of
their Testator or Intestate they posess a power
which was denied to their Testator or Intestate
himself by the express terms of the Charter -
and I am clear that they do not because a
derivative authority can never be greater than that
from which it is derived. —

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 Shallavaukum Trevengada Pillay Son and Heir as also administrator of Shallavaukum Veeraperumal Pillay Complainant and Paukum Singanah Chitty Defendant—

The Humble Petition and appeal of the above named Complainant—

Sheweth

That your Petitioner did on or about the Twelfth day of October which was in the year of Christ one thousand seven hundred and ninety file and Exhibit a certain Bill of Complaint in the Mayors Court at Madraspatnam against Paukum Singanah Chitty the above named Defendant for the recovery of the sum of Five thousand one hundred and ten Star Pagodas and twelve fanams Current Money of Madras

Filed in my office
the 30th March 1795
J Webbe
Clerk

Madras, making in sterling money of Great Britain, at the rate of eight Shillings for every Pagoda, the Sum of two thousand and forty four Pounds, two shillings, and one penny, or there abouts; and that an order of Court did thereupon pass for the said Defendant to be Summoned—

That on the Eighteenth day of January which was in the year of Christ One thousand Seven hundred and Ninety one, the said Defendant did by his attorney at Law appear to the said Bill of Complaint and did then and there file a Petition with an affidavit praying that he might be admitted to defend the above Suit in forma Pauperis, which prayer of the said Petition the said Mayors Court was pleased to Grant; and thereupon your Petitioner by his Attorney at Law Mr. Peter Walker did pray the said Mayors Court that the said Defendant might be held to Bail upon your Petitioners making Oath to the Justness of his demand, which prayer of your Petitioner the said Mayors

Mayors Court was pleased to Grant, as by the Extract of the Proceedings of the Eighteenth day of January hereunto annexed Marked **A** will appear.

And your Petitioner Sheweth that the said Defendant did in the fifteenth day of March in the said year one thousand Seven hundred and ninety one file his answer to the said Bills of Complaint and your Petitioner did on the Twenty Sixth day of April in the said year one thousand Seven hundred and ninety one file his Amended Replication to which the said Defendant did on the Seventeenth day of May then next following file his Amended Rejoinder whereupon issue was joined, and Rules passed for the Examination of Witnesses, And your Petitioner Sheweth that Mr. Peter Walker prior to his departure for Europe did on or about the fifth day of June which was in the year of Christ One thousand Seven hundred and ninety two decline acting for and on behalf of your Petitioner — And your Petitioner Sheweth that on or about the Twentieth day of June one thousand Seven hundred and ninety four your

your Petitioner did instruct Mr. Robert Williams one of the attornies of the said Honble the Mayors Court, to Appear and prosecute the Cause on behalf of your Petitioner as particularly mentioned in the Extract hereunto annexed marked **C**. and your Petitioner Sheweth that he did by his said attorney in Court at several time pray rules for the Examination of Witnesses in the said Cause as by Copies of the several Exhibits hereunto annexed marked **D E** and **F** will Appear, the originals Whereof are in your Petitioners Possession and ready to be produced at the hearing and your Petitioner Sheweth that on the ninth day of this present month of march he made Oath if the debt before Benjamin Roebuck Esquire the then and present mayor of Madraspatnam, as by the attested Copy thereof marked **B** will appear, and which Affidavit was duly signed by your Petitioners said attorney the said Robert Williams and filed of record in the said Mayors Court on the Eleventh day of march then next following in Consequence of which said Affidavit, a Warrant issued, and the Defendant was



by

by vertue thereof Arrested. And the warrant of arrest was on the Seventeenth day of the said month of march returned Served, and the defendant brought to Court as by the said Extract marked C will appear and your Petitioner Sheweth that Mr. John White the Attorney for the said Defendant did for certain reasons in the said Extract C explained, pray that the said Warrant of arrest might be Supersided, and that the said Defendant might be discharged from the Custody of the Sheriff at the suit of the Complainant to which said prayer your Petitioner by his said attorney the said Robert Williams did offer certain objections; not withstanding which the said mayors Court ordered that the warrant of arrest should be superseded and that the Defendant be discharged from the Custody of the Sheriff, as by the said Exhibit C will appear — whereupon your Petitioner Sheweth the said Defendant was accordingly liberiated, by which said Order of the said mayors Court your Petitioner doth think himself greatly aggrieved and doth appeal therefrom for the following Among other reasons —

First — For that by the said Order of the Eighteenth day of January One thousand Seven hundred and Ninety one your Petitioner was at any time during the Progress or pendency of the said Suit entitled to hold the said Defendant to Bail on making Oath to the Justness of his demand —

Secondly — That the Appearance of your Petitioners said attorney the said Robert Williams was Suffecient and Complete —

Third — That the Substitution of an attorney is a matter of Choice in as much as any person Competent to sue hath it at his option to prosecute his said Suit either in person or by an attorney as it may be most convenient to himself

Fourth — That if the said Defendant had been at any time dissatisfied with or had any cause of Complaint against your Petitioner on Account of the tardiness with which your Petitioner prosecuted his said claim the common Course of Practise would have furnished him with a remedy —

For all which Reasons and such others as may be offered at the hearing your Petitioner most humbly prayeth

prayeth, that the said Order of the said mayors Court of the said Seventeenth day of march in the said year one thousand seven hundred and ninety five, may be reversed, and that your Petitioner be entitled by the further Proces of the said mayor's Court to arrist and hold to Bail the said Defendant, and that your Wonble Court will be pleased to Grant unto your Petitioner such further and other relief as to your Wonble Court shall seem Meet and Expedient —

/Signed/ Robert Williams
Solicitor for Appellant

Extract

A

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 18th day of January Anno Domini 1796 —

Present

Josias Dupre Porcher Esquire Mayor
Andrew Ross and James Daly
Aldermen

Shallavaukam Trevengadah Pillah son and Heir and also administrator of Shallavaukam Veerapurmall Pillah Deceased
vers
Paukum Singana Chitty

Petition of the Defendant with an Affidavit Sworn to in Court read and filed this day praying that he may be permitted to Defend this Suit in Formâ Pauperis — Ordered that the Defendant be permitted to defend this Suit in Formâ Pauperis — Mr. John White appears as Attorney for the Defendant — The Attorney for the Complainant prays that the Defendant may be held to Bail upon his Client making oath to the Justness of his Demand Ordered Accordingly —

A True Extract
/Signed/ George Taylor Regr.

Filed

Filed 11th March 1795.

B

In the Honble the Mayor's Court at Madraspatnam.—

In the Cause wherein Shallavaukam Trevengada Pillah Son and Heir as also Administrator of Shallavaukam Veerapermaull Pillah is Complainant

and

Paukam Singanah Chitty is Defendant

The Affidavit of the above named Shallavaukam Trevengada Pillah.

Shallavaukam Trevengadah Pillah the administrator of Shallavaukam Veerapermaill Pillah Deceased maketh Oath and saith that the abovenamed Defendant is Justly and truly indebted unto this Defendant as administrator as aforesaid in the Sum of Twi thousand one hundred and ten Star Pagodas and twelve fanams and upwards for recovery whereof this Deponent as administrator as aforesaid did file his Bill of Complaint against the abovenamed Defendant

on the twelfth day of October Which was in the year of Christ One thousand Seven hundred & Ninety and Which Sum is now due from the said Defendant to the Estate of the said Shallavaukam Veerapermaull Pillah as this Deponent verily believes.—

/Signed/ Robert Williams
Attorney for the Complainant

A True Translation as near as Can be from the Malabar Language.
/Signed/ Ranganadom
Interpreter

Sworn to the 9th day of March before me
/Signed/ B. Roebuck
Mayor.

A True Copy
/Signed/ George Taylor Regr

Extract

C

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

Present

Benjamin Roebuck Esqr. Mayor

Andrew Ross and Willm. Abbott

Aldermen

Challavaukum Trevengada Pillah Son and Heir as also Admor of Lallavaukum Veerapichall Pillah Deceased

vrs

Paukum Singanah Chitty

Affidavit of the Complainant Sworn to before the Mayor and filed the 11th. Instant. Warrant of arrest issued thereupon returned Served the Defendant is brought to Court Mr. John White Attorney for the Defendant informs the Court that Mr. Peter Walker formerly one of the Attornies of this Court and now deceased, was the Attorney for the Complainant in the above Cause, and that the said Peter Walker declined acting therein on or about the 5th. day of June 1792 by having withdrawn himself from the Court, upon leave of absence since which time no other Attorney has entered his appearance upon the Records of this Honble Court as Attorney for the said Complainant in the room of the said Peter Walker, which according to the uniform practice of the Court should have been formally done before any further Proceedings could have been regularly had or taken on behalf of the said Complainant in the said Cause, notwithstanding which a warrant of arrest issued against the said Defendant in the said Cause on the 11th. day of March Instant, upon which the said Defendant has been arrested as by the Sheriffs return appears, and furthermore for that after so long a lapse of process the said warrant of arrest should have been formaly prayed upon the minutes, and specially ordered by the Court wherefore and for as much as the said warrant of arrest has issued irregularly the Attorney for the Defendant prays that the said warrant of arrest may be superseded, and the Defendant discharged from the Custody of the Sheriff at the Suit of the said Complaeniant Mr. Robert Williams Attorney for the Complainant objects to the motion of the Attorney for the Defendant and doth deny that the warrant hath issued irregularly against the said Defendant and

in

in objection states that he did on the twentieth day
of June 1796. appear as attorney for the Complainant
in the room of Mr. Walker and did pray that
a warrant of arrest might issue against the
Defendants Body which prayer for the Issuing of
the said Warrant the said Robert Williams was
desirous to withdraw, and did accordingly require of
the Register to strike out the said motion from the
Records but either from accident or that the Register
misunderstood the requisition of the said Robert
Williams or that the said Robert Williams did not express his
desire to the said Register With Sufficient perspecuity
not only the motion of the said Robert Williams but
his Appearance for the said Complainant were together
erased from the said Records by a Pen being drawn
through the same, as appears by the said four Records
now before the Court, and although the said Appearance
doth seem to have been erased yet the said Attorney
for the Complainant had no intimation or
Knowledge thereof. but if the same shall not be deemed
valid from the circumstance of the said Erasure yet
the

the said Attorney for the Complainant Contends that
as he did on the 17th day of February last pray further
Rule for the Examination of Witnesses in the said
Cause that such prayer of itself was a Sufficient
Appearance and which said Rule hath been served
on the Defendants attorney by the common course and
Practise of the Court, and the Complainants said attorney
acquaints the Court that the name of him the said Attorney
is Subscribed and affixed to the Affidavit made in this
Cause and on which the said Defendant hath been
arrested and the said Complainants Attorney saith
that the Recorded Appearance of an Attorney is for
the Information of the Complainant or Defendant of the
Certainty of the opposite parties attorney, and doth not
affect or operate on the merits of the Cause and if
the Complainant had been enclined to have Issued
the process of himself and Without the Substitution
of any attorney on his behalf in the room of Peter Walker
deceased he would have been entitled to the benefit
thereof under the Original prayer granted to him
wherein Bail was prayed on Oath being made to the
Debt under any Stage of the Suit Whenever the
Complainant

complainant might have thought or found it convenient to have availed himself thereof so that if any thing shall be considered informal in the appearance of the attorney for the complainant yet the party complainant in his affidavit sworn before the Mayor hath done all that is sufficient to intitle him to the Process he hath obtained having made Oath to the Debt — Ordered that the Warrant of Arrest be superseded, and that the Defendant be discharged from the Custody of the Sheriff —

A True Extract

/Signed/ George Taylor
Regr.

Shallavakam

D

Shallavakam Trevengada Pillay Son and heir as also
Admor of Shavakam Veerapermall Pillah Deceased
Paukam vers Singana Chitty

Further day is given the Parties till the 24th Instant
to Examine Witnesses —

Town Hall
17th February 1795.

Hour /signed/ G E Aitken
Dy Regr

A true Copy
/Signed/ Robert Williams
Solicitor for Appellant

E

Shallavakam Trevengada Pillay Son and Heir
and also Admor of Shallavakam Veerapermall Pillah Deceased
Paukam vers Singanah Chitty

Further Day is given the Parties till the
3d March next to Examine Witnesses. —

Town Hall
24th February 1795 —

Hour /Signed/ G E Aitken
Dy Regr

A True Copy
/Signed/ Robert Williams
Solicitors for Appellant

Shallavakam

F

Shallaivakam Trevengadam Pillay Son and Heir as also
Administrator of Shallawakam Verapurmall Pillah Deceased
Paukam Singanah Chitty

Further Day is given Parties till the 10th
Instant to Examine Witnesses

Town Hall
2d March 1795.

Hur
/Signed/ J. C. Affleck
57 Regt.

A True Copy
/Signed/ Robert Williams
Solicitor for appt.

To

To the Right Honourable Robert Hobart commonly
called Lord Hobart

President in Council
Fort Saint George

In the Honourable
the Court of Appeals

Between Shallavaukum
Trevengada Pillay Son and heir
as also administrator of
Shallavaukum Verapurmaul
Pillah Complainant and
Paukum Singanah Chetty
Defendant.

The Answer of the abovenamed Defendant.

Filed in my Office
the 21st April 1795
J. Webbe Clk

to the Petition and appeal of the abovenamed Complainant
The said Respondent admits that the
Appellant did at the time in the said Appellants
Petition and appeal mentioned file his Bill of
Complaint against this Respondent in the Honourable
the Mayors Court at Madraspatnam for the recovery
of the monies therein mentioned and alledged to have

accrued

accrued upon the foot of a certain Bond therein also
mentioned and bearing date the Eleventh day of October
One thousand Seven hundred and Sixty three and this
Respondent saith that he did on the Fifteenth day of
March in the year one thousand Seven hundred and
ninety One file his answer to the said Bill of Complaint
and did therein positively deny to be indebted to the
said Complainant in any wise howsoever and that
the said Appellant having filed his Repleication thereto
this Respondent rejoined and that Issue was thereupon
joined in the said cause and that no further
proceedings were had therein from the Fifth day of
June in the year one thousand Seven hundred and
ninety two until the Eleventh day of March in the
present year of our Lord one thousand seven hundred
and ninety five upon which day it appears that
the Complainant made the affidavit and obtained
the warrant of arrest in his Petition and Appeal
mentioned And this Respondent further saith that
no efficient proceedings were had upon the Records of
the said Mayors Court in the said cause from the
said

said Fifth day of June one thousand seven hundred
and ninety two until the Seventeenth day of March
now last past upon which day the Sheriff returned
a Capi Corpus upon the said warrant of arrest
whereupon the said Mayors Court was pleased supersede
the said Warrant of arrest and to discharge this
Respondent from the Custody of the Sheriff

The said Respondent in answer to the first
reason assigned by the said Appellant saith that the
said Appellant not having in due time avail'd himself
of the said Order of the Eighteenth day of January one
thousand seven hundred and ninety one but having
suffered this Defendants Answer to be filed whereby
the said debt is denied the Complainants affidavit
of the said Debt made on the said Eleventh day of
March one thousand seven hundred and ninety
five came too late as there is now the oath of the
Defendants against the affidavit of the Complainant
which being coupled with the staleness of the said demand
would have warranted the Mayors Court to have refused
the said warrant of arrest had the same been moved for

in

in open Court as it should have been - and this Respondent further saith that the Complainant having lain by from the said Fifth day of June one thousand Seven hundred and ninety two to the said Seventeenth day of March last, the said suit was by operation of Law discontinued, and was in effect, as a cause out of Court, upon which no further proceedings could have been legally had unless by Special Motion.

This Respondent in Answer to the Second Cause of Appeal assigned, Saith that the appearance of the Complainants Attorney should have been duly entered upon the Records of the said Mayors Court according to the uniform Practice thereof in like cases and the said Attorney not having been able to produce the Record of his appearance the said Mayors Court did not consider the naked assertion of the said Attorney in that respect as any proof of such appearance, and this Respondent humbly submits to this Honourable Court that if such Appearance had been entered the said Appellant would have produced the Record thereof. And as to the several other causes of Appeal by the said Appellant assigned This Respondent saith he is advised that the same and each of them are impertinent to the matter of the said

Appeal

Appeal and unnecessary to be further Answered unto

This Respondent therefore humbly prays that this Honble Court will be pleased to affirm the said order of the said Mayors Court, and that the Appellants said Petition of 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
of
Madraspatnam

Monday the 18 day of July
Anno Domini 1796.

Between Shallavauthum Trivengada Pillah Son and Heir and also administratrix of Shallavauthum Veraperumal Pillah Deceased Appellant and Pauthum Singanah Chitty 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 given in this Cause on Tuesday the 17th day of March 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.

By the Court
/Signed/ J. Webbe
Clk.

To

3

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

In the Honble the Court of Appeals at Madraspatnam

Between Niniapah Moodelliar
Administrator of the Estate and Effects of
James Johnson deceased unadministered
by William George Wasey deceased
Complainant and Streenevasiah
Runegrah Brahmin Administrator of
Estate and Effects of Trevengadiah Brami
-ny deceased unadministered by
Streenevasiah Brahmin deceased.

The Petition and Appeal of the abovenamed Complainant.

Sheweth

That your Petitioner did as administrator as aforesaid on or about the twelfth day of June which was in the year of Christ one thousand seven hundred and ninety three exhibit and file a certain Bill of Complaint in the Honble the mayors Court at Madraspatnam against the said Defendant as administrator abovenamed for the Recovery of the sum of thirteen thousand eight hundred

Filed in my Office the 10th August 1795
J. Webbe Clk

hundred and fifty nine Star Pagodas six fanams and Seventy Six Cash Current money of Madras Making in Current Money of Great Britain at the Rate of eight Shillings for every Pagoda the Sum of five thousand five hundred and forty three Pounds thirteen Shillings and three pence or so thereabouts to which said Bill of Complaint the said Defendant did Appear by his Attorney at Law and after certain rules had issued for him to Answer he the said Defendant did on the tenth day of July in the said year of Christ one thousand seven hundred and ninety three file his plea and Answer on oath to the said Bill of Complaint of your Petitioners. and your Petitioner Sheweth that to the said Plea and Answer he did on the Sixth day of August of the same year file his Repleation thereto and the said Defendant having on the third day of September in the year last before mentioned file his Rejoinder unto the said Repleation issue did join upon the above proceedings and Rules Issued for the examination of Witnesses —

And your Petitioner Sheweth that he did on the thirtieth day of September in the year aforesaid file and exhibit in the Office of the examiner of the said Mayors Court Certain Interrogatories to divers persons Amongst the number of Whom was one Sooboo Chitty Who did on the ninth day of October in the year aforesaid depose to such Interrogatorys as were then exhibited to him but your Petitioner Sheweth that the said Sooboo Chitty did not then nor for a great length of time thereafter sign his said Deposition, though repeatedly required so to do and your Petitioner Sheweth that the said Sooboo Chitty did, Not withstanding such repeated requisitions depart from Madras and do your orator was then informed for the purpose of proceeding to Tanjore without having signed his Deposition to the Interrogatories exhibited to him by the said Examiner on behalf of your Petitioner and your Petitioner Sheweth that the said Sooboo Chitty having departed from Madras as aforesaid your Petitioner did exhibit with the said Examiner additional Interrogatories to certain other persons amongst whom was one Ballaya Row, whom your Petitioner did intend to examine for the purpose of proving not Only the unwillingness of the said Sooboo Chitty to sign the Deposition which he had given

before

before the said Examiner to the Interrogatories which had
been exhibited to him on behalf of your Petitioner as aforesaid
but to shew that he had also actually departed from madras
and further to shew by whose immediate direction the said
Sooboo Chitty had left madras your Petitioner having much
reason to believe that the said Sooboo Chitty had been
purposely sent out of the way by the Defendant and your
Petitioner sheweth that having been informed that the
said Sooboo Chitty to return to madras for the purpose of being
Examined on behalf of the said Defendant your Petitioner
did forbear to examine the said Ballagie Row and did
exhibit with the said Examiner further additional Interrogatories
for the purpose of Obtaining from Sooboo Chitty himself such
information as your Petitioner had expected to Derive from
the said Ballagie Row and your Petitioner sheweth
that such further additional Interrogatories were filed
with the said Examiner on the fourteenth day of June which
was in the year of Christ one thousand seven hundred
and ninety four and certain Interrogatories and
additional Interrogatories were filed with the said
Examiner for and on behalf of the said Defendant on the

Seventh

seventh day of July in the year last before mentioned
on which same Day to wit. the said seventh day of July
it having been signified at the Office of your Petitioners
Attornies that the said Sooboo Chitty was produced at the
said Examiners Office for the purpose of being Examined
on behalf of the said Defendant, one of your Petitioners
said Attornies, namely Robert Williams did
personally attend at the Office of the said Examiner and
did as your Petitioner hath by him the said Robert
Williams been informed particularly desire the said
Examiner to recollect not only to require the said Sooboo
Chitty to sign the deposition which he had theretofore
given to the Interrogatories exhibited for and on behalf of
your Petitioner on the said thirtieth day of September one
thousand seven hundred and ninety three but also to give
his deposition to the further additional Interrogatories
exhibited as aforesaid for and on the behalf of your Petitioner
on the fourteenth day of June one thousand seven hundred
and ninety four and your Petitioner sheweth that he
did by his said Attornies some time thereafter, to wit.
on the eighth day of July in the said year one thousand
seven hundred and ninety four, pray the said

Mayors

Mayors Court that publication might pass in the said cause fully believing that the said Sooboo Chitty had not only originied his deposition to the Interrogatories first exhibited to him for and on the behalf of your Petitioner but that he had also deposed to the said further additional Interrogatories exhibited in the Office of the Examiner aforesaid on the said fourteenth day of June one thousand seven hundred and ninety four, and your Petitioners sheweth that Publication being passed the attorney for the Defendant did pray that two of his witnesses, namely, the said Sooboo Chitty and one Jaobiah Braminy who had been Examined on behalf of the said Defendant but had not signed their Depositions might be permitted to sign their said Depositions at the hearing to which your Petitioners attorney did not object for your Petitioner finding himself deceived in as much as the said Sooboo Chitty had been allowed to depart from the Office of the said Examiner without having given his Deposition to the said further additional Interrogatories Exhibited as aforesaid for and on the behalf of your Petitioner, did consider that if the said Defendant should find it convenient to produce the said Sooboo Chitty at the hearing of the cause for the purpose of obtaining his signature to his said Deposition on behalf of the said Defendant that would be the best opportunity of extracting the truth from the said Sooboo Chitty by a viva voce examination in open Court firmly relying that the said Court would when the said Sooboo Chitty should be so produced at the hearing allow your Petitioner to put such Interrogatories to the said Sooboo Chitty as should appear to be relevant and pertinent to the points in issue as well as to such matters as should have come to light from the several proceedings in the said cause since the passing of Publication and which to the said Court should appear to be fit and proper to be put and deposed to and your Petitioner further sheweth that in the Copy (furnished to your Petitioner by the said Examiner) of the deposition of the said Sooboo Chitty to the Interrogatories exhibited to him on the said seventh day of July one thousand Seven hundred and ninety four it appears that a very important part of his deposition is scratched and defaced and a Subterlineation in the hand writing of

of one of the clerks or writers of the said examiner introduced importing a directly opposite meaning to the words — originally taken down but afterwards scratched out — as by the said copy of the said Deposition will appear and which your Petitioner is ready to produce when duly called for and your Petitioner Sheweth that on the twenty eighth day of July last past the attorney for the Defendant did pray that the said Sooboo Chitty might be them allowed to sign his Deposition, the said Sooboo Chitty ~~ought to be then allowed to sign his Deposition~~, the said Sooboo Chitty being about to return to Sanjore, but which said prayer of the said Defendant by his said attorney appears by the said extract to have been so far misworded as that the same would seem by the words "etc contra" in the commencement thereof and again by the word "these causes" instead of this cause to allude to a cause and cross cause still pending between the same parties in the said Mayors Court whereas the said Deposition of the said Sooboo Chitty is not in the said cause and cross cause but in the cause herein before stated to have been instituted to wit for the recovery of the sum of thirteen thousand eight hundred and fifty nine Pagodas six fanams and seventy six cash; to which said prayer your Petitioners attornies did object, and did — them assign certain accuses of objection, notwithstanding with the said mayors court and in the said Twenty eighth day

day of July grant the prayer of the said attorney for the said Defendant and did order that the said Sooboo Chitty should be allowed to sign his deposition in court which was done accordingly by which said order your Petitioner doth consider himself greatly aggrieved and doth therefore appeal therefrom to this Honble court for the following Amongst other Reasons —

First Because, the Motion of the attorney for the — Defendant, that the said Sooboo Chitty might be — admitted to sign his Deposition instanter was a special motion, and by the Rule and Practice of the said — Mayors court, and which your Petitioners Attornies did insist on in their objection to the said Motion, as appears by the Extract of the said court of the said Twenty eighth day of July now last past, your Petitioners Attornies ought to have had a previous thereof, at least four clear Days before the making of the same: but — Which your Petitioners Attornies also shewed, that they had not been served with, contrary to the custom or usage of the said court, and your Petitioner Sheweth, that the said Rule usually observed by the said Mayors court, is found in great prudence and custom and is a great

Safe

safe guard to the Suitors of the said Court, inas much as it is calculated to prevent the Surprize of Parties into Errors or into hasty or sudden Decisions, which thereafter, it might be out of the power of the said Parties to Remedy, and the Departure of the said Mayor's Court from the said Rule of Practice in the Case of your Petitioner, from any thing that appears on the face of the said Extract, doth not seem to have been warranted or authorised by any necessity or urgency: and whereas by a departure from the same, they have done a manifest Injury as your Petitioner humbly conceives, to his your Petitioner's Cause.—

Secondly.... Because, the said Sooboochitty was admitted to sign the Deposition to which he was repeated in the said Mayor's Court, on the said twenty eighth day of July, on the said motion of the attorney for the said Defendant; without its having been duly and legally shewn unto the said Court, that the said Sooboochitty was the same Person, who had previously deposed before the Examiner of the said Mayor's Court, at the time implied, and purported on the face of the said Deposition, And your Petitioner sheweth that it doth not appear, that the Examiner of the said Mayor's Court, or the Clerk of the said Examiner, or the Interpreter attendant on the said Examiner, were or either of them was ever interrogated or asked, or that they, or either of them deposed, that the said Sooboochitty was ever interrogated before him the said Examiner, or that he was Sworn to the truth of the matters contained in the said Deposition: And your Petitioner is advised, that the said Examiner, and his said Clerk, and the Interpreter attendant on the said Examiner, are the only Persons who possibly could have given Evidence to the fact of the Examination of the said Sooboochitty, and of the taking of the Deposition, in Question, in solemn form.

Thirdly.... Because, the said Sooboochitty ought not to have been permitted by the said Court to have signed the said Deposition, in case the said deposition should have appeared to the said Court to have been actually made by the said Sooboochitty, before he had Answered to the several Interrogatories filed and exhibited on the

the behalf of your Petitioner in the office of the Examiner of the said Mayors Court: and which at the time of the said Soobboochitty's signing the said Deposition were of Record in the said Mayors Court. And your Petitioner Sheweth that it is an undeniable Rule, in like Cases, that no Deponent shall be allowed to sign his Deposition in Chief before he hath Answered to Cross Interrogatories, if any such should have been exhibited: and in all Courts of similar Constitution with the said Mayors Court the Party producing a Witness is obliged to detain him until he be cross-examined.— And your Petitioner Sheweth by the said Soobboochitty being allowed to sign his Deposition immediately on the Motion of the said Attorney as aforesaid: and without the Testimony of the said Examiner or of any of the said Persons employed in the said Examiner's office, your Petitioner was deprived of the Benefit of the said Examiner's Evidence or of those well versed in the Duties of his office as to the Point of Practice above alluded to, and other matters, and which your Petitioner might and would have had, if the said Soobboochitty had not been permitted to sign the said

said Deposition before the Day appointed for the Hearing of the Matters at Issue between your Petitioner and the said Defendant.—

And lastly ... Because the said Mayors Court in its ordinary Jurisdiction, as appears by the Extract hereunto annexed from the Minutes of the said Court, bearing date the Eighth day of July One thousand Seven hundred and Ninety four have ordered, that the said Soobboochitty should be admitted to sign his Deposition at the hearing of the Cause, the said Mayors Court endued with equal and similar Jurisdiction merely, as was the said Court where they passed the said Order in relation to the Deposition signed by the said Soobboochitty, from the Operation of the said Order of Court passed on the twenty Second day of October in the year one thousand Seven hundred and ninety three, an Extract of which is hereunto annexed, were not competent to pass an Order of the Extent of the said Order of the said twenty eighth day of July, permitting the Signature of the said Soobboochitty to the Deposition in question, in as much as the last mentioned Order is direct

Violation

Violation of the Order of the said twenty Second day of October.—

For all Which Reasons and such others as may be offered at the hearing of your Petitioners said Petition of Appeal, your Petitioner humbly prays that the said order of the said Mayors Court of the said twenty eighth day of July now last past may be set aside, and that the Deposition of the said Soobboltty may not be read at the hearing of the said Cause unless your Petitioners said further Additional Interrogatories filed and Exhibited as aforesaid on the said fourteenth day of June one thousand Seven hundred and ninety four and such further Interrogatories as may to the said Worble the Mayors Court at the hearing of the said Cause, appear to be relevant and pertinent to the Matters in Issue as well as to such matters as may from the said proceedings have come to light since the passing of Publication in the said Cause, and may be by the said Worble the Mayors Court at the hearing of the said Cause, deemed fit and proper, to be put and deposed to by the said Soobboltty, and that the said Defendant may be ordered to pay all costs of this your Petitioners said Petition and Appeal.—

/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 22d. day of October Anno Domini 1793.—

Present.

John Mitford Esquire Mayor
Henry Chichley Michell and Benjamin Roebuck Aldermen

Messrs. Aldermen Call, Webb Ross, Porcher, Daly &
Abbott and Cockburn take their Seats on the Bench.—

Ordered that in future it be a Standing rule of this Court that no Order or Decree of a Rotation Court shall be Reversed except by a full Court ~ Summoned for that Purpose.—

A True Extract
/Signed/ George Taylor Regr

Extract

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

Present

Henry Chichley Michell Esqr. Mayor
Josias DuRe Porcher — Andrew Ross — and James Daly Aldermen

Nineapah Moodelly Administrator of James Johnson Deceased Unadministered by William George Wasy Deceased.
vers
Seenevasa Rungiah Administrator of Seevengadiah Brawmy Deceased Unadministered by Seenevasayah Brawmy — Deceased.—

The Attorney for the Complainant prays that Publication may pass in this Cause to which the Attorney for the Defendant objects and prays he may be allowed a further time of one Week to Examine Witnesses— Ordered that Publication do pass— Publication is passed in this Cause— Mr. Hall attorney for the Defendant prays, that two of his Witnesses named Sooboo Chitty and Soobiah Brawmy who have been Examined, but have not Signed their Depositions,

may

may be permitted to sign their Depositions at the hearing to which the Opposite Attorney not objecting Ordered Accordingly —

A True Extract
/ Signed / George Taylor Regr.

Extract

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 28th. day of July Anno Domini 1795 —

Present

Benjamin Roebuck Esquire Mayor
William Webb Andrew Ross —
and Joseph Greenhill — Aldermen

Nienapah Moodelly Administrators of James Johnson deceased unadministered by William George Wasey

vers

Streenevasiah Rungiah Administrator of Trevengadiah deceased

Et Contra. Unadministered by Seenevasiah Deceased.

Mr. James Stuart Hall attorney for the Original Defendant and Gross complainant informs the court, that on the 6th. July 1795 an order passed in these Cause that Soobah Chitty and Soobiah Brammiey might be permitted to Sign their — Depositions at the hearing of these Cause, to which the opposite Attorney not objecting, It was Ordered Accordingly — The said Attorney prays that Sooboo Chitty may be now allowed to Sign his Deposition, being about

about to return to Tanjore — and in support of his motion
he prays leave to file the affidavit of the original —
Defendant and Cross Complainant. affidavit sworn to
in Court read and filed — The Attornies for the original
Complainant and Cross Defendant object to the above
motion — First Because the motion is special, and the
Attorney for the Defendant ought to have served the
attornies with the usual Notice thereof, which he has
not done — Secondly Because the Acquiescence of the
Court in the Prayer now made would be a Contradiction
of a former Order of Court — Thirdly Because their is no
Proof that the Person now exhibited, is the same who was
interrogated in the Cause before the Examiner. The Court
having taken the same into Consideration It is ordered
that Sooboo Chetty be now permitted to Sign his Deposition,
which is done — Accordingly

Messrs. Aldermen Ross and Greenhill dissent
to the Resolution of the Court, because they Consider the
present Application to be in effect a Special motion, notice
of which ought to have been given to the opposite attornies,
to whose Client the previous Knowledge of what is now
proposed may be Material, and which having been
Neglected they are of Opinion that the said attornies
should be allowed the time of Eight days to state such
Objections as they may find Necessary —

A True Extract
/Signed/ George Taylor
Regr

To

To the Right Honble Lord Hobart
President in Council
Fort Saint George

In the Honble
Court of Appeals

Between Nireapah mosdeliar
Administrator of the Estate and
Effects of James Johnson deceased
unadministered by William George
Wasey Deceasd Appellant and
Streenevasiah Rungiah Braminy
Administrater of the Estate and
Effects of Trevengadiah Braminy
Deceasd unadministered by
Struenevasiah Braminy deceased
Respondent.

Filed in my Office
the 3d Sept. 1795
J Webbe
Clk

The Answer of the abovenamed Respondent
to the Petition and Appeal of the abovenamed Appellant
This Respondent admits that the Appellant
did on or about the time in his Petition of appeal for
that purpose setforth Exhibit and file his Bill of
Complaint in the mayors Court Against this
Reispondent
Respondent for the relief therein stated that thereto
this Respondent did file his Plea and Answer to which
the Appellant did reply and that to the appellants
said Replication, this Respondent did Exhibit and
file his Rejoinder and this Respondent admits that
upon the pleadings had issue did Join and rules did
pass for the Examination of Witnesses and Witnesses
were accordingly Examined both on the part of the
Appellant and this Respondent this
Respondent admits that the appellant might have
filed in the Office of the Examener of the said mayors Court
Interrogatories to Sooboo Chitty that the said Sooboo Chitty
might have deposed thereto and that the said Sooboo Chitty
might have delayed signing the same for a
considerable length of time and this Respondent
admits that the said Sooboo Chitty might have departed
from Madras for ought this Respondent knows to
the contrary at the time Setforth in the appellants
said Petition of Appeal and this Respondents says
he doubts not of proving from the facts in issue that
the said Sooboo Chitty was not sent away from Madras
in

in the manner the appellant would insinuate and this Respondent further answering says it may be true for ought he knows to the contrary that the appellant may have filed in the said Examiners Office additional Interrogatories to the said Sooboolhitty but this Respondent does not know whether the appellants Attorney Robert Williams did or did not personally attend at the Examiners Office or that he did converse with the Examiner as in the appellants said Petition of Appeal the same is set forth and this Respondent humbly Submits to this Honble Court that such matters and things so stated by the Appellant is contrary to the course of this Honble Court and this Respondent doth therefore Except to that part of the Appellants said Petition of Appeal beginning with the words "On which day to wit the Seventh day "of July it having been signified at the Office of "your Petitioners Attornies "and Ending with the words "the further additional Interrogatories Exhibited "as aforesaid on the behalf of your Petitioner on the "fourteenth day of June one thousand Seven hundred

and

and ninety five "as new matter not at issue before the said mayors Court and humbly prays that the same may be Expunged from the Record and this Respondent further Answering says that the appellant did at the time in his Petition of Appeal for that purpose set forth pray the said mayors Court that Publication might pass in the Cause but this Respondent does not know the inducement of the appellant thereto but says that if it was as he has stated the fact to be, he ought to have made himself acquainted with the state of the depositions of the witnesses Examined by him by an Enquiry of the Examiner relative thereto, or have waited the generally observed rule of the Examiners notice to the Court before he prayed to pass Publication and this Respondent further Answering says that upon the Appellants praying as aforesaid that publication might pass in the Cause, he this Respondent did Object thereto and pray a further time of one week for the Examination of witnesses and upon Publication passing did then pray that the said Sooboolhitty

and

and one Soobiah Beammy who had been Examined on
the part of this Respondent but had not signed their
Depositions might be permitted to sign their said depositions
at the hearing to which no Objection was made on the part
of the Appellants and this Respondent submits to this
Honble Court that the reason now assigned by the
Appellant for his not objecting is irrelevant and that if the
fact really was as he had stated it to be, it arose from
his own precipitancy and neglect as he ought to have
known positively whether he was ready to pass publication
before he moved the said mayors Court for that purpose
And this Respondent further Answering says that the
mental reservation in the Appellants said Petition of
Appeal set forth as a further inducement not to appose
this Respondents prayer, that his said two witnesses
might be permitted to sign their depositions at the
hearing is altogether irrelevant and according to his own
shewing was not, nor could have been in any wise in
any issue before the said mayors Court and therefore this
Respondent humbly submits to this Honble Court that
the same ought to be Expunged from the Record and
this

this Respondent says that he is advised that after
a witness has been Examined upon the Interrogatories
he cannot be Examined Vivâ Voce in Court at the
hearing of a Cause and that such never has been the
practice of the said mayors Court although it has frequently
occurred that a witness who has been Examined and
had not signed his Deposition has been allowed to
sign the same at the hearing and this Respondent
says that he knows not any thing of any part of the
Deposition of the said Sooboo Chitty having been
scratched or defaced or Entertined in the Office of the
said Examiner in which this Respondent is advised
Every thing is conducted by the Examiner a Sworn Officer
of the said mayors Court and by his copying Clerk
who is also Sworn and this Respondent submits to
this Honble Court that Even if the fact was the
Appellant has stated it to be that the same is in no
wise pertinant or relevant to the matter now before this
Honble Court and this Respondent further answering
says that he admits that he did on the twenty
Eighth day of July last past pray that the said

Sooboo Chitty

Hon'ble Court.

To the Appellants first Reason for

Respondent says that he admits that upon

Deposition the said Soobo Chitty being about to return

to Jaffna and this Respondent admits that he

ex made upon a Notice of four days but

might have made the Mistake in the Appellants

in the present case the Motion was to con

Petition of Appeal stated but as the same is a

the decision of the said mayors Court upon

Motion in which the Appellant has con

that therefore it was a Motion of course an

Respondent says it was not, not could it hav

Motion by which to take the Appellant by

it was a motion that was grounded on the A

the said mayors Court has not the power

and the necessity And urgency of the case

to the said mayors Court upon the Affo

Respondent setting forth that the said Soobo

about to Depart for England and this Respondent

Respondent should that he would be dep

benefit of the Testimony of the said Soobo

at the hearing of the Cause if there was not

to Sign his said deposition as may not admit

a large Appeal by the said Affidavit of

appeal this

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record in

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this Honble Court and to which this Respondent prays reference.—

To the Second Reason this Respondent says that the said Sooboochitty was produced publickly in the said Mayor's Court on the twenty Eighth day of July the day on which he signed his said deposition and as he was well known to the appellant it was altogether unnecessary to Enter into any proof of his identity he was a witness as well on the part of the Appellant as on the part of this Respondent and therefore Equally well known to both — and if the person produced as Sooboochitty Examined on the part of this Respondent and Cross Examined on the part of the appellant had not been the real Sooboochitty who had given the deposition ~~therein specified~~ produced in Court and which he was then about to sign a simple Statement of the fact to the said mayor's Court would have prevented him from signing the same but this Respondent humbly submits to this Honble Court that the appellant his said Petition of appeal has fully admitted that the person who signed the said deposition

Deposition was Sooboochitty who had given it before the Examiner and this Respondent submits to this Honble Court that it was unnecessary to have called upon the Examiner and his Clerk and the Interpreter to prove that the said Sooboochitty had been Sworn to the truth of the matters contained in his said Deposition because this Respondent is advised that a witness deposing upon Interrogatories Exhibited in a temporal Court is always Sworn before he is interrogated and that the said Sooboochitty could not have given his deposition unless he had previously taken his Oath and this Respondent is further advised that it always has been the practice of the said mayor's Court to act in similar Cases Exactly as they have done in the present Instance and which this Respondent is ready to prove if this Honble Court should require it by Extracts from the proceedings of the said mayor's Court.—

To the third Reason Offered by the appellant as Cause of appeal this Respondent says that he is advised that after Publication passed it was not in the power of the

Mayor's

mayors court to have directed the Examination of
the said Sooboo Chitty upon any additional Interrogatories
that might have been filed upon the part of the appellant
who as this Respondent has shewn before submitted
to this Honble Court deprived himself by his own
act of the testimony of the said Sooboo Chitty by pressing
publication upon a more supposition that he had
been Examined and signed his deposition and this
Respondent by opposing the publication and praying
a further time for the Examination of witnesses by
the matter which has produced the present appeal.
has clearly Evidenced that he this Respondent had
no more influence over Sooboo Chitty than the
Appellant had or rather that the Appellant did
not by his hurry in passing publication in the cause
allow the said Sooboo Chitty time Even to sign the
Depositions he had given either on his the appellants
own part, or on the part of this Respondent and that
having found out his Error and that in Endeavouring
to prevent the said Sooboo Chitty from signing his
depositions given on the part of this Respondent, he

the

the Appellant prevented him from signing those
given on the part of the appellant, he is now desirous of
taking advantage of his own wrongs and this Respondent
submits to this Honble Court how severe the hardship
would have borne on him, and how contrary to the rules of
Justice if the said mayors Court had not allowed the said
Sooboo Chitty to sign his depositions given on the part of
this Respondent because he had not been Examined upon
the Interrogatories Exhibited on the part of the appellant
who hurried on publication before the witness had
had time to complete his Examination and this
Respondent says that had the Appellant prayed the
said mayors Court at the time that the said Sooboo
Chitty signed his depositions on the part of this
Respondent that he the said Sooboo Chitty might be
ordered to sign the deposition by him given on the part
of the Appellant the same would have been ordered as
of Course and this Respondent further says that at
the time the Appellant prefsed publication might
pafs as hereinabove mentioned he the said Sooboo Chitty
was at Madras and might have been Examined on

the

the part of the appellant to the additional Interrogatories
filed by him in the Examiners office, but by passing
publication as he shews himself upon the bare supposition
that the said Sooboochitty had completed his
Examination, it became no longer Necessary on the
part of this Respondent to detain said Sooboochitty
as the appellant by his own act had put a period to a
further Examination and this Respondent further
further says that the appellant on finding that the
said Sooboochitty had not completed his Examination
should have prayed the said Mayors Court to Enlarge
publication, and again Open the Examination, but
this he did not do, nor did he make any objections or
state any difficulties on the subject now before this
Honble Court until the said Sooboochitty in
consequence of a former rule of the said mayors Court
appeared to sign his Deposition and this
Respondent says that the Cause between the appellant
and this Respondent had long been set down
for hearing but put off by some accident not
occasioned by this Respondent but originally
with the said mayors Court as this Respondent

can

can prove if required and when this Respondent
understood that it was uncertain when the said Cause
might come on to be determined, and as the said
Sooboochitty was under the necessity of going to Tanjore
upon his own affairs and as this Respondent might
have been deprived of the benefit of his Testimoney if
he did not then sign his Deposition, he did by his
attorney in Court pray that the said Sooboochitty
might then be permitted to sign his deposition, and
stated his reasons upon oath and this Respondent
says that there was no necessity to give the appellant
any notice that he meant to make such a prayer
because it rose out of an order of Court, and if the
Cause had come on to be heard there would not
have been any necessity on the part of this Respondents
that the said Sooboochitty might be permitted to
sign his deposition the production of the Record
was all that would have been requisite to that End
and against which the appellant could not have
made any manner of Objection; and this Respondent
says that the said mayors Court in ordering as they

have

have done have not as the Appellant would suggest violated the order of a former Courts day but mouly anticipated that order upon an imergency, and in doing so they only carried into Execution what a former Court day had ordered and this Respondent Submits to this Honble Court that the reasoning of the appellant regarding the rule of practice of the said mayors Court does not apply to the matter in question.—

And this Respondent humbly Submits to this Honble Court that the prayer of the appellant does not arise out of the order appealed from but goes into matter altogether foreign thereto, and to take — advantage of his own precipitancy in praying publication under Erroneous Surmises, and of his subsequent neglect in not praying to Enlarge — publication when he found his Error.—

For all which Reasons and such others as may be offered at the hearing this — Respondent most humbly prays that the said order of the said mayors Court may be affirmed and that the appellants said Petition of Appeal — may be Dismissed with Costs.—

[Signed] James Stuart Hall
Solicitor for Respt

Court

Court of Appeals
Madraspatnam

Monday the 18th day of July
Anno Domini 1796.—

Between Niniapah Moodelly —
administrator of James Johnson deceased
unadministered by William George
Wasey Deceased Appellant and —
Struevasiah Rungiah administrator
of Trivengadasiah Deceased unadministered
by Seinevasiah Deceased Respondent.—

This cause coming on this day to be heard and debated before this Court by the attornies on both sides upon hearing the Petition of Appeal and Answer together with the order of the Honble the Mayor's Court given in this — because on Tuesday the 28th day of July 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 Mayor's Court dated the 28th day of July Anno Domini 1795. be set aside that the — Deposition of Sooboo Chitty be Suppressed and that the same be not read at the Hearing of the Cause unless the said Sooboo Chitty do attend the hearing thereof or Appear in the said Court to sign his said Deposition anew and Eight days — previous Notice thereof be given to the Opposite Party and that each party do pay his own cause in this Court.—

/Signed/ J. Webbe
Clk

To

To the Right Honble Robert Lord Hobart
President in Council
In the Honble the
Court of Appeals
Fort Saint George

Between Ramadas Ramanja
of Madras Inhabitant Complainant
and Zachariah Polack of the same
place Inhabitant Defendant

The Petition and Appeal of Zachariah Polack
the above named Defendant

Humbly Sheweth

That the said Ramdas Ramanjee above
named did file his Bill of Complaint in the Honble the
mayor's Court Against your Petitioner on or about the
Twenty Second day of October last past and did thereby
charge that your Petitioner did stand indebted to him
on Bond in the principal of Ninety Nine Pagodas
principal money besides an Interest thereon at the rate
of Twelve per Cent from the date. And your Petitioner
Sheweth that from various Negotiations for an
Accommodation of the real debt due from your Petitioner
to

Filed in my Office
the 28. December 1795
J Webbe Clk

to the said Complainant the time for Answering his
said Bill in the Mayor's Court Expired and a Decree
Copy whereof is hereunto annexed passed Against your
Petitioner to pay the said Complainant the Exorbitent Sum
of one hundred and Seventeen Pagodas Seven fanams and
Sixty Cash though in fact and in truth your Petitioner
in conscience owed no other or greater Sum than Sixty
Two Pagodas or thereabouts to which Effect and by way
of defence to the Inequitous Claim of the said
Complainant and to preclude him from equitably
recieving more than he was Justly Entitled to have
from your Petitioner He your Petitioner did prepare an
Answer and did attend with the same in his hand in
the said Mayors Court to put in notwithstanding
which and that the said mayors Court were
advised not to proceed to a Decree for that your
Petitioner had a Title to oppose in part the Complai-
nants pretensions yet the Decree did pass by which
your Petitioner doth conceive himself aggrieved and
doth therefore Appeal from the said Decree to this
Honble Court on the aforesaid Grounds and for the
following

following more prmise reasons.

Because the said Mayors Court not being solely a Court of Law but tempered with the Equitable Powers of the High Court of Chancery of England ought to have heard what your Petitioner had equitable to object to his Bond indoing which had they received your Petitioner said Answer they would have found that the Bond was in part obtained by surprize for the fact is that your Petitioners late wife during viduity that is prior to her Marriage with your Petitioner, owed the Complainant Sixty two Pagodas which your Petitioner Assumed to pay in convenient time and without Interest and to that End gave his written agreument. But so it happened that in a Moment of ungardedness the Complainant taking advantage of your Petitioner distocts of circumstances harrassed by grievous and Vexatious Suits in the Mayors Court prevailed on your Petitioner from Motives so powerfull to Execute the Bond in Question adding an Interest of Twelve per Cent on the said Original Memorandum of Debt of Sixty Two Pagodas thus

Thus making a Principal of ninety Nine Pagodas for which now Principal Sum a Bond was Demanded and Enforced bearing the usuriously added Interest of a further Twelve per Cent which your Petitioner humbly Suggests formed a good ground to Plead the Statute in such case provided and your Petitioner doth therefore say that the said Mayors Court ought now to be Obliged by the order of this Court to receive such your Petitioner Plea and other intended defence. But your Petitioner doth hereby admit to owe and is yet willing to pay and hath often tendered to pay the said Complainant the said Sum of Sixty Two Pagodas and Interest from the date of the Bond which hath been rejected thus driving your Petitioner to the cruel Necessity of this Appeal.

For all which reasons and such others as shall be urged on your Petitioners behalf at the hearing your Petitioner humbly prays the interposition of this Honble Court and that the

the Decree of the said Mayors-
Court may be opened and your
Petitioner duly let in to his —
defence and further that the —
said Complainant be Decreed
to pay all Costs of this Appeal.—

And your Petitioner
shall ever Pray

[Signed] John Wilkinson
Solicitor for Appellant

Extract

Extract from the Minutes of a Court Held at the Town
Hall on Tuesday the 15th Day of December Anno Domini 1795—

Present

Benjamin Roebuck Esq.r Mayor
Andrew Ross and Joseph Greenhill
Aldermen.—

Ramadas Ramanjee

vers

Zachariah Polack.—

The attorney for the Complainant produces
to the Court a Certificate from the Rejester Setting forth
that the usual Rules have Issued for the Defendant
to Answer the Complainants Bill which he has —
Neglected doing He therefore prays that a Decree may
now pass Bill Read.—

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

the Complainant the full and Just Sum of One Hundred and Seventeen Pagodas Seven fanams and Sixty Cash / Pagodas 117.. 7.. 60 / together with all such Interest as now is or shall hereafter been due thereon untill full Payment is made also all Costs of this Suit.—

A True Extract

/ Signed / George Taylor Regr

a true Copy

/ Signed / John Wilkinson

Solicitor for Appellant

To

To the Right Honorable Lord Hobart

President and Governor in Council &c.

Fort St George

In the Honourable the Court of Appeals

Between Zachariah Polach of Madras Inhabitant Appellant and Ramaids Ramanjee of the same place Inhabitant Respondent

The Answer of the above named Respondent to the Petition and Appeal of the above named Appellant Respondent admits that he did on or about the twenty Second day of October one thousand Seven hundred and ninety five his Bill of Complaint in the Mayors Court of Madraspatnam Against the said Appellant for recovery of the sum of Ninety nine Star Pagodas besides Interest owing upon the said Appellants Bond, and this Respondent saith that the usual time for answering the said Bill of Complaint having answer being filed this Respondent did on the first day of December one thousand Seven hundred and ninety five by his Attorney at Law pray the said Mayors Court to pass a Decree against the said Appellant But this Respondent saith that it being alledged on the part of the appellant that the Debt to this Respondent so owing should be discharged without further delay

Filed in my Office the 15th January 1796

J Webbe Clk

delay and that awarding a Decree would but encrease the Expences of the Suit the said Mayor's Court was thereupon pleased to postpone their said Decree to the eighth day of December aforesaid And this Respondent further saith that afterwards on the said eighth day of December the said Decree was on the like assurances as those which had been made on the Court Day preceding further extended to the fifteenth day of December as by Extracts from the Minutes of the said Mayor's Court whereof true Copies are hereunto annexed, to which this Respondent humbly refers it doth appear And this Respondent saith that on the said fifteenth day of December the said Debt being still unpaid Contrary to the express assurances of the Appellant and it Appearing from what had gone before that no reliance was to be placed in the promises of the Appellant the said Mayor's Court did at length pass a Decree Against the said Appellant And this Respondent saith that the aforesaid were the only terms that were ever proposed by the Appellant, namely the payment of his Bond and Costs of Suit and as to the several Matters and things in the Appellants Petition and

and Appeal set forth, as to the alledged merits of the Appellants Case, this Respondent saith that the same is wholly unfounded in truth, and is but mere Assertion, which proves nothing and cannot be regarded when Opposed to the Appellants own Solemn act, the Execution of his Bond. And Lastly this Respondent saith that the money which the said Appellant is now lavishing in a wanton litigation would have discharged the debt to this Respondent justly owing by the said Appellant.

This Respondent therefore humbly prays that this Honble Court will be pleased to affirm the said Decree of the said Mayors Court and that the Appellants said Petition and Appeal may be dismissed with such Costs as to this Honorable Court may seem meet.

/ Signed / John White
Solicitor for Respondent

Extract

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 1st. day of Decmber Anno Domini 1795.—

Present.

Benjn. Roebuck Esqr. Mayor.
Andrew Ross, William Abbott and
Alexander Cockburn, Aldermen,

Ramadas Ramanje
vers
Zachariah Polack

The Attorney for the complainant produces to the Court a Certificate from the Registar setting forth that the usual rules have issued for the Defendant to Answer the complainants Bill, which he has neglected doing he therefore prays that a Decree may now pass—to which the Attorney for the Defendant objects and prays a further time of one week to Answer. Ordered that one week be allowed and indefault of an Answer being then filed that a Decree do pass.

Further Day is given the Defendant till the 8th Instant

Instant to Answer the complainants Bill indefault of which Judgment will be given for the complainant

A True Extract
/Signed/ J. C. Alpin
Dy Regt.

A True Copy
/Signed/ John White
Solicitor for Respondent

Ramadas Ramanjee
vers
Zachariah Polack

Further Day is given the Defendant till the 15th Instant to Answer the complainants Bill indefault of which Judgment be given for the complainant.—

Town Hall
8th Decr. 1795.—

Clerk /Signed/ George Taylor
Regr

A True Copy
/Signed/ John White
Solicitor for Respondent

Extract

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 15th. Day of December Anno Domini 1795.—

Present.

Benjamin Roebuck Esq.r Mayor

Andrew Ross and Joseph Greenhill

Aldermen.

Ramadas Ramanjee

vers.

Zachariah Polack

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.—

Bill Read.—

It Appearing by the Records of this Court that the usual Rules have issued for the Defendant to answer the Complainants Bill which he has neglected doing This Court doth therefore think fit to order and Decree and doth Accordingly order and Decree that the Defendant do pay unto the Complainant the full and just Sum of one Hundred and Seventeen Pagodas Seven fanams and Sixty Cash / Pag.s 117.7.60 / together with all such Interest as now is or shall hereafter become due thereon untill full Payment is made also all Costs of this Suit

A True Extract

/ Signed / George Taylor

Regr.

Court.

Court of Appeals
&
Madraspatnam

Monday the 18th day of July
Anno Domini 1796.—

Between Zachariah Polack
of Madras Inhabitant Appellant
and Ramadas Ramanjee 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 15. day of December
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 the Honble the Mayors
Court dated the 15. day of December Anno Dominigs-

be

be reversed and that the further time of one Week
from this 18th day of July 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.—

By Cur
Signed/ J. Webbe
Clk

To

To the Right Honorable Robert Hobart commonly called Lord Hobart

President in Council,

In the Honorable the Court of Appeals at Madraspatnam } Fort Saint George.

Between Collah Ravanapah Chitty of Madras Inhabitant by his Attorney and Assignee Authinka Narrain Chitty of the same Place Inhabitant, Complainant, and Suncoo Chinna Kistnamah Chitty also of the same Place Inhabitant, Defendant.

The Petition and Appeal of Suncoo Chinna Kistnamah Chitty the Defendant abovenamed.

Sheweth.

That the abovementioned Complainant Collah Ravanapah Chitty by his said Attorney and Assignee the said Authinka Narrain Chitty did on or about the Thirtieth day of July in the present year of Christ one thousand seven Hundred and ninety five file and exhibit a certain Bill of Complaint in the Honble the Mayor's Court at

Filed in my Office the 28th Sept. 1795
J. Webbe Clk

at Madraspatnam, Against your Petitioner, wherein and whereby it was alleged that your Petitioner being sometime in the year of Christ one thousand seven hundred and ninety four, indebted unto the said Collah Ravanapah Chitty in the sum of two hundred and fifty Pagodas Current Money of Madras, did for securing the repayment thereof, on or about the eighteenth day of October and in the said year one thousand Seven hundred and ninety four, execute unto him the said Collah Ravanapah Chitty a certain Bond or obligation or writing for the penal Sum of five hundred Star Pagodas, and conditioned for the payment of the said Sum of two Hundred and fifty Star Pagodas, together with Interest thereon at and after the rate of twelve per cent per Annum, and payable in one month from the day of the date thereof; and that your Petitioner did in and by the said Bond or writing obligatory covenant and Agree to and with the said Collah Ravanapah Chitty that in default of payment on the part of your Petitioner of the said Sum of two hundred and fifty Pagodas, together with Interest thereon, that then he the said Collah Ravanapah Chitty might sue for and recover the same as against your Petitioner, as by reference

reference to the said Bond then in the posession of him the said Collah Ravanapah Chitty might Appear. And your Petitioner Sheweth that it was in and by the said Bill of Complaint further alleged that your Petitioner had not since the execution of the said Bond or writing obligatory paid off and discharged the same, or any part thereof, and further that by reason of the premises your Petitioner stood justly and truly indebted unto him the said Collah Ravanapha Chitty in the full and just Sum of two hundred and seventy three Star Pagodas. Current money of Madras, making in Sterling Money of Great Britain at the rate of Shillings for every Star Pagoda, the Sum of One hundred and nine Pounds or thereabouts, as by Copies of an Account Current and an Assignment, unto his said Bill of Complaint Annexed would Appear. And further that frendly Applications for payment of the said Bond or writing obligatory, had frequently been made, but without effect, wherefore it was in and by the said Bill prayed that your Petitioner should be decreed to pay unto the said Collah Ravanapah Chitty the said Sum of two hundred and seventy three Star Pagodas, with the Interest then due, and thereafter to grow due thereon, and all Costs of Suit. And your Petitioner further Sheweth that together with the said Bill of Complaint against your Petitioner, a certain Affidavit was filed, and which said Affidavit was before Benjamin Roebuck Esquire the Mayor of Madraspatnam Sworn to by the said Attorney and Assignee Authinka Narrain Chitty, by reason whereof a warrant of Arrest was issued Against your Petitioner who hath been since Accordingly held to Bail in the said Cause, as by reference to the proceedings therein had will fully appear. And your Petitioner Sheweth that he did by his Attorney at Law appear unto the said Bill of Complaint, and that the usual Rules issued requiring your Petitioner to file and exhibit his Answer to the said Bill of Complaint, which your Petitioner having failed to do, and the usual rules having Expired the Attorney for the said Complainant thereupon prayed the said Honorable the Mayor's Court to pass a decree against your Petitioner for default in not filing his Answer within the usual time for that purpose limited and appointed, as by reference

reference to the Extract hereunto annexed will more fully appear: to which said prayer of the said Complainants your Petitioner did by his said Attorney at Law object, for the reasons specified in the said Extract, but which said — objection the said Honble the Mayor's Court was pleased to over rule, and order that a decree should pass against your Petitioner, as by reference to the said Extract will more fully and at large Appear: and by which said Order your Petitioner doth consider himself greatly aggrieved, for the following Amongst other reasons.—

First..... Because the said Bond was executed for certain services to be done and performed by the said — Collah Ravanapah Chitty and which he the said — Collah Ravanapah Chitty faithfully promisid to do and perform: but which he never hath done or performed, and that consequently the said Bond being without consideration, is abinitio void, and the transfer and assignment thereof fraudulent and illegal.

Secondly..... That the said pretended assignment of the said Bond or writing obligatory, by the said Collah Ravanapah to the said Authinka Narrain Chitty, (the latter of — whom

whom is, as your Petitioner states the fact to be, the menial Servant of the said Collah Ravanapah Chitty) is a mere imposition, contrived by the said Collah — Ravanapah Chitty and his said Servant the said — Authinka Narain Chitty in collusion together for the purpose of harrassing and disgracing your Petitr, and which will evidently Appear by the said Copy of the said pretended Assignment, and more especially by the designed uncertainty ambiguity and — insuffiency of the said Affidavit of the said Authinka Narain Chitty.

Thirdly..... That the foregoing circumstances together with others which your Petitioner was advised to urge in his defence, would have fully and at large Appeared in his Answer had the Mayors Court been pleased to grant the time of one week to have filed the same.—

Fourthly..... That prayer of your Petitioner by his said — Attorney, for the obtention of one Weeks time, was evidently for the purpose of being enabled to file his said answer, and not with the intention of delay: for had delay been the mere object of his prayer, he would neither have

gone

gone to the expence of employing his Attorney to prepare his answer, nor the Interpreter to translate the same.

and lastly ..... Because the granting of one weeks further time to your Petitioner to have enabled him to file his said answer however the same might have been considered as an indulgence to your Petitioner, yet could it not have been any way detrimental or injurious to the complainant, had his claim been ever so just and correct, inasmuch as your Petitioner had given good and unexceptionable bail, and such as the said Complainant himself had thought proper to approve.

Wherefore, and for such other reasons as may be offered at the hearing of this matter, your Petitioner most humbly prays that the said Order of the said Mayors Court of the fifteenth day of September one thousand Seven hundred and ninety five, may be set aside and annulled, and that your Petitioner may be allowed such reasonable time to put in his answer to the said Bill of Complaint, as to this Honorable Court shall seem just and right.

/Signed/ Robert Williams
Solicitor for Appellant

Extract

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 15th day of September Anno Domini 1795.—

Present

Benjamin Roebuck Esq. Mayor

James Call Andrew Ross &c.

Wm. Abbott Aldermen.

Colla Ravanapah Chitty by his Attorney and Assignee Authinca Narrain Chitty vers Channa Kistnamiah Chitty

The Attorney for the complainant produces to the Court a Certificate from the Register setting forth that the usual rules have issued for the Defendant to answer the Complainants Bill which he has neglected doing Be therefore prays that a Decree may now pass to which Mr. Robert Williams for attorney the Defendant objects and acquaints the Court that he has prepared the Defendants answer and has sat in Court with the Translation but that the same is not Sworn to owing to the Defendants indisposition, he therefore prays a further time of one Week to file it ordered that a Decree do pass Bill Read —

It

It Appearing by the Records of this Court that the usual Rules have issued for the Defendant to answer the Complainants Bill which he has neglected doing This Court doth therefore think fit to order and Decree, and doth Accordingly order and Decree, that the Defendant do pay unto the Complainant the full and Just Sum of Two hundred and Seventy three Pagodas Pag.s 273 .. / together With all such Interest as now is or shall hereafter become due thereon untill full Payment is made also all Costs of this Suit —

A True Extract
/Signed/ J. E. Atkins
Sec.y Regr

To

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

In the Honble
Court of appeals

Between Collah Ravanapah Chitty of Madras Inhabitant by his Attorney and Assignee — Authinka Narain Chitty — Complainant and Suncoo Chenia Kistnama Chitty also of the same place Inhabitant Defendant

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

Filed in my Office the 17th October 1795
J. Webbe Clk.

This Respondent admits that he did by his attorney above named Exhibit and file his Bill of Complaint in the mayors Court at the time and for the Relief in the appellants Petition of appeal for that purpose set forth and this Respondent admits that he did by his attorney as aforesaid file an affidavit in the said mayors Court to the — Justness

Justness of the Debt for which this Respondent did by his said attorney Exhibit and file his said Bill of Complaint in the said mayors Court against the Appellant as aforementioned and this Respondent admits that thereupon a warrant of arrest did issue against the Appellant and that he has since given Bail and this Respondent admits that his attorney in Court did upon the Registers Certificate pray a Decree against the Defendant and that the said mayors Court did on the fifteenth day of September now last past Accordingly order and Decree that the Appellant should pay unto this Respondent the full and Just Sum of two hundred and Seventy three Star Pagodas together with all such Interest as then was or should thereafter become due thereon, also all Costs of the suit, but this Respondent doth not admit that the Appellant was in any wise Aggrivid by the said Decree of the said mayors Court or that he had any Cause for Appealing therefrom to this Honble Court

To the Appeallants first Reasons for appeal this Respondent says that the same is altogether irrelevant and was not nor could have been before the said mayors Court at the time they Decreed as aforesaid, that it might have been matter for an Answer. but it is not such matter as ought to be introduced in an appeal to this Honble Court which can only determine upon matter of fact Established in the Court below, and this Respondent doth therefore Except to the said first Reasons of Appeal and as contrary to the practice of this Honble Court, and humbly Submits to this Honble Court that the same ought to be Expunged Record.

To the third Reason for Appeal this Respondent says that the same contains a more suggestion of what might have been done, not what had actually been done

To the Second Reason for appeal this Respondent says that the same is irrelevant, and as the same is of a nature similar to the first Reason for Appeal this Respondent doth Except thereto upon the same grounds as he has by his Answer to the said first Reason for Appeal thereto Excepted, and humbly Submits to this Honble Court that the same ought to be Expunged from the

done and therefore is irrelevant and irregular and this Respondent doth Except to the said third Reason for appeal upon the principle urged in this Respondents answer to the said first Reason for appeal and doth thereupon humbly submits to this Honble Court that the said third Reason for appeal ought to be Expunged from the record—

To the fourth Reason for appeal this Respondent says that it is impossible to Judge of a persons intentions and therefore a Court of Justice has regard to his acts only— The Practice of the mayors Court is to allow the Defendant to a Bill of Complaint five Weeks to put in his Answer thereto and the Appellant had not only the usual Rules, but an indulgence of one Week to put in his Answer to this Respondents said Bill of Complaint and having neglected so to do, the said mayors Court had a right to conclude that his this appellants object in praying a further time of one Week was delay only, and therefore, and in order that their Rules should not be trifled with the said mayors Court did Decree as hereinabove Set forth—

To the last Reason for Appeal this Respondent says that

any

any delay in a matter of right is injurious to the party claiming that right and that although the appellant had as suggested by him given Bail to this Respondents action yet by accidents to which human nature is liable this Respondent might have been deprived of his Judgment and the advantages to be derived therefrom at the same time that the said Bail would have been dissolved from their Engagment and this Respondent humbly submits to this Honble Court that according to the practice of the said mayors Court as hereinabove set forth the appellant had full and sufficient time to file his answer to this Respondents said Bill of Complaint had he been inclined so to have done, and that by the Rules of the said Practice of the said mayors Court he the appellant ought to have filed his said answer on the preceding Court day that is to say on the Eighth day of the said month of September on Which day this Respondent was Entitled to a Decree as will more fully appear by the Extract hereunto Annexed for the inspection of this

this Honble Court to which this Respondent prays leave to refer and prays that the same may be taken as part of this his Answer.

For all which Reasons and such others as may be offered at the Hearing of this Cause this Respondent most humbly prays that the Honble Court will be pleased to affirm the said Decree of the said Mayor's Court and dismiss the Appellants said Petition of Appeal with Costs—

/Signed/ James Stuart Hall
Solicitor for Respondent

Court

Court of Appeals — }
Madraspatnam }

Monday the 18th. day of July
Anno Domini 1796.—

Between Suncoo Chinnia Kist
=namah Chitty of Madras Inhabi
=tant appellant and Collah=
Ravanapah Chitty of Madras
Inhabitant by his attorney and
Assignee Authinka Narrain
Chitty of the same place=
Inhabitant Respondent—

This Cause coming on this day to be heard and debated before this Court by the attornies on both sides=upon hearing the Petition of Appeal and answer and the Bills of Complaint of the Honble the Mayor's Court together with the Decree of the said Court given in this Cause on Tuesday the 15. day of September 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

and doth Accordingly order and Decree that the said Decree of the Honble the Mayor's Court dated the 15. day of September Anno Domini 1795 be reversed and that the further time of one week from the 18. day of July 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.—

J. Cur

Signed/ J. Webbe
Clk

To

To the Right Honble Lord Hobart

Governor &c in Council
Fort St. George.

In the Honble the
Court of Appeals

Between Stephen Towns of
Madras Inhabitant Complainant
and Condadah Cranah Braming
also of the same place Inhabitant
Defendant.—

The humble Petition and Appeal of
the abovenamed Defendant

Sheweth

That the Complainant above named did on or about the fifth day of February and year of Christ one thousand Seven hundred and ninety five Exhibit and file his Bill of Complaint in the mayor's Court at madraspatnam against your Petitioner for the recovery of the Sum of two thousand nine hundred and thirty five Pagodas three fanams and forty Cash Current money of Madras pretended to be due and owing unto him in and upon a certain Bond or Obligation

Filed in my Office
the 15th February 1796
J. Webbe Clk

Obligation said to be Executed by your Petitioner and your Petitioner Sheweth unto this Honble Court that the Complainants having also at or about the time he did so Exhibit and file his Bill of Complaint Sworn to the Justness of his said debt and that your ~~~ Petitioner would abscond on hearing a Bill of ~~~ Complaint was filed Against him did Obtain a warrant of arrest and procure your Petitioner to be arrested and thrown in gail.

And your Petitioner Sheweth unto this Honble Court that being served with proces to appear and Answer the Complainant said Bill of Complaint your Petitioner did appear by his attorney in Court and did Exhibit and file his Plea and Answer and for Plea did say that the Bond on which the Complainants said action was founded was obtained from your Petitioner by force duress and imprisonment and your Petitioner did plead such force duress and imprisonment in Bar to the Complainants said Bill of Complaint and to the Belief thereof and thereby sought after by him ~~~ and for answer to the Residue of the Complainants said

Bill

Bill your Petitioner did deny to stand indebted unto the Complainant in any Sum or Sums of money ~~~ Whatever.

and your Petitioner Sheweth unto this Honble Court that to your Petitioners said Plea and Answer the Complainants having Exhibited and filed his Replication and your Petitioner his Rejoinder Issue did join on the said pleadings and Rules did pass for the Examination of witnesses.

And your Petitioner Sheweth unto this Honble Court that Rules for Examination of witnesses having on or about the fifteenth day of Decmber last past Expired ~~~ and your Petitioner by reason of his imprisonment and Confinement in Gail at the Suit of the Complainant as aforesaid and being deprived of the means of attending on his attorney or furnishing him with the nuspary ~~~ materials for drawing his Interrogatories did by his ~~~ attorney in Court pray and obtain a further time until the Second day of frebruary and present year of our Lord one thousand Seven hundred and Ninety Six for the Examination of his said Witnesses

And

And your Petitioner Sheweth unto this Honble Court that during the period so allowed unto your Petitioner by the said mayors Court for the examination of his Witnesses as aforesaid your Petitioner did furnish his said Attorney with the necessary materials for the drawing of his said Interrogatories but which said Interrogatories by Reason of the Indisposition of your Petitioners said Attorney and his inability to attend to Business was not filed in the Examiners office till some short time before the said Rules so granted by the said mayors Court was about to Expire and your Petitioner Sheweth that on the said Second day of febreuary the Complainant did by his Attorney in Court pray that Publication might pass to which your Petitioners Attorney in Court did object and pray a further time of one week for the Examination of his said witnesses, but the said mayors Court was pleased to over Rule the same and to order that Publication should pass as by the said Order of the said mayors Court hereunto Annexed for the inspection of this Honble Court to which your Petitioner begs leave to refer and prays the same may be taken as part of this his Petition and Appeal may Appear

By which said order of the said mayors Court your Petitioner doth conceive himself aggrieved and doth therefore appeal therefrom to this Honble Court for the following amongst other Reasons—

First.... Because it is the province of every Court to allow a party Complainant or Defendant the means of bringing forward Evidence to support facts advanced and that in such Cases the time to be allowed for the purpose must be governed by Circumstances and your Petitioner has Shewn to this Honble Court that from the time the present suit was Commenced he has been confined and now is in Jail at the instance of the Complainant, that therefore he has not had the opportunities of attending to his Defence that other persons at liberty posses and thereupon your Petitioner humbly Submits to this Honble Court that he had a Claim to an Extraordinary Extension of time for the Examination of Witnesses and the more particularly as it was not to be supposed that your Petitioner

meant

meant to delay the hearing of the cause by praying another week to Examine his witnesses but on the contrary that he would bring on the hearing as soon as possible insomuch as that at the only hope of being liberated from his present Confinement rested on the final decision of the said mayors Court —

Secondly ... Because it appears that your Petitioners Interrogatories are filed in the Examiners office and that from the time of passing the last order on the fifteenth day of December until the second day of February when it Expired your Petitioners attorney in Court had been so much indisposed as to be incapable of attending to Business and incapable of drawing your Petitioners Interrogatories and therefore it was owing to unavordable Circumstance which your Petitioner could not control that led to the fact on which the said mayors Court has passed Publication and your Petitioner further humbly begs leave to submit to this Honble Court that from the time the last order passed until the time on which it Expired it was Vacation and no Business done in Court —

Court —

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 order of the said mayors Court of the Second day of February last past and allow your Petitioner a further time of a fortnight for the Examination of his said Witnesses and your Petitioner —

Will Ever Pray

/Signed/ James Stuart Hall

Solicitor for appellant

Extract

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 2d. day of February Anno Domini 1796.—

Present

James Daly Esquire Mayor.
James Call Andrew Ross and
Richard Chase, Aldermen

Stephen Towns
vers
Condada Nanah Brammey

Mr. Emanuel Samuel Attorney for the Complainant prays that Publication may pass and informs the Court that the last Rule for Examination of Witnesses passed on the 15th. Decmber last since which time no Witnesses have been Examined on the part of the Defendant and the Rule Expires this day to which Mr. James Stuart Hall attorney for the Defendant Objects having been almost the whole time since the order was passed so much indisposed as to be uneable to attend to business and uneable of drawing Interrogatories until lately, they are now filed in the Examiners Office and he therefore prays one Week to Examine Witness Ordered that Publication do pass in this

cause

Publication is passed in this cause.

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

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

To

To the Right Honorable Lord Hobart

Governor in Council &c.a

Fort St. George

Between Stephen Towns of
madras Inhabitant Complainant
And Condada Nanah Brahmin
also of the same place Inhabitant
Defendant.

The answer of the said Complainant to the
Petition and Appeal &c.a
of the abovenamed Defendant.

This Respondent doth admit that
he did on or about the fifth day of February in the year of our Lord
Filed in my office
the 1st March 1796 one thousand seven hundred and ninety five Exhibit and
J. Webbe Clk. file his Bill of Complaint in the mayor's Court at "
madraspatnam against the abovenamed Defendant and
for the sum of Two thousand nine hundred and thirty five
Pagodas three fanams and forty Cash due and owing unto
this Respondent on a certain Bond or obligation Executed by
the said Defendant unto this Respondent and that also
at the time of Exhibiting his said Bill he did swear to
the

the Justness of the said Debt owing to him by the said
Defendant and that thereupon a warrant of arrest did
issue and that the said Defendant was attached and
doth also admit that the said defendant did plea a plea and Answer to this Respon
committed to Goal. and this Respondent said Bill "
and did Setforth in the same the matters and things
alleged in the Defendants said Petition and this "
Respondent doth also admits that to the said Plea and
Answer he did file and Exhibit a Replication, and that
the said Defendant did thereafter also file his Rejoinder
and that thereupon Issue did Joyn.

And this Respondent doth further admit
that the Rules for the Examination of witnesses in the
said Cause between this Respondents and the said "
Defendant did Expire on or about the fifteenth day of
December in the year of our Lord one thousand seven
hundred and ninety five and at the Special Prayer of
the attorney for the said Defendant that the time for
the Examination of witnesses in the said cause was "
Enlarged unto the second Day of February now last past
and this Respondent further Answering Saith to the "
allegation Contained in the said Defendants said "
Petition

Petition and appeal, "that during the Period so allowed
"unto him the said Defendant for the Examination of
"Witnesses meaning and intending thereby from the
"said fifteenth Day of December unto the said Second
"Day of February, he the said Defendant did furnish
"his said Attorney with the necessary materials for —"
"Drawing the said Interrogatories but which said —"
" Interrogatories by reason of the Indisposition of the said
Defendants Attorney were not filed in the Examiners office
till some short time before the said Rule so granted by the
said mayors Court was about to Expire" That the said —
allegation and the matters and things set forth thereby did
in no sort appear in Evidence before the said mayors Court
that is that it did not appear that the said attorney of the
said Defendant had been indisposed and that he had
been prevented in filing the said Interrogatories in consequence
thereof, or that he had afterwards filed the said Interrogatories
in the said Examiners Office.

And this Respondent doth admit that on the
said Second day of February he did Pray by his attorney
that Publication might then Pass and that the said
Defendants

[2]

Defendants Attorney did pray a further time of one week
for the Examination of witnesses and that the said mayors
Court did over rule the Prayer on the part of the attorney
of the said Defendant and did order Publication to pass. —

And this Respondent in Answer to the first
Reason assigned by the said Defendant in his said
Petition doth admit that it is the Province of every
Court to allow a Party Complainant or Defendant the
means of bringing forward Evidence to support Facts
advanced; and that in such Cases the time to be allowed
must be governed by Circumstances. But then this —
Respondent Saith in Order that Suits may proceed to a
final Issue, it is necessary that some Definite Rule be
laid down as to the time requisite for bringing Suits in
general to a Determination, and in the Case of
Examination of Witnesses the said mayors Court have
Appointed five Weeks in Ordinary Matters as a time —
Sufficient for the said purpose and to induce the said
Court to deviate from the Rule prescribed it follows that
it is incumbent on those seeking an Extension of time to
Shew some good reason why the said mayors Court should

relax

relax in the prescribed Rule. and it does not appear that the said Defendant did shew any Satisfactory Reason. and this Respondent saith as to the matter resulting from the Confinement of the said Defendants as set forth it is common to every Suitor so circumstanced and to take the said Defendant out of the common Situation. he should have adduced some Special Cause which he has not. For if a Defendant were left to take his own leisure to Examine Witnesses the Suit would never terminate but at his pleasure and he might delay a Complainant in the recovery of his right ad infinitum.

And this Respondent saith that the Argument adduced by the Defendant in his said first reason that the hope of being liberated must be Supposed to Expedite rather than retard the Prosecution of the said Suit is fallacious or at least could only hold if the Defendant had a just Defence which is not the case of the Defendant. For it is clear from his own Shewing that when the Peremptory Rule for the Examination of Witnesses issued and at the Expiration of the same

When

When Publication should have passed, that he had a further time of more than Six weeks granted to him which passed away altogether unimproved. and further it appears from the Extract annexed that the Defendant was allowed a Space from the fourth Day of August one thousand Seven hundred and ninety five to the said second Day of February One thousand Seven hundred and ninety Six for the Examination of Witnesses during which time being a Space of nearly Six months he did not produce a Single Witness to be Examined, and from this it is rationally to be presumed that he has no Witness to Examine.

And this Respondent in answer to the Second Reason Assigned by the said Defendant saith that it no where appears but on the bare assertion of the attorney of the Defendant that the Interrogatories of the said Defendant were filed or that the said attorney was so indisposed as to be incapable of attending to Business. But had it really been as the said Defendant states the said Defendant was not intitled to a further Term for the Examination of Witnesses he never having Shewn to the Court any thing which should have induced the said Court to grant the same. and

as

as to the observation made by the said Defendant that it was
vacation time from the time of the last Rules passing to its
Expiration the same weighs more in favor of your Petitioner than
Against him as the said attorney of the said Defendant
had more Opportunity and leisure to Draw and file the said
Interrogatories and to Examine the necessary Witnesses
thereto.

For all which matters and things
and such others as may be offered
at the hearing this Respondent
Prays that the said Order and
Decree of the said mayor's Court
may be affirmed with Costs to
be paid by the said Defendant

/Signed/ Emanuel Samuel
Solicitor for Respondent

Extract

Extract from the Minutes of a Court Held at the Town Hall
on Tuesday the 4th. Day of August Anno Domini 1795.—

Present

Benjamin Roebuck Esq. Mayor
Andrew Ross and Alexander Cockburn
Aldermen

Stephen Towns
vers
Condada Nanah Braminy

Upon Sound
Day is given the Parties till the 11th. Instant to Examine
Witnesses.—

A True Extract
/Signed/ George Taylor
Regr

a true Copy
/Signed/ Emanuel Samuel
Solicitor for Respondent

Court

Court of Appeals
at
Madraspatnam

Monday the 18. day of July
Anno Domini 1796.—

Between Condadda Nanah Brahmin
of Madras Inhabitant appellant and
Stephen Lewins 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 together with
the order of the Honble the Mayors Court given in this cause
on Tuesday the 2d. day of February Anno Domini 1796.
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.—

By the Court
Signed J. Webbe Clk to

To the Right Honorable Robert Lord Hobart
Governor in Council
Fort St. George

In the Court of Appeals
at Madraspatnam

Between Arroolanandu-
Moodelliar of Madras Inhabitant
Complainant.
and
Durvapan of the same place
Inhabitant Defendant.—

Filed in my office
the 15th February
1796.
J. Webbe Clk

The humble Petition and Appeal of the
Shewen abovenamed Defendant.—

That on the third day of November in the year of our
Lord one thousand Seven hundred and ninety five last past
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 Pagodas and Twelve fanams charged to be
due and owing unto him by your Petitioner upon an Account
Current arising upon a Bond Copies whereof were annexed
to

to the Complainants said Bill of Complaint and your Petitioner further Sheweth that a Summons and warrant of arrest 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 did give good and Sufficient Bail and the usual rules having Passed for your Petitioner to answer the same your Petitioner Sheweth that before such answer was filed the said mayors Court did on the Second day of February in the Present year of our Lord one thousand Seven hundred and ninety Six 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 Pagodas and Twelve fanams together with the Interest due on which might grow due thereon as also all Costs of Suit which said Decree with an 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 Extract or order of the said Mayors Court your Petitioner doth 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 usual Practice of the mayors Court to grant on indulgence of one or two weeks further time for a Defendant to put in his answer to the Complainants Bill of Complaint on Reasonable Cause being Shewn to the Court why the Defendants answer could not be filed in due time such being the Case your Petitioner humbly Submits that the Objection offered to the Court to the Passing the decree against your Petitioner was good and Sufficient which objection will appear by the Extract hereunto annexed the Indisposition of your Petitioners attorney Preventing him that day from attending the Court to deliver in your Petitioners answer which accident your Petitioner could not forsee your Petitioner therefore humbly Submits to this Honble Court that as no unnecessary delay on the part of your Petitioner was intended and your Petitioner having given bail to the amount of double the Sum Sued for by the Complainant no prejudice could have happened to the Complainant had the Mayors Court granted a further time for your Petitioner to file his answer

Lastly that the Bond in which the Complainant Commenced his

his Suit against your Petitioner ought to have been proved previous to the said Mayors Court Passing the Decree against your Petitioner for the said Mayors Court without the said Instrument being proved had nothing before them wherein they could decree the Principle Sum to the said Complainant with the interest computed thereon Except the assertion of the Complainant which your Petitioner doth humbly Contend is Contrary to Law as well as Contrary to the usual Practice of the Mayors Court—

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 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. Pasley
Solicitor for Appellant

Extract

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 2d. Day of February Anno Domini 1796.

Present

James Daly Esquire Mayor
James Call Andrew Ross and Richard Chase
Aldermen

Anoolanda Moodelly
vers
Survapen

The Attorney for the Complainant produces to the Court a Certificate from the Register Setting forth that the usual rules have issued for the Defendant to answer the Complainants Bill which he has neglected doing He therefore prays that a Decree may now pass to which Mr. Emanuel Samuel for Mr. George Pasley Attorney for the Defendant Objects and prays a further time of one Week to answer, the Attorney being indisposed and the rule only Expiring this Day. to which the Attorney for the Complainant prays leave to observe that the Bill of Complaint was filed on the 3d. of November Since Which time 3 Months Except one Day have elapsed.

Whereas

whereas the stated Rules for an Answer are confined to 5 Weeks and it doesnot Appear further thereby the Assertion of the Attorney acting for Mr. Parry that he is indisposed ordered that a Decree do pass. Bill Read.

It Appearing by the Records of this Court that the usual Rules have issued for the Defendant to answer the Complainants Bill which he has neglected doing This Court doth therefore think fit to Order and Decree and doth accordingly Order and Decree that the Defendant do pay unto the Complainant the full and just Sum of Two Hundred and Eighty one Pagodas and twelve fanams / Pagodas 281.. 12.. / together with all such Interest as now is or shall hereafter become due thereon untill full payment is made also all Costs of this Suit.—

A True Extract
/ Signed / George Taylor
Regt

To

To the Right Honble Robert Lord Hobart

Governor in Council
Fort St. George

In the Court of Appeals
at Madraspatnam

Between Arroolanda Moodelliar
of Madras Inhabitant Complainant
and
Survapan of the same place
Inhabitant Defendant.

The Answer of the abovenamed Complainant

to the Petition and Appeal of the abovenamed Defendant

This Respondent admits that he did on the third day of November in the year of Christ one thousand Seven hundred and ninety five last past, filed and exhibit a Bill of Complaint in the Honble the mayors Court at madraspatnam Against the abovenamed Defendant, for the recovery of the Sum of Two hundred and Eighty one Pagodas and Twelve fanams, being so much principal and Interest due to this Respondent upon a certain Bond or written obligation executed by the said Appellant to this Respondent and Whereby the

Filed in my Office
the 29th February
1796
J Webbe
Clk

the said Appellant in default of payment did
authorise this Respondent to sue him in the Hon^ble
the Mayor's Court, as by the said Bond, Copy whereof
is annexed to this Respondents Bill of Complaint,
relation being thereunto had, will more fully Appear.
And this Respondent admits that a Summons did
issue from the said Mayor's Court, directing the said
Defendant to Appear to and Answer this Respondents
Bill of Complaint, who did Accordingly Appear
by his Attorney at Law, and the usual rules having
passed for the Defendant to Answer the said Bill,
which he neglected doing, the said Mayor's Court
were pleased to order and Decree and did Accordingly
Order and Decree that the said Defendant should
pay to this Respondent the Sum Sued for, with
Interest and Costs of Suit; as by the said Decree,
relation being thereunto had will more fully and at
large Appear.

And this Respondent denies that the
Appellant is aggrieved by the Decree of the said
Mayors Court, or that he has any just Cause or reason

to

reason to Appeal therefrom, on the Contrary this
Respondent Saith that it has been done thro' motives of
Litigiousness, and with a view to protract the time of payment
of the Sum so Decreed by the said Mayor's Court.

And for Answer to the first reason given by the
Appellant as Cause of Appealing from the Decree of the
said mayor's Court this Respondent admits, that
in Cases of a peculiar Nature, the said mayor's Court
are at times induced to grant a further time for
Answering a Bill of Complaint beyond the time
limitted by the rules of said Court, which is considered
as an indulgence; But in cases they do so grant an
indulgence beyond the usual rules, It is in consequence
of some good Cause, or reason Shewn by a Defendant
on Affidavit — In the present Case not only the
Stated time prescribed by the said Court for answering
the said Bill of Complaint had elapsed, but a further
time of Six weeks, making a space since the filing of
this Respondents Bill, of three months all but
one day, In the course of which time this Respondent
submits to this Hon^ble Court that had the said

Defendant

Defendant any circumstance to offer in his defence to this Respondents said Bill which could have operated in his favor that the Cause of action being upon a Bond, he would not have delayed it so long Wherefore upon this Respondents producing to the said Court a Certificate of the Register setting forth that the usual rules had issued for the said Appellant to answer this Respondents said Bill And this Respondents Attorney Observing to the said Mayors Court, in reply to what the Attorney Appearing for the Defendant had Asserted, that the Bill of Complaint of this Respondent was filed on the third of November last past. Since which time three months all but one day had elapsed; whereas the Stated rules for Answering to a Bill of Complaint are confined to five Weeks and it not Appearing further than by the Assertion of the Attorney Acting for the said Defendants Attorney Mr. Pasley, that he was indisposed the said Mayors Court did thereupon order a Decree to pass as a matter of Course, and as this Respondent humbly maintains as a matter of right. And this Respondent for further Answer to the

the first reason adduced by the said Appellant as Cause of Appeal saith, that if the Appellant has sustained any Injury by the Neglect of his Attorney that the Law hath provided a remedy and to him he ought to have recourse.

To the Second and last reason adduced by the said Appellant as Cause of Appeal This Respondent saith that a Bond or writing obligatory upon which an Action is brought, is never produced or proved in Support of such Action in a Case where a Decree is obtained for want of Answer, Or where the matters charged in the Bill are taken pro Confesso; Nor in any other Stage of a Suit untill the Cause is at Issue, when it is Customary to deliver ~~to the Court~~ into Court the Instrument upon which the Action is maintained, as an Exhibit, to the end that the same may be duly proved, if it has not been admitted by the Opposite party; or in a Case before Issue is joined where the Opposite party prays Oyer of such Bond or Instrument, when it is usual to deliver the same into Court: But in the present ~~present~~ Suit neither Oyer of the Bond in

question

question was prayed, nor was the said Cause at Issue
a Decree having passed for this Respondent in
consequence of the Appellant declining to Answer
the said Bill in the usual time, or the time that
followed subsequent thereto before said Decree was
made, or to Assign any Cause for same, whereby he
admitted, According to the practice of the said Court,
and the Court of Chancery, that the Matter charged
in the said Bill was true in fact and Substance.—

For all which Reasons and such
Others as may be offered at the hearing, this
Respondent humbly prays that this Honble Court
will be pleased to affirm the Decree of the said
Honble Mayors Court, and dismiss the Appellants
said Petition with Exemplary Costs.—

/Signed/ George Chalmer
Solicitor for Respondent

Court

Court of Appeals
at
Madraspatnam

Monday the 18. day of July
Anno Domini 1796.

Between Survapan of Madras
Inhabitant Appellant and
Arroolanda Moodelly of the same
place Inhabitant Respondent.—

This Cause coming on this day to be heard
and debated before this Court by the Attornies on both
sides upon hearing the Petition of Appeal and Answer
and the several Exhibits of the Honble the Mayors Court
together with the Decree of the said Court given in this
Cause on Tuesday the 2. day of February Anno Domini
1796. upon due Consideration had of the matters therein
severally contained and if 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

said Decree of the Honble the Mayors Court do stand affirmed and that the Appellants Petition be hence dismissed With Costs —

J^t Cur

/Signed/ J. Webbe
Clk

To the Right Honorable Lord Hobart

President in Council &c^a &c^a

Fort S^t George

In the Honorable the
Court of appeals —

Between Porter Massey Cassin of Fort Saint George Merchant Complainant and John Hamilton of the same place Mariner Defendant

The Humble Petition and Appeal of the above named Defendant

Humbly Sheweth

That Sometime in or about the Twelfth day of March which was in the Year of Christ One thousand Seven hundred and ninety five the abovenamed Complainant did file and Exhibit his Bill of Complaint in the Hon^ble the Mayors Court at Madraspatnam against your Petitioner and your Petitioner further Sheweth that in the said Bill of Complaint he the said Complainant did state and allege that your Petitioner stood justly and truly Indebted

Filed in my office the 22^d February 1795
J. Webbe
Clk

To

Indebted unto him the Said Complainant in the Full and Just Sum of One Thousand One hundred and Sixty two Pagodas Forty four fanams and Twenity Seven Cash Current Money of Madras and making in Sterling money of Great Britain at the rate of Eight Shillings for every Pagoda the Sum of Four hundred and Sixty five Pounds three Shillings and Ten Pence or thereabouts as he said would morefully and at large appear by the Copy of an account Current annexed to the said Bill for the Inspection of the said Honourable the Mayors Court, to which he the said Complainant did Crave leave to refer and that the same might be taken as part of his said Bill of Complaint the Origi= nal whereof being as he alleged in his Possessi and ready to be produced and proved when required and your Petitioner Sheweth unto this Honble Court that the said Complainant did further Setforth and say in and by his said Bill of Complaint that hee the said Complainant had frequently and in an ami= cable manner requested Payment from your Petitioner of the said sum of One thousand One hundred and Sixty two Pagodas Forty four fanams and Twenty Seven Cash But that your Petitioner had Obstinately and wilfully refused to pay the same or to give him the said Complainant any manner of Satisfaction touching the Premises whereupon the said said Complainant did pray a General relief such as to the said Mayors Court should appear agreeable to Equity and good Conscience and that your Petitioner might be Decreed to pay unto him the said Complainant the aforesaid Sum of One thousand One hundred and sixty Two Pagodas forty four fanams and Twenty Seven Cash with all such Interest that then was or should thereafter become due thereon also all Costs of the said suit and your Petitioner Sheweth unto this Honorable Court that your Petitioner having been duly Served with Process to Appear to and answer the said Complainants said Bill of Complaint did on the Twenty first day of April in the aforesaid year of Christ One thousand Seven hundred and ninety five Exhibit and file his Answer thereto wherein and whereby your Petitioner did

did deny to stand Indebted unto the said Complainant
in the Sum of One thousand One hundred and
Sixty two Pagodas forty four fanams and Twenty
Seven Cash as was alleged and Charged in the
Complainants said Bill of Complaint and your
Petitioner did further Setforth and Say that the
said sum of One thousand One hundred and
Sixty Two Pagodas forty four fanams and Twenty
seven Cash which was charged to be due and
owing to the said Complainant in his said
Bill was alleged to be so due and owing as
the balance of an account Current Drawn
by the said Complainant on the Seventh
Day of march then and now last past and
which said balance your Petitioner did say
was false and untrue and your Petitioner
did further say in his said answer that the
Balance of the account pretended to have been
struck on the thirty first Day of December
which was in the year of our Lord One thousand
seven hundred and ninety four and to which
the beforementioned balance of the said Seventh
Day of march had a reference was an "exparte"

Statement

Satement of accounts made by the said Complai=
=nant and in which the Complainants Interest
had been Considered without due regard to the
rights and Credits of your Petitioner and not a
fair Clear and honest account as it purported
to be between party and party and Your
Petitioner did further Setforth that he had had
various Commercial Dealings and money
Transactions with the said Complainant
from and before the month of august which
was in the year of our Lord One thousand
seven hundred and ninety three to the
Date on which he did file his said answer
and that no Statement of accounts between
your Petitioner and the said Complainant
had been enterchanged with in the said
period nor had your Petitioner at any
time within the said period Subscribed
his name to any account Submitted by the
said Complainant or had in any wise allawed

thereof

thereof and your Petitioner further Sheweth unto this Honble Court that your Petitioner did in his said answer further setforth that the Complainant had not at any time furnished your Petitioner with any vouchers on which the said Balance of said account Current must Depend so as to enable your Petitioner to come to a fair and Exact Reckoning with the said Complainant And your Petitioner did further setforth and say that the several Commercial and money Transactions which had passed between your Petitioner and the said Complainant from the said month of August in the said year of Christ One thousand Seven hundred and ninety three to the Date of his said answer were of Great Amount and Concern and that they did Embrace a Property of Several thousand Pagodas and your Petitioner did further say that as the account of the said Transactions had never been Concluded between your Petitioner and the said Complainant and as it did still remain to all Intents and

and purposes open your Petitioner was entitled to a full Complete and particular account of the Several Commercial and money Transactions which had Subsisted and which did subsist between the said Complainant and your Petitr and not the narrowed and partial account Current annexed to the Complainants said Bill made up suited and adopted only to the private Interest and advantage of the said Complainant and which said mode of account not only did preclude your Petitioner from entering on a full and ample Defence to the said Bill but which did give the Complainant a Benefit and advantage of which the Complainant had availed himself under the Circumstances of your Petitioners Case Contrary to Law in as much as the said Complainant had afsumed therefrom an usurious and extortionate Interest on the said balance at the various pretended times stuck under the Several Dates setforth in the said account

Current

current annexed to the Complainants Bill For you
Petitioner said that the said Complainant had comp
-ted an Interest of fifty four Pagodas fifteen fanam
and Twenty nine Cash as Charged to be due and
Awing from your Petitioner on the Twenty Eight
Day of February then and now last past as an
Interest account for fifty nine Days at the rate
of Twelve per Cent per annum on the sum of
Two thousand Eight hundred and Two
Pagodas nineteen fanams and fifty Eight Cash
a pretended balance charged to be due unto the
said Complainant from your Petitioner on the
said thirty first Day of December in the said
year of our Lord one thousand seven hundred
and ninety four and which said sum of fifty
four Pagodas fifteen fanams and Twenty
nine Cash together with a sum of seven
Pagodas thirty three fanams and sixty Cash
charged as a Discount on one thousand five
hundred and fifty one Pagodas Twenty Two
fanams and fifty two Cash for one half of a

month

month the said Complainant on the said Twenty
Eighth Day of February had added to the balance
Drawn by the said Complainant on the said Day
Scarcely two months from and after the time at
which the preceding pretended balance was
struck and the said Complainant on the
Seventh day of March next Ensuing the
said Twenty Eighth day of February Seven
Days only from and after the stricking of
the last mentioned balance had Drawn or
struck a third balance in which he had
included an Interest for the said seven
Days subsequent to the said Twenty Eighth
Day of February And your Petitioner did
further set forth and say that the said mode
of Computation by accumulation of Interest
on Interest on balances where no stated account
was ever made between parties, as in the Case of
your Petitioner and the said Complainant
was not only oppressive as to your Petitioner

but

but Contrary to Law and Conscience and your Petitioner did further say in his said Answer that if the accounts which had so long subsisted open had been fairly Concluded and stated between your Petitioner and the said Complainant and proper Credits and Correspondent Interest had been allowed to your Petitioner which he was fully and legally entitled to that so far from your Petitioner being Indebted unto the said Complainant as the said Complai=nant had unjustly charged in his said Bill in the sum of One thousand one hundred and Sixty Two Pagodas forty four fanams and Twenty Seven Cash that he verily believed the said Complainant would appear to be Indebted unto your Petitioner on the said accounts in a Considerable Sum of money and your Petitioner further Sheweth unto this Honourable Court that to the said answer of your Petitioner the said Complainant did on or about the nineteenth Day of may now last past file his Replication wherein and whereby he did insist that your Petitioner did stand not only justly and truely Indebted unto him the said Complainant in the sum Charged by the said Bill but also in a further sum of thirty Eight Pagodas and upwards as he did say might more fully appear to the said Mayors Court by a further account annexed to the said Replication and to which the said Complainant did Pray reference being of the like Date as he did further say with the account annexed to the said Bill and by an oversight therein Omitted to the said Complainants Credit the benefit whereof he did therein Pray and your Petitioner further Sheweth that the said Complainant did further state in his said Replication that for as much as your Petitioner did by his answer assert that the balance of an account on the thirty first Day of December One thousand seven hundred and ninety four was but a pretended and Exparte account and balance the said Complai=nant did say and pledged himself that he would thereafter prove that it was a real balance struck in your Petitioners presence and

and that the account so struck was Delivered to your Petitioner and that the same remained in your Petitioners possession for several Days and was then by your Petitioner returned without any Objection your Petitioner having taken as the said Complainant further alledged a Copy thereof and the said Complainant in his said Replication did further say that if your Petitioner had any objections to the said account your Petitioner might have then stated the same in his answer without equivocation or denial of your Petitioners knowledge of the true Statement of all your Petitioners Commercial and money Transactions with the said Complainant for tho the said Complainant did not pretend to shew that accounts were ever interchanged yet that the irregularly of your Petitioner in that respect. or your Petitioners Caution in not Subscribing his name to the Several accounts which were Delivered to your Petitioner could not affect the said Complainant nor his Claim he the said Complainant having done, as he alleged his Duty in furnishing the whole accounts of which your Petitioner, as he said, had Copies notwithstanding your Petitioner had assumed ignorance, as he said, of such accounts

Commencing

commencing the Twenty Sixth Day of august in the year one thousand Seven hundred and ninety three and your Petitioner sheweth unto this Honourable Court that the said Complainant in his said Replication did further say he did not Dispute that the balance of the account must Depend on vouchers but he Contended that the proof also of accounts Depended on vouchers and which Circumstance did afford a reason for not Delivering the said vouchers to your Petitioner and if a further reason were necsary it might be Drawn as the said Complainant did urge from the uniform Practice of merchants in this Respect it being a thing unknown among them, to Deliver up Vouchers untill the account should be settled or admitted and the said Complainant in his said Replication did further state that the vouchers of his account with your Petitioner were at all times ready to be produced to your Petitioner and that your Petitioner had recourse to several of them Viz.t to all that he had Demanded and which

related

related chiefly to the Charges of landing money and watching his your Petitioners Timber and that the account had never been Concluded, but remained open, Seemed to your Petitioner as he stated, to suppose a necessity of mutual Consent a supposition which would bear extremely hard upon the Complainant in as much as a Debtor might then perserve in an invincible aversion to a Settlement and evasion of an Interest account But the said Complainant in his said Replication did admit that your Petitioner was no Doubt entitled to a Compleate and Comprehensive account of his Concerns, and of that nature was the account in Question, and the said Complainant did further state that no further account had ever been Demanded by your Petitioner and that your Petitioner had repeatedly offered to Execute his Bond for the Balance put in Question by the answer to the said Complainant a fact which the said Complainant said would in due time be established and the said Complainant did further say that your Petitioner in his answer had Observed that the account was sisted and adapted to the private Interest and advantage of the said Complainant precluding your Petitioner from a full Defence, and affording to the said Complainant a pretence for assuming an usurious

Interest

Interest and to which the said Complainant did reply that as to the first part of which observation the Complainant said that he need not Comment as every Document that related to the Question was in the Possession of the said Mayors Court at your Petitioners Prayer leaving only the Charge of usurious Interest to be Considered in which the Complainant said it was to be noted that in the account Ending the thirty first Day of December, simple Interest was charged by the said Complainant on all his Payments, and allowed on all sums received reckoning from their respective Dates untill the last mentioned Day and that the account having remained open for a longer period than was usual amongst Merchants Viz. Sixteen months was at length, if that were necessary, closed in the presence of and with the entire acquiescence of your Petitioner, and it being as the Complainant further alleged at that time your Petitioners professed intention to propose some mode of settling the balance agreeable to which the said Complainant did further state your Petitioner did indeed make some proposals which partly from their being insatisfactory and again from their being retracted, Evaded, and some

times

times denied by your Petitioner the final Settlement was postponed from time to time until the Twenty Eighth day of February on which day a new statement as the Complai=nant further alleged was made out to include a further Sum to your Petitioners Credit by the State of some Timbers and the said Complainant did state, that in the said Statement Interest was of Course charged upon the former balance and that it would require no proof to the said mayors Court to Establish that it was the invariable Custom of Merchants to charge and allow an Interest account on yearly Balances, and your Petitioner further Sheweth that the said Complainant did further allege in his said Replication, that the discount of Seven Pagodas thirty three fanams and Sixty Cash, charged in the said account not appearing to be understood by your Petitioner he the said Complai=nant did take on himself to shew that your Petitioners Timbers were sold by Parcells on various Days, to wit a very inconsiderable part of them on the thirty first Day of December and Eighth Day of January then last past, but the greater bulk thereof between the Tenth and Twenty fifth Day of February then last past, and that the whole had produced up to the last mentioned Day, the nett sum of Pagodas One thousand

thousand five hundred and fifty one, Twenty Two fanams, and fifty two Cash, and that Messieurs Sharp and Reefke, the Auctioners had been Employed in such sales were by Custom entitled to one month for Payment of the Proceeds from the respective Days of Sale so that when the sum of One thousand five hundred and fifty one Pagodas Twenty two fanams and Fifty two Cash was carried to your Petitioners Credit on the Twenty Eighth Day of February a very trifling part thereof as the Complainant alleged, had fallen due, and the rest was to follow on the Different Days between the Tenth and Twenty fifth Day of march following, and that the average or medium which had arisen from the Consideration of those two Extremes was seventeen Days and a half and that in lieu thereof the discount charged by the said Complainant was for fifteen Days only and the said Complainant did further state that the balance due from your Petitioner was on the said Twenty Eighth Day of February One thousand one hundred and Sixty six Pagodas forty one fanams and sixty one Cash but which was soon after reduced by a farther Sale of

Timber

Timber amounting to forty Eight Pagodas Thirty six fanams and Twenty two cash and that on bringing which sum to the Credit of the account the preceeding balance was brought forward and Seven Days Interest had been charged thereon and the said Complainant did admit that an Interest upon Interest that is upon fifty four Pagodas fifteen fanams and Twenty nine cash had been assumed for seven days being five fanams and odd cash which composed, as the Complai=nant said the Gross amount of the usurious, Extortinate, unlawful and unconscientious advantages assumed by the said Complainant, who at the same instant had relinquish to your Petitioner as he said the C commission to which the said Complainant was entitled on the proceeds of the Timber being two and one half per Cent on one thousand six hundred Pagodas thirteen fanams and seventy four cash or Pagodas forty and Twenty seven fanams and a much more Considerable Claim as he said he was entitled to but would not mention for Commission Justly due to the said Complainant from your Petitioner on the Settlement of certain accounts referred by your Petitioner to the said Complainant to adjust with the Honourable Basil Cochrane and all which matters the said Complainant did say he would in due time prove - And your Petitioner further Sheweth

unto

unto this Honourable Court that to the said Replication your Petitioner on or about the Twenty third Day of June now last past did Exhibit and file his Rejoinder wherein and whereby he did setforth and allege that the several matters and things in your Petitioners said answer Contained were not refuted or in any substantial manner were denied by the said Complainant in his said Replication and your Pet. did further Say as in and by his said answer he had already said that he did not stand Indebted unto the Complainant in the sum sued for - and that he never did receive from the Repliant any adjusted account and that as to any Balance pretended to have been struck in your Petitioners presence he your Petitioner did deny that the Complainant did ever produce to him any vouchers for the various sums by him said to have been Expended on account of your Petitioner and therefore if any balance ever had been struck in your Petitioners presence and which your Petitioner did not admit to be the fact the same must have been done upon an advantage taken of your Petitioners Ignorance of accounts and entirely without your Petitioners acquiescence and merely that the Complainant might have the opportunity of Saying as he then

did

did that a balance had been struck in his your Petitioners
presence and your Petitioner did further say that he was
advised that stricking a Balance would not render such
Balance of any authenticity or enable the party to derive
any benefit therefrom either by way of Interest or otherwise
unless the other Party did give or Signify his full and
entire approbation thereof and your Petitioner did further
say that it was not true that the Complainant did
Deliver to him any regular account nor did your Petitioner
ever keep in his posfession for the Space of Tenn Days any
account with a Balance Struck thereon as asserted by
the Complainant in and by his said Replication and
your Petitioner did say that even if he had had in his
Posfession such accounts and for such a time he humbly
submitted to the said mayors court that sending them
back again as the Complainant had pretended with
any objection did not nor could be construed to
amount to an approval thereof and that to shew such
approval your Petitioner ought to have Signed the
Same in writing and the Complainant himself
had shewn that your Petitioner never did declare
his opinion of the account said to have been framed
by the Complainant and that no accounts
were interchanged between them and he also had

Shew

Shew that to give force and validity to the said accounts
your Petitioner ought to have Signed the same and
your Petitioner Sheweth that he did admit that he had
Copies of some accounts between your Petitioner and
the said Complainant but that they were made up
in such a manner that your Petitioner did not
understand the same and further that although
the Complainant would insinuate to the Contrary
he your Petitioner did not receive the said Copies
of accounts from the said Complainant until
the Eve of his being Confined in Gaol on the
present Suit and your Petitioner did further say
that although it might not be Customary
amongst Merchants to Deliver up Vouchers
as insisted on by the said Complainant until
Depending accounts should be settled yet your
Petitioner was advised that it was Consistent
with the Custom of merchants that Vouchers
be produced to the party against whom they stand
and further that by the Shewing of the said

Complainant

Complainant regarding the Detention of the vouch
and his resoning thereon it was Conclusive that no
balance pretended to have been struck by him wa
was approved of or admitted by your Petitioner - an
your Petitioner did further Say that he did not
know whether vouchers on the accounts in Quest
were or were not ready but that he knew they
never were Delivered to his your Petitioners Inspe
Either by the Complainant or by any other Per
and that the said Vouchers which the Compla
=nant did pretend to have shewn to your Petitione
but which your Petitioner did deny ever to have
seen were according to his own statement of the
fact very trivial and insignificant in their
nature as they related as the Complainant had
said Chiefly to the Charges of lending money and
Watching his Timber and your Petitioner in his sa
Rejoinder did further Say that the assertion of the
Complainant that your Petitioner did repeatedly

offer

offer to Execute his Bond for the balance in Question
was if true and which your Petitioner did deny
foreign to the matter before the said Mayors Court
And your Petitioner for further Rejoinder did say
as in and by his answer he had already said that
the account Current as made up by the Complai
=nant was so made up to answer his own purposes
and that he did deny that all or any of the Docu=
=ments relative to the matter in Question were
or are before the said Mayors Court and your
Petitioner did Submit to the said Mayors Court
that it was not a fair or merchantile mode to
make the Charges the Complainant had done
in and by his said account Current for the
Complainant in the said account Current or
Amongst other Extraordinary Credits taken to him
therein had Charged on the Insurance of the
Vessell called the minish one half per Cent on two
thousand Star Pagodas being the amount for which

the

the said Vessell was said to have been insured and in the said account Current he had also charged two and a half per Cent on two hundred Star Pagodas Ten Fanams and Seventy Cash the amount said to have been Disbursed for Effecting the said Insurance on the said Vessell and your Petitioner did say that the said Charges did appear to be unreasonable and Extravagant And your Petitioner did further allege that the said Complainant in and upon all the Goods which he had alleged to have been sold on the behalf of your Petitioner had also taken a Credit to himself in the said account Current of five per Cent on the pretended amount sale of the same as also a further Credit of one per Cent upon all the Disbursements stated to have been made by him over and above the Charges of Banksall hire Servants Wages and other incidental Charges and your Petitioner did say that he was advised that the said Charges were not allowable by the usage of merchants obtaining at Madras nor were they reconciliable to the general

Custom

custom of merchants elsewhere observed but if your Petitioner was not rightly informed in this Respect he could not think that the Interest assumed by the said Complainant in his said account Current over and above the said Extraordinary Charges could be Defended by any usage or Custom whatever for the said Complainant had assumed an Interest of Twelve per Cent per Annum the highest rate of Interest licensed to be taken in India on every particular sum alleged to have been Expended for the use of your Petitioner and had also taken a like Interest from and after the thirty first Day of December then last past on all the said sums charged to be due unto the said Complainant for and on account of Commission for all Business pretended to have been done on your Petitioners account And which your Petitioner did not admit without ever stating either in his the said Complainants said Bill or in his said Replication what Business had been done for and on account of your Petitioner or Shewing or Declaring that he ever had been

Commissioned

commissioned by your Petitioner to do or perform any Business of any kind for and on your Petitioners behalf and your Petitioner not adverting to the General unspecified Charges under the head of Commission made against your Petitioner in the Documents which the said Complainant had Delivered into the said mayors Court and which he had Delivered as so many vouchers for the Transactions and Dealings which had subsisted between your Petitioner and the said Complainant but which your Petitioner did not admit as any certain or conclusive Vouchers in that behalf your Petitioner would Pray the attention of the said mayors Court to the Item in the said account Current under Date the thirty first day of December wherein a Credit was taken by the said Complainant for the sum of Two hundred and Twenty five Star Pagodas being Exclusive as it was there charged of Commission on Cash and purporting to have been charged as an Exclusive Commission by the said Complainant for the Sale of the Ship Berrington for the sum of

of Fifteen thousand Pagodas and which said Ship the Berrington from what was apparent in the said account Current it would seem had been disposed of or sold by the said Complainant for and on account of your Petitioner but your Petitioner did say as he would in due time prove that the said Ship Berrington was actually and Bonafide Sold by your Petitioner and that the said Complainant had no active or other Share in the Premises and your Petitioner in further support of the Suggestion Made by him in his answer of usurious and Extortionate Interest having been taken by the said Complainant in his said account Current a Charge treated so lightly and indifferently by the said Complainant though in part Confessed by him that his said suggestion was well founded and had further and Stronger Grounds than admitted by the said Complainant in his said Replication for your Petitioner did shew to the said mayors Court from the said account Current of the said Complainant it did

did appear that in the Balance Self Concluded by the said Complainant on the thirty first day of December then last past not only an Interest was taken for all and every sum pretended to have been advanced by the said Complainant on account of your Petitioner but also on the Credit side of the said account a variety of Principal Sums were inserted not accepted or allowed by your Petitioner alleged to have been due to the said Complainant for service and business done for your Petitioner and a number of other Items of Principal Sums were also inserted as so many Disbursements also alleged to have been made by Order of your Petitioner and on which said Sums so pretended to have arisen for Service or Business done to the benefit of your Petitioner and so pretended to have been Disbursed though the same were disallowed and unsubstentiated the said Complainant had also assumed an Interest in the said account Current and on a pretended Balance of an Interest account the said Complainant

had

had inserted a Seperate Item as such pretended balance said to be due to the said Complainant from your Petitioner of three hundred and Twenty three Pagodas Twenty two fanams and Seventy one Cash and which said Pretended balance was added to the apparent Principal sums pretended to be owing unto the said Complainant and was included in a General balance assumed thereupon without notice to your Petitioner and your Petitioner further alleged that notwithstanding he never did admit or sanction the said balance so Partially Concluded by the said Complainant as your Petitioner had shewn on the said thirty first Day of December was again Debited on the Twenty Eighth day of February then last past as did appear by the said account Current in a Second Interest on the Sum of Two thousand Eight hundred and Two Pagodas thirteen fanams and fifty eight

Cash

cash on the said last mentioned balance for the spa
of fifty nine Days being the Extent of the inter
mediate Space between the said Twenty Eighth da
of February and the said Thirty first Day of Decem
and your Petitioner further Sheweth unto this
Honble Court that as he did in his said answer
state a third balance was again struck and a
Seperate and third Interest taken thereon on
the Seventh Day of march when another State
=ment of accounts was again feigned by the said
Complainant and your Petitioner did further
say that the said Interest taken by the said
Complainant and in his said account Current
on the said sums pretended to be due to the said
Complainant for Service and busines done and
performed on the behalf of your Petitioner and
on the said Disbursements and in the Commission
ajsumed on the said Disbursements and on the
pretended balance of the said Interest account
were extortionate and usurious and the amount of

Interest

Interest so usuriously taken did compose a larger sum
then the trivial amount allowed by the said Complai
=nant as by reference to the said account Current
would appear and that in consideration of the
Extraordinary Charges of Commissions taken by the
said Complainant as also on account of Disburse
=ments pretended to have been made by him as
well as on account of all incidental Expenditures
also placed to the Debit of your Petitioner he your
Petitioner did submit to the said mayors Court
whether the said Complainant in the Premises
was entitled to ajsume any Interest at all or if
he should seem entitled to Interest whether he was
authorised to take an Interest of Twelve perbent
and lastly your Petitioner did say that in the
Sales of Timber on the account of your Petitioner
the said Compelainant did not Consult the Just
advantage and benefit of your Petitioner as he ought
to have done for that the said Complainant did

Sell

Sell a great part of the said Timber without affording fu
and Suffecient notice of the Sale thereof either by Public
advertisement or else how and your Petitioner had hear
and did believe and would in due time Shew that great
part of the said Timber so sold by the said complai
nant on the behalf of your Petitioner had been purcha
by the said Complainant or at his particular Instanc
and your Petitioner further Sheweth unto this Honorab
Court that on the proceedings so had issue did join
and Rules did pass for the Examination of witnesse
as well on the part of the said Complainant as of your
Petitioner and your Petitioner Sheweth that one Jame
Sutherland of Fort Saint George Gentleman was Examine
=ned as a Witness on the part and behalf of the
said Complainant and who in Deposing to the
Second Interrogatory did say that he was acquain
=ted with the account and Transactions Existing
between the said Complainant and your Petitioner
and that he became so acquainted by being the
Clerk or Bookeper of the said Complainant and that

he had knowledge of the said accounts and Trans=
actions from the beginning of the year one thousand
Seven hundred and ninety three to the End of may
one thousand seven hundred and ninety five and
for the intermediate Space between the said Dates and
your Petitioner further Sheweth that the said Deponent
in answering to the third Interrogatory Exhibited
to him did say that he had looked upon the account
Current marked with the letter A and at the Several
Balances thereof respectively and that he was acquainted
with the Several Items composing the said
Account Current in so far as did belong to his
Situation as the Bookeeper of the said Complainant
and that the said account to the best of the said
Deponents knowledge did contain a full and
fair Statement of the Transactions between
the said Complainant and your Petitioner as
existing at the respective Dates of the same and
your Petitioner further Sheweth unto this Honble
Court

Court that the said Deponent in answering to the fourth Interrogatory did further say that so much of the said account Current marked A which reaches to and ends at the thirty first day of December one thousand Seven hundred and ninety four having been made up in every particular as it now stands except as to certain Piece Goods the said balance of the said account Current was afterwards struck to wit Early in the month of January under the said Deponents Hand in the Year as was as he the Deponent recollected in the Office of the said Complainant and in the Presence of your Petitioner and the said Complainant as also in the presence of the Dubash of the said Complainant and of him the said Deponent and that previous to the striuching of such balance that the Piece Goods aforesaid were put to your Petitioners credit with his acquiescence at the rate of thirty five perbent advance and your Petitioner further Sheweth unto this Honble Court that

that the said Deponent in answering to the fifth Interrogatory did further say that the said account Current which ends on the said thirty first day of December one thousand Seven hundred and ninety four was on being closed as termed by the said Deponent Delivered to your Petitioner and that it remained with your Petitioner for Several Days but how many Days the said Deponent confessed he could not tell and that after which it was returned to the said Deponent to the best of his the said Deponents knowledge at his the Deponents own request in order that it might be further Continued and your Petitioner further Sheweth unto this Honble Court that the said Deponent in answering to the sixth Interrogatory did further Depose that when that part of the said account Current which reaches to the thirty first December in the said year one thousand Seven hundred and ninety four was made up in Rough and before closing the Sales of the Piece Goods as aforesaid your Petitioner

did

did inspect the said account as it then should and that he recognised many of the Principal Payments but that your Petitioner did object to the Charge of a certain Bill upon Mr. Bonifas and that your Petitioners objection was attended to and that your Petitioner did make some Demur to the Charges upon your Petitioners Timber and the said Deponent did produce to your Petitioner the Vouchers Containing the Particulars of such Charges and that the Deponent said that the said Objections to the best of his the Deponents recollection was the only objections made by your Petitioner to the said account and that the said Vouchers aforementioned were the only Vouchers which your Petitioner Demanded and your Petitioner further Sheweth unto this Honble Court that the said Deponent in answering to the Seventh Interrogatory did further Say that the Several Balances in the account Current marked A appearing to be Struck Subsequent to the said Thirty first Day of December one thousand seven hundred and ninety four were so Struck at or near the Dates of the said respective balances and that the balance of the Twentieth Day of February one thousand seven hundred and ninety five was Struck to the best of the Recollection of the said Deponent in consequence of a Promise on the part of your Petitioner to Settle accounts with the said Complainant at or about that time and the balance of the seventh March of the same year was struck under a further Promise of Settlement on the behalf of your Petitioner as also with the Declared resolution of the said Complainant to Compell such Settlement and that the latter balance bearing no Date was added in order to charge your Petitioner with Two sums which had been omitted and in order to give your Petitioner a credit for a Small sum and Interest which had been borrowed of him by the said Complainant and your Petitioner further Sheweth that the said Deponent in answering to the last Interrogatory did say that the Several Commissions Charged in the said account Current were

were by him the said Deponent computed according to
the Rules fixed and laid Down in a certain printed List
to which the names and firms of Commercial Houses
in madras are affixed - And your Petitioner further
Sheweth unto this Honble Court that the Honorable
Basil Cochrane a Civil Servant on the madras Establish
=ment was also Examined as a witness in the said Cause
on the part and behalf of the said Complainant who
amongst other things did Depose that he the said
Deponent did through the mediation of the said
Complainant Purchase of your Petitioner a certain
Ship or Vessell called the Burrington - and that
such Purchase was agreed upon and concluded
with the said Complainant and that the said Ship
or Vessell was conveyed to the said Deponent by
your Petitioner and that the conveyance thereof was
Delivered to the said Deponent by the said Complai
=nant and the said Deponent did further say that
the Consideration given by the said Deponent for
the said Ship or Vessell was Fifteen Thousand Star
Pagodas and that the same was passed in an account
Current betwixt the said Deponent and your Petitioner
and your Petitioner further Sheweth unto this Honble
Court that one Tellisinga a Dubash was also Exami
=ned as a witness in the said Cause on the part and
behalf of the said Complainant who amongst
other things did Depose that the Several Account
Sales produced to him at the time of his Examination
and numbered respectively number first, Second,
third, fourth, and fifth, were the actual Sales of the
Several Goods mentioned and Contained in the said
accounts Sales and that the said Sales were made
and managed by the said Deponent in the Capacity
of Dubash to the said Complainant and under the
immediate Direction of the said Complainant and
for the account of your Petitioner and your Petitioner
further Sheweth unto this Honble Court that John
Sharp of Madras merchant was also Examined as
a witness in the said Cause on the part and behalf
of

of the said Complainant who did amongst other
Depose that he did in or about the months of Dec
one thousand seven hundred and ninety four
or about the month of January and Febru
thousand Seven hundred and ninety five sell
Dispose of by auction a Quantity of Tandoo
the property of your Petitioner being in the
or Power of the said Complainant and that he
of the same by the order and the authority of you
Petitioner - and that due notice was given by
ment in the newspapers and Hand Bills of the
Respective Days on which the said Tundoos
Exposed for Sale - and that the said Complainan
others for him did purchase sixty four Piece
Rajamandry Teak wood and Eighteen Planks
said Tundoos and that the said Tundoos were
Purchased at the average rate of the Sale of the
Days on which such Purchases were made by
and for the said Complainant - and your Petit

further

further Sheweth unto this Honourable Court that after the
Examination of the said witnesses on the part of the said Complai
nant Publication did pass in the said Cause and that the same
was thereafter Set down to be heard and accordingly come on to
be heard before the said Mayors Court on the ninth Day of
this present month of February when the said Mayors Court
did think fit to order and Decree and did accordingly order
and Decree that your Petitioner should pay unto the said
Complainant the full and Just Sum of one thousand one
hundred and Sixty Two Pagodas forty four fanams and
Twenty Seven Cash together with all such Interest as
then was or should thereafter become due thereon until
full Payment should be made as also all Costs of the said
Suit as will more fully and at large appear by Copy of
the said Decree hereunto annexed for the Inspection of this
Honble Court and to which your Petitioner craves leave to
refer the Original being in the Possession of your Petitioner
and ready to be produced if required -

By which said order and Decree of the said Mayors

Court

Court your Petitioner doth think himself much aggrie
and doth therefore appeal therefrom for the following
amongst other reasons

First.... Because the action of the said Complainant bei
founded on the balance of an account Current or at
least was pretended so to have been founded it was
incumbent on the said Complainant to have shew
that an account had been stated between the said
Complainant and your Petitioner at or previous
to the time when the said pretended balance was
alleged to have been struck and your Petitioner
Shweth unto this Honble Court that it was no
where in Proof before the said Mayors Court that
an account had ever been stated between the said
Complainant and your Petitioner The said Complai
=nant had set up divers pretences of the statement
of accounts existing between your Petitioner and
the said Complainant and had produced certain
pretended Documents to shew the same at Various
and Sundry times prior to and subsequent to the Date

when

when the said alleged Balance on which the said Bill of Complaint was grounded was assumed to have been struck but your Petitioner humbly Sheweth that the said Complainant has not any where attempted even to prove that any account had been adjusted or Stated save on the day setforth in the said account Current annexed to the said Complainants Bill to wit on the thirty first day of December One thousand Seven hundred and ninety four and your Petitioner further Sheweth unto this Honble Court that the Evidence produced on the part of the said Complainant to Establish the fact of a Settle=ment of accounts having been come to between your Petitioner and the said Complainant on the said thirty first Day of December in endeavouring to make out that Fact had proved all that was material to your Petitioners Defence namely that no account had ever been settled or Concluded between your=Petitioner and the said Complainant For your Petitio=ner Saith that he is advised that an account can

only

only be said to have been lawfully Stated in two ways
by the Express act of the Parties to the account or by Impl
of Law and which first mode of adjustment can only ha
from the Subscription of the parties to an account mut
agreed on, or by the interchanging of the bopies of an ac
to and with each other previously agreed upon as jus
where one Party Subscribes to the Counter part of an
account Delivered to him under equal Solemnity
the other and your Petitioner humbly Shweth that the
said Complainant did not Shew or attempt to Shew
any account was ever subscribed to by your Petitioner
much less that any account was interchanged in
either of the manners or ways above setforth- and your
Petitioner Sheweth that the second, that is the implied
or presumed adjustment of accounts happens from the
Detention of an account or accounts made out by one
Party and Delivered to the ~~said~~ other, when according to
the Length or Duration of time for which the party who
receives the said account or accounts may Detain the same
the Law implies an acquiescence in the particulars of the

accounts

accounts so Delivered and received and which last mode of
adjustment is almost wholly applicable to the Settlement
of Foreign Merchantile Transactions or accounts with
parties beyond sea- and your Petitioner humbly Contends
that the said Complainant had not Exhibited any
Proof before the said Mayors Court to induce or raise a
Presumption in Law that an account had at any time
but more particularly at the time insisted on been
stated or Settled between the said Complainant and
your Petitioner-

And your Petitioner further Sheweth unto
this Honble Court that the only Evidence adduced to
prove the first mode of adjustment, went to these Points
that the pretended balance in the account Current
bearing Date of the thirty first Day of December One
thousand Seven hundred and ninety four, was Struck
in the presence of your Petitioner and others,
early in the month of January one thousand Seven
hundred and ninety five And that your Petitioner
had acquiesced in certain Piece Goods being brought

to

to his Credit in the said account Current at an
advance of thirty five per Cent on the Invoice Price
and which your Petitioner Contends is no proof
whatever of your Petitioners acquiescence in or admis-
sion of the General Items Charged by the said
Complainant in the said account on which the said
pretended balance was Struck-

And your Petitioner further Sheweth unto this
Honourable Court that the only Evidence produced
to the last mode of Settlement went no further than
to Shew that the account Current under Date of the
said thirty first Day of December was Delivered to your
Petitioner and that he remained with your Petitioner
for Several Days when it was returned at the requisition
of the said Complainant i.e. at the request of his Clerk
or Bookeeper and that it was then returned to be further
Continued your Petitioner therefore humbly Contends
that the said Evidence was and is altogether as
deficient to raise a legal presumption of a Stated
account between your Petitioner and the said

Complainant

Complainant as was the Evidence of the said Complai-
-nant to substantiate an Express and absolute Settle-
-ment by the act of the parties to the said Account
For your Petitioner Sheweth, not only from the Declara
purpose of the said Complainant in sending for the
said account of the said thirty first Day of December
, in order, as it was said that it might be further
Continued but from the further Evidence of the said
Complainant to the respective balances pretended
to have been struck on the Twenty Eighth Day of
of our Lord One thousand Seven hundred and ninety
five which is after this Tenour and Effect "that the said
" Balances where Struck on the said Dates respectively
" on a Promise as it was said of a Settlement on the
" part of your Petitioner" That no Statement or Settle-
ment of accounts had been previously come to. or was
supposed even to have been come to between the said
Complainant and your Petitioner the Settlement
of accounts as it would appear by the said

Evidence

Evidence being an Event Expected not actually pa
as was insisted on by the said Complainant—

Your Petitioner therefore humbly contend
as there was not any proof of an account state
before the said Mayors Court they should have Dec
in the Premises as if all all accounts between you
Petitioner and the said Complainant had remaine
open and unsettled and if so that the said Decree of t
said Mayors Court would have passed in favor of you
Petitioner—

Secondly— Because the said Complainant having failed to sh
an account stated between your Petitioner and the said
Complainant ought in order to have substantiated
any Claim to the balance of the said account preten
=ded to be owing by your Petitioner unto the said Compla
=nant to have produced clear and Satisfactory Evidenc
before the said Mayors Court to the Several Items or
Articles Contained in the various accounts existing
between your Petitioner and the said Complainant

in

in the intermediate Space between the Twenty Sixth Day
of August in the year of our Lord one thousand Seven
hundred and ninety three when the Commercial Dealings
between your Petitioner and the said Complainant—
are stated to have Commenced and the Date at which
the said Complainant filed his said Bill against
your Petitioner And your Petitioner further—
Sheweth unto this Honble Court that there was no
proof Exhibited unto the said Mayors Court of the
reality and truth of the Claims of the said Complai
=nant to the several Credits taken by the said
Complainant in the Different accounts furnished
by him and the said Credits being for the most part
or purporting to be on account of Disbursements by the
Said Complainant at the request and on the behalf
of your Petitioner as also for a particular Definite—
Amount of Commission alleged to be due from—
your Petitioner unto the said Complainant for
Work said to have been done and performed by the

said

said Complainant on and above the Business and at the Instance of your Petitioner and further on account of Warehouse Rent and Servants Wages said to have been rented hired and paid by the said Complainant to and for the use and benefit and on the account of your Petitioner and your Petitioner further Sheweth unto this Honorable Court that the said Complainant in order to have intitled himself to the said credits assumed by him in the said account Current ought to have produced some receipts or written Vouchers or should have Shewn by oral Testimony that the various Disbursements pretended to have been made by him on the account of your Petitioner were positively and bonafide made and at the requisition of your Petitioner as also that he the said Complainant had been Commissioned by your Petitioner to Transact the Different kinds of Business pretended to have been done by him the said Complainant and at a certain rate or Commission agreed on between the said Complainant and your Petitioner and that he

he had actually done the same in pursuance of the authority given to him - and further that the said Complainant had been instructed to rent a House and Engage Servants to and for the use and service of your Petitioner and that the said Complainant had rented a House or Houses and Engaged Servants for and on account of your Petitioner But your Petitioner Sheweth unto this Honble Court that there was no Proof Exhibited by the said Complainant to Shew that the said Disbursements were made on the behalf of your Petitioner by the said Complainant neither of any authority given by your Petitioner to the said Complainant to transact any Business on the account of your Petitioner and Consequently not of any rate of Payment for the Transaction of such Business nor did he Exhibit any Proof of Instructions transmitted or given to him the said Complainant to hire any house or Servants for the use and on account of your Petitioner And therefore your Petitioner

humbly

humbly Contends that the said Complainant was not any wise entitled to the Several Credits assumed by him in the said account and which the said mayors Court as appears by the said Order or Decree have allowed him in the Premisses.

Lastly -- Because It was apparent on the face of the accounts Exhibited by the said Complainant in the said Cause that he had taken an usurious Interest or advantage of your Petitioner by the method followed by the said Complai=nant in presuming Reckonings to have been come to between him and your Petitioner at Several and Different times and Computing a fresh and new Interest on the every such presumed Reckoning which said Reckonings as your Petitioner hath herein before shewn did never happen or occurr and were no where given in Evidence before the said mayors Court and your Petitioner further Sheweth unto this Honourable Court that it was also Evident on the face of the said accounts that the said Complainant had Claimed not only an Interest but a Double Interest where he had not Established any right to the Principal Sum as in the case of Commissions and where if he had clearly established a Right thereto he was neither in Law or Equity entitled to assume any Interest whatever.

For all which Reasons and such others as may be offered at the hearing your Petitioner most humbly Prays this Honble Court will be pleased to Reverse the said Decree of the said Mayors Court & grant your Petitioner such Relief in the Premises as in their Wisdom shall seem meet.

/Sgnd/ Emanuel Samuel
Solicitor for Appellant

Mayors

Mayors Court at Madraspatnam

Tuesday the 9th day of February Anno Domini 1796

Present

James Daly Esqr Mayor
William Webb & Andrew Ross
Aldermen

S S

Between Peter Massy Esqr in Behalf of Fort St George Merchant complainant and John Hamilton at present of the same place Mariner 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 The Amended Replication The Amended Rejoinder The Interrogatories And Depositions on the part of the complainant with Two Exhibits 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 one thousand one hundred and Sixty two Pagodas forty four fanams and Twenty Seven cash / Pago= das. 1162 „ 44. 27 / together with all such Interest as now is or shall hereafter become due thereon untill full Payment is made also all costs of this Suit

A True Copy

Pur. G. Taylor Regr

/ Signed / Emanuel Samuel
Solicitor for Appellant

To

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

In the Honble the
Court of Appeals

Between Peter Massey Cafsin of
Fort Saint George Merchant complai=
=nant and John Hamilton of the
same place Mariner Defendant

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

Filed in my Office
the 30. March 1796
J Webbe Clk

This Respondent answering doth admit
that on or about the Twelfth day of march which was
in the year of our Lord one thousand Seven hundred
and Ninety five he this Respondent did Exhibit his
Bill of Complaint in the Honourable the Mayors
Court against the Petitioner Above named as
alledged in and by the said Petition of appeal and
to the tenor and Effect therein particularly setforth &c

And

And this Respondent further answering doth admit
that the said Petitioner did on or about the Twenty
first day of April in the year aforesaid file his
Answer to the said Bill of Complaint and therein
did answer alledge and say the Several Matters
and things Mentioned and Setforth in the
Said Petition of appeal And this Respondent
further Answering doth admit that to such the
answer of the said Petitioner he this Respondent did on
or about the Nineteenth Day of May in the said
year file his Replication thereby replying and
insisting as in and by his said Petition of appeal
the Petitioner hath Stated And that on or about
the Twenty third Day of June in the said
year the said Petitioner did file his Rejoinder
to the said Replication of this Respondent and
that the Tenor of such Rejoinder is fairly detailed by
Petitioner in his said Petition - And this Respondent
further answering doth admit that on the procee
=dings so had issue did Join and Rules did pass for

the

the Examination of Witnesses as well on behalf of this Respondent as of the said Petitioner That James Sutherland of Fort Saint George Gentleman The Honorable Basil Cochrane a Civil Servant on the Madras Establishment Tellesinga a Dubash and John Sharp of Madras Merchant were severally Examined as Witnesses in the said Cause on the part and behalf of this Respondent and that the said Several Witnesses did respectively depose and say as the said Petitioner in and by his said Petition hath Setforth And this Respondent further Answering doth admit that after the Examination of the said Witnesses on the part of him this Respondent / no witnesses having been Examined or adduced on the part of the said Petitioner / Publication did pass in the said Cause and that the same was thereafter set down to be heard and accordingly came on to be heard before the said Mayors Court on the Ninth day of the Month of February now last past and that the said Court did then think fit to order and Decree and did accordingly order and Decree that the said Petitioner should pay unto this Respondent the full

full and Just Sum of One thousand one hundred and Sixty two Pagodas forty four fanams and Twenty Seven Cash together with all such Interest as then was or should thereafter become due thereon untill full payment should be made as also all Costs of the said suit- But this Respondent doth deny that the said Petitioner was or is in any wise aggrieved by the said Decree or hath any good cause of appeal therefrom And to the several reasons adduced by the said Petitioner in support of his appeal from the said Decree this Respondent doth answer and say in manner following to wit

To the first Reason- The Petitioner hath said that this Respondents action was founted on the Balance of an account Current or at least that it was pretended so to have been founded In this exposition of the matter there is a misstatement small in appearance but in its consequence very material and as it seems to have misled the Petitioner in the whole of his reasoning and to have given rise to the inconsisting that appears between his first and second Reasons this Respondent doth rather choose to say as the fact is

that

that his action was founded upon an account Current and was brought for a Debt or Balance arising upon such account And it must be added that this acco- altho annexed to the Bill of Complaint in an abridg- form was nevertheless produced and sworn to in Evidence at full length Hence then it doth appear that this respo- -dent instead of being limited as the Petitioner in his fo- Reason doth assume to the proof of an admitted Bala- or a stated account hath a further option to prove his Bal- a justone - This premised the Respondent proceeds to shew that so far from having failed to Establish his Cash he h- actually proven it in two different modes - For First he hath Shewn by Evidence in controverted the following facts touching the account of the thirty First Day of Decembe- one thousand Seven hundred and ninety four to wit the inspection and Examination thereof by the Petitioner the production of and his reference to such vouchers in suppo- thereof as he the Petitioner chose to demand the closing of the said account in the presence and with the acquiescence of the Petitioner the delivery thereof to him its continuing in his Possession for Several days and the subsequent

rendering

rendering thereof to the Bookkeeper of this Respondent without objection a Clearance of circumstances which this Respondent is advised is more than sufficient to establish an adjustment by Implication of Law up to the said thirty first day of December And this Respondent saith that the subse- -quent part of the said account is almost wholly for the benefit of the said Petitioner and no part thereof hath been questioned or objected to by him except only the Charge of Interest the justness of which necessarily follows from the simple fact of a previous adjustment - Secondly This Respondent having obviated every objection specifically alleged by the Petitioner shewing by his this Respondents Replication that he had strictly adhered to the Custom of Merchants in all his Trans- actions with the said Petitioner especially in the stating of his account and in the calculation of Interest therein Establishing by the Evidence of the Honorable Basil Cochrane his this Respondents Right to Charge Commission on the sale of the Ship Barrington and removing by the Evidence of John Sharp the wicked imputation of infair dealing in the disposal of the Petitioners Property He this Respondent did at

length

length by the Evidence of his Bookkeeper James Suthd
prove that the account in Question did contain a fai
and fair statement of the Transactions between the
Petitioner and this Respondent as existing at the res
tive Dates of the same whereby he this Respondent
doth conceive and humbly contend that the Debt
or Balance arising upon the said account is fully
Established as a just Demand against the Petitioner
In this the First Reason of the Petitioner a passage is
quoted from the deposition of the said Witness James
Sutherland to this Effect that certain Balances
allowed to were struck at their respective dates on
a promise of a Settlement on the part of the Petitioner
from which the Petitioner assuming the word
Settlement as synoneymous with his own term State=
=ment infers that no statement or settlement of accounts
had been previously come to between this Respondent
and the Petitioner and that it thereby appeared that the
Settlement was an Event expected not actually past
Surely nothing can be more distant from the import
of the Evidence than the meaning here assigned to
it by the Petitioner The words are Common - and the
sence plain leaving no room for ambiguity nor necessity
for

For comment. If however it were at all necessary an
illustration occurs at once obvious and in point for this
Respondent may with equal truth and pertinency assert
that his account has long been stated but is not yet settled.

To the Second reason This Respondent saith that the Petitioner
having in his first Reason asserted this Respondents
action to have been founded upon a Balance and having
thence argued the necessity of Shewing a Stated account
in seeming exclusion of every other mode of proof this
Respondent thought it most pertinent in answering
the said First reason to discuss the question in its whole
Extent by which means he hath in some measure
anticipated the arguments of the Petitioner in this his
second Reason - For what remains this Respondent
answereth and saith that the points enumerated by
the Petitioner as requisite to be proven are for the most
part but circumstances appertaining to and implied
in the very nature of the Transactions existing between
this respondent and the Petitioner and that every proof
really material to this Respondents Case will be found
in the Evidence which he hath adduced For this Respon=
=dent doth conceive that it must have appeared
almost ridiculous in him to have shewn by special
proof

proof that he was authorized to hire ware houses for the Petitioners cloth or Bankfalls for his Timber or that he was authorized to pay Rent for such accommodations or to pay Boat and Cooley hire for the landing and removing of the Petitioners Consignments And it would have been almost as unnecessary to prove that upon the Sale of such Goods he was entitled to a Commission that being a point Established by the Custom of Merchants But the quantum of that Commission he this Respondent hath shewn to be Conformable to the printed regulations made and adopted by the principal Houses in Madras- with regard to the payments and disbursements the Petitioner might at all times have had reference to the vouchers in support thereof and to some Vouchers actually did refer. That he he did not refer to the others also can only have proceeded from one of two motives either that he was satisfied of the Justness of the Charges or that he had determined to avoid being so But the proof of this point and that of several of the foregoing points is Contained in the Evidence of James Sutherland who hath deposed that he was acquainted with the several Items Composing the account

account Current in Question in so far as did belong to his Situation as the Bookkeeper of this Respondent and that the said account did to the best of his the Deponents knowledge Contain a full and fair Statement of the Transactions between the Petitioner and this Respondent as existing at the respective dates of the same- Thus much as to the solidity of the Second Reason Considered in itself-

But viewing the said second Reason as it relates to the question now before this Honourable Court this Respondent saith that it doth urge a defence different in to to from that which was setup for the Petitioner before the Honourable the Mayors Court That of Consequence it doth adduce matter which never came nor could have come under the Consideration of that Court previous to the passing of the Decree now sought to be reversed- And so that the said second reason is altogether irrelevant

To the third and last reason- This Respondent saith that he hath by his Replication shewn that he was entitled to Interest upon the Balance of the thirty first of December by the Custom of merchants That his Title to such Interest hath been since shewn in a different Ground by the

Evidence

Evidence in the Cause and that reckoning from the afore=
=said Balance he hath in his said Replication Demon=
=strated that the Compaund Interest Contained in
the said account Current amounted to no more than
five fanams and a few Cash a sum ridiculously small
and that even that small Error had been occasioned by
the procrastinations and unfulfilled promises of the
Petitioner

The Petitioner hath alleged that it was evident
on the face of the account in Question that this Respon=
=dent had assumed not only on Interest but a double
Interest where he had not established any Right to
the Principal sum as in the Case of Commission where
if he had clearly Established a right thereto he was neither
in Law or Equity entitled to assume any Interest
whatever

Neglecting as too trivial the matter of double
Interest here again repeated by the Petitioner this
Respondent in order the better to try this Concluding
argument will suppose that his this Respondents
demand had been stated in any mode different
from that which the Petitioner condemns that is to say
that he this Respondent had forborn to Claim
Interest

Interest until he had Established his right to the Princi=
=pal The Consequence would have been that he this Respon=
=dent could have recovered only what he did Claim to
wit his Principal & that he would have been concluded
from demanding any Interest at all The latter member
of the Paragrapah under Consideration is noticiable for
containing a Doctrine equally navel as bold Is it meant
that a liquidated Balalance which includes Commission
shall never bear Interest or must such a balance
remain for Ever liable to be decomposed in order to extract
from it and to Exempt from Interest the amount of
Commission which it may Contain To one or other of
these Positions the Petitioners assertion doth amount but
in either view it needs not nor deserves to be refuted

For all which reasons and such others
as may be offered at the hearing this Respon=
=dent most humbly prays that this Honble
Court will be pleased to affirm the Decree
of the Honble the Mayors Court and to
dismiss the Appellants Petition with such
Excamplary Costs as his litigious Conduct
Shall appear to deserve

/ Signed / John Wilkinson
Solicitor for Respt

Court

Court of Appeals at Madraspatnam } Monday the 18th day of July Anno Domini 1796

Between John Hamilton at present of Fort St George Mariner Appellant and Peter Masey Cassim 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 Honble the Mayors Court together with the Decree of the said Court given in this Cause on Tuesday the 9th day of February Anno Domini 1796 upon due Consideration had of the Matters therein Severally Contained and of the Pleadings and Arguments Used by the Attornies on both Sides This Court doth think fit to Order and Decree and doth Accordingly Order and Decree that the said Decree of the Honourable the Mayors Court do Stand Affirmed and that the Appellants Petition be hereby Dismissed with Costs—

Exr

(Signed) J. Webbe
Atk

To the Kings Most Excellent Majesty in Council—

Between Peter Masey Cassim of Fort St George Merchant Complainant and John Hamilton of the same place Mariner Defendant—

The humble Petition and appeal of the above named Defendant—

Humbly Sheweth to your Most Excellent Majesty in Council—

That some time on or about the Twelfth day of March which was in the year of Christ One thousand Seven hundred and Ninety five the above Named Complainant did file and Exhibit his Bill of Complaint in the Honourable the Mayors Court at Madraspatnam against your Petitioner and your Petitioner further Sheweth that in the said Bill of Complaint he the said Complainant did state alledge that your Petitioner stood Justly indebted unto him the said Complainant in the full and Just sum of one thousand one hundred and sixty two Pagodas forty four fanams and twenty one Cash Current Money of Madras and making in sterling money of Great Britain at the rate of Eight Shillings

Filed in my office the 31st July 1796
J Webbe Atk

Shillinges for every Pagoda The sum of Four hundred and
Sixty five Pounds Three Shillings and ten pence or
thereabouts as he said would morefully and at large
appear by the Copy of an account Current annexed
to the said Bill for the inspection of the said Hon^ble
the Mayors Court to which he the said Complainant
did crave leave to refer and that the same might be
taken as part of this said Bill of Complaint the origi-
whereof being as he alledged in his posession and ready
to be produced and proved when required And your
Petitioner Sheweth unto your most Excellent Majesty in
Council that the said Complainant did further
setforth in and by his said Bill of Complaint that he
the said Complainant had frequently requested paymt
from your Petitioner of the said sum of one thousand
One hundred and sixty two Pagodas forty four fanams
and Twenty Seven Cash But that your Petitioner had
refused to pay the same or to give him the said Complai-
=nant any manner of Satisfaction touching the premiss
whereupon the said Complainant did pray a General
relief such as to the said Mayors Court should appear
agreeable to Equity and Good Conscience and that your

Petitioner

Petitioner might be decreed to pay unto him the said
Complainant the aforesaid sum of one thousand one hundred
and Sixty two Pagodas forty four fanams and twenty
Seven Cash with all such Interest that then was or
Should thereafter become due thereon also all Costs of the
said suit and your petitioner Sheweth unto your most
Excellent Majesty in Council that your Petitioner
having appeared to the Complainants said Bill of
Complaint did on the Twenty first day of april in the
aforesaid year of Christ one thousand seven hundred
and Ninety five Exhibit and file his answer thereto and
therein and thereby your petitioner did deny to Stand
indebted unto the said Complainant in the Sum of
one thousand one hundred and sixty two Pagodas
forty four fanams and twenty seven Cash as was alledged
and Charged in the Complainants said Bill of Complaint
ant your Petitioner did further say that the said Sum of
one thousand one hundred and sixty two Pagodas
forty four fanams and Twenty Seven Cash which was
charged to be due and owing to the said Complai
=nant in his said Bill was alledged to be so due and
owing as the Balance of an account Current drawn

by

by the said Complainant on the seventh day of March
than and now last past and which said Balance your
Petitioner did say was false and untrue - And your
Petitioner did further say in his said answer that the
Balance of the account pretended to have been struck
on the thirty first day of December which was in the
year of our Lord one thousand seven hundred and ninety
four and to which the before mentioned Balance of
the said seventh day of March had a reference
was an "exparte" Statement of accounts made by the said
Complainant and in which the Complainants Interest
had been considered without due regard to the rights
and credits of your Petitioner and not a fair clear and
honest account as it purported to be between party and
party and your Petitioner did further setforth that he
had had various Commercial Dealings and money trans-
-actions with the said Complainant from and before
the Month of august which was in the year of our
Lord one thousand Seven hundred and ninety three
to the date on which he did file his said answer and
that no Statement of accounts between your Petitioner
and the said Complainant had been interchanged
within the said period nor had your petitioner at &
any

any time within the said period subscribed his name to
any account submitted by the said Complainant or had
in any wise allowed thereof And your Petitioner further
Sheweth that your Petitioner did in his said answer &
further setforth that the Complainant had not at any
time furnished your Petitioner with any Vouchers on
which the said Balance of the said account current must
depend, so as to enable your petitioner to come to a fair
and exact reckoning with the said Complainant and
your Petitioner did further setforth and say that the
Several Commercial and money transactions which had
passed between your Petitioner and the said Complainant
from the said month of august in the said year of
Christ one thousand seven hundred and ninety three
to the date of his said answer were of Great amount
and concern and that they did embrace a property of &
Several thousand Pago das and your Petitioner did &
further say that as the account of the said Transactions
had never been concluded between your petitioner and
the said Complainant and as it did still remain to
all intents and purposes open your Petitioner was &
entitled to a full complete and particular account of
the

the several Commercial and money Transactions which had subsisted and which did subsist between the said Complainant and your Petitioner and not the narrative and partical account Current annexed to the Complainants said Bill made up, suited, and adopted, only to the private Interest and advantage of the said Complainant and which said mode of account not only did preclude your Petitioner from entering on a full and ample defence to the said Bill but which did give the Complainant a Benefit and advantage of which the Complainant had availed himself under the circumstances of your Petitioners Case contrary to Law in as much as the said Complainant had assumed therefrom an usurious and extortionate interest on the said Balance at the Various pretended times struck under the several dates setforth in the said account Current annexed to the complainants Bill For your petitioner said that the said complainant had computed an Interest of fifty four Pagodas fifteen fanams and twenty Nine Cash, as charged to be due and owing from your petitioner on the twenty Eighth day of February then and now last past as an Interest account for fifty nine Days at

at the rate of twelve per cent per annum on the sum of Two thousand Eight hundred and two Pagodas nineteen fanams and fifty eight Cash a pretended Balance charged to be due unto the said Complainant from your Petitioner on the said thirty first day of December in the said year of our Lord one thousand seven hundred and ninety four and which said sum of fifty four Pagodas fifteen fanams and twenty nine Cash together with a sum of Seven pagodas thirty three fanams and sixty Cash charged as a Disaccount on Pagodas one thousand five hundred and fifty one twenty two fanams and fifty two Cash for one of a Month the said Complainant on the said Twenty eighth day of February had added to the Balance drawn by the said Complainant on the said day Scarcely two Months from and after the time at which the preceding pretended Balance was struck - and the said Complainant on the seventh day of March next Ensuing the said twenty Eighth day of February, Seven Days only from and after the striching of the last Mentioned Balance had drawn or struck a third Balance in which he had included an Interest for the said seven Days subsequent to the said Twenty

Eighth

Eighth day of February and your Petitioner did further
setforth and say that the said mode of Computation by
accumulation of Interest on Interest on Balances where
no stated account was ever made between parties as in the
case of your Petitioner and the said Complainant was not
only oppressive as to your Petitioner but contrary to law
and Conscience And your Petitioner did further say in his
said answer that if the account which had so long subsisted
open had been fairly concluded and stated between your
petitioner and the said Complainant and proper Credits
and correspondent Interest had been allowed to your
petitioner which he was fully and legally entitled to that
so far from your Petitioner being indebted unto the said
Complainant as the said Complainant had unjustly
charged in his said Bill in the sum of one thousand one
hundred and sixty two Pagodas forty four fanams and
twenty seven Cash, that he verily believed the said
Complainant would appear to be indebted unto your
petitioner on the said accounts in a considerable sum of
Money

And your petitioner further Sheweth unto your
Most Excellent Majesty in Council that to the said
answer of your Petitioner the said Complainant did on
or

or about the nineteenth day of May now last past file
his Replication wherein and whereby he did insist that
your Petitioner did stand not only Justly and truely
Indebted unto him the said Complainant in the Sum
charged by the said Bill but also in a further sum of
thirty eight Pagodas and upwards as he did say might
morefully appear by a further account annexed to the
said Replication and to which the said Complainant
did pray reference being of the like date as he did further
say with the account annexed to the said Bill and by an
oversight therein omitted to the said Complainants Credit
the benefit whereof he did therein pray and your Petitioner
further sheweth unto your most Excellent Majesty in
Council that the said Complainant did further state
in his said Replication that for as much as your Petitioner
did by his answer assert that the Balance of an account
on the thirty first day of December one thousand seven
hundred and ninety four was but a pretended and
Exparte account and Balance the said Complainant
did say that he would thereafter prove that it was
a real balance struck in your Petitioners presence
and that the account so struck was Delivered

to

to your Petitioner and that the same remained in your Petitioners posfesfion for several days and was then by your petitioner returned without any objection And your Petitioner sheweth unto your most Excellent Majesty in Council that the said Complainant did amongst other things in his said Replication further say he did not dispute that the Balance of the account must depend on Vouchers but he contended that the proof also of Accounts depended on Vouchers and which Circumstance did afford a reason for not delivering the said Vouchers to your petitioner and if a further reason were necessary it might be drawn as the said Complainant did urge from the uniform practice of Merchants in this respect it being a thing unknown among them to deliver up Vouchers until the account should be settled or admitted that the Vouchers of his account with your Petitioner were at all times ready to be produced to your petitioner, and that your petitioner had recourse to several of them Vizt. to all that he had demanded and which Related chiefly to the charges of landing Money and watching his your petitioners Timber- and the said Complainant did further say that your petitioner in his answer had observed that the account was suited and adopted to the private Interest and advantage of the said Complainant precluding your Petitioner from a full defence and affording to the said Complainant a pretence for afsuming an usurious Interest and to which the said Complainant did reply that as to the first part of which observation he need not to comment as every document that related to the Question was in the posfesfion of the said Mayors Court at your Petitioners prayer leaving only the charge of usurious Interest to be considered on which the Complainant said it was to be noted that in the Account ending the thirty first day of December simple Interest was charged by the said Complainant on all his payments and allowed on all sums received reckoning from their respective dates until the last mentioned day and that the account having remained open for a longer period than was usual amongst Merchants Vizt. Sixteen months was at length fs that were unnecessary/ closed in the presence of and with the entire acquiescance of your petitioner and it being as the Complainant further alleged at that

time

time professed intention to propose some mode of settling
the Balance agreeable to which the said Complainants
did further state your Petitioner did indeed make some
propasals which partly from their being insatisfactory and
again from their being retracted evaded and some times
dicised by your Petitioner the final Settlement was postpone
from time to time until the Twenty Eighth day of Febru
on which day a new statement as the Complainant
further alledged was made out to include a further sum
to your petitioners credit by the sale of some timbers and the
said Complainants did state that in the said state
Interest was of course charged upon the former balance
and that it would require no proof to the said Mayors
Court to Establish that it was the invariable custom
Merchants to charge and allow an Interest account
yearly Balances and your petitioner further sheweth th
the said Complainant did further allege in his said
Replication that the discount of Seven Pagodas th
three fanams and sixty Cash charged in the said
not appearing to be understood by your Petitioner he
said Complainant did take in himself to shew that
petitioners Timbers were sold by parcels on various da

wit a very inconsiderable part of them on the thirty first day
of December and Eighth day of January then last past but the
greater bulk thereof between the tenth and Twenty fifth day
of February then last past and that the whole had produced
up to the last mentioned day, the nett sum of Pagodas
one thousand five hundred and fifty one Twenty two fanams
and fifty two Cash and that Mafsieurs Sharp and Heefke
the auctioneers had been Employed in such sales were by
Custom entitled to one month for payment of the proceeds
from the respective days of sale so that when the Sum of
one thousand five hundred and fifty one pagodas twenty
Two fanams and fifty two Cash was carried to your
petitioners Credit on the Twenty Eighth day of February a
very trifling part thereof as the Complainant alluded had
fallen due and the rest was to follow on the different
days between the Tenth and twenty Fifth day of March
following and that the average or medium which had
arisen from the consideration of those two Extremes was
Twenties days and an half and that in lieu thereof the
discount charged by the said Complainant was for fifteen
days only and the said Complainant did further state
that the Balance due to from your Petitioner was on

the

the said twenty Eighth day of February one thousand one hundred and sixty six pagodas forty one fanams and six one cash but which was soon after reduced by a further state of Timber amounting to forty Eight pagodas thirty six fanams and twenty two Cash, and that on bringing which sum to the Credit of the account the preceding balance was brought forward and seven days Interest had been charged thereon and the said Complainant did admit that an Interest upon Interest that is upon fifty four Pagodas fifteen fanams and twenty nine Cash had been assumed for seven days being five fanams and odd Cash which was composed as the Complainant said the gross amount of the usurious Extortionate unlawful and unconscientions advantage assumed by the said Complainant who at the same instant had relinquished to your petitioner as he said the Commission to which the said Complainant was entitled on the proceeds of the timbers being two and half perbent on one thousand six hundred pagodas thirteen fanams and sixty four Cash or pagodas forty and twenty seven fanams and a much more considerable claim as he said was entitled to, but would not mention for Commission Justly due to the said Complainant

from

from your petitioner on the Settlement of certain accounts referred by your petitioner to the said Complainant to adjust with the Honorable Basil Cochrane and your petitioner humbly sheweth unto your most Excellent Majesty in Council that to the said Replication your petitioner did Exhibit and file his Rejoinder and did therein and thereby allege that the several matters and things in your petitioners said answer contained were not refuted, or in any substantial manner ever desined by the said Complainant in his said Replication and your petitioner did further say as in and by his said answer he had said, that he did not stand indebted unto the Complainant in the sum sued for and that he never did receive from the Complainant any adjusted account and that as to any Balance pretended to have been struck in your Petitioners presence he your petitioner did deny that the Complainant did ever produce to him any Vouchers for the Various sums by him said to have been expended on account of your petitioner and Therefore if any Balance ever had been struck in your petitioners presence and which your petitioner did

not

not admit to be the fact the same must have been done upon an advantage taken of your petitioners ignorance of accounts and entirely without your petitioners acquiescence and merely that the Complainant might have the opportunity of saying as he then did that a Balance had been struck in his your petitioners presence, and your petitioner did further say that he was advised that striching a Balance would not render such Balance of any authenticity or enable the party to derive any benefit therefrom either by way of Interest or otherwise, unless the other party did give or signify his full and entire approbation thereof And your petitioner did further say that it was not true that the Complainant did deliver to him any regular account nor did your petitioner ever keep in his posfession for the space of ten days any account with a balance struck thereon as asserted by the Complainant in and by his said Replication and your Petitioner did say that even if he had, had in his posfession such accounts and for such a time he humbly submitted that sending them back again as the Complainant had pretended without any objection, did not nor could be construed to amount to an approval thereof and that to shew such approval your petitioner ought to have signed the same in writing and the Complainant himself had shewn that your petitioner never did declare his opinion of the account said to have been framed by the Complainant and that no accounts ever were interchanged between them and he also had shewn that to give force and validity to the said accounts your petitioner ought to have signed the same and your Petitioner did further say that although it might not be customary amongst Merchants to deliver up vouchers, as insisted on by the said Complainant until the depending accounts should be settled, yet your petitioner was advised that it was consistent with the custom of Merchants, that Vouchers be produced to the party against whom they stand and further that by the shewing of the said Complainant regarding the detention of the Vouchers and his reasoning thereon it was conclusive that in Balance pretended to have been struck by him ever was approved of" or admitted" by your petitioner- And your petitioner did further say that he did not know whether Vouchers on the accounts in Question were or were not ready but that he knew they never were delivered to his your petitioners inspection either by the Complainant or by any other

person

person, and that those Vouchers which the Complainant
pretend to have shewn to your petitioner but which your
Petitioner did deny ever to have seen were according to
own statement of the fact very trivial and insignificant
in their nature, as they related as the Complainant has
said chiefly to the charges of lending Money and watching
his Timber and your Petitioner in his said Rejoinder did
further say that the assertion of the Complainant that
your petitioner did repeatedly offer to execute his Bond for
the Balance in question was if true and which your
petitioner did deny foreign to the Matter before the said
Mayors Court. And your Petitioner for further Rejoinder
did say that the account Current as made up by the
Complainant was so made up to answer his own purposes
and that he did deny that all or any of the Documents
relative to the matter in question were or are before the
said Mayors Court, and your petitioner did submit that
it was not a fair or merchantile mode to make the charges
the Complainant has done in and by his account Current
for the Complainant in the said account Current amongst
other extraordinary Credits taken to him therein had
charged on the Insurance of the Vessel called the Minish one
half

per Cent on two thousand Pagodas being the Amount for which
the said Vessel was said to have been insured and in the said
account Current he had also charged two and half perbent
on two hundred Star Pagodas ten fanams and seventy Cash
the amount said to have been dispersed for effecting the said
Insurance on the said Vessel and your Petitioner did say
that the said charges did appear to be unreasonable and
extravagant And your Petitioner did further allege that
the said Complainant in and upon all Goods which he
had alledged to have sold on the behalf of your petitioner had
also taken a credit to himself in the said account Current
of Five perbent on the pretended Amount sale of the same
as also a further Credit of one perbent upon all disbursements
stated to have been made by him over and above the charges
of Bankshall hire Servants Wages and other incidental charges
And your petitioner did say that he was advised that
the said Charges were not allowable by the usage of Merchants
obtaining at Madras nor were they reconcilable to the
General Custom of Merchants elsewhere observed but if your
Petitioner was not rightly informed in this respect he could
not think that the Interest assumed by the said Complainant

in

in his said account Current over and above the said Extraordinary Charges would be defended by any usage or Custom whatever for the said Complainant had assumed an Interest of twelve perbent per annum, the highest rate of interest licensed to be taken in India on every particular sum alleged to have been expended for the use of your petitioner and had also taken a little interest from and after the thirty first day of December then last past on all the said sums charged to be due unto the said Complainant for and on account of Commission for all Business pretended to have been done on your petitioners account and which your petitioner did not admit without ever stating either in his said Complainants said Bill or in his said Replication what Business had been done for and on account of your petitioner or shewing or declaring that he ever had been commissioned by your petitioner to do or to perform any Business of any kind for and on your petitioners behalf and your Petitioner not adverting to the General unqualified Charges under the head of Commission made against your petitioner in the Documents which the said Complainant had delivered into the said Mayors Court and which he had delivered as so many Vouchers for the Transactions and Dealings which had subsisted between your Petitioner and the said Complainant but which

your

your petitioner did not admit as any certain or conclusive vouchers on that behalf your Petitioner would pray the attention of the said Mayors Court to the item in the said account Current under date the thirty first day of December wherein a credit was taken by the said Complainant for the sum of two hundred and twenty five Star Pagodas being exclusive as it was there charged of a Commission on bash and purporting to have been charged as an exclusive Commission by the said Complainant for the sale of the Ship Berrington for the sum of Fifteen thousand pagodas and which said ship the Berrington from what was apparent in the said account Current it would seem had been disposed of or sold by the said Complainant for and on account of your petitioner but your petitioner did say as he would in due time prove that the said ship Berrington was actually and bonafide sold by your petitioner and that the said Complainant had no interest or other share in the premisses, and your petitioner in further support of the suggestion made by him in his answer of usurious and extortionate Interest having been taken by the said Complainant in his said account Current a charge treated so lightly and indifferently by the said Complainant through in part confessed by him that his said suggestion was well founded and had further and stronger Grounds

than

in his said account current over and above the said Extraordinary
Charges would be defended by any usage or Custom whatever
for the said Complainant had assumed an Interest of twelve
perbent per annum, the highest rate of interest licensed to be
taken in India on every particular sum alleged to have been
expended for the use of your petitioner and had also taken as
little interest from and after the thirty first day of December
then last past on all the said sums charged to be due unto
the said Complainant for and on account of Commission for
all Business pretended to have been done on your petitioners
account and which your petitioners did not admit without
ever stating either in his said Complainants said Bill or in
his said Replication what Business had been done for and on
account of your petitioner or shewing or declaring that he
ever had been commissioned by your petitioner to do or to
perform any Business of any kind for and on your petitioners
behalf and your Petitioner
not adverting to the General unqualified Charges under the head
of Commission made against your petitioner in the Documents
which the said Complainant had delivered into the said
Mayors Court and which he had delivered as so many Vouchers
for the Transactions and Dealings which had subsisted
between your Petitioner and the said Complainant but which
your

your petitioner did not admit as any certain or conclusive vouchers
on that behalf your Petitioner would pray the attention of the said
Mayors Court to the item in the said account current under
date the thirty first day of December wherein a credit was taken
by the said Complainant for the sum of two hundred and twenty
five Star Pagodas being exclusive as it was there charged of or
Commission on Cash and purporting to have been charged as an
exclusive Commission by the said Complainant for the sale of
the Ship Berrington for the sum of Fifteen thousand pagodas
and which said ship the Berrington from what was apparent
in the said account current it would seem had been disposed
of or sold by the said Complainant for and on account of your
petitioner but your petitioner did say as he would in due time
prove that the said ship Berrington was actually and bonafide
sold by your petitioner and that the said Complainant had
no interest or other share in the premisses, and your petitioner
in further support of the suggestion made by him in his answer
of usurious and extortionate Interest having been taken by
the said Complainant in his said account current a charge
treated so lightly and indifferently by the said Complainant
through in part confessed by him that his said sugges-
tion was well founded and had further and stronger Grounds
than

than admitted by the said Complainant in his said Replication
for your petitioner did shew to the said Mayors Court from the
account Current of the said Complainant it did appear that
in the Balance self concluded by the said Complainant on
the thirty first day of December than last past not only an
Interest was taken for all and every sum pretended to have
been advanced by the said Complainant on account of your
petitioner but also on the Credit side of the said account a
varity of principal sums were inserted not accepted or allowed
by your petitioner alleged to have been due to the said Complai
-nant for service and Business done for your petitioner and a
Number of other Items of principal sums were also inserted
as so many disbursements also alleged to have been made by
order of your petitioner and on which said sum so pretended to
have arisen for service or Business done to the Benefit of
your petitioner and so pretended to have been disbursed, though
the same were disallowed and unsubstantial the said
Complainant had also assumed an Interest in the said
Account Current and on a pretended balance of an Interest
account the said Complainant had inserted a seperate
Item as such pretended Balance said to be due to the said
Complainant from your petitioner of three hundred and Twenty
three

three Pagodas twenty two fanams and seventy one cash and
which said pretended Balance was added to the apparent
principal sums pretended to be owing unto the said Complai
-nant and was included in a general Balance assumed
thereupon without notice to your petitioner and your petitioner
further alleged that notwithstanding he never did admit or
sanction the Balance so partially concluded by the said
Complainant as your petitioner had shewn on the said thirty
first day of December was again debited on the Twenty Eighth
day of february then last past as did appear by the said
account Current in a second Interest on the sum of two
Thousand Eight hundred and two Pagodas thirteen fanams
and fifty Eight cash on the said last mentioned Balance
for the space of fifty nine days being the Extent of the
intermediate space between the said twenty Eighth day of
February and the said thirty first day of December, and
your petitioner Sheweth to your most Excellent Majesty in
Council that as he did in his said answer state, a third
Balance was again struck and a separate and third
Interest taken thereon on the seventh day of march when
another statement of accounts was again feigned by the
said Complainant that the Interest taken by the said

Complainants

Complainants and in his said Account Current on the said sum pretended to be due to the Complainant for service and business done and performed on the behalf of your petitioner - and on the said disbursements and in the Commission assumed on the said disbursements and on the balance of the said Interest account were usurious. and Lastly your petitioner did state that in the sales of Timber on the account of your petitioner the said Complainant did sell great part of the said Timber without affording proper and sufficient notice of the sale thereof either by Public advertisements or else how and that great part of the said Timber so sold by the said Complainants had been purchased by himself or at his particular instance.

And your Petitioner most humbly Sheweth unto your most Excellent majesty in Council that on the Proceedings so had Issue did Join and Rules did pass for the Examination of Witnesses as well on the part of the said Complainant as of your Petitioner - and your Petitioner Sheweth that one James Sutherland of Fort St. George Gentleman was Examined as a witness on the part and behalf of the said Complainant and who in deposing to the second Interrogatory did say that he was acquainted with the accounts and Transactions Existing between the said Complainant and your Petitioner, and that he became so acquainted by being the Clerk or Bookkeeper of the said Complainant and that he had knowledge of the said accounts and Transactions from the begining of the Year one thousand seven hundred and ninety three to the end of may one thousand seven hundred and ninety five and for the intermediate space between the said dates and your Petitioner doth further shew that the said Deponent in answering to the third Interrogatory Exhibited to him did Say that he had looked upon the Account Current marked with the Letter A and at the Several Balances thereof respectively and that he was acquainted with the several Items composing the said account Current in so far as did belong to his situation as the Book keeper of the said Complainant and that the said account to the best of the said Deponents knowledge did contain a full and fair statement of the transactions between the said Complainant and your Petitioner as existing at the respective dates of the same. And your Petitioner further humbly Sheweth unto your most Excellent majesty in Council that the said deponent in answering to the fourth Interrogatory did further

further say that so much of the said account current marked
A which reached to and ended at the thirty first day of
December one thousand seven hundred and ninety four having
been made up in Every particular as it then stood Except
as to certain Piece Goods the said Balance of the said
account current under the said date afterwards was struck
to wit Early in the month of January in the Ensuing year
in the office of the said Complainant and in the Presence of
your Petitioner and the said Complainant as also in the
presence of the Dubash of the said Complainants and that
previous to the striching if such Balance that the Piece
Goods aforesaid were put to your Petitioners Credit, with
his acquiescence at the rate of thirty five perbent advance
and your Petitioner further sheweth unto your most Excellent
majesty in Council that the said deponent in answering to
the fifth Interrogatory did further say that the said account
current which ended on the said thirty first day of December
one thousand seven hundred and ninety four was on being closed
/as termed by the said Deponent/ delivered to your petitioner
and that it remained with your petitioner for several
days and that after which it was returned to the said
deponents at his this Deponents own Requests in order that
it

it might be further contained. and your Petitioner further most
humbly Sheweth unto your most Excellent majesty in Council
that the said Deponent in answering to the sixth Interrogatory
did further depose that when that part of the said account
current which reached to the thirty first December in the said
year one thousand seven hundred and ninety four was made
up in rough, and before closing the sales of the Piece Goods as
aforesaid your Petitioner did inspect the said account as it
then stood and that he recognized many of the Principal
payments, but that your Petitioner did object to the charge of a
certain Bill upon Mr. Bonifas. and that your Petitioners
objections was attended to and that your Petitioner did make
some Demur to the charges upon your Petitioners Timber and
that the said Deponent did produce to your Petitioner the
Vouchers containing the particulars of such charges and that
the deponent said that the said objections were the only
objections made by your Petitioner to the said account and
that the said Vouchers were the only vouchers which your
Petitioner demanded And your Petitioner further Sheweth unto
your most Excellent majesty in Council that the said
Deponent in answering to the seventh Interrogatory did
further say that the several Balances in the account
current

current marked A appearing to be struck subsequent to the said thirty first day of December one thousand seven hundred and ninety four, were so struck at, or near the dates of the said Respective Balances and that the Balance of the twenty Eighth day of February one thousand seven hundred and ninety five was struck in Consequence of the promise on the part of your Petitioner to settle accounts with the said Complai=nant at or about that time and that the Balance of the ninth march of the same year was struck under a further promise of settlement on the behalf of your Petitioner as also with the declared resolution of the said Complainant to compel such settlement and that the latter Balance bearing no date was addid in order to charge your Petitioner with two sums which had been omitted and in order to give your Petitioner a credit for a small sum and Interest which had been borrowed of him by the said Complainant - And your Petitioner further sheweth unto your most Excellent majisty in Council that the said Deponent in answering to the last Interrogatory did say that the several Commissions charged in the said account current were by him the said Deponent computed according to the Rates fixed and laid down in a certain printed list to which the Names and Firms of Commercial Houses in madras were affixed - And your Petitioner humbly Sheweth unto your most Excellent majisty in Council that the Honourable Basil Cochrane was also Examined as a witness in the said Cause on the behalf of the said Complainant who amongst other things did depose that he the deponent did thro the medium of the Complainant purchase of your Petitioner a certain Ship or Vessel called the Berrington and that such purchase was agreed upon and concluded with the said Complai=nant and that the said ship or Vessel was conveyed to the said deponent by your Petitioner and the said deponent did further say that the Consideration given by the said Deponent for the said ship or vessel was fifteen thousand star Pagodas and that the same was passed in an account current betwixt the said Deponent and your petitioner - And your Petitioner further Sheweth unto your most most Excellent majisty in Council that one Tellesingah a Dubash was also Examined as a witness in the said Cause on the behalf of the Complainant who amongst other things did depose that the several account sales produced to him at the time of his Examination numbered respectively N° 1. 2. 3. 4. and 5. were the actual sales of the several Goods mentioned and contained in the said account sales and that the said sales were made, and managed by the Deponent in

in the Capacity of Debash to the said Complainant and under the immediate direction of the Complainant and for account of your Petitioner—

And your Petitioner most humbly shweth unto your most Excellent majesty in Council that John Sharp of Madras merchant was also Examined in the said Cause on the Part and behalf of the said Complainant who did amongst other things depose that he did in or about the month of December one thousand seven hundred and ninety four and on or about the months of January and February one thousand seven hundred and ninety five sell and dispose of by auction, a quantity of Tundoos the property of your Petitioner and that he disposed of the same by the order and authority of your Petitioner and that due notice was given by advertisements in the news papers and Grand Bills of the respective days on which the said Tundoos were Exposed for sale and that the said Complainant and others for him did purchase sixty four Pieces of Teak wood and Eighteen Planks of the said Tundoos and that the said Tundoos were purchased at the average rate of sale of the days on which such purchases were made, by and for the said Complainant and your Petitioner humbly

Sheweth

Sheweth unto your most Excellent Majesty in Council that after the Examination of the said witnesses Publication did pass in the Cause and that the same was thereafter set down to be heard and accordingly came on to be heard before the said Mayors Court on the ninth day of the month of February and year of our Lord one thousand seven hundred and ninety six when the said mayors Court did think fit to order and Decree and did accordingly order and Decree that your Petitioner should pay unto the said Complainant the full and just sum of one thousand one hundred and sixty two Pagodas forty four fanams and twenty seven Cash together with all such Interest as then was or should thereafter become due thereon until payment made also all Costs of suit—

And your Petitioner most humbly Sheweth unto your most Excellent majesty in Council that Conceiving himself very matterially aggrived by the said order and Decree of the said mayors Court your Petitioner did on the twenty Second day of the said month of February and year aforesaid appeal therefrom to the Court of appeals at Madraspatnam and for Cause of appeal did state First that the action of the said Complainant being founded on the Balance of an account Current, it was incumbent of the said Complainant to

have

have Shewn, that an account had been stated between the said Complainant and your Petitioner at or previous to the time when the said pretended Balance was alledged to have been struck and your Petitioner did shew that it was no where in Proof before the said mayors Court on account Current had ever been stated between the said Complainant and your Petitioner That the said Complainant had set up divers pretences of the statement of accounts Existing between your Petitioner and the said Complainant and had produced certain pretended documents to shew the same at various and sundry times prior to and subsequent to the date when the said alledged Ballance or which the said Bill of complaint was grounded was assumed to have been struck but your Petitioner did humbly shew that the said Complainant had not any where attempted Even to prove that any account had been adjusted or stated save on the day setforth in the said account Current annexed to the said Complainants Bill to wit on the thirty first day of December one thousand seven hundred and ninety four and your Petitioner sheweth that the Evidence produced on the behalf of the Complainant to Establish the part of a settlement of accounts having been come to between your

Petitioner

Petitioner and the Complainant on the said thirty first day of December in endeavouring to make out that fact had proved all that was material to your Petitioners Defence namely that no account had Ever been settled or concluded between your Petitioner and the Complainant For your Petitioner did say he was advised that an account could only be said to have been lawfully stated in two ways, either by the Express act of the Parties to the account or by Implication of Law and which first mode of adjustment could only happen from the subscription of all the parties to an account or Materially agreed on or by the enterchanging of the Copies of an account to and with each other previously agreed upon as Just, e, e where one party subscribes to the Court or part of an account delivered to him under Equal or solemnity by the other and your Petitioner did humbly Shew that the said Complainant did not shew or attempt to shew that any account was ever subscribed to by your Petitioner Much less that any account was interchanged in either of the manners ways above setforth

And your Petitioner did state, that the second or that was, the implied or presumed adjustment of Accounts happened from the detention of an account

or

or accounts made out by one Party and delivered to the other when according to the length duration of time for which the Party who received the said account or accounts might detain the same, the Law implied an acquiescence in the particulars of the accounts so delivered and received and which last made of adjustment was wholly applicable to the Settlement of Foreign mercantile transactions or accounts with parties beyond sea and your Petitioner did humbly contend that the said Complainant had not Exhibited any Proof before the said mayors Court to induce or raise a Presumption in Law that an account had at any time been stated or settled between the said Complainant and your Petitioner

And your Petitioner most humbly sheweth unto your most Excellent majesty in Council that he did amongst other things in his said first Reason state that the only Evidence produced to the last mode of settlement went no further than to shew that the account Current under date the said thirty first day of December was delivered to your Petitioner, and that it remained with your Petitioner for several days when it was returned at the Requisition of the said Complainant and that it was then returned, to be further Continued: your Petitioner did

therefore

therefore contend that the said Evidence was altogether as deficient to raise a Legal Presumption of a stated account between your Petitioner and the said Complainant as was the Evidence of the said Complainant to substantiate an Express and absolute settlement, by the act of the Parties to the said account For your Petitioner did shew not only from the declared purpose of the said Complainant in sending for the said account of the said thirty first day of December in order as it was said that it might be further continued but from the further Evidence of the said Complainant to the respective Balances pretended to have been struck on the Twenty eighth day of February and the seventh day of march in the year of our Lord one thousand seven hundred and ninety five which was after the following Tenor and Effect "that the said "Balances were struck at the said Dates respectively - on a "promise as it was said of a settlement on the part of your "Petitioner" That no statement or settlement of accounts had been previously come to, or was supposed ever to have been come to between the said Complainant and your Petitioner the settlement of accounts as it would appear by the said Evidence being an Event Expected not actually past as was insisted on by the said Complainant your Petitioner did

therefore

therefore contend as there was not any Proof of an account
stated before the said Mayors Court they should have decreed
in the premises as if all accounts between your Petitioner and
the said Complainant had remained open and unsettled and
if so that the said Decree of the said mayors Court should
have passed in favor of your Petitioner

Secondly That the said Complainant having failed to shew an
account stated between your Petitioner and the said Complai=
=nant ought in order to have substantiated any Claim to
the Balance of the said account pretended to be due by
your Petitioner unto the said Complainant to have produced
clear and satisfactory Evidence before the said mayors Court
to the several Items or articles contained in the various
accounts Existing between your Petitioner and the said
Complainant in the intermediate space between the twenty
sixth of august in the year of our Lord one thousand seven
hundred and ninety three when the Commercial dealings
between your Petitioner and the said Complainant are
stated to have commenced and the Date at which the said
Complainant filed his said Bill against your Petitioner
and your Petitioner did in his said second Reason also
state that there was no proof Exhibited of the reality and
truth of the Claims of the said Complainant to the several
Credits

Credits taken by him in the different accounts furnished by
him and the said Credits being for the most part on account
of Disbursements by the said Complainant at the request
and on behalf of your Petitioner as also for a particular definite
amount of Commission alledged to be due from your Petitioner
unto the said Complainant for work said to have been done
and performed by the said Complainant on and about the
Business, and at the Instance of your Petitioner and
further on account of Warehouse Rent and servants
Wages said to have been Rented, hired, and paid by the
said Complainant and your Petitioner did further shew
that the said Complainant in order to have Entitled
himself to the said Credits assumed by him in the
said account current ought to have produced some
Receipt or written Vouchers, or should have shewn by
oral Testimony, that the various disbursements pretended
to have been made by him on the account of your Petitioner
were positively and bona fide made and at the
requisition of your Petitioner as also that he the said
Complainant had been Commissioned by your Petitio=
=ner to transact the different kinds of Business
pretended to have been done by him the said Complainant

and

and at a certain rate or Commission agreed on between &c
him and your Petitioner and that he had actually
done the same in pursuance of the authority given to
him and further that the said Complainant had been
instructed to rent a House and Engage servants to
and for the use of your Petitioner and that he the said
Complainant had rented a House or Houses and engaged
servants for and on account of your Petitioner But &c
your Petitioner did state that there was no proof &c
Exhibited by the said Complainant to shew that
the said disbursements were made on the behalf of
your Petitioner and the said Complainant neither
of any authority given by your Petitioners to the said
Complainant to transact any Business on the account
of your Petitioner and Consequently not of any rate of &c
Payment for the Transaction of such Business nor did he
Exhibit any Proof of Instructions to hire any House or
servants for the use and on account of your Petitioner
and therefore your Petitioner did contend that the said
Complainant was not any wise Entitled to the several
Credits assumed by him in the said account and &c
which the said mayors Court had allowed him in

the

the premises Lastly your Petitioner did say that it was
apparent on the face of the accounts Exhibited by the
said Complainant in the said Cause that he had taken
an usurious Interest by the method followed by the
said Complainant in presuming Reckonings to have
been come to between him and your Petitioner, at &
several and different times and computing a fresh and
new Interest on every such presumed Reckoning, which
said Reckonings your Petitioner did shew did never
happen or occur and where no where given in Evidence
before the said Mayors Court and your Petitioner did
further state that it was also Evident on the face of the
said accounts that the said Complainant had claimed
not only on Interest, but a double Interest, where he
had not established any Right to the principal sum
as in the Case of Commission and where if he had
clearly Established a Right thereto he was neither in
Law or Equity Entitled to assume any Interest &c
whatever and your Petitioner most humbly Sheweth
unto your most Excellent majesty in Council that for
the afore in part recited Causes or Reasons of appeal
and such others as might be offered at the Hearing of

your

your Petitioners said Petition of appeal your Petitioner did most humbly pray that the said Court of appeals would Reverse the said order and Decree of the said Mayors Court and grant unto your Petitioner such further and other Relief in the premises as in their wisdom should seem meet —

And your Petitioner most humbly Sheweth unto your most Excellent majesty in Council that to your Petitioners said Petition of appeal the Complainant did Exhibit and file his answer and in answer to your Petitioners first Cause or Reason for appeal did in substance state that so far from having failed to Establish his Case he had actually proved it in two different modes for that first he had shewn by Evidence the inspection and Examination of the account of the thirty first day of December One thousand seven hundred and ninety four by your Petitioner, the Production of and reference to such Vouchers in support of the said account as he your Petitioner chose to demand the closing of the said account in the presence of your Petitioner the delivery thereof to him its continuing in your Petitioners possession for several days and the subsequent rendering thereof to the Complainants Book keeper without objection — Secondly That he the Compluinant had strictly adhered to the Custom of Merchants in his Transactions with your Petitioner Establishing by the Evidence of the said Honble Basil Cochrane his the Complainants right to charge Commission on the sale of the ship Berrington and removing by the Evidence of John sharp the imputation of unfair dealing in the disposal of your Petitioners property — In answer to your Petitioners second Cause or reason of appeal the Complainant did in substance amongst other things urge that every proof really material to his Case would be found in the Evidence — which he did pretend he had adduced that he conceived it would have appeared ridiculous in him to have shewn by special proof that he was authorized to hire ware Houses for your Petitioner or Banksalls or that he the Complainant was authorized to pay Rent for such accomodations or Boat and Cooly Hire for the landing and removing of your Petitioners Consignment and that it would have been almost as necessary to prove that upon the sale of such Goods he was Entitled to a Commission — That with regard to the

payments

payments and disbursements he your Petitioner might at all times have had reference to the Vouchers in support thereof and that to some vouchers your Petitioner did actually refer- and that your Petitioner did not refer to the others also could only have proceeded as the Complainant did insinuate either that he your Petitioner was satisfied of the Justnifs of the charges or that he had determined to avoid being so and to the third or last Cause or Reason of appeal the Complainant did amongst other things state that he was Entitled to Interest upon the Balance of the thirty first day of December by the Custom of Merchants that his title to such Interest had been Shewn on a different Ground by the Evidence in the Cause and that the Compound Interest as charged by your Petitioner to have been made up by the Complainant did not account to more than a few fanams- And your Petitioner most humbly sheweth unto your most Excellent majesty in Council that the Complainant after having thus loosely answered the several Causes or Reasons assigned by your Petitioner for appeal did pray that the said Court of appeals would be pleased to affirm the said order and Decree of the said mayors Court and dismifs your Petitioners said appeal with Costs-

And your Petitioner most humbly sheweth unto Your most Excellent majesty in Council that your Petitioners said Petition of appeal and the said Complainants answer thereto did on the Eighteenth day of July and present year of our Lord one thousand seven hundred and ninety six come on to be heard by and before the said Court of appeals when your Petitioner most humbly sheweth the said Court of appeals was pleased to order and Decree and did order and Decree that the said Decree of the said Mayors Court should stand affirmed, and that your Petitioners said Petition of appeal should stand dismifsed with Costs, 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 craves leave to refer and prays the same may be taken as part of this his Petition and appeal the Original being ready to be produced at the hearing of this your Petitioners appeal may more fully and at large appear-

By which said order and Decree of the said

Court

Court of appeals your Petitioner ~~doth~~ doth conceive himself much aggrieved and doth therefore appeal therefrom - and from the said order and Decree of the said mayors Court to your most Excellent majesty in Council for the following amongst other reasons -

Because your petitioner humbly sheweth to your most Excellent majesty in Council that it was absolutely incumbent on the said Complainant to have shewn either some stated or allowed account by your Petitioner or otherwise to have Established by positive and incontrovertible testimony not only his actual Right of charging for and on account of the several Items in the said account contained but should further have shewn that such charges were warranted, and accept to have been allowed which your Petitioner most humbly sheweth the said Complainant hath not only failed in doing but hath admitted in his answer to your Petitioners Petition of appeal, and hath further shewn by the Evidence he hath brought forward that the account was not only objectionable but actually objected to by your Petitioner when the same was Exhibited to him by the Complainants Book keeper - and your Petitioner further

Submits

submits to your most Excellent majesty in Council that the said Complainant hath in no sort shewn that he had any the smallest right to have Exhibited the several charges on account of ware House Rent and servants Wages and Commission, altho the said Complainant hath pretended and assumed the Right yet as the same were severally contested by your Petitioner he humbly submits that it would not have been rediculous in the said Complainant to have adduced sufficient testimoney in proof of the several allegations in his said Bill of Complaint contained but was materially necessary to do so -

For all which Reasons and such others as may be offered at the hearing your Petitioner most humbly prays that your most Excellent majesty in Council, will be pleased to Reverse the said Decrees of the said mayors Court and Court of appeals and that your Petitioner may have such other Relief in the Premises as to your most Excellent majesty in Council shall seem meet

/Signed/ Emanuel Samuel
Solicitor for appellant

Court

Court of Appeals at Madraspatnam &c

Monday the 18th day of July Anno Domini 1796

Between John Hamilton at present of Fort St. George Mariner appellant and Peter Massey Cassin 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 Honble the Mayors Court together with the Decree of the said Court given in this cause on Tuesday the 9th day of February Anno Domini 1796 upon due consideration had of the matters therein severally contained and of the Pleadings and arguments used by the attornies on both sides This Court doth think fit to order and Decree and doth accordingly order and Decree that the said Decree of the Honble the Mayors Court do stand affirmed and that the appellants Petition be hence dismissed with Costs

True Copy

/Signed/ Emanuel Samuel
Solicitor for appellant

/Signed/ J. Webbe Clk

To the Kings Most Excellent Majesty in Council

Between Peter Massey Cassin of Fort Saint George Merchant Complai-nant and John Hamilton of the same place Mariner Defendant

The answer of the above named Complainant To the Petition and appeal of the above named Defendant

May it please your Most Excellent Majesty in Council. This Respondent answering doth admit that he did some time on or about the Twelfth day of March which was in the year of Christ One Thousand Seven hundred and ninety five file and Exhibit his Bill of Complaint in the Honourable the Mayors Court at Madraspatnam against the Petitioner and that in the said Bill of Complaint he this Respondent did state and alledge that the Petitioner stood Justly and truely indebted unto him the said Complainant in the full and Just sum of One thousand one hundred and sixty two Pagodas forty four fanams and twenty one Cash Current money of madras making into Sterling money of Great Britain at the rate of Eight Shillings

Filed in my Office the 25th October 1796
J. Webbe Clk

for

To

for every Pagoda the sum of Four hundred and sixty five pounds Three Shillings and Ten Pence or thereabouts as he this Respondent said would morefully and at large Appear by the Copy of an account Current annexed to the said Bill for the Inspection of the said Honourable the Mayors Court to which he this Respon= =dent did crave to refer and that the same might be taken as part of his said Bill of Complaint the original thereof being as he this Respondent alledged and as the fact was in his ditto posession ready to be produced and proved when required ditto and this Respondent doth further admit that he did further setforth in and by his said Bill of Complaint that he this Respondent had frequently requested payment from the Petitioner of the said sum of one thousand one hundred and sixty two Pagodas forty four fanams and Twenty Seven Cash but that the Petitioner had refused to pay the same or to give him this Respondent any manner of satisfaction touching the premises and that thereupon this Respondent did pray a general relief such as to the Mayors Court should appear agreeable to Equity and good conscience and that the Petitioner might be Decreed to pay ditto unto him this Respondent the aforesaid sum of one thousand one hundred and sixty two Pagodas forty four fanams and

Twenty

Twenty Seven Cash with all such Interest that then was or should thereafter become due thereon also all Costs of the said Suit May it please your most Excellent Majesty in Council and this Respondent doth farther admit that the Petitioner having appeared to this Respondents said Bill of Complaint did on the Twenty first day of April in the aforesaid year of Christ one thousand Seven hundred and Ninety five Exhibit and file his answer thereto and therein and ditto thereby did deny to stand indebted unto this Respondent in the sum of one thousand one hundred and sixty Two Pagodas forty four fanams and Twenty seven Cash as was alledged and charged in this Respondents said Bill of Complaint and the Petitioner did further say that the said Sum of one thousand one hundred and sixty two Pagodas forty four fanams and twenty seven Cash which was charged to be due and owing to this Respondent in his said Bill was alledged to be so due and owing as the Balance of an account drawn by this Respondent on the Seventh day of march then and now last past and which said Balance the Petitioner did say was false and untrue and the Petitioner did in his said answer pretend that the Balance of the account alledged by this ditto

Respondent

Respondent to have been struck on the thirty first day of December which was in the year of our Lord one thousand Seven hundred and ninety four and to which the said Balance of the seventh day of march had a reference was an "exparte" statement of accounts made by this Respon=dent and in which this Respondents Interest had been considered without due regard to the Rights and credits of the Petitioner and further pretended that the same was not a fair clear and honest account as it purported to be between party and party and the Petitioner did further setforth that he had, had various commercial dealings and mony transactions with this Respondent from and before the month of august which was in the Year of our Lord one thousand Seven hundred and Ninety three to the date on which he did file his said answer and that no statement of accounts between him the Petitioner and this Respondent had been enterchanged within the said period nor had he the Petitioner at any time within the said Period subscribed his name to any accounts submitted by this Respondent or had in any wise allowed thereof. And the Petitioner did in his said answer further setforth that this Respondent had not at any time furnished the Petitioner with any vouchers on which the said Balance of the said account Current must depend so as to enable him the Petitioner to come to a fair and exact reckoning with this Respondent And may it please your most Excellent majesty in Council the Petitioner did further setforth and say that the several Commercial and money Transactions which had passed between him and this Respondent from the said month of august in the said year of Christ one thousand seven hundred and ninety three to the date of his said Answer were of great amount and concern and that they did embrace a property of several Thousand Pagodas And the Petitioner did pretend that as the account of the said Transactions had never been concluded between him and this Respondent and as it did still remain to all intents and purposes open he the Petitioner was entitled to a full compleate and particular account of the several commercial and money Transactions which had subsisted and which did subsist between this Respon=dent and the Petitioner and not such an account Current as was annexed to this Respondents said Bill which account the Petitioner was pleased to term

narrowed

Narrowed and partial and made up suited and adopted only
to the private Interest and advantage of this Respondent and
the said Petitioner did pretend that such mode of account was
only did preclude him the Petitioner from entering on a full
and ample defence to said Bill but did give this Respondent
a Benefit and advantage of which he this Respondent had
availed himself contrary to Law by assuming an usurious and
extortionate Interest on the said several Balances - And may
it please your most Excellent Majesty in Council the Petitioner
in his said Answer further said that this Respondent had
computed an Interest of fifty four Pagodas fifteen fanams
and Twenty Nine Cash as charged to be due and owing
from the Petitioner on the Twenty Eighth Day of February then
last past as an Interest for fifty Nine days at the rate of Two
per cent per annum on the Sum of Two thousand Eighteen
hundred and two Pagodas Nineteen fanams and fifty Eight
Cash which the Petitioner calls a pretended Balance charged
to be due unto this Respondent from the Petitioner on the
Thirty first day of december in the said year of Lord one
thousand seven hundred and Ninety four and the said sum
of fifty four Pagodas fifteen fanams and Twenty Nine
Cash together with a sum of seven Pagodas thirty three

fanams

fanams and sixty Cash charged as a discount on Pagodas one
thousand five hundred and fifty one twenty two fanams and
fifty two Cash for one half of a month had been by this Respon-
dent on the said Twenty Eighth day of February added to
the balance drawn by this Respondent on the said day
scarcely two months from and after the time at which the
preceding said to be pretended balance was struck - And
May it please your most Excellent Majesty in Council
the Petitioner in his said answer did further say that this
Respondent on the seventh day of march next ensuing the
said Twenty eighth day of February seven days only from
and after the stricking of the last mentioned balance
had drawn or struck a third Balance in which he had
included an Interest for the said seven days subsequent
to the said Twenty eighth day of February - and the Petitio-
ner did further in his said Answer say that such mode of
computation by accumulation of Interest on balances where
no stated account was ever made between parties as he the
Petitioner pretended was the case between him and this Respon-
dent was not only oppressive as to him the Petitioner but
contrary to Law and conscence - And May it please your
most Excellent Majesty in Council the Petitioner did further

say

say in his said answer That of the account which had so long subsisted open had been fairly concluded and stated between him the Petitioner and this Respondent and proper credits and correspondent Interest had been allowed to the Petitioner which he was fully and legally entitled to. that so far from the Petitioner being indebted unto this Respondent as he this Respondent had unjustly in his said Bill charged in the Sum of one thousand one hundred and sixty Two Pagodas forty four fanams and Twenty seven Cash that the Petitioner did verily believe this Respondent would appear to be indebted unto him the Petitioner on the said Accounts in a Considerable Sum of money And may it please your most Excellent majesty in Council this Respondent doth admit that to the said answer of the Petitioner this Respondent did on or about the Nineteenth day of may now last past file his Replication wherein and whereby he did insist that the Petitioner did stand Justly and truely indebted unto him this Respondent not only in the Sum charged by the said Bill but also in a further Sum of thirty Eight Pagodas and upwards as this Respondent did say might more fully appear by a further account annexed to the said Replication and

to

to which this Respondent did pray reference being of the like date with the account annexed to the said Bill and by an over sight therein omitted to this Respondents credit the benefit where of he this Respondendent did therein pray and this Respondent did further state in his said Replication that for as much as the Petitioner did by his answer assert that the balance of an account on the thirty first day of December one thousand seven hundred and ninety four was but a pretended and Exparte account and balance this Respondent did say that he would thereafter prove that it was a real balance struck in the Petitioners presence and that the account so struck was delivered to the Petitioner and the same remained in the Petitioners possession for several days and was then returned by him without any objection the said Petitioner having taken a Copy thereof and this Respondent in his said Replication did further say that if the Petitioner had any objections to the said account he might have stated the same in his answer without equivocation or denial of his the Petitioners knowledge of the True State of his commercial and money transactions with this Respondent for that tho this Respondent did not pretend to Shew that

accounts

accounts were ever interchanged yet that the irregularity of the Petitioners in that respect or his caution in not Subscribing his name to the several accounts which had been delivered to him could not affect this Respondent or his claim He this Respondent having done his duty in furnishing the whole accounts of which this Respondent did say the Petitioner had copies notwithstanding his assumed ignorance thereof And this Respondent in his said Replication did further say he did not dispute that the balance of the account must depend on Vauchers but he contended that the proof also of accounts depended on vouchers and that, that circumstance did afford a reason for not delivering the said vouchers to the Petitioner and that if a further reason were necessary it might be drawn from the uniform practice of marchants in this Respect it being a thing unknown among them to deliver up Vouchers until the accounts were settled or admitted. That the Vouchers of this Respondents account with the Petitioner were at all times ready to be produced to him and that the Petitioner had recourse to several of them Viz.t to all that he had demanded and which related chiefly to the Charges of landing moving and watching his the Petitioners Timber. And this Respondent

in

in his said Replication did thus proceed to say "the account had "never been concluded but did remain open seemed to this Respon= "dent to suppose the necessity of mutual consent a supposition "which would bear extremly hard upon this Respondent in as "much a Debtor might then act as the Defendant in this case "had done by persevering as the Petitioner had done in an "invincible aversion to settlement and the evasion of an Interest "account" And this Respondent in his said Replication did say that the Petitioner was no doubt entitled to a compleat and comprehensive account of his concerns and that the account in Question was so much as that for account Current it went much further being so framed as to comprise an abstracted account sales of such part of his property as was partly but not fully disposed of And this Respondent did further say that the Petitioner in his answer had observed that the account was suited and adopted to the private Interest and advantage of this Respondent precluding the Petitioner from a full defence and affording to this Respondent a pretence for assuming an usurious Interest and to which this Respondent did reply That as to the first part of the said observation he need not comment that related to the Question was in the

possession

Profession of the said Mayors Court at the Petitioners progress
leaving only the charge of usurious Interest to be considered
on which this Respondent said it was to be noted that
in the account ending the Thirty first day of December
simple Interest was charged by him this Respondent on
all his Payments and allowed on all sums received or
reckoning from their respective dates until the last mentioned
day and that, that account having remained open for a
longer period than was usual amongst merchants Viz.t Sixteen
Months was at length (if that had been necessary) closed in
the presence of and which the entire acquiescence of the Petitioner
over it having as this Respondent further alledged and as the
fact was been the Petitioner professed Intention to propose at
that time some mode of settling the Balance and this
Respondent did further state that the Petitioner did indeed
make some proposals which partly from their being retracted
evaded and some times denied by the Petitioner the finals
settlement was postponed from time to time until the Twenty
Eighth Day of February on which day a new statement
was made out to include a further sum applicable to the
Petitioners credit by the sale of some Timber and this
Respondent did state that in the said statement Interest

was of course charged upon the former balance and that it would require no proof to the said Mayors Court to Establish that it was the unvariable custom of merchants to charge and allow an Interest account on yearly balances. And this Respondent admits that he did in his said Replication suggest that the discount of Seven Pagodas Thirty three fanams and sixty Cash charged in the said account did not appear to be understood by the Petitioner and therefore he this Respondent did shew that the Petitioners Timbers were sold by parcels on various days to wit a very inconsiderable part of them on the thirty first day of December and Eighth Day of January then last past but the greater bulk there of between the Tenth and Twenty fifth day of February then also last past and the whole had produced up to the last mentioned day the net sum of Pagodas one thousand five hundred and fifty one Twenty Two fanams and fifty two Cash that Messieurs Sharp and Keefke the accetioneers employed in such sales were by custom entitled to one month for payment of the proceeds from the respective days of sale so that when the sum of one thousand five hundred and fifty one Pagodas Twenty two fanams and fifty two Cash was carried to the Petitioners Credit on the Twenty Eighth Day of February a very

trifling

trifling part thereof had fallin due and the rest was to follow on the different days between the Tenth and Twenty fifth day of march following That the average or medium which had arose from the Consideration of those two extreems was seventeen days and an half and in lieve thereof the discaunt charged by this Respondent was for fifteen days only and this Respondent did further state that the balance due from the Petitioner was on the said Twenty Eighth day of February one thousand one hundred and sixty Six Pagodas forty one fanams and sixty one Cash but was soon after reduced by a further state of Tember amounting to forty Eight Pagodas thirty Six fanams and twenty Two Cash and that on bringing that Sum to the credit of the account the proceeding balance was brought forward and Seven days Interest had been charged thereon - And this Respondent did admit that an Interest upon Interest that is upon fifty four Pagodas fifteen fanams and Twenty Nine Cash which composed the gross amount of the usurious extortionate unlawful and unconscientious advantages assumed by this Respondent who at the same instant had relinquished to the Petitioner the Commission to which this Respondent was entitled on the proceeds of the timbers being Two and an half per Cent on One thousand Six hundred Pagodas thirteen fanams and seventy four Cash or Pagodas forty and Twenty Seven fanams and a much more considerable Claim for commission Justly due to this Respondent from the Petitioner on the settlement of certain accounts referred by the Petitioner to this Respondent to adjust with the Honourable Basil Cochrane and thereupon this Respondent did humbly submit to the said Mayors Court that the Petitioners belief if it were at all material that on a fuller and fairer statement this Respondent would be found indebted to him the Petitioner must vanish together with the flimzy foundation of General and unsupported assertion on which it was built - And may it please Your Most Excellent majesty in Council this Respondent doth admit that to the said Replication the Petitioner did Exhibit and file his Rejoinder and did therein and thereby allege that the several matters and things in his the Petitioners said answer contained were not refuted or in any substantial manner even denied by this Respondent in his said Replication and the Petitioner did further say as in and by his said answer he had said that he did not stand indebted unto this Respondent in the sum sued for and that he

never

never did receive from this Respondent any adjusted account and that as to any balance pretended to have been struck in the Petitioners presence he the Petitioner did deny that this Respondent did ever produce to him any vouchers for the various sums by him said to have been expended on account of the Petitioner and therefore if any balance ever had been struck in the Petitioner presence and which the Petitioner did not admit to be the fact, the same must have been done upon an advantage taken of the Petitioners ignorance of accounts and entirely without the Petitioners acquiescence and merely that this Respondent might have the opportunity of saying as he then did that a balance had been struck in his the Petitioners presence And the Petitioner did further say that he was advised that striking a Balance would not render such balance of any authenticity or enable the party to derive any benefit therefrom either by way of Interest or otherwise unless the other party did give or signify his full and entire approbation thereof- And the Petitioner did further say that it was not true that this Respondent did deliver to him any regular Account nor as the Petitioner

pretended did he the Petitioner ever keep in his possession for the space of ten days any account with a Balance struck thereon as asserted by this Respondent in and by his said Replication and the Petitioner did say that even if he had, had in his Possession such accounts and for such a time he humbly submitted that sending them back again as this Respondent had pretended without any objection did not nor could be construed to amount to an approval thereof- and that to Shew such approval the Petitioner ought to have signed the Same in writing and this Respondent himself had Shewn that your Petitioner never did declare his opinion of the account said to have been framed by this Respondent and that no accounts ever were interchanged between them and he also had shewn that to give force and validity to the said accounts the Petitioner ought to have signed the same and the Petitioner did further say that although it might not be customary amongst Merchants not to deliver up vouchers as insisted on by this Respondent until the depending accounts should be settled yet the Petitioner was advised that it was consistent with the Custom of Merchants that

Vouchers

Vouchers be produced to the Party against whom they stand and the Petitioner did further pretend that by the shewing of this Respon = dant regarding the detention of the vouchers and his reasoning thereon it was conclusive that no Balance pretended to have been struck by him this Respondent ever was approved of" or admitted by the Petitioner and the Petitioner did further say that he did not know whether Vouchers on the accounts in Question were or were not ready but he knew they never were delivered to his the Petitioners inspection either by this Respondent or by any other person and that those Vouchers which this Respondent did as the Petitioner terms it pretend to have shewn to the Petitioner but which the Petitioner did deny ever to have seen were according to his this Respondents own Statement of the fact very trivial and insignificant in their Nature as they related, as this Respondent had said chiefly to the Charges of landing moving and watching his Timber and the Petitioner in his said Rejoinder did further say that the assertion of this Respondent that the Petitioner did repeatedly offer to execute his Bond for the Balance in question was if true and which the Petitioner did deny foreign to the matter before the said Mayors Court and the Petitioner for further Rejoinder did say that the account Current as made up by the

this Respondent was so made up to Answer his own purposes and that he did deny that all or any of the Documents relative to the matter in question were or are before the said Mayors Court and the Petitioner did submit that it was Notafair or Merchantile mode to make the Charges this Respondent had done in and by his account Current that for this Respondent in the said account Current amongst other pretendedly extraordinary Credits taken to him therein had charged on the insurance of the Vessel called the Minish one half perbent on two Thousand Pagodas being the amount for which the said Vessel was said to have been insured and in the said account Current he had also Charged two and half perbent on two hundred Star Pagodas ten fanams and seventy Cash the amount said to have been disbursed for effecting the said Insurance on the said Vessel and the Petitioner did say that the said Charges did appear to be unreasonable and Extravagant and the Petitioner did further allege that this Respondent in and upon all goods which he had alledged to have sold on the behalf of the Petitioner had also taken a Credit to himself in the said account Current of five per Cent on the alleged to be pretended amount sale of the same as also

a

a further Credit of one per Cent upon all Disbursement stated to have been made by him over and above the Charges of Bankshall hire Servants Wages and other incidental Charges and the Petitioner did say that he was advised that the said Charges were not allowable by the usage of Merchants Obtaining at Madras nor were they reconcilable to the General Custom of Merchants Elsewhere observed but if the Petitioner was not rightly informed in this respect he could not think that the Interest assumed by this Respondent in his said account Current over and above the said Extraordinary Charges would be defended by any usage or Custom whatever for this Respondent had assumed an Interest of twelve perbent per annum the highest rate of Interest licenced to be taken in India on every particular sum alledged to have been expended for the use of the Petitioner and had also taken a like Interest from and after the thirty first day of December then last past on all the said sums charged to be due unto this Respondent for and an account of Commission for all Business pretended to have been done on the Petitioners account and which the Petitioners did not admit without ever stating as the Petitioner did pretend either in his this Respondents said Bill or in his said Replication

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what Business had been done for and on account of the Petitioner or shewing or declaring that he ever had been Commissioned by the Petitioner to do or perform any Business of any kind for and on the Petitioners behalf and the said Petitioner not adverting to the general unqualified Charges under the head of Commission made against the Petitioner in the Documents which this Respondent had delivered in to the said Mayors Court and which he had delivered as so many Vouchers for the Transactions and Dealings which had subsisted between the Petitioner and this Respondent but which the Petitioner did not admit, as many certain or conclusive Vouchers on that behalf the Petitioner Prayed the attention of the said Mayors Court to the item in the said account Current under date the thirty first day of December wherein a Credit was taken by this Respondent for the sum of two hundred and twenty five Star Pagodas being exclusive as it was there Charged of Commission on Cash and purporting to have been Charged as an exclusive Commission by this Respondent for the sale of the Ship Berington for the sum of Fifteen Thousand Pagodas and which said Ship the Berington from what was apparent in the said account Current it would seem had been disposed of or sold by this Respondent for and on account of your

Petitioner

Petitioner but the Petitioner did say as he pretended he would in due time prove that the said Ship Berrington was actually and bonafide sold by the Petitioner himself and that this Respondent had no Interest or other share in the premisses and the Petitioner in further support of the suggestion made by him in his answer of usurious and extortionate Interest having been taken by this Respondent in his said account Current a Charge pretended to be treated so lightly and indifferently by this Respondent though alledged to be in part confessed by him that his the Petitioners said suggestion was well founded and had further and stronger Grounds than admitted by this Respondent in his said Replication for the Petitioner did shew to the said Mayors Court that from the said account Current of this Respondent it did appear in the Balance pretended to have been self concluded by this Respondent on the thirty first day of December then last past not only an Interest was taken for all and every sum said to be pretended to have been advanced by this Respondent on account of the Petitioner but also on the credit side of the said Account a Variety of Principal sums were inserted not accepted or allowed by the Petitioner alledged to have been due to this Respondent for service and Business done for the Petitioner and a Number of other Items of Principal sums were also inserted as so many Disbursements also alledged to have been made by order of the Petitioner and on which said sum so pretended to have arisen for service or Business done to the benefit of the Petitioner and so pretended to have been Disbursed though the same were as the Petitioner alledged disallowed and unsubstantiated the said Complainant had also assumed an Interest in the said Account Current and on a pretended Balance of an Interest account this Respondent had inserted a seperate Item as such pretended Balance said to be due to this Respondent from the Petitioner of three Hundred and twenty three Pagodas twenty two fanams and seventy one Cash and which said pretended Balance was aded to the apparent principal sums pretended to be owing unto this Respondent and was included in a General Balance assumed thereupon without Notice to the Petitioner and the Petitioner further alledged that notwithstanding he never did admit or sanction the Balance so partially concluded by this Respondent as he the Petitioner pretended to have shewn on the said thirty first Day of December was again Debited on the Twenty eighth day of February then last past as the Petitioner alledged did

did appear by the said account Current in a second Interest on the sum of two thousand Eight hundred and Two Pagodas thirteen fanams and fifty eight Cash on the said Last mentioned balance for the space of fifty Nine days being the Extent of the intermediate space between the said Twenty Eighth day of February and the said thirty first day of December and this Respondent doth admit that the Petitioner in his said Rejainder did further set forth that as he had in his said answer stated a third balance was again struck and a seperate and third Interest taken thereon on the seventh day of march when another statement of accounts was again said to be feigned by this Respondent that the Interest taken by this Respondent and in his said account Current on the said sums said to be pretended to be due to this Respondent for service and busineſs done and performed on the behalf of the Petitioner and on the said Disburse=ments and in the Commiſsion aſsumed on the said Disbursements and on the balance of the said Interest Account were usurious and lastly the Petitioner did state that in the sales of Timber on account of the Petitioner this Respondent did sell great part of the said Timber without

without offording proper and Sufficient Notice of the sale thereof either by public Advertisement or otherwise howsoever and that great part of the said Timber so sold by this Respondent had been purchased by himself or at his parti=cular Instance- May it please your most Excellent Majesty in Council this Respondent doth most humbly admit that on the proceedings so had iſsue did Join and Rules did paſs for the Examination of Witneſses as well on the part of this Respondent as of the Petitioner and this Respondent doth admit that one James Sutherland of Fort Saint George Gentlemen was Examined as a witneſs on the part and behalf of this Respondent and who in deposing to the second Interrogatory did say that he was acquainted with accounts and transactions Existing between this Respondent and the Petitioner and that he became so acquainted by being the Clerk or Bookkeeper of this Respondent and that he had knowledge of the said Accounts and Transactions from the begining of the year one thousand seven hundred and Ninety three to the end of May one thousand seven hundred and Ninety five and for the intermediate space between the said dates and this Respondent doth admit that the said Deponent in answering to the

third

third Interrogatory Exhibited to him did say that he had looked upon the account Current marked with the letter A and at the several balances thereof Respectively and that he was acquainted with the Several Items composing the said account in so far as did belong to his situation as the Bookkeeper of this Respondent and that the said account to the best of the said Deponents knowledge did contain a full and fair Statement of the Transactions between this Respondent and the Petitioner as Existing at the Respective dates of the same and this Respondent doth admit that the said Deponent in answering to the forth Interrogatory did further say that so much of the said Account Current marked A which reached to and Ended at the thirty first day of December one Thousand seven hundred and Ninety four having been made up in every particular as it then stood Except as to certain piece Goods the said Balance of the said Account Current under the said date afterwards was struck to wit early in the Month of January in the Ensuing year in the office of this Respondent and in the presence of the Petitioner and this Respondent as also in the presence of the Dubash of this Respondent and

and that previous to the striuching of such Balance the piece goods aforesaid were put to the Petitioners Credit with his acquiescence at the rate of thirty five perbent advance and this Respondent doth further admit that the said Deponent in answering to the fifth Interrogatory did further say that the said account Current which Ended on the said thirty first day of December one thousand seven hundred and Ninety four was on being closed delivered to the Petitioner and that it remained with the Petitioner for several days after which it was returned to the said Deponent at his the Deponents own request in order that it might be further continued and this Respondent doth further most humbly admit that the said Deponent in answering to the sixth Interrogatory did further depose that when that part of the said Account Current which reached to the thirty first December in the said year one thousand Seven hundred and Ninety four was made up in rough and before closing the sales of the piece Goods as aforesaid the Petitioner did Inspect the said account as it then stood and recognized many of the principal payments but that the Petitioner did objects to the charge of a certain Bill upon Mr. Bonifas which had been remitted to him by this Respondent he the Petitioner alledging that he had only received four hundred Pagodas

in

in part of the said Bill and that therefore he ought not to have been charged with the whole amount and the said Deponent did say that in consequence of such Observation of the Petitioner the Balance of the said Bill alledged by the Petitioner not to have been received was put to the Credit of him the Petitioner with Interest which the said Deponent did say would appear by the said account Current and that the Petitioner did make some Demur to the Charges upon the Petitioners Timber and that the said Deponent did produce to the Petitioner the Vouchers containing the particulars of such Charges and the Deponent said that the said objections were the only objections made by the Petitioner to the said ditto account and that the said Vouchers were the only Vouchers ditto which the petitioner Demanded and this Respondent doth further admit that he the said Deponent in answering to the seventh Interrogatory did further say that the several Balances in the Account Current Marked A appearing to be struck subsequent to the said thirty first day of ditto December one thousand seven hundred and Ninety four were so struck at or near the dates of the said Respective Balances and that the twenty Eighth day of February one thousand seven hundred and Ninety five was struck in

Consequence

Consequence of the promise on the part of the Petitioner to settle Accounts with the said Complainant at or about that time and that the Balance of the ninth march of the same year was struck under further promise of settlement on the behalf of the Petitioner as also with the declared resolution of this Respondent to Compell such settlement and that the latter Balance bearing no date was added in order to charge the Petitioner with two sums which had been omitted and in order to give the Petitioner a credit for a small sum and Interest which had been borrowed of him by this Respondent- and this Respondent doth further most humbly admit that the said Deponent in ditto Answering to the last Interrogatory did say that the several Commissions charged in the said Account Current were by him the said Deponent Computed according to the rates fixed and laid down in a certain printed list to which the Names and Firms of the Principal commercial Houses in madras were affixed and this Respondent doth further humbly admit that the Honble Basil Cochrane was also Examined as a Witness in the said cause on the behalf of this Respondant who amongst other things did dispose that he the Deponent did thro the medium of this Respondent

Purchase

purchase of the Petitioner a Certain Ship or Vessel called the Barrington and that such purchase was agreed upon and concluded with this Respondent and that the said Ship or Vessel was conveyed to the said deponent by the Petitioner and the said Deponent did further say that the consideration given by him the deponent for the said Ship or Vessel was Fifteen thousand star Pagodas and that the same was passed in an account Current betwixt the said Deponent and the Petitioner and this Respondent doth further most humbly admit that one Tellesingah a Dubash was also Examined as a Witness in the said Cause on the behalf of this Respondant who amongst other things did depose that the several account sails produced to him at the time of his Examination membered respectively No 1.2.3.4 and 5 were the actual sales of the several Goods Mentioned and contained in the said account sales and that the said sales were made and Managed by the Deponent in the Capacity of Dubash to and under the immediate direction of this Respondent and for account of the Petitioner and this Respondent doth further most humbly admit that John Sharpe of madras Merchant was also Examined in the said Cause on the part and behalf of this Respondent who did amongst other things depose that he did

did in or about the month of December one thousand seven hundred and Ninety four and on or about the month of January and February one thousand seven hundred and ninety five sell and dispose of by Auction a quantity of Tundoos the property of the Petitioners and that he disposed of the same by the order and authority of the Petitioner and that due Notice was given by advertisements in the News Papers and hand Bills of the respective days on which the said Tundoos were Exposed for sale and that this Respondant and others for him did purchase sixty four pieces of Teak wood and Eighteen planks of the said Tundoos and that the said Tundoos were purchased at the average rate of sale of the days on which such purchases were made by and for this Respondant and this Respondant doth further most humbly admit that after the Examination of the said Witnesses Publication did pass in the Cause and that the same was thereafter set down to be heard Accordingly came on to be heard before the said mayors Court on the ninth day of the month of February and year of our Lord one thousand seven hundred and ninety six when the said

Mayors

Mayors Court did think fit to order and Decree and did accord=
=ingly Order and Decree that the Petitioner should pay unto
this Respondant the full and just Sum of one thousand
one hundred and sixty two Pagodas fourty four fanams and
twenty seven Cash together with all such Interest as there
was or should thereafter become due thereon until payment
made also all Costs of suit - And may it please your
most Excellent Majesty in Council this Respondant doth
most humbly admit that the Petitioner pretending to consider
himself very materially agrieved by the said order and Decree
of the said mayors Court did on the twenty second day of
the said Month of February and year aforesaid Appeal
therefrom to the Court of Appeals at Madraspatnam and
for Cause of Appeal did state first that the action of
this Respondant being founded on the Balance of an
Account Current it was incumbent on this Respondant
to have shewn that an account had been stated between
this Respondent and the Petitioner at or previous to the
time when the said pretended Balance was alledged
to have been struck and the Petitioner did alledge that
it was no where in Proof before the said mayors Court

that an account Current had ever been stated between this
Respondant and the Petitioner that this Respondent had
set up divers by the said Petitioner absurdly termed pretens=
=ces of the statement of accounts Existing between the Petitioner
and this Respondant and had produced certain Documents
called by the Petitioner pretended Documents to shew the
same at various and sundry times prior to and subsequent
to the date when the (said to be) alledged Balance on which
the said Bill of Complaint was grounded was assumed to
have been struck but the Petitioner did pretend that this
Respondent had not any where attempted Even to prove
that any account had been adjusted or stated Save on the
day set forth in the said account Current annexed to
the said Complainants Bill to wit on the thirty first
day of December one thousand Seven hundred and
Ninety four and the Petitioner did pretend that the
Evidence produced on the behalf of this Respondant to
Establish the fact of Settlement of Accounts having been
come to between the Petitioner and this Respondant
on the said thirty first day of December in Endeavour=
=ing to

to make out that fact had proved all that was material to
Petitioners Defence Namely as the said Petitioner did pretend
that no account had Ever been settled or concluded between
Petitioner and this Respondant for the Petitioner did say he
was advised that an account would only be said to have been
lawfully stated in two ways either by the Express act of the
Parties to the account or by Implication of Law and which
first mode of adjustment could only happen from the subs-
=cription of all the parties to an account mutually agreed
on or by the enterchanging of the Copies of an account to and
with each other previously agreed upon a Just i.e. where
one party subscribes to the Counter part of an account delivered
to him under Equal Solemnity by the other And the Petr
did allege that the said Complainant did not shew / or
attempt to shew that any Account was ever subscribed to
by the Petitioner muchless that any Account was intended
=ged in either of the manners ways above setforth - and the
Petitioners did allege that the second to wit, the implied
or presumed Adjustment of Accounts happened from the
detention of an account or accounts made out by one
party

party and delivered to the other when According to the ordr
length or duration of time for which the party who received
the said accounts might detain the same the law
implied an acquiescence in the particulars of the Accounts
so delivered and received and which last mode of adjust=
=ment was wholly applicable to the settlement of Foreign
Merchantile Transactions, or Accounts with parties beyond
sea, and the Petitioner did Contend that this Respondant had
not Exhibited any proof before the said Mayors Court to
induce or raise a presumption in Law that an account had
at any time been stated or settled between this Respondent
and the Petitioner — And may it please your most
Excellent Majesty in Council this Respondant doth now
admit that the Petitioner did amongst other things
in his said first reason state that the only Evidence
produced to the last mode of settlement went no further
than to shew that the account current under date the
said thirty first day of December was delivered to the
Petitioner, and that it remained with the Petitioner for
Several days when it was returned at the requisition of

this

this Respondant and that it was then returned to be further
Continued, the Petitioner did therefore contend that the said
Evidence was altogether as deficient to raise a Legal Presump-
=tion of a stated account between the Petitioner and this
Respondant as was the said petitioner did pretend the
Evidence of this Respondent to substantiate an Express
and absolute Settlement by the act of the Parties to the said
Account for the Petitioner did allege that not only from
the declared purpose of this Respondant in sending for the
said account of the said thirty first day of December in
Order as it was said that it might be further continued
but from the further Evidence of this Respondant to the
Respective Balances pretended to have been struck on the
Twenty Eighth day of February and the seventh day of
march in the year of our Lord one thousand seven hundred
and ninety five which was the following Tenor and
Effect "that the said Balances were struck at the said
"dates respectively on a promise of a Settlement on the
"part of the Petitioner" That no statement or settlement
of Accounts had been previously come to, or was supposed

ever to have been come to between this Respondant - and the
Petitioner the settlement of accounts as the Petitioner did
most uncandedly pretend it would appear by the said Evidence
being an Event expected not actually past, as was insisted
on by this Respondant the Petitioner did therefore as he said
contend as there was not any proof of an account stated
before the said mayors Court they should have decreed in
the premises as if all accounts between the Petitioner and
this Respondant had remained open and unsettled - and
if so that the said Decree of the said Mayors Court should
have passed in favor of the Petitioner - And this Respondant
doth most humbly admit that the said Petitioner did
alledge in the Second place that this Respondant having
failed to shew an account stated between the Petitioner
and this Respondant out in order to have substantiated any
claim to the Balance of the said account pretended to be
due by the Petitioner unto this Respondant to have
produced clear and Satisfactory Evidence before the said
Mayors Court to the several Items or articles contained in
the Various accounts Existing between the Petitioner and

this

this Respondant in the intermediate space between the twenty Sixth of august in the year of our Lord one thousand Seven hundred and ninety three when the Commercial dealings between the Petitioner and this Respondant are stated to have commenced and the Date at which this Respon=dent filed his said Second reason also pretend that there was no proof Exhibited of the reality and truth of the &c claims of this Respondant to the several Credits taken by him in the different Accounts furnished by him and the said Credits being for the most part on account of Disbursements by this Respondent at the request and on behalf of the Petitioner as also for a particular definite Amount of Commission alledged to be due from the Petitioner unto this Respondant for work said to have been done and performed by this Respondent on and about the Business and at the Instance of the Petitioner and further on account of ware house rent and servants Wages said to have been rented hired and paid by this Respondant and the Petitioner did &c further allege that this Respondant in order to have

entitled himself to the said Credits assumed by him in the said Account Current ought to have produced some &c receipt or written Vouchers or should have shewn by oral Testimony that the Various Disbursements pretended to have been made by him on the account of the Petitioner were positively and bonafide made and at the requisi=tion of the Petitioner as also that he this Respondent had been Commissioned by the Petitioner to transact the different kinds of Business pretended to have been done by him this Respondant and at a certain rate or Commission agreed on between him and the Petitioner and that he had actually done the same in pursuance of the authority given to him and further that this &c Respondant had been instructed to rent a House and engage Servants to and for the use of the Petitioner and that he this Respondant had rented a House or Houses and engaged Servants for and on account of the petitioner but the Petitioner did alledge that there was no proof Exhibited by this Respondent to shew that the said Disbursements were made on the &c

behalf

behalf of the Petitioner neither of any authority given by the petitioners to this Respondent to transact any business on the account of the Petitioner and consequently not of any rate of payment for the Transaction of such business nor did he this Respondent as the said Petitioner did alledge Exhibit any proof of Instructions to hire any House or servants for the use and on Account of the Petitioner and therefore the Petitioner did Contend that this Respondent was not any wise entitled to the several Credits assumed by him in the said Account and which the said Mayors Court had allowed him in the premisses and this Respondent doth most humbly admit that the said Petitioner did in the last place say that it was apparent on the face of the Accounts Exhibited by this Respondent in the said Cause that he had taken an usurious Interest by the Method followed by this Respondant in presuming rechonings to have been come to between him and the Petitioner at several and different times and computing a fresh and new Interest on every such alledged to be presumed

Rechoning which said rechoning the Petitioner pretended did never happen or occur and were no where given in Evidence before the said Mayors Court and the Petitioner did further pretend that it was also Evident on the face of the said accounts that this Respondents had blamed not only on the Interest but a double Interest where he had not Established any right to the principal sum as in the case of Commission and where if he had clearly Established a right thereto the Petitioner did most untruly pretend he this Respondent was neither in Law or Equity Entitled to assume any Interest whatever And this Respondent doth most humbly admit that the Petitioner for the afore recited causes or Reasons of appeal and such others as he the Petitioner did suggest might be offered at the hearing of his the Petitioners said Petition of Appeal the Petitioner did pray that the said Court of Appeals would reverse the said order and Decree of the said Mayors Court and Grant unto him the Petitioner such further and other relief in the premises as in their Wisdom should seem meet

And this Respondant doth most humbly admit

admit that to the Petitioners said Petition of appeal this Respondent did Exhibit and file his answer and in such his answer did setforth and shew in the first place that the Petitioner had said that this Respondents action was founded on the Balance of an account current or at least that it was pretended so to have been founded that in such Exposition of the matter there was a misstatement small in appearence but in its consequences great and material and as it seemed to have misled the Petitioner in the whole of his reasoning and to have given rise to the inconsistency that appeared between his first and second reasons this Respondent did rather choose to say as the fact was that his action was founded upon an account current and was brought for a debt or Balance arising upon such account and this Respondent did further state that the account altho annexed to the Bill of Complaint in an abridged from was nevertheless produced and sworn to in Evidence at full length whence this Respondent did say it would appear that this Respondent instead of being lemitted as the Petitioner in his first reason did assume to the proof of a stated account or an admitted Ballance had a further option to prove the account a Just one. This premised this Respondent did proceed to shew that so far from having failed to Establish his case he had actually proven it in two different modes — For that first he had shewn by Evidence uncontroverted the following facts touching the account of the thirty first day of December to wit the inspetion and Examination thereof by the Petitioner The production of and his reference to such Vouchers in support thereof as he the Petitioner chose to Demand the closing of the said Account in the presence and which the acquiescence of the Petitioner the delivery thereof to him its continuing in his posfession for several days and the subsequent rendering thereof to the Bookkeeper of this Respondent without objection &c. climax of circumstances which this Respondent did say he was advised to be more than sufficient to Establish an adjustment by implication of Law up to the said thirty first day of December. And this Respondent did say that the subsequent part of the said account was almost wholly

wholly for the benefit of the Petitioner and no part thereof had
been questioned or objected to by him except only the charge of
Interest the Justness of which necessarily followed from the
simple fact of a previous adjustment Secondly that this &c
Respondent having obviated every objection specially alledged
by the Petitioner shewing by his replication that he had &c
strictly adhered to the Custom of Merchants in all his Trans=
actions with the said Petitioner especially in the stating of
his accounts and in the Calculations of Interest thereon &c
Establishing by the Evidence of the Honble Basil Cochrane
his this Respondents right to charge Commission on the
sale of the ship Barrington and removing by the Evidence
of John Sharp the wicked imputation of unfair dealing in
the disposal of the Petitioners property He this Respondent
did say he had at length by the Evidence of his Bookkeeper
James Sutherland proved that the account in Question
did contain a full and fair statement of the Transactions
between the Petitioner and this Respondent as existing
at the respective dates of the same whereby he this Respon=
=dent did say he conceived and humbly contended that the
debt

debt or Balance arising upon the said account was fully &c
Established as a Just Demand against the Petitioner And
this Respondent did say That in the first reason of the Petr &c
a passage was Quoted from the Depasition of the said witness
James Sutherland to this Effect That certain Balances &c
alluded to were struck at their respective dates on a promise
of a Settlement on the part of the Petitioner from which the
Petitioner assuming the word Settlement as synonimous
with his own term statement had inferred That no state=
=ment or Settlement of accounts had been previously come to or
was supposed even to have been come to between this Respon=
=dent and the Petitioner and had insinuated that it thereby
appeared that the Settlement of accounts was an event
expected and not actually past This Respondent did say
that surely nothing could be more distant from the &c
import of the Evidence than the meaning there assigned to it
by the Petitioner That the words were common and the sense
plain having no room for ambiguity nor any necessity for
comment That if however it were at all necessary an illustra=
=tion did then occur at once obvious and in point for that

this

this Respondent could with equal truth and pro-
assert that his account had long been taken but that
same was not yet settled.

And in answer to the second reason
Petitioner in his said appeal this Respondent did
the said Petitioner having in his first reason a
Respondents action to have been founded upon a
and having thence argued the necessity of shewing
accaunt in suming exclusion of every other mo
this Respondent had thought it most pertinent
answering the said first Reason to discuss the Ques
its whole extent by which means he had in some
anticipated the arguments of the Petitioner in his
second Reason That for what remained he this Re
-dent did Answer and say that the Points enume
the Petitioner as requisite to be proven were for
part but circumstances appertaining to and emp
in the very nature of the Transactions existing
this this Respondent and the Petitioner and that
proof realy material to this Respondents case

found in the Evidence which he had adduced for this Respon-
-dent did say he conceived that it must have appeared almost ri-
-diculous in him to have shewn by special proof that he was
authorized to hire ware houses for the logement of the Petitioners
Cloth or Banksals for his Timber or that he was authorized to
pay Rent for such accommodations or to pay Boat and Cooley
hire for the landing and removing of the Petitioners Consign-
-ments and it would have been almost as unnecessary to prove
that upon the sale of such Goods he was Entitled to a Commission
that being a point Established by the Custom of Merchants
that the quantum indeed of that Commission he this Respon-
-dent had shewn to be Conform to the printed regulations
made and adopted by the principal Houses in Madras that
with regard to the payments and disbursements the Petitioner
might at all times have had reference to the Vouchers in
support thereof and to some Vouchers actually did refer that he
had not referred to the others also could only have proceeded
from one of two motives either that he was satisfied of the
Justness of the Charges or that he had determined to avoid
being so This Respondent did say that this point and
Several of the foregoing paints were contained in the
Evidence

Evidence of James Sutherland who had deposed that he a
=ainted with the several Items Composing the account
in Question in so far as did belong to his situation as the
of the said Respondent and that the said Account did to
of his the Deponents Knowledge contain a full and
=ment of the Transactions between the Petitioner and
Respondent as existing at the respective dates of the
much this Respondent did urge as to the solidity of
Reason considered in itself But Viewing the said
reason as it related to the Question now before this H
This Respondent said that it did urge a defence dif
to to from that which was set up by the Petitioner befo
Hon^ble the Mayors Court that of Consequence it did
matter which never came nor could have come under
=deration of that Court previous to the passing of the
now sought to be reversed and so that the said sec
Reason was altogether irrelevant

And in answer To the third and last
of the said petitioner this Respondent did say That he
by his Replication shewn that he was entitled to Int

upon the Balance of the thirty first December by the Custom of
Merchants that his title to such Interest had been since shewn
on another Ground by the Evidence in the Cause and that reckoning
from the aforesaid Balance he had in his said Replication
demonstrated that the compound Interest contained in the
said account Current amounted to no more than five fanams
and a few Cash a sum rediculously small and that even that
small Error had been occasioned by the procrastinations and
unfulfilled promises of the Petitioner and the Petitioner having alledged
"that it was evident on the face of the Account in question that this
" Respondent had assumed not only an Interest but a double
" Interest where he had not Established any right to the principal
" sum as in the case of Commission where if he had clearly established
" a right thereto he was neither in law or equity entitled to assume
" any Interest whatever" this Respondent did say that Neglecting
as too trivial the matter of double Interest here again repeated by
the petitioner this Respondent in order the Better to try this conclu=
=ding argument would suppose that his this Respondents demand
had been stated in any mode different from that which the petitio=
=ner did condemn To wit that he this Respondent had forborn
to claim Interest until he had Established his right to the
principal

principal consequence this Respondent did assert would have been that he this Respondent could have recovered only what he did claim to wit his principal and would have been concluded from demanding any Interest at all And this Respondent did say the latter member of the paragraph under consideration was noticiable for containing a doctrine equally novel as bold - was it this Respondent did Interrogate meant that a Equidated Balance which included Commission should never bear Interest or must it remain forever liable to be decomposed in order to Extract from it and to exempt from Interest the amount of Commission which it might contain To one or other of these positions this Respondent did say the Petitioners assertions did amount but that in either case it needed not now deserved to be refuted - And this Respondent doth admit that the Petitioners said Petition of Appeal and this Respondent answer thereto did on the Eighteenth day of July and present year of our Lord one thousand Seven hundred and Ninety six come on to be heard by and before the said Court Appeals when the said Court of Appeals was pleased to order and Decree and did order and Decree that the said Decree of the said mayors Court should stand affirmed and that the Petitioners said Petition of appeal Should

should stand dismissed with costs - But may it please your most Excellent majesty in Council this Respondent doth not admit that by the said Decree of the Hon^ble the Court of Appeals or by that of the Hon^ble the Mayors Court the said Petitioner was or is in any way aggrieved or that he hath any good groound of Appeal from the said Decrees or from either of them - And this Respondent most humbly sheweth unto your most Excellent majesty in Council that the arguments offered by the Petitioner in support of his appeal to your most Excellent majesty in Council excepting therefrom one or two allusions equally uncandid and incorrect to this Respondents answer in appeal are nothing more than a part of those already urged by him with greater detail in his Petition to the Hon^ble the Court of appeals and which have been by this Respondent in his said Answer fully discussed and as he well hopes refuted - This Respondents hath now therefore only to meet the Petitioners arguments with a repetition of those which he this Respondent hath already opposed to them vindicating however as he proceeds his Pleadings and Evidence from the partial and distorted sense imposed upon them by the Petitioner - That this Respondent did in his answer to the Petitioners Petition of Appeal admit

admit and that he also showed by his Evidence that the accounts were not only objectionable but actually objected to by the Petitioner when the same was Exhibited to him by this Respondents Bookkeeper but this Respondent doth in a qualified sense admit but the objection was removed and the error rectified as the same answer and the same evidence do most clearly shew. The Petitioners assertion then can be true only of the account in its original uncorrected state and doth not in any respect agree with or apply to the account exhibited in this Cause. If therefore such assertion be by the Petitioner meant so to apply which to have any significancy it must be this Respondent doth say it is a gross mistake or a palpable sophism. In support of this Respondents case he this Respondent hath shewn an Examination of his account by the Petitioner previous to the striking of any balance the Petitioners objections and his doubts in the course of the said Examination are also enumerated and the former are shewn to have been removed by due correction the latter to have been met by regular Vouchers thus leaving as this Respondent doth humbly conceive and infer the remaining unspecified Items either expressly or impliedly admitted For if this Respondent may be allowed to assume by way

way of experiment the supposition that the said remaining Items had actually been acquiesced in by the Petitioner have could such acquiescence have been otherwise shewn in the then imperfect state of the account than by his the Petitioners recognizing such articles as were in his recollection passing by in silence such as had nothing doubtful in them pausing at those that had and satisfying himself by inspection of the vouchers expressing his objections where any occurred and getting the objectionable part corrected such this Respondent doth humbly conceive would have been the natural proceeding of the Petitioner on the assumed supposition and such accordingly is that detailed in the evidence But on the other hand if the Petitioner had had still further objections to the said account can any motive be assigned at once honest and rational why he should not propose those objections while the Vouchers were at hand to refer to would such an omission have been wise or natural or is it on the present hypothesis to be believed that he would afterwards have suffered as by the Evidence it appears he did this account to be balanced in his presence the unconcluded sales of his goods on hand to be closed for the express purpose

of

of Effecting such balance and the amount sales to be carried to his credit in the same account would he have taken the account thus balanced along with him and would he after retaining it for several days in his Possession have delivered it back and that too to be continued without ever suggesting the objections which he now brings against it no a Similar proceeding would never be allowed by any man solicitous of the Character of fair intention and valuing the reputation of Common sagacity The account thus Examined thus objected to and rectified demurred to and supported and upon the whole as this Respondent humbly conceives and contends acquiesced in having been as aforesaid subsequently closed and delivered to the Petitioner and by him after a term retained in order to be continued was continued accordingly in several successive stages each of which is self explanatory and has besides been more than sufficiently illustrated by this Respondent in his Pleadings and in his Evidence. The Petitioners allegations about compound Interest have been to the Exception of a trifle to small to name demonstratively disproved and all the specifick objections urged in his Pleadings have been

Confuted

confuted by the most respectable testimony. And finally the Deposition of the witness James Sutherland evinces that the Exhibited account doth to the best of his knowledge as this Respondents Bookkeeper contain a full and fair statement of the Transactions between this Respondent and the Petitioner as existing at the Dates of the respective Balances This Respondent hath no where said as the Petitioner by allusion would insinuate that it would be rediculous in him this Respondent to adduce sufficient Testimony in proof of the allegations contained in his Bill of Complaint He this Respondents assertion was very different to wit. In substance that every proof really material to this Cause being comprised in the Evidence which he had adduced it would be rediculous to bring evidence of circumstances necessarily implied in the nature of his this Respondents transactions with the Petitioner an assertion which this Respondent most humbly craves leave here again to repeat with this addition that the detail of proof required by the Petitioner besides being unnecessary was also unattainable for his fastidious ingenuity assembled circumstances so minute that scarce any testimony could reach them and in

such

To the Right Honourable Lord Hobart

President and Governor &c in Council

Fort Saint George

In the Honourable the Court of Appeals &c

Between Cadiam Govindamah of Madras Inhabitant administratrix of the Estate and Effects of Cadiam Appiah Naick Deceased complainant and &c Cadiam Vegeapah Naick of the same &c place Inhabitant Defendant-

The humble Petition and Appeal of the above named Defendant

Sheweth

That Cadiam Govindamah of Madras Inhabitant did in or about the Sixteenth day of January in the present year One thousand seven hundred and ninety six as administratrix aforesaid file her Bill of Complaint against your Petitioner in the Honourable the Mayors Court at Madraspatnam and therein and thereby did pretend that your Petitioner did stand justly and truly indebted unto her as administratrix as aforesaid in the full and just Sum of Four hundred and eighty three Pagodas eighteen fanams and sixty five

Filed in my Office the 28th March 1796
J Webbe Clk

five Cash upon an Account Current arising upon a Taxed Bill of Costs Copy whereof was as the said Complainant alledged annexed to the Complainants said Bill of Complaint. And your Petitioner further Sheweth unto this Honble Court that he having been Summoned and required to appear to and Answer the said Complainants said Bill of Complaint he appeared thereto and on the second day of February in the said year filed his Plea to the Complainants said Bill of Complaint and for Plea thereunto your Petitioner said that the said Complainant is an Indian Native of Madraspatnam, and that the said Cadiam Appiah Naick was also in his life time an Indian Native of Madraspatnam And your Petitioner said and did also aver that he your Petitioner is an Indian Native of Madraspatnam and that he did not consent or agree that the said Complainant should sue your Petitioner in the said Mayors Court of Madraspatnam and therefore your Petitioner did plead the said several matters to the said Complainants said Bill of Complaint and to the relief and discovery thereby sought. And your Petitioner prayed &c Judgment of the said Bill of Complaint and of the relief and

discovery

discovery thereby sought and if the said Mayors Court of Madraspatnam would have further Cognizance of the said suit - and your Petitioner prayed to be dismissed the said Mayors Court with his reasonable Costs and Charges in that behalf sustained as by the said Bill of Complaint and Plea remaining of record in the said mayors Court to which your Petitioner humbly craves leave to refer &c relation being thereunto had will more fully appear your Petitioner further Sheweth unto this Honourable Court that the said &c Complainant by his attorney at Law prayed the said mayors Court that your Petitioners said Plea might be set down to be argued and the same accordingly came on to be argued before the said Mayors Court on the fifteenth day of this present &c month of march when the said mayors Court was pleased to over rule your Petitioner said Plea with Costs and to order that your Petitioner should be put upon his Answer as by Copy of the said order hereunto annexed for the inspection of this &c 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 order of the said &c Mayors Court your Petitioner doth conceive himself much

aggrieved

aggrieved and doth therefore Appeal therefrom to this Honble Court of Appeals as your Petitioner is advised and believes that the said order of the said Mayors Court for the Causes and reasons in your Petitioners said Plea setforth and assigned is erroneous and contrary to the Charter by which the said Mayors Court is constituted -

Your Petitioner therefore humbly prays that this Honble Court will be pleased to reverse the said order of the said Mayors Court made in the said Cause on the said fifteenth day of this &c present month of march with Costs to be &c paid by the said Complainant and to grant your Petitioner such relief in the premises as to this Honble Court shall seem meet - And your Petitioner shall ever pray -

/Signed/ John White
Solicitor for appellant

Extract

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 15th day of March Anno Dominiq 1796

Present

James Daly Esqr Mayor
Andrew Ross & Jos Greenhill
Aldermen

Messrs Aldermen Call Webb Mitford Cockburn & Chase take their Seats upon the Bench

Cadiam Govindamah administratrix of Cadiam Appiah Naick deceased
Vers
Cadiam Vegeapah Naick

Bill with Copy of an Account annexed Read
Plea Read

The Defendants Plea to the Complainants Bill coming on to be argued this day in the presence of the Attornies on both sides and on due Consideration had thereon

The Court are of opinion that the Plea is insufficient This Court doth therefore think fit to order and doth Accordingly order that the Plea be over Ruled with Costs and that the Defendant be put upon his Answer

A True Copy
/Signed/ John White
Solicitor for the Appellant

A True Extract
/Signed/ J. C. Afflin Sy Regr

To

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

In the Honble the Court of Appeals

Between Cadiam Govindamah of Madras Inhabitant administratrix of the Estate and Effects of Cadiam Appiah Naick Deceased Complainant and Cadiam Vegeapah Naick of the same place Inhabitant Defendant

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

Filed in my Office the 19th April 1796.
J. Webbe Clk

This Respondent answering doth admit That on or about the Sixteenth Day of January now last past She this Respondent did file or Bill of Complaint in the Honble the Mayors Court of Madraspatnam against the above named appellant and thereby did charge and set forth that the said Appellant was and stood Justly and Truely indebted unto her this Respondent as administratrix

administratrix aforesaid in the full and Just sum of four hundred and Eighty three Pagodas Eighteen fanams and sixty five Cash upon an account Current arising upon a Taxed Bill of Costs Copy whereof was annexed to this Respondents said Bill of Complaint And this Respondent further answering Saith that the said Appellant having been Summoned to appear and answer to this Respondents said Bill of Complaint he the said Appellant did appear thereto and on the second Day of February also now last past did file his Plea to this Respondents said Bill of Complaint and that such his Plea was to the purport and Effect setforth in the said Petition of Appeal- And this Respondent further answering doth not admit that She did by her attorney at Law pray that the said Appellants Plea might be setdown to be argued-and that the same accordingly came on to be argued before the said mayors Court and that the said Court was pleased to not over Rule the Appeallants said Plea with Costs and to order that the said Appellant should be put upon his answer of which order this Respondent doth admit that a True Copy is annexed to the Petition of the said Appellant- But this Respondent doth deny that the said appellant

was

was or is in any wise aggrieved by such the order of the said Honble the Mayors Court or that he hath any good cause of Appeal therefrom-

And for Reason this Respondent sheweth That this Respondents Suit having been brought to recover certain Costs Taxed against the said Appellant under an order or Decree of the Honble the Mayors Court in a matter wherein this Respondent was not Proponent and the said Appellant opponent touching the Right of administration to the Estate of this Respondents said Intestate in which matter the said Honble Court had unquestioned Jurisdiction and the said Appellant was voluntary party the said Suit results from the original Cause upon a principle of Expediency and even of necessity not to be rejected without admitting the most absurd and dangerous consequences-For if the said Honble the mayors Court shall be held to have no Jurisdiction in the present suit then any person however unentitled may harrass and oppose the Relations Creditors and others having right to the administration of an intestates Estate and the Honble Court instead of having the power to discourage such vexatious and litigi-ous proceedings shall not have even that of reimbursing to the rightful claimant the Charges of the Contest Again it every day

happens

happens that native Bail are offered and taken in suits wherein the Complainants are also Natives Now if the Appellants Plea were admitted such Plaintiffs would lose all benefit of the Bail or remedy against them there being in those cases no other mode of recovery than a suit in the said mayors court in which suit the Native Bail might plead to the Jurediction of the said Court with equal Justice and propriety as the appellant in the present case—

This Respondent therefore humbly hopes that she may without further illustration conclude that the said Appellants Plea is litigious and ill founded its tendency no less mischievous than absurd and the making of the same a daring attempt to set at nought the Lawful Jurisdiction and authority of the said Honble Court—

For all which reasons and such others as may be offered at the hearing this Respondent most humbly prays that this Honble Court may be pleased to affirm the said order and dismiss the said Appellants Petition with Exemplary Costs such as may at once accord with his litigious Conduct and the Justice of this Honble Court

/Signed/ John Wilkinson
Solicitor for Respondent

Court of Appeals at Madrasspalnam

Monday the 18th day of July Anno Domini 1796—

Between Cadiam Vegeapah Naick of Madras Inhabitant appellant and Cadiam Govendamah of the same place Inhabitant administratrix of Cadiam Appiah Naick Deceased Respondent—

This cause coming on this day to be heard and debated before this Court by the attornies on both sides upon hearing the Petition of Appeal and answer and the several Exhibits of the Honble the Mayors Court together with the order of the said Court given in this cause on Tuesday the 15th day of March Anno Domini 1796 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 15th day of March Anno Domini 1796 be reversed

reversed and that the Plea in this Cause be allowed as good and sufficient in law and this Court doth further Order and Decree that each party do pay his own Costs.

Hur
/Signed/ J. Webbe
Clk

To the Right Honourable Lord Hobart—

President and Governor &c. in Council

Fort Saint George

In the Honble the Court of Appeals

Between John Wright of Calcutta mariner by his attornies Robert Woolf, Daniel Crawford, and Robert Forbes of madras merchants, Complainant and Benjamin Sulivan, William Harcourt Torriano, Rechard Chace, Thamas Chase, Thomas Parry, William Dring, Henry Sewell, Vencata narrain, Ravanapah Chitty & moodoo moodelly of madras Inhabitants Defendants—

The Humble Petition and appeal of Benjamin Sulivan Richard Chace Thomas Chace and Henry Sewell four of the above named Defendants

Shew

Filed in my Office the 28th March 1796
J. Webbe Clk

That the Complainant above named by his said attornies did on or about the nineteenth Day of march and year of our Lord One Thousand Seven hundred and ninety five Exhibit and file his Bill of

To

of Complaint on the Honble the Mayors Court at Madraspatnam against your Petitioners and the said William Harcourt Toriano Thomas Parry William Dring Vencata Narrain Ravanapah Chitty and Moodoo Moodelly of of Madras Inhabitants and did therein and thereby amongst other things state that on or about the Twenty Eighth Day of June which was in the year of our Lord One thousand seven hundred and ninety three the Complainant being then Owner and Commander of the Ship Ceres left Calcutta in the Kingdom of Bengal in order to proceed on a Voyage to Manilla in the Island of Luconia and that the Complainant arrived in the said Ship Ceres on or about the Twenty fifth day of august in the said year of our Lord One thousand Seven hundred and ninety three and that he the Complainant did previous of his living the said Port of Calcutta direct his attornies messuiers Colven and Bazzett of the same place merchants to effect an Insurance on the body of the said Ship Ceres on her returning Voyage that in pursuance whereof the said messrs Colven and Bazzett caused an application by means of their agents at Madras to be made to the New Madras Insurance Company who agreed to cover and Insure the sum of fifty thousand

thousand sicca Rupees or fifteen thousand three hundred and forty three Pagodas thirty eight fanams and thirty Cash on the Block of the said Ship for a Premium of Twelve per Cent and that those terms being acceded to and the sum of one thousand Eight hundred and forty one Pagodas thirty two fanams and Twenty five Cash being paid as a Premium by the Complainants said attornies that Thomas Chase John Hamilton Hugh Jones and Henry sewell of madras Merchants then members of the said new madras Insurance Copany and the immediate acting committee thereof did as their Representatives on the thirtieth day of December in the said year one thousand Seven hundred and ninety three sign and Execute a certain Policy of Insurance whereby they undertook to cover and Insure the said messrs Valued Sum of Fifty thousand sicca Rupees upon the Block of the said Ship Ceres from Manilla to Calcutta against the several Perils and adventures in the said Policy mentioned the Risk being Stipulated by the said Policy to commence from and immediately after the Loading being compleated as by the said Policy true Copy whereof the Complainant did say was annexed to his said Bill of Complaint would more fully and at large appear and the Complainant did further state that his their attornies the said messrs

messuiers

missuirs Colvin and Bazzett conceiving it probable that the Complainant might find it expedient to touch at the Port of madras did sometime afterwards in order to procure permission to Depart from the Line of the prescribed Voyage pay a &c further sum of Seven hundred and sixty seven Pagodas &c Eight fanams and seventeen Cash the receipt whereof was &c acknawledged on the back of the said Policy and the Complai=nant by his said attornies did further state that on the thirtieth Day of January which was in the year of our Lord one thousand Seven hundred and ninety four the said ship Ceres having thon Completely taken on board her returning Cargo water and Stores the Bills of Lading and port Clearance being also obtained the ship unmoored and every thing in a state of readiness to put to sea the Complainant did on the said day address a Letter to the &c Chief officer of the said ship Ceres informing him of his intention to weigh the next morning and the Complainant did state that about ten at night on the same Evening the said ship Ceres was suddenly surprised and boarded by a number of armed men Consisting Principally of French Prisinors and Spanish Deserters and amounting to nearly forty five in number as the Complainant had been informed who found means to escape

escape from the Shore and having in that Peratical manner got Possession of the Ceres they carried her to sea and afterwards to the Island of mauritious notwithstanding every possible exertion was made by the Complainant to prevent it as soon as the unfortunate accounts were Communicated to him and the Complainant by his said attornies did further state that act of Surprisal and Perary being one of the Perils which the Policy Covered the Complainant caused the most early notice of the loss to be Communicated to the said madras Insurance Company and upon the arrival of the &c Complainant and the officers of the said Ship Ceres at Calcutta they did in order to give a full and explicit account of the loss &c respectively make their Declaration and Protest before a notary Public which Declaration and Protest being sworn to was Trans=mitted to and duly Served upon the said Company true Copy &c where of the Complainant did say he had annexed to his said Bill of Complaint and the Complainant by his said attornies did further state that by reason of the Premises your Petitioners and William Harcourt Torians, Thomas Parry, William Dring, Venkata Narrain, Ravanapah Chitty, and moodoo moodelly of madras &c Inhabitants and the members at present Composing the said madras

Insurance

Insurance Company did stand Justly and Truely Indebted to
the Complainant in the full and Just Sum of Seventeen thousand
four hundred and five Pagodas one fanam and seventy six Cash
Current money of madras or in Sterling money of Great Britain
at the rate of Eight Shillings for every Pagoda the sum of sixc^o
Thousand nine hundred and sixty Two Pounds or thereabouts as
by an account Current to the Complainants said Bill annexed
the Complainant did say would more fully and at large &c^a
appear and the Complainant did thereupon amongst other things
in and by his said Bill pray that your Petitioner and the said
William Harcourt Toriano Thomas Parry William Dring &c^a
Vencata Narrain Ravanapah Chitty and moodoo moodelly
the other Defendants in his said Bill named might be &c^a
Decreed to pay to the Complainant the said sum of seventeen
Thousand four hundred and five Pagodas one fanam and &c^a
Seventy six Cash with all such Interest as then was or should
thereafter become due thereon also all Costs of the said suit &c^a

And your Petitioner shew that being served with
Process to appear to and answer the Complainants said &c^a
Bill of Complaint your Petitioners did accordingly appear
thereto and on or about the nineteenth Day of May did Exhibit and
file their Several Plea and answer and did therein and thereby state
that the scope and end of the Plaintiffs Bill was to Compell your &c^a
Petitioners to pay unto him the Sum of Fifteen thousand three hundred
and forty three Pagodas thirty eight fanams and thirty Cash &c^a
together with an Interest thereon which said sum of Fifteen &c^a
thousand three hundred and forty three Pagodas thirty eight fanams
and thirty Cash was as the Plaintiff pretended the amount of &c^a
a certain Risk insured by your Petitioners on the Stock and Block
of the Ship Ceres under a Policy of Insurance No. 559, bearing Date
the thirteenth Day of november and in the year of our Lord One
thousand Seven hundred and ninety three and by your Petitioners
or their Representatives duly Executed and for as much as that the
said Ship the Ceres was his the Plaintiffs Sole property and that
the Insurance aforesaid was effected on his account and for as &c^a
much as that the said Ship the Ceres was about ten Oblock
of the night of the thirteenth January which was in the year
of our Lord one thousand Seven hundred and ninety four &c^a
Surprised and Seized by Pirates in the Port of Manilla where
She was then riding at anchor and by the said Pirates Carried

into

into the Mauritius and for as much as that the act of Piracy was one of the Perils Covered by the said Policy of Insurance &c he the Plantiff pretended that he was entitled to recover from your Petitioners the said sum of Fifteen thousand three hundred and forty three Pagodas thirty Eight fanams and thirty bash so Insured by your Petitioners as aforesaid together with an Interest which he the Plantiff pretended had arisen and grown due thereon your Petitioners by Protestation not Confessing or acknowledging all or any of the matter or thing in the said Bill Contained to be true in such Sort manner and form as the same were therein and thereby Charged alleged and Setforth as to so much of the said Bill as did Seek to Compel your Petitioners to pay the said Sum of Fifteen thousand three hundred and forty three Pagodas &c thirty eight fanams and thirty bash and the Interest thereon and as to any Relief in and by the said Bill Prayed &c Touching the said Policy of Insurance by your Petitioners or by their said Representatives Executed as aforesaid your Petitioners did plead in Bar and for Plea did say that upon an application by Messrs Chase Sewell and Chase to the office of your Petitioners to insure a Risk on the Stock and Block of the said Ship the Ceres they the said Messrs Chase Sewell and Chase did by Letter then in the Possession of your Petitioners amongst other things represent to your Petitioners or to their representatives that the said Ship the Ceres had on board besides her Compliment of Seamen a party of Twelve Sepoys (native Soldiers) and your Petitioner did say that upon the said representation and others by the said Messrs Chase Sewell and Chase made to your Petitioners or their &c representatives your Petitioners did Consent and agreed to Cover and did accordingly Cover a risk on the Stock and block of the said Ship the Ceres to the amount of Fifteen thousand three hundred and forty three Pagodas thirty eight fanams and thirty bash, and your Petitioners did aver that eight of the said sepays &c instead of being on board the said Ship the Ceres on the said thirtieth day of January and at the time when she was as aforesaid Surprised and Seized on and carried away by the said Pirats were actually on shore at manilla and not on board the said Ship the Ceres as they ought to have been to guard and &c Protect the same for your Petitioners did say the fact did so appear by the Plantiffs own Shewing in and by a Protest whereof a &c Copy was annexed to his said Bill and by him Prayed to be taken as

as part thereof and your Petitioners did therefore plead a breach &c
of the said representation touching the said Twelve Sepoys
native Soldiers and matters aforesaid in Bar to the Plaintiffs
said Bill and did humbly Demand the Judgement of the said
mayors Court whether they should be compelled to make any
further or other answer to the Complainants said Bill of Complaint
and your Petitioners not waiving their said Plea but fully relying
and insisting thereon for further Plea did say that according to the
usage and Custom established in the merchants Service and by
the underwriters understood and relied on to be strictly observed
that a good and sufficient Watch should be kept on board
every Ship both in a harbor and in open Roads particularly
in the time of war and during the time of night as a proper and
indispensibly necessary security to every such Ship and to the
Cargo thereon loaded against any Sudden surprise of Pirats
Privateers and men of war and various other accidents, to &c
which Shiping are in every Situation liable and your Petitioners
did aver that the Plaintiff who was Captain and owner of the
said Ship the Ceres did neglect the observance of the said
usage and Custom touching the keeping of a good and &c

Sufficient

Sufficient Watch on board the said Ship the Ceres and that on the
night of the thirteenth Day of January one thousand Seven hundred
and ninety four and at the time the said Ship the Ceres as &c
charged in and by the Plaintiffs Bill, was surprised and seized on
by Pirates, there was only one man upon the Deck of the said Ship
the Ceres as a watch for your Petitioners did say that the fact did
so appear by the Plaintiffs own Shewing in and by a Protest, Copy
whereof was annexed to his Bill and by him therein Prayed to be
taken as part thereof and your Petitioners did Plead such neglect
and the matters aforesaid in bar to the Plaintiffs said Bill and the
relief therein and thereby sought &c as in their said Bill is
did therefore Demand the Judgement of the said mayors Court whether
they should be Compelled to make any further or other answer &c
thereto and your Petitioners not waiving or Departing from the
said Several Pleas but wholly relying and insisting thereon - for
Answer to the residue or to such part of the Complainants Bill
as your Petitioners were advised were material or necessary for them
to make answer unto did answer and say that some time on or
about the Twenty Seventh Day of November which was in the
year of our Lord one thousand Seven hundred and ninety three

an

an application was made by Messrs. Chase Sewell and Chase at the office of your Petitioners to insure a certain risk on the Block and Cargo of the ship the Ceres, Stating that the said Ship &c might possibly leave manilla about the end of the said month of November, and Probably not before the middle of December that She was a fine new vessell Coppered, well manned and navigated by a very able and experienced Seman that She mounted Twelve four Founders besides Swivels and that she had besides her Complement of Seamen Twelve Sepoys (native Soldiers) as would morefully and at Large appear by a Copy of the said application made by the said Messrs. Chase Sewell and Chase to your Petitioners said Plea and answer annexed, and by them prayed to be taken as part thereof and your Petitioners did say that in Consideration of the premises they did agree to Cover a Risk on the Stock and Block of the said Ship the Ceres to the amount of Fifteen thousand three hundred and forty three Pagodas thirty eight fanams and thirty Cash &c from manilla to Calcutta, at a premium of Twelve per Cent Engaging to refund two per Cent if the Ceres should leave &c manilla after the thirtieth Day of the said month of November as would morefully and at large appear by the Copy of a

Letter

Letter addressed to the said messrs. Chase Sewell and Chase one of by your Petitioners (Thomas Chase) as Secretary to and under the direction of the said Insurance Company to your Petitioners said Plea and Answer annexed and your Petitioners did say that they did thereupon Execute a Policy of Insurance marked no. 599 and bearing date the thirtieth day of the said month of november One thousand Seven hundred and ninety three in the names of Messrs. Colvens and Bazett by their agents or attornies the said messrs. Chase Sewell and Chase under the Instructions by them the said messrs. Chase Sewell and Chase Declared to have been received for that purpose from the said messrs. Colvens and Bazett a Copy whereof your Petitioners did annex to their said Plea and answer and your Petitioners did say that they did afterwards that was to say, on the Eleventh Day of march, which was in the year of our Lord one thousand Seven hundred and ninety four in consideration of the Promises and of the further Premium of Five per Cent on account of the said Ship the Ceres paid by the said &c Messrs. Chase Sewell and Chase for and on account of the said messrs. Colvens and Bazett agree to permit the said ship the Ceres to touch at madras in her voyage from manilla to Calcutta and

did

did engage to refund four and one half per Cent of such additional Premium if the said Ship the Ceres should perform in safety the &c Original Voyage as stipulated in the said Policy as by an endorsement on the back of the said Policy reference being thereunto had your Petitioners did say would appear and your Petitioners did further say that they did not know otherwise than as they were informed &c thereof by the Complainants said Bill of Complaint that the said Ship the Ceres had on the thirtieth day of January which was in the year of our Lord one thousand Seven hundred and ninety three completely taken on board or returning Cargo water and Stores and obtained Bills of Lading and Port Clearances &c that the said Ship the Ceres had unmoored and that everything was in a state of readiness to put to Sea and that they did not know further than as they have been informed by the &c Complainants said Bill of Complaint that he the Complainant did address a letter to the Chief Officer of the said Ship the &c Ceres informing him of his Intentions to weigh the next &c Morning nor did your Petitioners know nor could they admit that about Ten oClock of the night of the said thirtieth Day of January the said Ship the Ceres was suddenly &c

Surprised

Surprised and boarded by a number of armed men consisting &c Principally of French Prisoners and Spanish Deserters amounting Nearly to forty five who found means to escape from the Shore as setforth by the Complainant in and by his said Bill of &c Complaint for your Petitioners did say it appeared by the &c Complainants own Shewing in and by the Protest to his said &c Bill of Complaint annexed that at Eleven oClock of the night of the said thirtieth day of January nothing Extraordinary had Occured on board the said Ship the Ceres for that at that hour the Chief Officer of the said Ship the Ceres was on Deck and that then and at that time every thing was quiet and your &c Petitioners did say that they did admit it might be true for ought they knew to the Contrary that certain Pirates might as aforesaid by means that did not appear and that were &c unknown to your Petitioners have surprised and taken Possession of the said Ship the Ceres and that for ought your Petitioners knew to the Contrary the said Pirates might have Carried the said ship the Ceres from manilla where She then Lay at anchor to the Mauritius and your Petitioners did further admit that the act of Surprisal and Piracy was one of the

perils

Perils Covered by the said Policy of Insurance but your Petitioners did not admit that thereby or by reason of the Premisses they your Petitioners were in any wise liable to pay the amount by them Covered by the said Policy of Insurance for your Petitioners did say that the printed words in the Policy of Insurance upon which the Complainant rested his Claim on your Petitioners that was to say "beginning the adventure upon the said Bottom "Goods and merchandizes whatsoever from and immediately following "the loading thereof on board the said Ship" were as your Petitioners were advised totally inapplicable to the matter in Question which stood upon its own ground and was taken entirely out of the said printed Clause as appeared by the Declaration in writing at the foot of the said Policy of Insurance in the words and figures following that was to say "This Insurance is Declared to be "on the Stock and Block as Interest may appear We the assurers engaging to refund two perbent if the Ceres leaves manilla &c after the thirtieth of november" and your Petitioners did say they were advised that as it was frequently necessary to insert written Clauses in printed Policies of Insurance in order to Express the meaning of the Parties to the Contract which in some particulars the printed form might not sufficiently Explain such written

Clauses

Clauses and Conditions so inserted were to be Considered as the real Contract and were Suffered to Controul the printed words in Policies of Insurance and your Petitioners did say that the printed Clause in the said Policy of Insurance as relied on by the Complainant was indefinite as to the thing thereby meant to be insured and did not express the intention of the parties for taking the said Clause together and it could not as your Petitioners did Say they were advised be Severed and it would appear that your Petitioners had Covered a Risk not only upon the Stock and Block of the Ship the Ceres but also upon the Goods and merchandizes laden thereon the words in the said Clause being as follows In the name of God amen mess.rs Chase Sewell and Chase for and on account of Mess.rs Colvens and Bazet as well in their own name and in the name and names of all and every person or persons to &c whom the same doth may or shall appertain in part or in all doth make assurance and Causeth themselves and them and &c every of them to be insured lost or not lost from manilla to Calcutta upon the body tackle apparel ordnance amunition artillery Boat and other furniture also the Goods and &c merchandizes of and in the good ship or Vessell Called the

Ceres

Ceres burthen Tons or thereabouts whereof is master under
God for this Present Voyage Captain Wright or whosoever else
shall go for a master in the said Ship or by whatever other name or
names the said Ship or the master thereof is or shall be named or
called beginning the adventure upon the said Bottom Goods
and merchandize whatsoever" and your Petitioners did say that
it was evident from the matters and things hereinbefore
Letforth and from the shewing of the Complainant that your
Petitioners had not covered or meant or intend to Cover any
Risk upon the goods and merchandizes
Said Ship the Ceres but upon the stock and Block thereof
and such only being the intention of the Parties insured at the
time they applied to effect the Insurance aforesaid and
of your Petitioners who where the asurers at the time they
Executed the said Policy of Insurance and as such Intentions
were not nor could be expressed by the said Printed Clause for the
reasons therein before stated it became necessary to make a
Special Clause for the Specific purpose and the same was
accordingly made in writing at the foot of the said Policy
as herein before mentioned and your Petitioners did say
that

that the said written Clause Shewed the Risk your Petitioners had
in Contemplation when the said Policy was effected and that Shewed
also that an actual bonafide Departure from manilla was meant
and understood by the Parties in order to Commence the Risk for
that your Petitioners in and by the said written Clause engaged
to refund the sum of two per Cent if the said ship the Ceres should
Leave manilla after the thirtieth Day of November by which
it was evident and so the truth was that your Petitioners imagi-
ned that the said Ship might possibly said Earlier than the said
thirtieth Day of november and that in such case the risk would be
greater as the passage through the straights would not be so
safe nor so expeditiously performed and therefore your Petitioners
engaged to refund Two per Cent if the said Ship the Ceres should
remain at manilla until the month of November and not leave
that port until after the thirtieth of the said month and by the
words "leaving manilla" an actual and bonafide Sailing from
thence was in the minds of the parties at the time the said
Insurance was Effected and that untill such actual and
bonafide Sailing should have taken place the said Risk was
not meant or intended to have Commencement and therefore
your Petitioners did Submit to the said mayors Court that the
attempt

attempt of the Complainant to take an advantage of the said Printed Clause and to assist from thence that the said Risk Commenced from and immediately following the loading of the said Ship the Ceres was unfair and unjust first because as your Petitioners had already Shewn such pretended Commencement of the said risk was not within the meaning or intention of the parties at the time the said Insurance was effected and secondly because the said printed Clause not being Capable of Shewing particularly the thing insured the same was Declared and or Expressed by a Clause in Writing at the foot of the said Policy of Insurance whereby the said Printed Clause became Controled and rendered nul and void and your Petitioners did Say that their said intention further explained and demonstrated by a further Clause or Declaration on the back of the said Policy and herein above referred to whereby your Petitioners did for the additional Premium therein setforth Engage to permit the said Ship the Ceres to touch at madras on her Voyage from manilla to Calcutta and refund four and one half of such additional premium if the said Ship the Ceres should perform her original Voyage as stipulated in the said Policy which said original Voyage as appeared

in the body of the said Policy was from manilla to Calcutta and an actually sailing from manilla after the thirtieth of November as appeared by the said written Clause or Covenant at the foot of the said Policy which expressed "if the Ceres leaves manilla after the thirtieth of november" and your Petitioners did say that they were advised and had always understood and believed the fact so to be that it was the intention and not the letter that was the true rule by which a Policy of Insurance was to be construed and that should there appear good proof that Policy did not accord with the clear and evident intentions of the parties the same might be both rectified and that the same had often been done by the Courts of Law and equity and thereupon your Petitioners did say in further proof of the Intentions of the parties assurers and assured that by the letter of Instructions from the said Messrs Colvens and Bazett to the said Messrs Chase Sewell and chase to effect the said Insurance and hereinabove referred to it was stated that the risk was Commence from manilla and the said messrs Chase Sewell and Chase as the agents of the said messrs Colvens and Bazett in their application to the office of your Petitioners as herein above Setforth did Direct the said Insurance on the said Ship the Ceres to be made from manilla to Calcutta and both the

Instruction

the

Instruction and application mentioned probable time of her Depar-
ture from manilla the object and intention therefore of the said
Messrs Colvens and Bazett was clearly to cover a risk on the said
Ship from manilla to Calcutta and had no manner of conside-
ration as to the time of her being loaded The Seas at that period
being either infested with Privateers or they were expected to be in the
Streights or bay of Bengal and it was the war risk that made
the said parties so anxious to ensure the said Ship the Ceres and
which induced your Petitioners to require and the said Messrs Colvens
and Bazett to give so high a Premium and there was not nor
could have been any Danger to be apprehended on account thereof
during the time the said Ship the Ceres might remain in the said
Port of manilla and the same being also in the Contemplation
of your Petitioners and their meaning at the time they insured the
said Ship and that the risk was to Commence immediately on
Departure of the said Ship the Ceres from manilla your Petitioners
did humbly submit to the said mayors Court that they ought not
be liable to a greater loss than that against which they were
required to ensure and against which they did accordingly ensure
that was to say the risk on the said Ship from the time of her
Sailing from manill and your Petitioners did submit to the

said

said Mayors Court that had it been the intentions of the said Messrs
Colvens and Bazett to ensure the said Ship during the time she
might remain at Manilla or from the time of her Compleading
her loading there as well as during her Voyage from thence they
would doubtless have been particular in their said Instructions
and Directed the insurance to be made at and from manilla
generally or at and after a particular Day as it was clear from
what your Petitioners had already Shewn that there was a Probabi-
lity that the said Ship the Ceres might remain in Port some
time after having taken in her Cargo and She would Consequently
have been Exposed during that period to some risk and as your
petitioners did further Submit to the said mayors Court that
it was not Probable that your Petitioners could have meant
or intended to take upon themselves such risk and much less
that they should have agreed to refund a part of the Premium
received in case such risk should be intended for by the said
Policy they agreed as before shewn to refund two per Cent if the
said Ship the Ceres should leave manilla after the thirtieth of
November but as it was the meaning of your Petitioners that the
risk against which they intended to insure should Commence the
moment the said Ship should sail from manilla and conceiving

that

that by Sailing early the risk might be encreased they agreed &c
to refund the said two per Cent of the Premium if the said Ship
Should have manilla after the thirtieth day of November and
your Petitioners did say that it appeared by the Complainants
own Shewing that the said Ship the Ceres had not left the
Port of manilla nor as your Petitioners were advised had she even
broke ground for your Petitioners did say that they Doubted not of
proving to the said mayors Court that in the Case where a Ship
was moored the having up one anchor was not breaking ground
for that your Petitioners were advised that breaking ground
was moving from a Situation in which a Ship had been &c
for some time moored or riding at anchor to some other tho' the
Difference as to distance should be very trifling and your &c
Petitioners did submit to the said mayors Court that even if
it were true that the hearing up of one anchor was breaking
ground that would not alter the Case in favor of the Plantiff
as it would not bring it within the meaning and intention
of the said Policy of Insurance and of the parties at the time of
executing the same and your Petitioners did say that they had
ever understood and believed that all questions regarding
Insurances submitted to the Decision of a Court of Judicature
should

should be stated candidly and fairly and that there should not be
any Concealment on the part of the Plantiff as to the intention of the
parties at the time of Executing the Policy that was when such Policy
might admit of any Doubt or where any Doubt was stated thereon &c
because in such Case it was the intentions of the parties at the time
that should explain such Doubts and your Petitioners did say
that they Doubted not of manifisting to the said mayors Court
that the Complainant had actually not only concealed his &c
knowledge but his own Conviction of the Intentions of the parties &c
relative to the Policy in Question with a View of inducing your Petitioners
and had Endeavoured with the same view to take an advantage of the
Printed Clause in the said Policy which so far from conceiving it to
be expressive of the intention of the parties at the time of the Execution
of the said Policy he never attempted to bring in the Course of Several
of his former applications to your Petitioners but rested his claim upon
breaking ground and Circumstances relative to the Port of &c
manilla for your Petitioners did say that on the Twelfth Day of
august which was in the year of our Lord one thousand Seven
hundred and ninety five Messrs Chase Sewell and Chase
as the agents of the said Messrs Colvens and Bazett did by
Letter addressed to the Secretary to the Insurance Committee
of

of your Petitioners Demand Payment of the amount Covered by your Petitioners on the block of the said Ship the Ceres enclosing at the same time an Extract of a letter from the said Messrs Colvens and Bazett and the Protest of the Complainant but the same being unsatisfactory your Petitioners did accordingly refuse to Comply with the said Demand stating as their reason for so doing that it did not appear by the said Protest that the Voyage was Commenced as the unmooring and taking up one anchor only did not constitute breaking ground and your Petitioners did say that some time afterwards the said Messrs Chase Sewell and Chase did again by letter apply to your Petitioners through their said Secretary for Payment as aforesaid and did accompany their said letter by Several papers as strengthing and supporting their said application and that one of the said Papers appeared to be the Copy of a letter from the Complainant to the said Messrs Colvens and Bazett in which he the Complainant after attempting to Shew that the having up of one anchor was actually breaking ground and that because by unmooring the Ship was not in a State of such perfect Security as when moored she was Consequently at the risk of the under writers he changed that ground and endeavoured to establish his claim upon another

for in and by his said letter he stated Besides that the ship Ceres after having remained upwards of three months at Cavita the Port of manilla where she unloaded her outward Cargo Had sailed from the above Port of manilla agreeable to the Customary usage and was at the time of her Capture riding at anchor in the Roads of manilla Distant from Cavita the port of manilla at least three leagues therefore Conceive that even viewing it agreeable to their own Ideas the objection of the under writers must fall to the Ground as the Ships Sailing from the Port of manilla distant at Least three leagues will certainly be estamed to be breaking ground Cavita is the Port of Manilla where Ships usually lay and it is only at a certain season and for Quick Dispatch in lading that has occasioned the Custom of moving to the roads to Corroborate this Inclose you a letter Addressed to two old and experienced seamen who had been long Commanders in the manilla trade with their answers which I hope will prove Satisfactory and induce the under writers to Settle the loss without further delay" a Copy of which said letter your Petitioners did annex to their said answer and your Petitioners did say that the said two Several paper writing said to be Copies of the letters above alluded to and which your Petitioners did

believe

believe to be the fact were in the Possession of your Petitioners and contained the following questions that was to say what is understood by the Ships breaking ground what part is generally understood to be the port of manilla It is usual and Customary for Ships trading to manilla after having Discharged or unloaded the outward Cargo at Cavita to sail from thence to the Road of manilla to load the homeward bound Cargo suppose yaw had a Ships at manilla on which yaw have made an Insurance upon the Block from manilla for Instance to madras when do yaw suppose the risk of the underwriters to Commence and your Petitioners did submit to the said mayors Court that the Complainant when he made his former applications to your Petitioners for the amount of the Risk by them Covered by his own shewing was fully Convinced in his own mind that the printed blause in the said Policy of Insurance had nothing to do with the thing insured that was to say the Stock and Block of the said Ship the Ceres and that the same was not within the Intention nor mind of the parties at the time the said Policy was Executed by your Petitioners as aforesaid and that the parties

at the time when the said Insurance was Effected meant and intended and so the truth was that the said written blause at the Bottom of the said Policy of Insurance should alone be of binding in regard to the thing by them insured and in regard to the Commencement of the Risk and unpressed with such Conviction the Complainant was therefore desirous of Shewing only first that by having up one anchor he had actually broke ground and that by breaking ground after having taken out his port Clearances and being ready to sail the next Day was to be understood Sailing and Secondly that the only Port in Manilla was Cavita and that having landed his Cargo there and Sailed from thence to the Roads of manilla although he had not taken in his Cargo at Cavita was sailing within the Spirit of the Policy so as to Commence the Risk Covered by your Petitioners and your Petitioners believed that the Principal reason on the part of the assured in Causing the said Insurance to be Effected was to Cover the said Ship the Ceres against the War Risk and that the Intention of your Petitioners positively were and so they firmly believe the Intention of the assured to have been at the time the said Policy of Insurance was effected that the Commencement of the Risk so Covered by

your

your Petitioners as aforesaid on the Stock and Block of the said Ship the Ceres was to take Place the moment the said ship the Ceres should leave manilla and not before and that the said Insurance rested Solely on the said written Clause at the foot of the said Policy and had no reference to the said Printed Clause—

And your Petitioners Shew unto this Honble Court that to your your Petitioners said Plea and answer the complai=nant did Exhibit and file his Replication and did therein and thereby state that in Reply to your Petitioners said first Plea he did by his said attornies admit that when Instructions were given respecting the Insurance in Question It was represented that the said Ship Ceres besides her Compliment of Seamen had a party of Twelve Sepoys and which was really and truely the case the Complainant having sailed from the Port of Calcutta with that number on Board But the Complainant did say that the said Representation was made merely with the View of Shewing that the said Ship was well prepared to resist attacks from Privateers and was not intended as a warranty as to the said Sepoys always remaining on board and which from the nature of the sea Service was a thing not to be expected nor that it did appear that your Petitioners ever Considered the

Circumstance

Circumstance of the Vessell having Twelve Lyons and so many Sepoys as a Condition they wished Strictly to be adhered to, otherwise It was to be presumed they would have taken Care to have that put in the body of the Policy and the Complainant did say that he was advised it was not the usage to Consider Instructions or any Verbal or written Stipulation as a warranty without they were entered in the Policy and made part of the Contract and upon those Principles therefore the Complainant did say that the said Plea was altogether misconceived and thereupon did pray that it might be over ruled and the Complainant by his said attornies did deny that there was any thing apparent on the face of the said Protest to warrant the second Plea of your Petitioners in Bar to the Complainants Bill and the relief thereby sought for the Complainants did say that on the night of the said thirtieth Day of January when the said Ship Ceres was surprised and taken It was stated that the usual and ordinary Watch of a seacunny was placed and that it was Consist with the Customs and regula=tions of the Country Service while a Ship was at an anchor to give Charge of the Deck to a Seacunny who was Considered to be a person of Responsibility and was a Station similar to that of a Quarter master on board of his majestys or

one

one of the Honble Companys Ships the charge of Stowage and of Stuving the Vessell being committed to them and the Complainant did say that in those Warm Climates the Crews of the Country Ships generally Sleep on Deck and hence it become unnecessary to partition them into Watches while at an anchor Since if any particular duty was required of them the whole were ready at a call and therefore he did humbly Contend that the Second Plea was altogether futile and it was a piece of Cavil or defence which no Insurer who meant to Contest a Demand upon fair Principle would were think of resorting to and therefore the Complainant did Pray that the same might be over ruled and for Replication to your Petitioners said answer the Complainant by his said attornies did say that as your Petitioners had admitted that the Premium mentioned by the Complainant in his Bill of Complaint was received by them and that they Executed the Policy Copy whereof was annexed thereto that they were &c bound to pay the sum Insured with legal Interest thereon as charged by the Complainant from the time the loss happened and the Complainant did admit that it was frequently necessary to insert written Clauses in Policies of Insurance in order to Express clearly the meaning of the parties to the Contract and &c which in many Cases the said printed form was insufficient to

do

do and did further admit that such Clauses and Conditions so &c inserted were considered as the real Contract and in Policies of &c Insurance were suffered to Controul the printed words But the Complainant denied that under those Principles or according to that Doctrine the written Clause at the foot of the Policy upon which the present action was founded did Controul the printed words insisted on by the Complainant which words in a clear distinct and Explicit manner fixed the time when the Risk was to Commence that was to say on the Bottom Goods wares and merchandizes from and immediately after the Loading thereof Whereas that the written Clause at the foot of the said Policy had been entered for the Sole purpose of distinguishing the subject of Insurance and not the Commencement of the Risk which the Insurers at the time of filling up and Executing the said Policy had obviously left to the Printed words to Explain and therefore the Complainant by his said &c attornies did Contend that as the said Printed words respecting the Commencement of the Risk stood uncontrouled they should prevail and have due effect both as to Construction and evidence of the intention of the Insurers at the time of intering into the Contract and the Complainant did deny that the Circumstance of returning Two per Cent if the Ceres left manilla after thirtieth

of

of November did warrant the Construction which your Petitioners had placed on it namely that an actual and bonafide Departure was meant and understood by the parties in order to Commence the Risk For the Complainant did say that it evidently appeared by your &c Petitioners own Shewing that they had in Contemplation some &c Extraordinary Risk which they apprehended the said Ship Ceres was likely to meet with and Experience either in the China Seas or Streights of malacca if they left manilla before that period and which had induced them to agree to return two perbent if She &c sailed after the thirtieth of November and to mention the same of their own accord in the written Clause at the foot of the Policy in their Capacity of Insurers and therefore the Complainant did humbly &c that the streps which your Petitioners had laid on that Contingency and the Constructions which they had made thereon favorable to their own purpose did by no means lessen the advantages which the Complainant derived from the printed Words fixing the &c Commencement of the risk as aforementioned and the Complai= =nant did further state that he did not printed to deny that where evident mistakes had crept into Policies of Insurance Contrary to the Instructions and real intention of the parties that such mistakes might be and had been rectified But that there was no mistake to rectify in the present Case the said &c Policy being made out in Conformity to the terms of the said Instruc tions and that your Petitioners had misstated the letter of Instructions from the said messrs Colvens and Bazett which did not Express that the risk was to Commence from manilla as was untruly alleged in and by the said answer for in reference to the Extract of the said letter Copy whereof was to the answer annexed the words would &c appear as followed "We should be glad to cover half Lack of Rupees "on the Block and Cargo of the Ship Ceres Captain John wright from "manilla to this" meaning the Port of Calcutta and the Complainant Construction which your Petitioners would insinuate that it Conveyed to the said Policy in as much as the word from could only be Construed to Shew that the Port of manilla was a place where the Ceres lay and from whence she should of Course Depart being Governed by the Subsequent words in the said Policy to wit begenning the &c adventure upon the Bottom Goods and merchandizes whatsoever from and immediately following the loading thereof on board the said Ship and which beyond the Shadow of Doubt Deter= =mined the Circumstance which was to fix the Commencement of the Risk and the Complainant did further Say that although the

the war Risk was no Doubt the particular Object which the parties Insurers and assured had in contemplation when the said Insurance was effected yet the Complainant Conceived that it did not nor could not banish or preclude altogether the Consideration of the Danger which Ships were while in a harbour were from various causes Subject to But as that risk was very small when Compared to the other It would appear that your Petitioners Thomas Chase and Henry Sewell and the other two members of the Committee of the Madras Insurance Company who Executed the Policy thought very little of it and in Consideration of the very high Premium which was paid being at the rate of Twelve per Cent under wrote the Policy in the terms which they had done thereby taking upon themselves every Risk which the said Contract Expressed and the Complainant denied that he had Concealed his knowledge on the Conviction which he entertained of the original intention of Parties or that he took any undue advantage as had been wrongfully imputed to him by your Petitioners in their said answer For that he had not sun the Policy when the Resolution of the said new Madras Insurance Company not to pay the loss was first Communicated to him and that as your Petitioners Grounded their refusal upon the Circumstance of the risk not having Commenced that he did then oppose to that the usage of the manilla Trade by which it was understood that the homeward Voyage Commenced the moment the Ships left Cavite to take in her loading and in order to establish what the Complainant Conceived to be a material fact he admitted to have addressed Certain Queries to Captain Ede and Bacon two old and very experienced Commanders who had long frequented that Port and who were Consequently well acquainted with the usage and Custom thereof and that the Complainant did hope that a Consideration of that usage would have had the effect of inducing the said Company to pay the loss without the interference of Law But when he found the intention of the said Company was to resist the Payment of the Claim and that they were making Construction favorable for their purpose It then behoved the Complainant in Justice to himself as legal measures became indispensible to take the best advice on the Subject of his Claim and the Complainant did further state that notwithstanding the assertions of your Petitioners with respect to what Constituted breaking ground the Complainant did submit that whoever duly reflected on the subject would be of opinion that when a Ship was unmoored for the Express and avowed purpose of proceeding on her distined Voyage that was to every intent and

and purpose breaking Ground and Constituted an inception of such a Voyage and of any Risk which was to take place in the Commencement thereof since it was obvious that a Ship could not be in the same state of Safety while at single anchor as She was while moored and the Complainant did state that it was unnecessary for your Petitioners to have enlarged so much in their answer upon the mistake which had crept in respecting the time when the said Ship Ceres was surprised as the insertion of the words Ten Instead of Twelve was evidently a Clerical Error besides it was very immaterial to the Question at which of the said hours the said Ship Ceres was surprised and taken and the Complainant did pretend that it was Extraordinary your Petitioners Should Defend the present Suit upon the Principle of the Risk not having Commenced whilst at the same time they had not paid the premium of Insurance into Court nor had they in their answer said that they had always been and were ready to return the said Premium which they ought to have done for nothing could be clear than that, that if the Risk had not Commenced that your Petitioners could have no right to retain the Premium and the Complainant did pretend that your Petitioners did in their Conscience well know that the whole of the Cargo of the said Ship Ceres was actually on board the said Vessell on the thirtieth Day of January the several Bills of Lading and Invoices of the said Cargo being annexed to the original Protest which was in the Possession of the Complainants attorneys But which were in the first Instance transmitted to your Petitioners Thomas Chase Henry Sewell and Richard Chase by the said messrs Colvins and Bazett and Lastly the Complainant did state that no other Construction could be Drawn then that the risk Commenced on the bottom of the said Ship Ceres from and immediately following the loading of the Cargo such being the Express tenor of the Printed words and which words stood uncontrouled by any written Clause wherefore the Complainant did pretend that he had an unquestionable right to recover the Sum for which he had brought his action

And your Petitioners Shew unto this Honble Court that to the Complainants said Replication your Petitioners did Exhibit and file their Rejoinder and did therein and thereby amongst other things State that the Complainant in and by his said Replication did aver that the representation touching the Twelve Sepoys on board the ship the Ceres as Setforth in the Plea of your Petitioners was made merely with

with a view of Shewing that the Ship the Ceres was well prepared to resist the attacks of Privateers and that it was not intended as a warranty that the said Sepoys should always remain on board which your Petitioners stated was an unfair attempt to do away fact by argument and further that when the said Representation was made to the office of your Petitioners he the Complainant did not give to your Petitioners any Explanation regarding the Particular Duty to be performed by the said Sepoys nor the period that they were to remain on Board the said Ship and that your Petitioners therefore could only Draw from the general fact a general Conclusion that the said Sepoys were to guard and Protect the said Ship the Ceres against all Dangers to which she was liable to be Exposed and against which she was then about to be insured at the office of your Petitioners and your Petitioners did say that in the application made to the office of your Petitioners to Ensure the said Ship the Ceres there was the following representation "She is a fine new Vessell Coppered well manned and navigated by a very able and Experienced Seamen and mounts twelve four pounders besides Swevels and has besides her Compliment of men a party of twelve Sepoys" and your Petitioners did submit to the said mayors Court that the Complainant might well with equal propriety have said that the said Twelve four pounders Swivels and Seamen were not always to remain on board the said Ship the Ceres as that the said Twelve Sepoys were not intended to guard and Protect the said Ship the Ceres against Every discription of Enemies and particularly against those Worst of Enemies Pirates which was one of the risks Covered by your Petitioners in and by the Policy upon which the Complainant had brought his present action and your Petitioners did say that it was more particularly to be Expected that the said Sepoys would always be and remain on board the said Ship the Ceres notwithstanding the Suggestion of the Complainant to the Contrary in so much as that they the said Sepoys could not from the nature of the thing have any Duty to perform on Shore their Duty being Confined to the Ship which they were intended solely to guard and Protect and for that purpose and no other did your Petitioners Consider the said Sepoys to have been Placed in the said Ship the Ceres and in further Rejoinder to that part of the Complainants said Replication wherein he stated nor did it appear that your Petitioners ever considered the Circumstance of the Vessell having Twelve Guns and so many Sepoys as a Condition they wished strictly to be adhered to or they would have

have taken care to have that part in the body of the Policy your Petitioners did say that although they did not enter any part of the said Representation respecting the said Ship the Ceres in the body of the said Policy and yet it was to be presumed and so your Petitioners did Declare the fact to be that in &c Covering a Risk on the said Ship the Ceres they were guided entirely by the said Representation and not only wished but expected that the whole and not any &c particular part thereof would be adhered to and upon such Representation and in such Expectation they &c required a lesser Premium than they otherwise would have Demanded to cover the Risk proposed and your Petitioners did say that the Representation made by the party desirous of effecting an insurance was the only means within the Powers of assurers whereon to &c form their Judgement regarding the thing to be insured and therefore if the party in his said representation did conceal any material facts necessary to the information of the assurers or if he did therein give more favorable Statements than the thing would admit of and &c that thereby the assurers relying thereon should Effect

the insurance required the Policy was voidable and your Petitioners did say that the Endeavours of the Complainant to take partial Extracts from the said Representation in order to promote the Objects of his said Bill of Complaint were in every way unjustifiable as Contrary to the known and Established usage and Custom of merchants in one Instance and in opposition to the Doctrine of Evidence in the other for your Petitioners did say that although the said Representation did Consist of many particulars yet that those particulars could only be considered as forming one aggregate whole and they did further say that whenever a party suitor in a Court of Judicature did refer to written Evidence he was not allowed nor would any Court Endure it to Select therefrom such parties as might be Serviciable to his own purposes only but he was concluded by every part thereof and your Petitioners did Say that they did admit that it was not according to the usage of merchants to consider any Verbal or written Stipulation as a Warranty unless the same be Entered in the policy and form a part of the Contract and your Petitioners thereupon did say that they had not in and by their said Plea as &c insinuated by the Complainant pleaded a breach of Warranty

but

but a Breach of the said Representation upon which they did agree to Cover and had accordingly Covered a Risk upon the said Ship the Ceres and your Petitioners did Say that a breach of Representation did according to the Law and usage of merchants Vitiate and render void the Policy Effected thereon and your Petitioners did therefore plead a breach of the said Representation touching the said Seapoys and thereupon did say that the Prayer of the Complainant that the said Plea of your Petitioners might be over ruled was unfounded and that your Petitioners said Plea did operate in Bar to the Complainants said Bill of Complaint and your Petitioners did therefore humbly insist as in and by their said Plea they had humbly insisted thereon and your Petitioners for further Rejoinder did say that notwithstanding the denial of the Complainant the Protest to the Complainants said Bill of Complaint annexed did carry on the face of its Evidence Sufficient on which to ground a Plea in Bar to his the Complainants said Bill of Complaint and your Petitioners Second Plea did therefore rest thereon Supported by the Several other matters therein Setforth for your Petitioners did say that it was stated in the said

Protest that on the night on which the said Ship the Ceres was Surprised and taken by Pirates as stated and Charged by the Complainants said Bill of Complaint there was only one man upon the Dech of the said Ship the Ceres as a Watch and although the said Protest might state as the Complainant did in and by his said Replication urge the fact to be that the said man so placed as a Watch was a Sea cunny and the usual and ordi=nary Watch yet your Petitioners did say that it was not such a Watch as was actually requisite and indispensibly necessary and such as might with the greatest ease and Convenience have been kept on board the said Ship the Ceres to guard and Protect the said Ship against those accidents to which a Ship was at all times and in all Situations was liable when the Size of the said Ship the Ceres and the Compli=ment of Seamen be considered and when it be also considered that over and above the said Compliment of Seamen she had belonging to her twelve Sepoys- and your Petitioners did Say that they did not admit that it was Consistent with the Custom and Regulations of the Country Service to give Charge of the Dech to a Seacunny and that in the very act of giving the Charge of the Dech to a petty officer implied an

an intention that he was in that Situation to carry some kind of Command and your Petitioners did further say that it would be some what singular to give a man a Command and not place any person under him and that whatever might be the Custom and regulation of the Country service it was the Custom of merchants in general and so understood and relied on by underwriters that a good and sufficient Watch should be kept on board every Ship both in a harbour and in open roads and particularly when in a foreign port and in the night time and during the time of War otherwise the asurers might be misled by the negligence of the party asured and your Petitioners did say that it was not sufficient that the Crews of a Ship Sleep upon Deck for in that case instead of being a Watch for the Safety of the Ship they require a Watch over themselves as it was not to be imagined that people could watch when they were a Sleep nor was it Sufficient that they would be ready as the Complainant suggested at a call because there might be no one to give that Call for independent of accidents that might happen from natural Causes to the Seacunny who Should be left in charge of the Deck he might be Suddinly attacked and totally deprived of the power of uttering a Syllable and

and which Seemed to have been the case at the time of the Seizure of the said Ship the Ceres as the Pirates who Seized her appear to have been Complete posfesion of the said Ship the Crews and had fastened down some of the gratings there of long before the officers on board were apprised of their unfortunate Situation for Henry mcblaish the Chief Officer of the said ship the Ceres did in and by the said Protest Declare that about Ten oblock of the night in which the said Ship the Ceres was Seized as aforesaid he was upon Deck and Directed the Seacunny to Call him at three oblock in the morning that about Twelve oblock he was awoke by a Strange and uncommon noise upon the Deck of the said ship and that in attempting to get upon Deck he found that the greating had been put upon the Companion scuttle and that the foremast of the hatch way grating was put on also and your Petitioners did say that notwithstanding the Suggestion of the Complainant whereby he would make it appear that on the night the said Ship the Ceres was Surprized and taken as aforesaid it was evident from the Declaration of the said Henry mcClush in the said Protest contained that the People were not

Sleeping

Sleeping upon Deck for the said Henry Mc Clush in and by the said Protest Declared that after he had got upon Deck that was after he had forced open the hatchway he found himself &c without any afsistance the greatest part of the Ships Company being below the gratings and your Petitioners did say that their said second plea was not as asserted by the Complainant a Specis of Cavil or Defence which no insurer who meant to content a Demand upon fair Principles would ever think of resorting to but on the Contrary that the same was founded upon Just Principles and arose out of the Complainants own Shewing and your Petitioners relying upon their said Plea and the &c insufficiency of the Replication of the Complainant thereto did humbly Pray as in and by their said Plea they had already &c Prayed and your Petitioners did submit to the said mayors Court that if the Complainant had been advised that the said two Several Pleas of your Petitioners were misconceived he ought to have Demurred thereto and not having done so but having replied thereto he did admit the said Several Pleas of your Petitioners to be well pleaded and by his said Replication put your Petitioners upon the proof as to the matters of fact in their said Several Pleas contained and your Petitioners did say that the Proof necessary to be adduced by them in support of the said matters of fact was deducible partly from the Complainants own Shewing as herein above Setforth and partly from his admission of the said representation made to your Petitioners and upon which the Policy in Question was effected and thereby and by reason thereof your Petitioners did humbly &c Submits to the said mayors Court being so advised that their said Several Pleas were Established both upon Law and upon fact and that therefore the Complainants said Bill ought to be Dismissed and your Petitioners for further Rejoinder did Say that although they had admitted the Receipt of the &c Premium by the Complainant setforth in and by his said Bill of Complaint and that they had Executed the said Policy upon which the said Bill of Complaint was grounded yet they did deny that they were thereby or by reason thereof bound to Pay to the Complainant either the Principal or Interest of the amount therein mentioned to have been insured and did also Deny as in and by their said answer they had already denied and for the Reasons therein setforth that the risk by them covered on the Bottom of the said Ship the Ceres did commence immediately after the said Ship the Ceres had

taken

taken in her bargo or that it could have commenced untill the said Ship should have got under weigh and was actually Sailing for the Destined Port and did say as in and by their said answer & they had already said and for the reasons therein Setforth that the written clause at the foot of the said Policy upon which the Complainant had brought his said Bill of Complaint did Control the Printed Words in the body of the said Policy contained as insisted on by the Complainant and which did not in a clear and Explicit manner or otherwise fix the time when the risk was to commence notwithstanding the contrary was insisted on by the Complainant and notwithstanding the Explanation he had in and by his said Replication attempted to give thereon and which Explanation did appear to be at Variance with the matter of fact as in and by your Petitioners answer the same was particularly setforth and that notwithstanding the assertion of the Complainant to the contrary that the circumstance of returning two per cent if the said Ship the Ceres should leave manilla after the thirtieth of november did Warrant the Construction of your Petitioners thereon as contained in their said answer and that the arguments adduced by the Complainant in support of such his assertion were

were altogether unfounded and irrelevent and your Petitioners had fully and clearly Established the facts in and by their said answer that there were not only mistakes to rectify but that certainly also was to be Established in and upon the said Policy in order to ascertain the thing thereby meant and intended to be insured and which could only be done by a written clause at the foot thereof and which was done accordingly and your Petitioners did say that they were not conscious of having as insisted on by the Complainant misstated the Letter of Instructions from the said mess^rs Colvins and Bazett nor could they have availed themselves of any such misstatements had it really taken place in so much as that your Petitioners had made a profert of the original Extract then in their Possession and to oyer whereof the Complainant was at all times Entitled - but your Petitioners did submit to the said mayors Court that it did appear by the Complainants own Shewing that they your Petitioners had not misstated the Instructions alluded to but that they had according to the Complainants

Own

Own Shewing only given to those Instructions a Construction which the Complainant Suggested was not warranted thereby but your Petitioners did say that such the suggestion of the Complainant was not the fact and so the same would appear by referrence to the said Instructions which did not require the aid of Construction And your Petitioners did deny that the words in the said Instructions Contained could be Construed to mean any thing more than what they did positively Express or that they were governed as the Complainant would have it appear by the words Setforth in the pretended part of the said Policy or that it was possible that the said Instructions could be so governed but by the reversing of order and the nature of things that your Petitioners did admit that on account of the war they did Demand a much higher Premium than they would have required had they not agreed to

Cover

Cover that risk and which was Expressive of the intention of the Complainant at the time he procured the Insurance to be effected and that the said Policy did carry upon the face of it Evidence that they had in contemplation every risk therein and thereby Contracted for and that the said Premium did apply to the whole of the said risks Collectively and not to any one Seperately although the War risk was the Prominent feature thereof and your Petitioners did say that notwithstanding the denial of the Complainant he the Complainant had Concealed his knowledge and his own conviction of the intention of the parties relative to the Policy in Question in manner and form as the fact was stated in their said Answer and that the assertion of the Complainant in his said Replication contained that he had not seen the Policy in Question when the resolution of the Madras Insurance Company not to pay the loss was first Communicated to him instead of doing away the said fact in

your

your Petitioners said answer contained did Corrobo=
=rate and support the same in so much as that
the Complainant not howing the said Policy
before him did Speak purely from his own &
knowledge and from his own conviction as to what
were the Intention of the parties at the period &
when the said Policy was affected - and your
Petitioners did say that if it were understood
as the Complainant would suggest the fact to
be and which he Contended still deserved support
that the Port of Cavita was the Port of manilla
and that the risk Commenced in quitting that
Port then and in that Case the Sailing from
thence to the roads of manilla distant about
three Leagues in order to take in Cargo would
be considered and held as a Deviation and the
Policy of course become and be void That the &
Complainant did admit that under the impression
that the risk had Commenced at the time the
said Ship the Ceres Sailed from the said port of

Cavita

Cavita he did apply to the office of your Petitioners
for Payment of the loss upon the risk Covered by the
said Policy and he Shewed that he never Entertained
an Idea that he would set up any Demand against
your Petitioners upon any other ground untill finding
that the office of your Petitioners had refused to
Comply with his the Complainants said application
he took legal advise and it appeared by his own &
Shewing that then and not till then he shifted his
ground and chose that on which his said Bill of &
Complaint was founded and your Petitioners did
say as in and by their said answer they had already
said that the unmooring of a Ship by having up
one of her anchors did not Constitute the breaking
of ground nor was the inception of the Voyage
nor any Risk which was to take place at the &
Commencement thereof Constituted thereby and that
if a Ship be not so safe when riding at a Single &
Anchor as while She was moored it was at the risk
of the Party and not of the underwriters who insure

from

from and not at and from a port and that to commence a risk in such case there ought to be an actual and bonâfide Sailing That in answering the Complainants said Bill of Complaint your Petitioners were under the necessity of remarking on the Variance between the Charges in the said Bill contained and the Protest thereunto &c annexed and they did humbly Submit to the said mayors Court that in doing so they had not Enlarged thereon further than the nature of the thing required and whether such variance be or be not material your Pet.rs did not take upon themselves to Determine That they were advised that it was not necessary for them to Pay the Premium into the said mayors Court in so much as that they were at all times liable and by the usage and Custom of merchants bound to pay the same to the Complainant and that the payment thereof to the Complainant would be made part of the Decree of the said mayors Court in the Event of his the Complainants said Bill of Complaint &c being dismissed and that they were then and at all times had been ready to Pay the same to the Compl=nant That notwithstanding the Suggestion of the Complainant to the Contrary they did not know that the whole of the Cargo of the said Ship Ceres was actually on board of the said Vessell on the thirtieth Day of January but it might have been on board thereof for ought they know to the Contrary and that whether the said Cargo was or was not on board the said Ship the Ceres on the said thirtieth Day of January was not a matter in Issue for your Petitioners did say as in and by their said answer they had already said that the risk on the said Ship the Ceres did not Commence from and immedi=ately following the loading of her Cargo but that the same was meant and intended to Commence from and immediately after the sailing of the said Ship the Ceres from manilla on her Destined &c Voyage as Expressed in the said Policy by the written Clause at the foot thereof

And your Petitioners Shew unto this Honorable

Honourable Court that upon the Proceedings so
being had Issue did Join in the said Cause and
did pass for the Examination of witnesses one Wm
was Examined on the part of the Complainant
Deposition on the hearing your your Petitioners
was on the motion by your Petitioners attorney Sup
and your Petitioners Shew unto this Honourable
Court that Publication having thereupon pas
in the Cause the same was Set down for hearing
the same having accordingly come on to be hea
by and before the said mayors Court on the fifte
Day of the present Instant March the said ma
Court did think fit to order and Decree and did
accordingly order and Decree that your Petitione
Should pay unto the Complainant the full and
Just Sum of Seventeen thousand four hundred
and five Pagodas one fanam and seventy Sic
Cash together with all such Interest as then was
or Should thereafter become due thereon also all
Costs of the said Suit - as by the said Decree of the
said

said mayors Court Copy whereof is hereunto annexed for the
Inspection of this Honble Court to which your Petitioners
Pray reference may appear

By which said order and Decree of the said
mayors Court your Petitioners do conceive themselves much
aggrieved and do therefore appeal therefrom to this Honourable
Court for the following amongst other Reasons -

First .... Because, the action of the Complainant is founded on
an alleged undertaking of your Petitioners for a Consideration
received to hold the Complainant harmless from certain Perils
and Hazards which might befall the Ship Ceres in a given
and definite Voyage and which alleged undertaking of your
Petitioners is stated by the said Complainant to have been reduced
to writing, and is by him termed a Policy of Insurance - and
is so Declared on by the said Complainant in his Bill and your
Petitioners Shew unto this Honourable Court, that the under-
taking of your Petitioners evidenced by the said Policy was
to insure the Bottom of the said Ship the Ceres from manilla
to calcutta against the Several Perils mentioned in the said
Policy To have rendered your Petitioners therefore liable to the
Action of the said Complainant on the said Policy or

Written

Written undertaking of your Petitioners for and on account of any loss, which might have happined to the Ceres the said mayors Court ought to have had clear and distinct Evidence before them, that the loss so happening to the said Ship was in direct consequence of one or more of the Risks or Perils Discribed, and by your Petitioners under taken to be Eventually sustained and borne in and by the said Policy and in a Prescribed Course and your Petitioners Shew, that there was not any Evidence before the said Court, to Shew that the loss of the said Ship was occasioned by any of the Risks or Perils against which the Complainant had caused himself to be assured in and by the said Policy — For your Petitioners Shew that the loss of the said Ship the Ceres is stated by the said Complainant in his Bill, and is manifisted further by the Protest annexed to the same to have been occasioned by an act of Piracy done and Committed on the said Ship while She lay at anchor at Manilla But the under=taking of your Petitioners as appears by the said Policy and as your Petitioners have herein before Shewn was to insure the said Ship from manilla that is on her Departure from manilla including the intermediate and intervenient Risks untill her arrival at Calcutta and not to Cover any antecedent Perils in and at the Port of manilla your Petitioners therefore humbly Contend that as the Commencement of the Risk, undertaken by your Petitioners in the said Policy, depended on the Event of the Departure of the Ceres from manilla and as the said Ship was last the only equivocal allegation of the said Complainant prior to the occurrence of that Event your Petitioners are altogether free and exonerate of all and every Damage or Injury which the said Complainant may have Suffered by reason of the loss of the said Ship in the manner and form alleged such loss and its Consequence not having been induced or brought on by and/or any of those Perils undertaken in and by the said Policy to be Covered by your Petitioners —

Secondly — Because the Risk, as discribed by your Petitioners in the preceeding Reason and as defined and marked out by the words From manilla to Calcutta, in the said

said Policy was the only Risk undertaken by your Petitioners and so understood by the agents of the said Complainant at the time of their procuring the said Policy to be subscribed and your Petitioners Shew that such intermediate Perils and such intermediate Perils only as might occur to the said Ship the Ceres from and after her Departure from manilla until her arrival at Calcutta/that is from Port to Port/were in the actual contemplation of the assured when the Policy in Question was Effected and your Petitioners Shew that the Extract of the Letter from Messrs Colvin and Bazett of Calcutta under date the Eleventh Day of november, one thousand Seven hundred and ninety three and addressed to their agents at madras directing the said assurance to be made on the Ceres, for the benefit of the Concerned Explains decidedly the definite adventure which was intended by the party complainant and his agents to be insured in the following words. We should be glad to cover one and a half Laces of Rupees on the Block and Cargo of the Ship Ceres Captain John Wright, from manilla

manilla to this"/meaning Calcutta/from which place the said letter of the said Colvin and Bazett appears to have been Directed and your Petitioners further Shew that in pursuance of such original Instructions from Colvin and Bazett of Calcutta on the behalf, as it is Since alleged of Captain John Wright Communicated to the agents of the said Colvin and Bazett at madras application was made in Writing to your Petitioners as appears on the face of the Pleadings in the said Cause to undertake the said proposed adventure on the said Ship and the said application in writing which is the Letter of messrs Chase Sewell and Chase under date the Twenty Seventh day of November in the said year of our Lord one thousand, seven hundred, and ninety three is in further corroboration of the Intent of the Party assured at and previous to the time of the said Policy being made and Subscribed and the said Letter as far as regards the Point in Question is in words of the following tenor having received Directions to insure a Considerable amount on the Block and Cargo of the Ceres

Captain

Captain Wright from manilla to calcutta We, request to know, on what terms your Committee will cover a part of the Risk &c." So that your Petitioners humbly presume from the said letters it is manifist that the assured at the time of causing the said Policy to be made and for the consideration therein Expressed had nothing further in view, than to insure the said Vessell, in and during her intended Voyage from the Port of Manilla to the Town of Calcutta - and that your Petitioners meant to cover and undertook to cover, such intervenient Perils, only, as might occur in the said intended Voyage, that is, from the Departure of the said Ship, the Ceres from manilla until her arrival at Calcutta and which is not only Evident on the face of the said Policy, but from the letter of the Secretary of your Petitioners in reply to the said application on the part of the said Complainant respecting the said Insurance then in Contemplation and which is in words of the following Tenor "The Committee of the new madras Insurance Company will cover Rupees 50,000 or

Pagodas

Pagodas 15315. 38. 30 on the Block of the Ceres, from manilla to calcutta, at a Premium of 12, per Cent Engaging to refund two per Cent, if the Ceres leaves manilla after the 30th of November" and your Petitioners Shew that the said Letter and Extract of a Letter hereinabove referred to, by Consent of and for the Convenience of the Parties Complainant and Defendants, were admitted on a Special motion, made on that behalf, in the progress of the said Cause through the said mayors Court as good and lawfull Evidence and so to be received and read before the said Court in the final adjudication to be had and made in the said Cause between the said Complainant and your Petitioners and your Petitioners humbly Contend, that the Said letters, and Extract, are Strong and Conclusive Evidence of the adventure meant to be assured and of the Risk ingaged to be borne and Sustained between the parties to and in the said Policy - and which adventure was a Voyage intended from the port of manilla to Calcutta and the Risk undertaken by the Insurers, your Petitioners,

was

was against such Perils as are stated in the Policy or any of them which might occur and happen in the said intended Voyage and after the same should have commenced namely on the Departure of the said ship the Ceres from the said Port of Manilla and your Petitioners Shew that when a Doubt shall arise on a Policy of Insurance the same being regarded in the Eye of the Law as a mere Parol Contract it is according to the Custom and usage of Courts of Law, to let in Circumstances and Proofs, Collateral to the Policy to Expound and Explain the same, and your Petitioners Contend that if any doubt or uncertainty should be observable in the said Policy Subscribed by your Petitioners such Doubt and uncertainty must be removed by the Letters and Writings hereinbefore referred to by your Petitioners and to the benefit and advantage of which under the Circumstances hereinbefore Setforth your Petitioners allege that they are fully and legally entitled. and your Petitioners humbly Shew unto this Honble Court that the fair and Equitable Presumption for the Premises just mentioned is in favor of your Petitioners if the Letter of the said Policy (which it does not) had ran Counter to the meaning Contended for by your Petitioners for it cannot reasonably be concluded that your Petitioners would have Spontaneously undertaken Extraordinary Risks whereunto they had not even been requested by the said Complainant or his agents for one and the same Premium that is when they were required to insure the Ceres in and during the Course of the Voyage from manilla to Calcutta that they should have Volunteered other Perils, of which the party Complainant and his agents at the time of effecting the said Policy were altogether Careless and your Petitioners further Shew unto this Honble Court that the words Common to Policies of Insurance and Instruments of a like nature from Judicial Decisions numerous concurrent and uniform have acquired a definite legal acceptation and Currency and of which legal acceptation the parties to a Policy are supposed to be acquainted and your Petitioners are advised that the word "From", Seperately Considered, does in all Policies intend a bonafide and actual Departure and

nothing

nothing less than a Departure well Satisfy it and that a long Course of legal Decisions authorises such an Interpretation of the Term and your Petitioners are further advised when any Risks are meant to be assured previous to Departure that it is Customary and usual to have such Risk Denoted in the Policy under the Term "at" which also has Received a Current and precise legal meaning including all Risks and Hazards after arrival and During the Continuance in Port and is in all respects as referring to a Policy opposite to and Contradistinguished from the word "From" which extends as your Petitioners have Shewn to all Hazards out of Port and your Petitioners humbly Shew that the said Risks being ever regarded as distinct and Different Risks are subject to Different and distinct Premiums or one Premium apportioned to the two Risks, intended to be Covered and although it may not be usual to Express, on the face of the Policy the Precise Premium paid on each Risk, yet it is always required that such Distinct Risks should be Setforth and Discribed in Seperate Terms, in and on the Policy, or Instrument by which the Objects of the Insurance are discribed and ascertained - and your Petitioners having Shewn, that "at and From" are two opposed Terms in Policies that they intend two Risks that for every Several Risk a Several Premium is required and that every Risk insured against on the part of the Assured should appear in and upon the Policy - and your Petitioners having herein before shewn that in the Policy, in Question they had only Covered the Seres from manilla and that it appears by the Policy itself as well as by the said Letters immediately referred to that the Premium received by your Petitioners was for an Assurance of the said Ship from manilla - and as it also appears that the Seres was lost as stated by the said Complainant by an act of Piracy at Manilla your Petitioners do therefore humbly contend, that they are not in any wise chargiable for or on account of the loss of the said Ship they neither having conditioned in the said Policy to insure the said Ship against any loss which might happen at Manilla nor having Received any Premium in consideration of such a Risk

and

and any Condition of Insurance Entered into on the part of your Petitioners except on a Premium received would be null and vaid to every legal Purpose as being without a Consideration -

Thirdly -- Because the time and Circumstance of the Commencement of the Risk being accurately and clearly Discribed in the leading Words of the Policy and being Defined &c according to the Intentions of the Parties to the same as your Petitioners have endeavoured to Shew in the preceding Reasons no forced Construction Drawn from subsequent words in the said Policy ought to be allowed to Operate in disfavor of your Petitioners in violation of the Plain sense and meaning of the words precedent and in direct Contradiction of the Intention of the Parties to the Instrument and your Petitioners humbly Shew that the Construction as to the Commencement of the Risk insured by your Petitioners as contended for by the said Complainant is harsh and strained instead of being a liberal and equitable Construction which ever should prevail and is always allowed to prevail in the &c Interpretation of such an Instrument For the said Complainant has insisted in the Pleadings Exhibited on his behalf

in the said mayors Court that the general words in the said Policy "Beginning the adventure upon the said Bottom Goods and merchandizes whatsoever from and immediately following the Loading thereof on board the said Ship &c" had extended the Risk which your Petitioners had engaged to Cover in the outset of the Policy and had introduced a new Event from which the Inception of the adventure assured was to arise Namely from and immediately after the Loading of the &c Goods and merchandizes on the said Ship the Ceres But Your Petitioners humbly Contend that as the words foregoing in the Policy plainly Speak the meaning of the parties to the Policy and the precise adventure Covered that according to the Rule of Law, no Subsequent Words can Controul and change the same - and your Petitioners are advised that when any latter Clause in a writing is contradictory of a Clause forerunning that Legal & Practice Warrants either that such Clause be so attired as to Correspond with the forerunning Clause to perfect the Intent of the parties, or where the Intent of the parties is manifest, to reject the Contradictory Clause from the Writing as Surplusage -

and

And your Petitioners further Shew that the words from which the said Complainant has taken up the Construction by him Contended for as to the Commencement of the Risk, are general words and Common to all Policies which insure against a general loss as well of Cargo as of the Vessell and that the Complainant in the Event of any loss of Goods and merchandizes if the said words were supposed to have any operation in the Policy might by virtue of the said words and the said Clause in the Policy as well have called on your Petitioners to make good such loss, as for any particular Loss in respect to the said Ship The said words in the Policy importing the adventure to be on the Bottom Goods and merchandizes - But your Petitioners Shew that the adventure was restricted and restrained to the Bottom of the Ceres and as appears by the written Clause at the Foot of the Policy and which written Clause declares the particular Risk assured or Namely the Stock and Block and confirms the Intention of the parties made known in the leading Paragraph of the Policy in defining by the word "Leave" the exact nature and Commencement of the Risk.

and

And your Petitioners humbly presume that from the Principal Paragraph in the Policy, wherein the assurance intended to be made is setforth, to wit "do make assurance and cause themselves to be insured lost or not lost, from manilla to Calcutta" aided assisted, and supported by the Letters and written applications on the part of the assured and of the written answer of the Insurers your Petitioners alluded to in the two first Reasons assigned by your Petitioners, Compiled with the concluding Written Paragraph in the said Policy to wit "if the Ceres leaves Manilla after the thirtieth of november it is clear and evident that an actual Departure was the Event in the understanding of the Parties to the Policy as which was to lead and induce the Risk undertaken by your Petitioners and your Petitioners further Shew in a later Insurance effected on the said Ship the Ceres - and by the same parties and which is made or written on the back of the said Policy, the adventure covered by your Petitioners is Expressed in plain and single Terms and not liable to any other than one Interpretation and which his the Interpretation on which your Petitioners have hereinbefore insisted - For the Indorsment on the

said

said Policy States that for a certain consideration paid your Petitioners did permit the Ceres to touch at madras in her Voyage from manilla to Calcutta and that they would return a certain part of the additional Premuim if the Ceres performed in Safety the original Voyage as Stipulated in the said Policy so that the Declaration of the Intention of the Parties to the Policy in the said Indorsement (nearly four months after the Subscription of the Policy) of what had been assured by the one and undertaken by the other Party in the said Instrument cannot leave the Vestige of a Doubt as to the particular Risk insured - It not being simply Declared in the said Indorsement that the Ceres might touch at &c Madras on her Voyage from manilla to Calcutta - But such Voyage is Explained and Emphatically stated the Original Voyage, as Stipulated in the Policy - and your Petitioners therefore humbly Contend that as the Voyage from Manilla to Calcutta so Explained was the adven= ture undertaken by them the actual Departure of the &c Ceres from Manilla was understood and alone could be understood as the Inception of the Voyage or adventure under the Terms and Conditions of the Policy - and your

Petitioners

Petitioners humbly Shew unto this Honble Court that from the haste in which Insurance Contracts are often times Drawn and Executed and the Difficulty of making any given or Policy to answer the purposes of every Person or Persons desirous of making an assurance, the Courts of Law, on the Custom of merchants have allowed a peculiar force and operation to the written Clauses in a Policy of Insurance and that it is an indisputable Rule at this Day that such written &c Clauses in a Policy shall govern and Controul the formulary and Printed parts of the same - and your Petitioners humbly insist that the written Clause at the foot of the said Policy demarking the Particular Extent and nature of the adventure did over rule and supersede the general printed Clause in the Policy - out of which the said Complainant has Drawn his Construction of the Commencement of the Risk for if the said Clause were not over ruled and Superseded it must stand and operate wholly and entirely and not partially or so far only as to serve the Construction aimed at by the said &c Complainant and if so, the said Clause rendered your Petitioners liable and responsible for the Goods and merchandizes on the said ship of which the said Clause is cautious and provisory - But

Your

said Policy States that for a certain consideration paid your Petitioners did permit the Ceres to touch at madras in her Voyage from manilla to Calcutta and that they would return a certain part of the additional Premuim if the Ceres performed in Safety the original Voyage as Stipulated in the said Policy so that the Declaration of the Intention of the Parties to the Policy in the said Indorsement (nearly four months after the Subscription of the Policy) of what had been assured by the one and undertaken by the other Party in the said Instrument cannot leave the Vestige of a Doubt as to the particular Risk insured - It not being simply Declared in the said Indorsement that the Ceres might touch at or Madras on her Voyage from manilla to Calcutta - But such Voyage is Explained and Emphatically stated the Original Voyage, as Stipulated in the Policy - and your Petitioners therefore humbly Contend that as the Voyage from Manilla to Calcutta so Explained was the adven= ture undertaken by them the actual Departure of the Ceres from Manilla was understood and alone could be understood as the Inception of the Voyage or adventure under the Terms and Conditions of the Policy - and your

Petitioners

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Your

your Petitioners have Shewn by the said Letters hereinbefore referred to by your Petitioners as well as by the Concluding Paragraph of the Policy that the Goods and merchandizes were not in any sort the objects of the said Insurance on the behalf of the said Complainant and therefore the said Clause as referring to objects foreign to the Intent of the parties to the Insurance ought to have been rejected or over Ruled by the Clause in writing at the foot of the Policy or should have been altered so as to have been capable of Correspondence with the Tenor of the Instrument and hence your Petitioners conclude that the Construction of the said Complainant from the said words of Generality in the Policy is partial confined and Erroneous and ought not to prevail in the Interpretation of the said Written Instrument but that the same should be broken so as to render it Conformable to the Intentions of the parties at the time of making the same and not to their Intentions at a Subsequent period which might be different and discordant according to Circumstance accident or Change of Interests

Fourthly... Because the said Construction as to the Commencement of the Risk of your Petitioners set up by the said Complainant in opposition to the Intention of the parties to the Policy at the time of making the same was in a great Degree abandoned by the said Complainant or at least not Depended on by his afterwards resorting to other Grounds and suggestions and your Petitioners humbly Shew unto this Honble Court that the said Complainant did first suggest that the Risk of your Petitioners did Commence from the Departure of the said Ship the Ceres from Cavita to the Roads of manilla and next that unmooring the said Ship, that is, by raising one of the anchors of the same and which was termed by the said Complainant a breaking Ground was an Inception of the Voyage from manilla and a Commencement of your Petitioners Risk But your Petitioners state unto this Honble Court that if the Departure from Cavita to the Roads of manilla be Considered as a Departure from manilla / Cavita being discribed to be the port of Manilla / the sailing to and Stay of the Ceres in the Roads of manilla for the purpose of taking in Cargo as setforth was a palpable Deviation from the Voyage insured and as such made the Contract of Insurance void the said Policy precluding such an act and your Petitioners further state that the mere unmooring

of a Vessell, by raising one anchor, does not as indeed
said Complainant constitute a breaking ground fo
Term breaking Ground in Legal Sense, and Phrase
tantamont to and equipollent with sailing and is
indifferently and indiscreminately for the last mon
word - and this your Petitioners are ready to Shew by a
of authorities and your Petitioners humbly cont
the said Complainant having had recourse to th
Suggestions is a proof unwillingly Drawn from him
an actual Departure was necessary to be Shewn
order to bring the loss which has happened within
Peril of the Policy - For if the loading of the Good
the said Vessell had been unquestionable Evidence of
Commencement of the risk whence the necessity incumb
on the Complainant to prove a Departure and
which your Petitioners again contend that he has
failed -

Fifthly --- Because that if the Risk of your Petitioners co
be supposed to have commenced on any of these Event
enumerated by the said Complainant that from the
circumstances under which such Risk Commenced y

Petitioners would be altogether discharged from the Conditions and
obligations in the said Policy mentioned For your Petitioners Shew
that at the time of Effecting the said Insurance on the beres
the agents of the said Complainant did represent to your Petitioners
that the said Ship had on board besides her Compliment of Seamen
a Party of Twelve Sepoys and your Petitioners in consideration of
the Circumstance did Calculate their Risk accordingly and did
undertake to Cover the said Ship from the Hazards discribed in
the Policy But your Petitioners Shew that from the Evidence
on the part of the Complainant, it appears, that Eight of the
said Sepoys were on Shore and from the ship at the time of the
Surprise and Seizure of the same and your Petitioners therefore
humbly Contend that such misrepresentation on the part of the
Insured in regard to the said Sepoys being material and
Important as to the object of Insurance is in its Consequences
and Effect as a Fraud and Deceit on your Petitioners and of
Course Destructive of the Contract and the said Contract being
thereby void in Law that the Complainant Cannot be entitled
to any advantage under the same -

Lastly --- Because the loss of the said Ship the Beres in the
way and manner as alleged by the said Complainant / should
the

the Risk were be supposed to have commenced in the due Course) would not from a view of the whole Case have been chargeable to your Petitioners For your Petitioners Shew that at the time of the Seizure of the Vessell one Seacony only was in actual Charge and Custody of the Deck a negligence of such a nature as to Demonstrate a total Disregard on the part of the Assured for the Safety of the Vessell and your Petitioners Shew that the Complainant being the master as well as Proprietor of the said Vessell by an implied Contract with your Petitioners ought to have exhibited Sufficient and due care towards the Preservation of the Ship which from the said Circumstance it is clear that he did not and therefore as the Law abhors that any man should benefit by his own Wrong doing the said Complainant ought not to be allowed to Draw an advantage by reason of the said Policy of Insurance from his own negligence and want of Caution.

For all which Reasons and such others as may be offered at the Hearing your Petitioners most humbly Pray this Honourable Court will be pleased to reverse the said Decree of the said Mayors Court and Grant unto your Petitioners such Further and other Relief in the Premises as in the wisdom of this Honourable Court Shall Seem meet

/Signed/ Emanuel Samuel
Solicitor for appellants

Mayors

Mayors Court at Madrasspatnam } Tuesday the 15th day of March Anno Domini 1796

L.S.

Present

James Daly Esqr. Mayor
James Ball William Webb
Andrew Ross John Mitford
Alexander Cockburn & Jos. Greenhill

Aldermen

Mayors Court

Between John Wright of Calcutta Mariner by his attornies Robert Woolf Daniel Crawford and Robert Forbes of Madras merchants Complainants and Benjamin Sulivan William Harcourt Toriano Richard Case, Thomas Chase, Henry Sewell, Vencata Narrain, Ravanapah Chitty, and Moodoo Moodelly, Defendants—

This Cause coming on to be heard and Debated this day in the Presence of the attornies on both sides on reading the Complainants Bill with Copies of three Exhibits annexed

annexed. The Defendants Plea and answer with Copies of Four Exhibits annexed The Replication The Rejoinder The Interrogatories and Depositions on the part of the Complainant with one Exhibit annexed, Two Exhibits on the part of the Complainant Extract from the minutes of Court of the 20th. October 1795 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 Complainants the full and Just Sum of Seventeen thousand four hundred and five Pagodas one fanam and Seventy Six Cash Pagodas 17405. 1. 76. / 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—

Fleur

A True Copy
/Signed/ Emanuel Samuel
Solicitor for Appellant

/Signed/ G. E. Ashin
Sec'ty.

To

To the Right Honorable Lord Hobart-

President and Governor &c in Council of

Fort St. George

In the Honourable the Court of Appeals-

Between John Wright of Calcutta &c Mauriner by his attornies Robert Woolf &c. Daniel Crawford and Robert Forbes of Madras Merchants Complainants and Benjamin Sulivan William Harcourt Toriano Richard Chase Thomas Chase Thomas Parry William Dring Henry Sewell Vencata Narrain Ravanapah Chitty and Moodoo Moodelly of Madras Inhabitants Defendants-

Filed in my office the 2d. May 1796
J. Webbe Clk

The Answer of John Wright the above named Complainant to the Petition and Appeal of Benjamin Sulivan Richard Chase Thomas Chase and Henry Sewell four of the above named Defendants-

This Respondent admits that he did on or about the nineteenth day of march and year of our Lord one thousand Seven hundred and ninety five by his attornies Robert Woolf Daniel Crawford and Robert Forbes Exhibit and file his Bill of Complaint in the Honourable the Mayors Court at Madraspatnam against the said Appellants and the said William Harcourt Toriano Thomas Parry, William Dring Vencata Narrain Ravanapah Chetty and Moodoo Moodelly of Madras Inhabitants as the members composing the new madras Insurance Company and did therein and thereby Setforth and State that on or about the Twenty eighth day of June which was in the year of our Lord one thousand Seven hundred and ninety three This Respondent being then sole owner and Commander of the Ship Ceres left Calcutta in the Kingdom of Bengal in order to proceed on a Voyage to Manilla in the Island of Luconia That previous to his leaving the said Port he directed his attornies Messrs Colvins and Bazzett of the same place merchants to effect an Insurance on the Body of the said Ship Ceres on her returning Voyage In Consequence whereof the said Colvins and Bazzett caused an application to be made to the New Madras Insurance Company by means of their agents Chase Sewell and Chase and that in Consideration of a Premium of twelve per cent Thomas Chase John Hamilton Hugh

Hugh Jones and Henry Sewell then Members of the said new Madras Insurance Company and the immediate acting or Committee thereof did sign and Execute the Policy upon which the present action is founded Copy whereof is annexed to the Bill of Complaint whereby they undertook to Cover and Insure the Valued Sum of fifty thousand Sicca Rupees upon the Block of the said Ship Ceres from manilla to calcutta against the Several perils and adventures in the said Policy mentioned the risk being Stipulated by the said Policy to Commence from and immediately after the loading being Completed—

And this Respondent for further answer to the said Petition and appeal admits that he did in his said Bill further State that on the Thirtieth day of January which was in the year of our Lord one thousand Seven hundred and ninety four the said Ship Ceres having then Completely taken on board her returning Cargo water and Stores the Bills of Lading and Port Clearances being also obtained the Ship unmoored and every thing in a state of readiness to put to Sea That about Ten at night on the same evening the said Ship Ceres was suddenly Surprised and boarded by a Number of armed men Consisting principally of french Prisoners and Spanish Deserters who

and afterward to the Island of mauritius notwithstanding every possible exertion was made by this Respondent to prevent it And this Respondent doth admit that by reason of the premisses he did Charge the said appellants to stand indebted to this Respondent in the full and just Sum of Seventeen Thousand Four hundred and five Pagodas one fanam and Seventy six Cash Current money of madras for the recovery whereof as is stated by the appellants He did file and Exhibit his Bill of Complaint—

And this Respondent by his said attornies for further answer to the said Petition and appeal admits that the appellants being served with Process to appear to and Answer this Respondents Bill of Complaint did accordingly appear and did on or about the nineteenth day of may Exhibit and file Two Pleas and an answer The first Plea being founded on the following futile and very insufficient grounds (Vizt) That in the original letter from Colvins and Bazzett to Thomas Chase Henry Sowell and Richard Chase directing the Insurance in Question and in the immediate application from them to Thomas Chase in his Capacity of Secretary It had been represented That the Ceres

besides

besides her Compliment of Seamen had a party of Twelve Seapoys and that it appeared from the Protest That Six of those Seapoys were on Shore at the time the Ship was surprised which they Considered as a breach of representation That exonerated them and therefore pleaded the same in bar That as Cause for a Second Plea They did aver that there was not a Sufficient watch at the time the said Ship Ceres was Surprised To appearing from the Protest that there was only one man upon the Deck of the Ceres at the time she was Surprised and taken and therefore they pleaded the same in bar of the said Bill and the relief thereby sought and demanded the Judgment of the said mayors Court whether they should make any further or other answer &c thereto And this Respondent further saith that the said Appellants did in their said answer admit the Execution of the said Policy and did further admit that it might be true for ought they knew to the Contrary that Certain Pirates might have Surprised and have taken possession of the said Ship the Ceres and that the said Pirates might have &c carried the Said Ship the Ceres from Manilla where she then lay at anchor to the Mauritius and they did &c further admit that the act of Surprisal and Piracy was

one of the perils Covered by the said Policy of Insurance but the said appellants denied that thereby or by reason of the premisses they were in any wise liable to pay the amount by them Covered by the said Policy of Insurance For the said appellants did Contend that the Printed words in the Policy of Insurance upon which this Respondent rested his Claim on the appellant that was to say "beginning the &c "adventure upon the said Bottom Goods and merchandizes "whatsoever from and immediately following the loading thereof "on board the said Ship" were totally inapplicable to the matter in Question which Stood upon its own ground and was taken entirely out of the said printed Clause - as appeared by the Declaration in writing at the foot of the said Policy and this Respondent admits that the said Appellants did in their said answer further allege that they were advised that it was frequently necessary to insert written Clauses in printed Policies of Insurance in order to express the meaning of the parties to the Contract where the printed forms were not Sufficiently Explanatory and that such written Clauses and Conditions so &c inserted were to be Considered as the real Contract and

were

were Suffered to Contraul the printed words in policies of Insurance
and this Respondent admits that the said appellants further alledged
that the printed Clause in the said Policy of Insurance as relied
on by this Respondent was indefinite as to the thing thereby
meant to be Insured and did not express the intention of the
parties taking the said Clause together and it could not as
the appellants said they were advised be Severed and the said
appellants did further alledge, that as their intentions respecting
the Insurance in Question Could not be expressed by the
printed words that it became necessary to make a Special
Clause for that Specific purpose and the same was accordingly
made in writing at the foot of the said Policy which written
Clause Shewed the Risk that was in Contemplation when the
said Policy was effected and that an actual bonafide Departure
from manilla was meant and understood by the parties in
order to Commence the Risk and that until such actual and
bonafide Sailing should have taken place the said risk was
not meant or intended to have Commencement and therefore
that the attempt of this Respondent to take an advantage
of the said Printed Clause and to assert from thence that
the said Risk Commenced from and immediately following

the

the loading of the said Ship the Ceres was as the said appellants
alleged unfair and unjuste And this Respondent admits that
the said appellants did further allege in their said answer that
it appeared by this Respondents own Shewing that the Ship
the Ceres had not left the Port of manilla, nor as the
appellants were advised had She even broke ground for the
said appellants did say that they doubted not of proving to
the said mayors Court that in the Case where a Ship was
moored the heaving up of one anchor was not breaking
Ground for that they were advised that breaking ground
was moving from a Situation in which a Ship had been for
some time moored or riding at anchor to some other tho the
difference as to distance should be very trifling But that
even if it were true that the heaving up of one anchor was
breaking Ground that would not alter the case in favor of this
Respondent as it would not bring it within the meaning and intention
of the said Policy of Insurance and of the parties at the time of executing
the same and this Respondent by his attornies further Saith that many
other matters were by the said appellants Setforth and alledged
by way of defence to the said Bill which said answer being recited
by the appellants in their appeal This Respondent craves leave

to

to refer thereunto and prays the same may be taken as part and
parcel of this his answer.

And this Respondent doth admit that to the appellants
said Pleas and answer this Respondent did Exhibit and file his Repli
cation and for Reply thereto said that it did not appear that the &c.
appellants ever considered the Circumstance of the Vessel having twelve
Guns and so many Seapoys as a condition they wished Strictly to be
adhered to otherwise It was to be presumed they would have taken care
to have that put in the body of the Policy That it was not the usage
to consider Instructions or any Verbal or written Stipulation as a &
warranty without they were entered in the Policy and made part of the
Contract and upon those principles this Respondent did contend that
the said Plea was altogether misconceived. And this Respondent by
his said attornies did deny that there was any thing apparent on the
face of the said Protest to warrant the Second Plea of the appellants
in bar to this Respondents Bill and the relief thereby Sought For that
it was stated that the usual and ordinary watch of a Seacunny
was placed, and that it was Consistent with the Customs and
regulations of the Country Service while a Ship was at an anchor
to give Charge of the Deck to a Seacunny who was considered

to be a person of Responsibility and was a Station similar to that
of a Quarter master on board of his Majestys or one of the Honble &
Companys Ships, the Charge of Stowage and of Steering the Vessel
being Committed to them and thereupon this Respondent did contend
that the Second Plea was altogether futile and was a Species of Cavil
or defence which no Insurer who meant to Contest a demand upon
fair principles would ever think of resorting to - and this Respondent
in Replying to the merits did admit that it was frequently necessary
to insert written Clauses into Policies of Insurance in order to express
Clearly the meaning of the parties to the Contract and which in
many cases the said printed form was insufficient to do But this
Respondent denied that under these principles or according to that
Doctrine the written Clause at the foot of the Policy upon which
the present action was founded did controul the printed words &
insisted on by this Respondent which words, in a Clear distinct
and explicit manner fixed the time when the Risk was to Commence
that was to say on the Bottom Goods wares and merchandizes &
from and immediately after the Loading thereof Whereas the written
Clause at the foot of the said Policy had been entered for the sole
purpose of distinguishing the Subject of Insurance and not the

Commencement

commencement of the Risk which the Insurers at the time of
filling up & Executing the said Policy had obviously left to the
printed words to Explain and therefore this Respondent did
contend that as the Printed words respecting the Commencement
of the Risk stood uncontrouled they should prevail and have
due effect both as to Construction and Evidence of the intention
of the Insurers at the time of entering into the Contract and
this Respondent in his said Replication did further State that
notwithstanding the Assertions of the appellant with Respect
to what Constituted breaking Ground He was convinced that
who ever duly reflected on the Subject would be of opinion that
when a Ship was unmoored for the Express and avowed purpose of
proceeding on her destined Voyage that was to every intent and
purpose breaking ground and Constituted an inception of such
Voyage and of any Risk which was to take place on the
Commencement thereof since it was obvious that a Ship could
not be in the same State of Safety while at Single anchor
And this Respondent further admits that the said
Appellants did put in their Rejoinder to the said Replication
which said Replication and Rejoinder being Set forth and fully

recited

recited in and by the said appeal this Respondent craves leave
to refer thereunto and prays the same may be taken as part and
parcel of this his answer And this Respondent by his said attornies
further saith That in order to prevent the delay and unnecessary
expence which must have attended an Examination to prove
that the loading of the Ship Ceres was completed at the time
She was Surprised and taken as well as other points on
which this Respondent depended, It was mutually agreed
upon that the original Protest Should be delivered into Court
and Received as good Evidence any thing in the Pleadings contained
to the contrary notwithstanding and it was further agreed upon
that the Several Letters annexed to and Exhibited with the
Appellants Pleas and Answers should be admitted as evidence
as much so as if the hand writing had been proved and this
Respondent further Saith that on the Fifteenth day of march
in the said year one thousand Seven hundred and ninety Six
The original Protest was delivered in and the following minute
entered on the Record "The attorney for the Complainant delivers
into Court the original Declaration and Protest of John wright
Henry McLeish Robert Weir and Joachim De La cruz Sworn

to

"to before Sir William Dunken one of the Justices of the Supreme or
"Court of Calcutta. And it is agreed to by and between the parties
"Complainant and Defendants that the matters in the said
"Protest Stated shall be read and Received as good Evidence on
"the part of the Complainant and Defendants any thing Setforth
"in the pleadings to the Contrary in any wise notwithstanding
"And it is further agreed to by and between the Parties Complainant
"and Defendant that the Letter annexed to the Answer purporting
"to be a Letter from messrs Chase, Sewell and Chase to Thomas Chase
"Secretary to the new madras Insurance Company shall also be read
"as Evidence in as much as if the Hand writing had been proved and
"in like manner the Letter from Thomas Chase to Chase Sewell
"and Chase also the Exhibit purporting to be an Extract of a Letter
"from Messrs Colvins and Bazzett together with the letter Signed
"John Wright ordered accordingly" And this Respondent by his
said attornies further Saith that the Substance of the said Declaration
and Protest made by this Respondent Henry M'Elish late Chief
mate Robert Weir Second officer and Joachim Deleiriz late a
Seacunny and so received as good Evidence was as follows (To wit)
That on or about the Twenty eighth day of June in the year of Christ

One thousand Seven hundred and ninety three the Declarants said
in the said Ships Ceres in the Several Capacities aforementioned with
a Cargo on board on a Voyage to Pulo Penang and Manilla. And
that they arrived at the Port of Manilla in the Island of Luconia
on or about the twenty fifth day of august in the year of Christ one
thousand Seven hundred and ninety three where they landed the
Cargo and took in a fresh Cargo as hereafter is particularly mentioned
That on the Thirtieth day of January last the said Ship having
Completely taken on board her returning Cargo and having
Regularly cleared out the Ship from the said Port by having obtained
the usual Port clearances from the proper officers of the Spanish
Government and having on board all the water and every other Store
for the Voyage with a Sufficient Compliment of men The Ship
having broke ground and then only lying at a Single anchor
with her Sails all bent for the purpose of proceeding the winds
and weather permitting from the Road of Manilla aforesaid
to Bengal on the following day. This Respondent did write
a Letter to the said Henry M'Elish informing him of such his
intention And the said Henry M'Elish for himself declared
that on the said thirtieth day of January last the said Ship

Ceres

very dark he could not distinguish who it was but on enquiry found him to be the other Declarant Robert weir when he the said Henry m'blish in attempting to get up the ladder Struck his head against something which occasioned his Slipping off the ladder when upon looking up he discovered that the Grating which was was not on when he went to bed was put on the Companion Scuttle upon which he the said Henry McBlish went to the after or Hatchway and desired the second mate to assist him in removing the Grating which had also been put on that he might get upon Deck he the Declarant imagining and believing that the noise was occasioned by a Guard from the Corregidor or magistrate to see if there were any women from manilla on board it being prohibited by the Government there. And the said Henry m'blish in his said Declaration and Protest further said that with the assistance of the said Robert weir they should up the foremast after Hatchways Grating and he got upon Deck and passed to the Starboard Gangway where he stood for some little time and saw many people aft in much Confusion talking french and heard the

beres having been unmoored as aforesaid was riding at Sing anchor in the Road of Manilla, about one mile from the S with her Sails all bent and every thing ready for going to S at a minutes warning, early he received a letter from this Depo who was at such time very ill a Shore directing him to have Boats belonging to the said Ship beres and to get every thi for Sailing the following morning And the said Henry and Robert weir in their said Declaration further Decla that having set the ordinary watch at Seacunny on Deck said Henry McBlish having directed the said Seacunny to him at three oBlock in the morning that at Eleven o the same night it being then very dark he went upon D and finding the Seacunny on watch and every thing quiet he w to bed, That about twelve oBlock of the same night he wa awoke by a Strange and uncommon noise upon the Deck the said Ship that he thereupon immediately got up and w into the Steerage in order to get upon Deck to learn the Occasion of the noise above when he saw some body Standing between the after Hatchway and

the Ship to prevent Smuggling Speaking to the people a
him in a Stepplicating tone, And the said Henry M
further declared that finding himself without any assis
the Greatest part of the Ships company being below when
no possibility of doing any thing in that Situation either for
defence of himself or the Ship he Slipped down by a Rope
the water and got to a Vessel Called the Constantee a Spani
Vessel that was lying within about a quarter of a mile of
Ceres, and told the people on board what had happened and
requested assistance offering every man who would go back
with him to the Ceres in their Ships Boat one hundred
Dollars each but could not prevail on any of the people to
so That almost immediately upon his getting on board the
Constantee he the Declarant saw the people loosing the Ceres
Sails and knew that they had cut her Cable as the Ship
casted upon which he requested the People of the Constantee
to put him on Shore in their Boat that he might get
assistance from thence and begged they would fire some Guns
to alarm the Fort But he was told their Guns were not in readiness

and they did not fire or give any alarm whatever That he went
on Shore and got to the house of this Respondent about one hour
after the people had got on board the Ceres as before mentioned
and informed him of the Circumstance. And this Respondent
and the said Henry McBleish in their said Declaration and
Protest further declared that after many delays and much
trouble they procured a Brig then lying there and as they
understood ready for Sea and made sail after the Ceres at about
day break in the morning having on board the said Brig
Seventy people in all that Shortly after they
the said Brig they found they had only one Cask and a
very little more of fresh water on board although the owner
had Reported her ready for Sea which obliged them to return
without effecting the object they had in view. And the
Declarant Robert Weir in his said Declaration and Protest
declared that immediately after the other Declarant Henry
McBleish had got upon Deck in the manner before
mentioned He attempted to follow him but was twice beat
Back at the last time he fell down and was Stunned

with

with the fall and that about half an hour after as he belie
as he was lying upon the Deck four frenchmen came down
with a light, and Searched the Great Cabbin as he imagi
after the Captain and other officers and at day light conf
him the Declarant under a Guard in the Great Cabbin w
he remained until about ten oblock in the morning when
observing some of the People belonging to the Ceres getting
the long Boat he intreated the Frenchmen to Suffer him
to get with them and to which they at length consented
and he did actually quit the Ceres then out at Sea and
arrived at Manilla with three Seaconnies one Tandal one Siriang and
about fourteen men belonging to the Ceres on or about the
Third day of February in the year of Christ one thousand
Seven hundred and ninety four And the Declarant
Robert weir further Declared That the said Ship Ceres
was carried out to Sea almost immediately after her being
boarded in manner aforesaid and that the persons who boarded
the said Ship and Carried her away Consisted of as he
believed Twenty Five french men some Spanish Soldiers
and some Indians altogether to the number of Forty five

And this Respondent for himself declared that the
Paper writings to the said Protest annexed were the real and true
Invoices of the Cargo which was on board the said Ship Ceres
at the time she was boarded and Seized in manner herein
before related and that the Signature "Pierre Ruett" to them respec-
tively Set was of the proper hand writing of the said Pierre Ruett

And this Respondent Henry mcBlish and Robert weir did
in their said Declaration and Protest further declare that
they made every Exertion in their power to Save the said Ship
and that the said Ship was not lost from any neglect or misconduct in them
but wholly in the manner before related wherefore they desired
an act of the Notary before whom the said Protest was made to
avail them and the owners of the said Ship Ceres and here-
Cargo and all others Concerned therein at time and place
Convenient and declared to Protest against the Several persons
and all and every of them and all others who were in any manner
aiding abetting assisting or encourraging them in such the
Piratical acts of boarding Seizing and carrying away the said

Ship

Ship Geres, Stores, Cargo and men To the end that all loss
Costs Charges and Expences Sustained by reason of the Perils
above declared might be borne and Sustained by the C
Insurers and underwriters.

And this Respondent further saith that upon
facts Setforth and Stated in and by the said Protest ye
Gain in the said Cause and rules passed for the Examinat
of such witnesses as the parties Complainant or Defendants
might find it expedient to produce in order to prov
matters relevant to the Cause and which the said Protest
not established and this Respondent saith that as the said
appellants in their answer to the Bill of Complaint had la
much Stress upon the Letter written by themselves to Thomas
Chase Copy whereof is to the said Plea and answer annexed
and as they Contended and inferred therefrom that the said
Letter Exhibited the fullest evidence of their Intentions as to the
Commencement of the risk which they alleged was not to take
place untill after the departure of the Vessel This Respondent
deemed it expedient in order to do away its effect as well as
to shew the Conduct which another Publick body namely the
Madras Insurance Company had manifested under Similar
Circumstances to annex the Copy of an original Letter written
by the appellants Thomas Chase Henry Sewell and Richard
Chase to the Secretary of the said Company which was
Verbatim the same as that addressed to the said Thomas
Chase and this Respondent having in his said Replication
Shewn that the said Madras Insurance Company had
not attempted to place the same unwarrantable Construc-
tion thereon which the said Thomas Chase Henry Sewell
and Richard Chase did put upon
the full benefit of their Policy and of every Clause therein
Contained that it became necessary in order to Support
his said Allegation as well as to prove the Letter so written
to Examine a witness thereto, That according Interroga-
tories were Exhibited to Mr. George Chalmer a member of
the Committee of the said old Madras Insurance Company
who being examined deposed as follows That he is a or
member of the Madras Insurance Company and that he
was

was a Member of the Committee of the said Company in the month of November in the year one thousand Seven hundred and ninety three That he had looked at the paper writing produced and Shewn to him at the time of his Examination purporting to be a letter from Messrs. Chase Sewell and Chase to the Secretary of the said Company and said that an Insurance was effected in Consequence of the said letter to the amount of Ten thousand Pagodas and for which a Premuim of Eleven per Cent was given That he was one of the members of the Committee of the said Company who signed the Policy That a Total loss did ensue thereon in Consequence of the Ship Beres having been Surprized and Carried off by Pirates while lying at Manilla and that the said loss was adjusted and paid off by the said Company to Messrs. Chase Sewell and Chase three of the Defendants in the suit And this Respondent further Saith that no other witness was Examined on his part and the Appellants having declined entering into any Examination Publication did thereupon pass, and the Cause Setdown for hearing And this Respondent further admits that on Tuesday the fifteenth day of March last past the said Cause came on to be heard by and before a full Court of Aldermen when the Several proceedings in the said Cause being read The said Mayors Court was pleased to order and Decree and did accordingly order and Decree that the appellants Should pay unto this Respondent the full and just Sum of Seventeen thousand four hundred and five Pagodas one Fanam and Seventy Six Cash together with all such Interest as then was or should thereafter become due thereon also all Costs of Suit. And this Respondent denies that the Deposition of the witness taken on the part of this Respondent was Suppressed on a motion made by the Appellants attorney as is untruely alledged by him in his said Petition and Appeal But this Respondent doth admit that the following lines in his Replication contained were ordered to be expunged (to wit) "And this "Repliant Saith that in Consequence of the above "application the said old madras Insurance Company "took a risk of Ten thousand Pagodas on Goods and Merchandize

" Merchandize on the said Ship Cores at Eleven per Cent. and
" this Respliant Saith that although the said Letter is Verbatum
" the same as that which was addressed to the said Thomas Chase
" in his Capacity of Secretary yet the said old madras Insurance
" Company did not by any written Clause attempt to Controul
" the words of their printed policy But Executed it as it was
" and thereby Subjected themselves to all the perils which the
" Printed words expressed and this Repliant further Saith that
" upon the same prelence of intention which is set up by the
" said new madras Insurance Company That is to say on the
" Original application the said Old madras Insurance Company
" might have prayed the said Policy to be rectified and themselves
" exonerated But a different Conduct Governed them they did
" not Cavil upon pretended Original intentions and Set such
" Intention in opposition to their own immediate acts, But
" Chearfully paid the loss thereby adhereing to the Spirit of
" Insurance which has for its object the protection and incourage-
" ment of Commerce" And this Respondent doth also admit
that the opinion of the Advocate General was also ordered to
be

to be Expunged as by an Extract from the minutes of the said Court Copy whereof Is hereunto annexed relation being thereunto had doth and will more fully and at large appear. And this Respondent humbly Submits to this Honble Court that the words in the said Replication & contained directed to be expunged were not irrelevant but that they were Closely Connected with the Subject Matter being Explanatory of the letter written by the Appellants Chase, Sewell and Chase to the Secretary of the Madras Insurance Company as also of the Deposition adduced in Support thereof. And this Respondent further Saith that the opinion of the advocate General of Bengal was not introduced by this Respondent with the View of giving any Bias to the minds of the Members of the said mayors Court But in order to account for the manner in which this Respondent had brought the present action which the said Appellants alledged was on different principles than which this Respondent had at first depended on And therefore this Respondent prays that

the

the order of the said mayors Court in respect to the matters ordered to be Expunged may be Reversed. And this Respondent denies that the appellants are aggrieved by the Decree of the said mayors Court or that they have any Just cause for appealing therefrom And for Answer to the first reason adduced by the appellants as cause of Appeal from the Decree of the said mayors Court this Respondent admits that the present action is founded on an undertaking of the said appellants for a Consideration received to hold harmless thase that were interested and Concerned in the Policy in Question from Certain Perils and Hazards which might befal the Ship Ceres in a Certain Voyage in the said Policy described and this Respondent for further answer admits that the undertaking of the said appellants evidenced by the said Policy was to Insure the Block of the said Ship against the Several Perils therein mentioned and this Respondent doth further agree with the appellants that in order to render them liable to the action of this Respondent on the said Policy for and on account of any loss which might have happened the Ceres It was necessary that the said mayors Court should have

have Clear and distinct Evidence before them that the same was in Consequence of one or more of the risks or Perils described and by the said appellants undertaken to be eventually Sustained This Respondent saith that the said Mayors Court had before them the most Clear distinct and irrefragable proofs of these facts and did thereupon give their Judgment First from the matters appearing on the face of the Policy and Secondly from the Protest herein before Shewn to have been received, and admitted as good Evidence This Respondent saith that the act of Surprisal and Barratry are Perils which the Insurers in this as in all other Policies undertake to Secure the assured against a fact which indeed is admitted by the appellants themselves in answering to one of the Interrogatories In this Respondents Bill contained being in the words following and this Respondents further admit that the act of Surprisal and Peracy is one of the Perils Covered by the said Policy. And this Respondent saith that the said Policy doth expresly mention that the said risk was to Commence upon the said Bottom from and immediately following the loading of the Cargo while the said Protest States that the time the Ship was

Surprised

Surprised and boarded The Cargo was all on board that Bills of Lading were granted Port Clearances obtained and the Vessel unmoored for the express purpose of proceeding on her Voyage These Circumstances therefore to every interest and purpose Constituted an inception of the Voyage and formed the Commincement of the Insures risk and not an actual Sailing or departure from the said Port of Manilla as is &c alledged by the appellants—

And to the Second reason adduced by the appellants as Cause of Appeal from the Decree of the said mayors Court and &c wherein it is alledged and said by the Appellants that such perils and accidents as might occur between Manilla and &c Calcutta were the only Risks undertaken by them and so &c understood by this Respondents agents This Respondent for answer thereunto prays leave to observe That the said appellants Thomas Chase Henry Sewell and Richard Chase the partners Composing the House of Chase Sewell and Chase were the agents of this Respondent That is to say they were the person employed by Colvins and Bazzett and did accordingly effect the said Insurance If such therefore were the Ideas which they entertained of the risk in Question named that it was not to take place until after an actual departure from Manilla and that the intervenient Risk between that Port and Calcutta were the only perils which they understood they were to bear It is extraordinary that they did not Express their intentions more clearly and which could easely have been done acting as they were without Controul in the double Capacity of Insurers and as agents to the assured And this Respondent further Submits that the letter upon which so much stress has been laid from Colvins and Bazett to Chase Sewell and Chase an Extract whereof his annexed to the appellants Plea and answer when impartially Viewed can be Considered in no other light than as a General letter to effect an Insurance leaving the said Chase Sewell and Chase a discretionary power to Complete the same in such manner as to them should appear most advantageous The following words being part of the said Letter "And wish "you to act accordingly for us in this Situation as you would "for yourselves assuring you that we Shall Conform to &c "what you shall think it advisable to be done in the "business" And this Respondent by his said attornies

further

further submits to this Honble Court that it is not the letter written by Thomas Chase and his partners Henry Sewell and Richard Chase under the Firm of Chase Sewell and Chase to the said Thomas Chase in his capacity of Secretary to the said new Madras Insurance Company that ought to be allowed to regulate the Construction of this Policy but the Instrument itself which it is to be presumed was executed under fair impressions and with the View of &c giving those that were Interested therein the full benefit of every Clause which the said Policy Contained that was not Specifically excepted to This Respondent saith it frequently happens that various Communication pass verbally and in &c writing between an Insurer and the parties who apply for &c Insurance previous to the Execution of a Policy But when that is once completed there Communication are forgot, and it is the Instrument so completed which must demonstrate the intention of the parties and which this Respondent Submits cannot be altered unless in Cases of Fraud or where plain and obvious mistakes have Crept in But then mistakes even of that nature are not to be rectified by the immediate act of the

the party who is to be benifited therefrom for that would be contrary to the Established Law of Evidence as well as to very principle of &c Justice And this Respondent by his said attornies further saith that the Appellants Thomas Chase and Henry Sewell who were on the Committee at the time the Insurance in question was made must or ought to have known the effect and operation of the Policy which their Company had adopted as a form and they must or ought to have known that every Printed Clause thereof unless where &c Controuled by written words Clearly expressed was conclusive &c against them The Printed words of the said Policy there & thew that all risks whether on Block or Cargo Commenced from and immediately following the loading thereof and therefore that it became necessary where the parties Insurer and Assured were &c desirous of fixing the Commencement of the risk to different periods to Controul these printed words by some Specifick Clause in writing Such as the risk to Commence upon a particular day or after the departure of the Vessel from the Port where She lay And this Respondent for further answer to the said Second or Reason denies that the said appellants did Volunteer or take

upon

upon themselves any risk which they were not aware and fully & sensible of and for which an ample premium was paid and thereupon this Respondent doth submit how extremely hard his case would be if the appellant Thomas Chase Henry Lewell and Richard & Chase who acted as the agents of this Respondent in effecting the Insurance in Question should in their Capacity of Insurers be allowed to say that any particular Clause is inoperative merely because it Speaks in favor of the Claim which this Respondent has made on them upon and under the said Policy

And for answer to the third reason or Cause of Appeal from the Decree of the said mayors Court This Respondent by his said attornies denies that he has endeavoured to place a wrong Construction on the said Policy or to draw a meaning therefrom in any respect different from what the words of the said Policy Strictly and literally warrants This Respondent Submits to this Honble Court That the word from in the said Policy contained and upon which the Appellant has laid so much Emphasis as tending to mark the Commencement of the risk Is in Print and Consequently becoms Subject to the Explanation and Controul of the Subsequent printed words fixing the Commencement of all risks under the said Policy whether on Block and Cargo after the loading thereof And this Respondent & further Saith that the printed form adopted by the said new madras Insurance Company differs in this Respect materially from the forms which are Generally adopted by other Insurers In as much as in all or most other Policies a distinction is made between the Goods and the Block The Formulary or printed words first Stating the risk to Commence on the Goods and merchandize from and immediately following the loading thereof and upon the said Ship leaving a Blank space where in the Specific period is to be inserted And this Respondent further Saith that if the said Company had adhered to this General form no difference of opinion could have arisen in respect to the Commencement of the risk Because it being clearly ascertained that the Block and not the Cargo was the subject of Insurance there would have been a Blank space for the insertion of the necessary words upon Block and Cargo respectively That is if they had adopted that form which is generally used It would necessarily have occured to the parties

in

in filling up the said Policy the necessity of fixing some Specific period
But as the said new madras Insurance Company have thought
proper to make choise of a Printed form wherein the Block and
Cargo are blended instead of being made distinct and Seperate
Insurances, It is fair and just that they Should be concluded by
their own acts and thereupon this Respondent doth Submit that so
far from this Respondent having given the said Policy a harsh or
unfair Construction That that is the appellants who have attempted
to do so by rejecting as Surplusage that part of their Policy which
Especially tells in favor of this Respondent and this Respondent
further Saith that the greatest part of the arguments used and
adopted by the said Appellant in his said third reason are
fallacious and unjust particularly in that part where the
appellants allege That the words upon which this Respondent
has taken up the Construction as to the Commencement of the
risk, are General words and Common to Policies which Insure
against a General loss as well on the Cargo as the Vessel and
that this Respondent in the event of any loss of Goods and
Merchandize (If the said words were Supposed to have any

operation

operation in the Policy) might by Vertue of the said words
and the said Clause in the Policy as well have called upon
the appellants to make Good such loss, as on the said
Ship, This Respondent for answer thereunto prays leave to
observe that if no written Clause had been entered at the
foot of the Policy to distinguish the Subject of Insurance
That the Clause in the said Policy Contained and by the
Appellants alluded to would undoubtedly have the operation
and effect which the appellants have alleged and the Insurers
in Such Case would be liable to pay the loss whether on
Block or Cargo But in respect to the Ceres the appellants
themselves have Shewn in the Course of their pleadings as does
the Policy that the adventure was restricted to the Bottom
hence the said printed Clause fixing the Commencement of the
risk could only apply as to the Block as it would also have
done upon the Cargo if that had been the Specific think
Insured and this Respondent denies that the written Clause at
the foot of the said Policy Contained Stating that Two per Cent
was to be returned if the Ceres left manilla after the Thirtieth

November

November doth Shew that an actual Sailing therefrom was the circumstance which was to form the Commencement of the risks is untruly alleged by the said appellants For this Respondent Saith it is evident by the appellants own Shewing that they had other serious peril or danger in contemplation which they were apprehensive the Vessel might Sustain or meet with by Sailing from to the thirtieth of November and which had induced them to agree to Return Two per Cent In the event of her not Sailing before that period Hence this Respondent Saith it is evident it was risks while the Vessel lay at Manilla that the appellants were affraid of encountering and therefore that they could have had no intention at the time of Executing the said Policy of procuring such as were interested therein from the advantage which might accrue from all or any of the printed Clauses thereof. And this Respondent doth admit the further matters Stated and Setforth in and by the said Reason To wit that from the haste in which Insurance Contracts are often times drawn and executed and for the other Causes in the said Reason &c assigned that the Courts of law as well as the Custom of merchants have

have allowed a peculiar force and operation to the written Clauses of a Policy and that such written Clauses do Controul and &c Govern the Printed parts of the same But this Respondent doth maintain that so for as these Printed or formulary words remain uncontrouled they must prevail with equal force both as to Construction and as Evidence of the Intention of the Insurers who ought Surely to be acquainted with the effect and operation of their printed form and therefore it is their own &c fault if they do not word the written Clause so as that all doubts restricting the intention of the parties should be removed and the Subject made Clear And this Respondent Submits to this Honble Court of Appeals that if &c written Clauses were allowed to be worded ambiguously and then made Subject to the Construction which every interested person would be inclined to give them It would be the Source of Continued imbarrasment and open a door to endless Litigation The law and Custom of merchants &c therefore requires that where a parties Insurer and Assured intend to Controul any Printed Clause by written words

that

that they must do so in clear and precise terms - And with respect to the matter Stated in and by the fourth Reason &c or Cause of Appeal and wherein the appellants have alleged that this Respondent did in a great degree abandon or at least not depend upon the Ideas which he first entertained of the Commencement of the risk But did afterwards resort to other Grounds and Suggestion This Respondent for answer thereto saith that in his Replication it hath already been Shewn that this Respondent had not seen the policy when the Resolution of the said new madras Insurance Company not to pay the loss was first Communicated to him But understanding that their &c motives for refusal was founded on the Circumstance of the Voyage not having Commenced " This Respondent admits that in a letter addressed by him to mess^rs " Colvins and Bazzett Copy whereof &c is to the appellants said Plea and answer annexed He did then mention the usage of the manilla Trade by which it is understood that the homeward Voyage Commences the moment the Ships &c leaves Cavita and this Respondent Saith that he was in &c hopes that these Suggestions Shewing what was the usage of the

Manilla

Manilla Trade Supported by the opinion of Two old and very &c experienced Commanders would have had the effect of inducing the said new madras Insurance Company to pay the loss &c without the interference of law But when he found their intention was to resist the payment of the Claim This Respondent deemed it expedient before he Commenced proceedings at Law to take the best advice on the Subject, and this Respondent saith it &c doth appear in and by the said letter Copy whereof is annexed to the appellants said Plea and answer and by them prayed and admitted to be received as evidence, that this Respondent had not at that time seen the Policy for the said letter states " I cannot take a full opinion of Council on the Case not having " a Copy of the Policy" and he Concludes the said letter with saying " I will thank you to desire your Correspondent at madras to " send a Copy of the Policy on the Block of the Ceres" and this &c Respondent Saith that having obtained a Copy of the Policy which he had not seen before he Submitted the same with a State of his Case to the advocate General of Bengal who gave an opinion to the following effect That he had read the Case and the Copy

of

of the Policy and was of opinion that the Sum for which the Hull of the Ship was Insured ought to be paid by and might be recovered from the underwriters that his opinion was founded on the express Stipulation in the Policy Stating that the risk should commence from and immediately following the loading of the Ship" which freed his mind from all doubts on the question And this Respondent further saith that in consequence of this opinion of the advocate General and not before he yielded up the ideas which he had formed previous to his seeing the same and pursued the Course by him Suggested and herein this Respondent doth Submit that it cannot in any manner militate against his Claim that in the framing of the present action he hath followed the opinion and the rule prescribed by an able and learned Lawyer rather then his own Ideas of the Question and this Respondent humbly Conceives that in an equitable point of View His Claim Still derives Support from Such usage and that if the Homeward bound Voyage Commences upon the Ship leaving Cavita which is the Port where the Ship lay that the Ceres in proceeding to the Road of Manilla for the purpose of Completing her Cargo was not guilty of a deviation and to that part of the Appellants said fourth reason wherein it is alledged that because or this Respondent did say the "act of unmooring Constituted breaking "Ground and formed an inception of the Voyage that it was a proof "unwillingly drawn from this Respondent that an actual and "bonafide departure was necessary to be Shewn in order to bring "the loss which had happened within the perils of the Policy" "For that if the loading of the Goods on the Vessel had been "unquestionable evidence of the Commencement of the risk whence "the necessity of Shewing that the risk had begun by the Vessel "unmooring" This Respondent for answer thereunto Saith that the Clause in the said Policy Contained fixing the Commencement of the risks upon the Cargo being loaded and the Circumstance of breaking Ground are distinct questions and are to be Considered as Seperate and distinct Counts which this Respondent has a right to depend upon and avail himself of For if it should be determined that the said Clause is inoperative as the appellants would infer that it is. This Respondent doth then insist the Vessel having unmoored and it being admitted by the appellant

Appellant that this was done for the avowed purpose of proceeding on her distined Voyage that the Insurers risk did thereupon commence upon the said Bottom and this Respondent further Saith that although the said appellants did in their said Plea and answer pledge themselves to prove that Where a Ship was moored the heaving up of one anchor does not Constitute breaking Ground yet having failed in that proof and having Consented to the said Protest being received as Evidence wherein it is Stated and Sworn to that the said Vessel did actually break Ground This Respondent doth Submit to this Honble Court that these Circumstances Shew a dereliction in the Appellants of the Sentiments which they appear to have entertained respecting what Constitutes breaking Ground and of their acquiescence in the opinion of this Respondent respecting the Same- And this Respondent Submits to this Honble Court That as a Ship by the Laws of Insurance is allowed twenty four hours to moor after her arrival at a Port and so She is all that time at the risks of the underwriters. That by fair inference she ought also to be so after she is unmoored when it is admitted as in the present Case that the act is done in order to proceed on the Voyage Insured against-

And to the fifth Reason or Cause of appeal wherein it is alledged by the Appellants that even on the Supposition of the risk having Commenced on some of the events enumerated by this Respondent that Still they were as the assured Exonerated on the Ground of Misrepresentation the agents of this Respondent having Stated in their original application that there were twelve Seapoys on board besides her usual Compliment of Seamen while the Protest Shewed that Six of them were on Shore at the time the Vessel was Surprised This Respondent for answer thereunto saith that although the letter from Colvins and Bazzett to the appellants Chase, Sewell and Chase and from them to the said Thomas Chase in his Capa= =city of Secretary did represent that fact yet it is not Stated in the Said letter nor Can it be understood by implication, that these Seapoys were to be debarred the priviledge of going on Shore, And this Respondent further

Respondent further Saith that there is no distinction in the laws of Insurance better known than that which exists between a warranty and Condition which makes part of a policy and a representation of the Case. The former must be strictly attended to and the terms literally Complied with But a performance in Substance will Satisfy a Condition or expressed in a representation now in the present Case there was no warranty. It was only representing what might be the State of the Ship as to force which She had on the outward Voyage and it would seem that the appellants were perfectly Satisfied as it does not appear from any thing Setforth in the pleadings that they troubled themselves further on the Subject. And this Respondent further Saith that if any of the Seapoys had died in the Course of the Voyage. This Respondent would have lost the benefit of his Policy if the doctrine of the appellants was Suffered to prevail which doctrine in its principle is altogether so absurd this no attention as this Respondent Submits ought to be paid thereto

And

And for answer to the last reason or Cause of appeal this Respondent doth deny that there was any negligence manifest on his part which could demonstrate a disregard to the Safety of the said Ship. For this Respondent hath Shewn by the Protest on oath or that the ordinary watch was kept and that the Seacunny who was in Charge of the Deck is considered as a Petty Officer in the Ships in the Country Service being a Station similar to that of a quarter master on board of his Majestys or the Honble Company Ships And this Respondent further Submits that it would open a Door to endless Cavils and litigation If or pretended neglect should be Sustained to liberate the Insurers In the Course of a maritime adventure. It is often impossible to distinguish the Degrees of fault or to draw the line between fault and accident and no Instance of loss could occur or where there might not be room for dispute and litigation or upon the pretence of faulty negligence in the master or crew and the proof in such cases would be inextricable accordingly mercantile people as this Respondent is advised seem to be or agreed in rejecting a defence of this nature against the or

claim

claim of the assured— And Lastly this Respondent prays to call the attention of this Honble Court to the Insurance which was effected in the office of the old Madras Insurance Company upon the said Ship Ceres under circumstances exactly similiar to the present That is to say upon the letter written by the appellants Thomas Chase Henry Sewell and Richard Chase to the Secretary of the said Company which letter also mentions From manilla But the said Company having granted their policy which like the one in Question also States the risk whether on Ship Stock or Cargo to Commence from and immediately following the loading thereof that they did not attempt to do away this Solemn act by a retrospect to pretended original intentions but Chearfully paid the loss thereby adhearing to Spirit of Insurance which has for its object the protection and encouragement of Commerce—

For all which Reasons and Such others as may be adduced at the hearing this

Respondent

Respondent humbly prays this Honble Court will be pleased to affirm the Decree of the said Mayors Court and that the appellants Petition and appeal may be Dismissed with Costs—

/Signed/ George Chalmer
Solicitor for Respondent

Extract

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 15th day of March Anno Domini 1796.

Present

James Daly Esqr. Mayor

James Call William Webb

Andrew Ross John Mitford

Alexander Cockburn & Ja. Greenhill

Aldermen

John Wright by his Attorneys Robert Woolf Daniel Crawford and Robert Forbes

Benjamin Sulivan Richard Chase Thomas Chase and Henry Lavell.

Bill with Copies of three Exhibits annexed Read.

Plea & Answer with Copies of four Exhibits annexed Read

Replication Read

Rejoinder Read.

Interrogatories on the part of the Complainants with an Exhibit annexed Read.

one Deposition taken thereto Read

Protest Invoice & Bills of Lading Read

Policy of Insurance Read

Extract of the 20th. October 1795 Read

The Court being of opinion that the following Lines introduced in the Replication Commencing with the words "And this Repliant Saith that in Consequence of the "above application the said Old Madras Insurance Company "took a Risk of Ten Thousand Pagodas on Goods and "Merchandize on the Said Ship Bees at Eleven per "Cent. and this Repliant Saith that although the said "Letter is Verbatim the same as that which was addressed "to the said Thomas Chase in his Capacity of Secretary yet "the said Old Madras Insurance Company did not "by any written Clause attempt to Controul the "words of their printed policy But Executed it as it was "and thereby Subjected themselves to all the perils which "the Printed words expressed and the Repliant further "Saith that upon the same pretence of intention which is

set

" set up by the said new madras Insurance Company - That is to
" say on the original application the said old madras Insurance
" Company Might have prayed the said Policy to be rectified
" and themselves exonerated But a different Conduct Governed
" them, they did not Cavil upon pretended Original intentions and
" Set Such Intention up in opposition to their own immediate acts
" But Chearfully paid the loss thereby adhearing to the Spirit of
" Insurance which has for its object the protection and incouragement
" of Commence" as also the openion of the advocate General at
Bengal are irrelevant to the Cause it is ordered that the same
be expunged therefrom with Costs. Mr. Alderman Webb dessents
to the first part being of opinion that it is Material to the
Matter in Question and ought therefore to form part of the
Proceedings.

A True Extract
/Signed/ George Taylor
Regr

True Copy
/Signed/ George Chalmer
Solicitor for Respondent
Court

Court of Appeals
at
Madraspatnam

Monday the 18th day of July
Anno Domini 1796.

Between Benjamin Sulivan William
Harcourt Toriano Richard Chase Thomas
Chas Henry Sewell Vencata Narrain
Ravanapah Chitty and Moodoo moodelly
appellants and John Wright of Calcutta
Mariner by his attornies Robert Woolf
Daniel Braund and Robert Forbes of
Madras Merchants Respondent.

This Cause coming on this day to be heard
and debated before this Court by the attornies on both
Sides upon hearing the Petition of appeal and answer
and the Several Exhibits of the Honourable the Mayors
Court together with the Decree of the said Court given
in this Cause on Tuesday the 15th day of March
Anno Domini 1796 upon due Consideration had of the
matters

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

Fiat

/Signed/ S. Webbe
Clk

To

To the Kings Most Excellent Majesty in Council

Between John Wright of Calcutta Merchant by his attornies Robert woolf Daniel Crawford and Robert Forbes of Madras Merchants Complainant and Benyamin Sullivan William Harcourt Torianno, Rechard Chase Thomas Chase Thomas Parry William Dring Henry Sewell Vencata Narrain Ravanapah Chitty and Moodoo Moodilly of Madras aforesaid Merchants Defendants

Filed in my office the 31st July 1796
Webbe Clk

The Humble Petition and Appeal of Benyamin Sullivan Rochard Chase Thomas Chase and Henry Sewell four of the above named Defendants

Humbly Shew unto your Most Excellent Majesty in Council

That the Complainant above named by his said attornies Did on or about the Nineteenth day of march and year of our Lord One thousand Seven hundred and ninety five, exhibit and file his Bill of complaint in the Mayors Court of Madraspatnam against your Petitioners and the said William Harcourt Torianno Thomas Parry William Dring Vincata Narrain Ravanapah Chitty and Moodoo Moodilly of Madras Merchants and did therein and thereby amongst other

other things State that on or about the Twenty eighth day of June was in the year of our Lord One thousand Seven hundred and Ninety three the Complainant being then Owner and Commander of the Ship Ceres left Calcutta in the Kingdom of Bengal in order to proceed on a Voyage to Manilla in the Island of Sencnia at which Port the Complainant arrived in the said Ship Ceres on or about the Twenty fifth day of August in the said year of our Lord One thousand Seven hundred and Ninety three and that he the Complainant Did previous to his leaving the said Port of Calcutta Direct his attorney Messieurs Colvins and Bazzett of the same place Merchants to effect an Insurance on the body of the said Ship Ceres on her returning Voyage that in pursuance whereof the said Messieurs Colvins and Bazzett caused an application by means of their Agents at Madras to be made to the New Madras Insurance Company who agreed to cover and insure the Sum of Fifty thousand Sicca Rupees or fifteen thousand three hundred and forty three Pagodas thirty eight fanams and Thirty Cash on the Block of the said Ship for a premium of Twelve per Cent and that these Terms being acceded to and the Sum of One thousand Eight Hundred and forty one Pagodas thirty two fanams and twenty five Cash being paid as a Premium by the Complainants said attornies That Thomas Chase John Hamilton Hugh Jones and Henry Sewell of Madras Merchants then members

Members of the said New Madras Insurance Company and the immediate acting Committee thereof Did as their Representatives on the thirtieth day of December in the said year One thousand Seven hundred and Ninety three Sign and Execute a certain Policy of Insurance whereby they undertook to cover and Insure the said valued Sum of Fifty thousand Sicca Rupees upon the Block of the said Ship Ceres From Manilla to Calcutta against the several Perils and Adventures in the said Policy mentioned the Risk being stipulated by the said Policy to commence from and immediately after loading being compleate as by the said Policy a true Copy whereof the Complainant annexed to his said Bill of Complaint would more fully and at large appear and the Complainant did further State that his then attornies Colvins and Bazzett conceiving it probable that the Complainant might find it expedient to touch at the Port of Madras Did sometime afterwards in order to procure permission to depart from the Line of the Prescribed voyage pay a further Sum of Seven hundred and Sixty Seven Pagodas Eight fanams and Seventeen Cash the receipt whereof was acknowledged on the back of the said Policy And the Complainant by his said attornies Did further state that on the thirtieth day of January which was in the year of our Lord One thousand Seven hundred and ninety four the

the said Ship the Ceres having then completely taken on board her returning Cargo Water and Stores the Bill of lading and Port Clearances being also obtained the Ship unmoored and every thing in a State of Readiness to put to sea the Complainant did on the said day address a Letter to the Chief Officer of the said Ship Ceres informing him of his intention to weigh the next morning And the Complainant Did state that about Ten at night on the same Evening the said Ship Ceres was suddenly surprised and boarded by a number of armed men Consisting principally of French Prisoners and Spanish Deserters and amounting to nearly Forty five in number as the Complainant had been informed who found means to escape from the Shore and having in that piratical manner got possession of the Ceres they carried her to sea and afterwards to the Island of Mauritius Notwithstanding every exertion was made by the Complainant to prevent it as soon as the unfortunate Accounts were communicated to him And the Complainant by his said Attorneys Did further State that the Act of Surprisal and Piracy being one of the Perils which the Policy Covered the Complainant caused the most early notice of the loss to be communicated to the said Madras Insurance Company and upon the Arrival of the Complainant and the Officers of the said Ship Ceres at Calcutta they did in order to

give

give a clear and explicit Account of the loss respectively make their Declaration and protest before a Notory Public which Declaration and protest being sworn to was transmitted to and duly Served upon the said Company a true Copy whereof the Complainant did say he had annexed to his said Bill of Complaint and the Complainant by his said Attorney did further State that by reason of the premises your Petitioners and William Harcourt Torriano, Thomas Parry, William Dring, Vencata Narrain, Pravanapah Chitty and Moodoo Moodilly of Madras Inhabitans and the Members then composing the said Madras Insurance Company Did stand indebted justly and truly to the Complainant in the full and just Sum of Seventeen thousand four hundred and five Pagodas One fanam and Seventy Six cash Current Money of Madras or in Sterling money of great Britain at the Rate of Eight Shillings for every Star Pagoda the Sum of Six Thousand nine hundred and Sixty two Pounds or thereabouts as by an account Current to the Complainants Bill of Complaint annexed the Complainant did say would more fully and at large appear And the Complainant did thereupon amongst other things in and by his said Bill pray That your Petitioners and the said William Harcourt Torriano Thomas Parry William Dring

William Dring Vencata Narran Ravanapah Chitty and Moodoo Moodilly the other Defendants in his said Bill named might be Decreed to pay to the Complainant the said Sum of Seventeen thousand four hundred and five Pagodas One fanam and Seventy six bash, with all such Interest as then was or should thereafter become due thereon also all Costs of Suit –

And your Petitioners humbly Shew unto your most Excellent Majesty in Council that to the Complainants said Bill of Complaint your Petitioners did on or about the day of and said year of our Lord One thousand Seven hundred and ninety five, Exhibit and file their Several Plea and answer and did therein and thereby amongst other things state That the scope and end of the Plaintiff Bill was to compel your Petitioners to pay unto him the Sum of Fifteen Thousand three hundred and forty three Pagodas thirty Eight fanams and thirty bash together with an Interest thereon which said Sum of Fifteen thousand three hundred and forty three Pagodas thirty eight fanams and thirty bash, was as the Plaintiff pretended the amount of a certain Risk insured by your Petitioners on the Stock and Block of the Ship Ceres under a Policy of Insurance N.° 559. bearing date the 30.th day of November which was in the year of our Lord One thousand Seven hundred and Ninety three and by your Petitioners

Petitioners or their Representatives duly executed and for as much as that the said Ship the Ceres was the Plaintiff sole property and that the Insurance aforesaid was effected on his account and forasmuch as that the said Ship the Ceres was about ten Clock of the Night of the thirtieth of January which was in the year of our Lord One thousand Seven hundred and ninety four surprised and seized by Pirates in the Port of Manilla where she was then riding at anchor and by the said Pirates carried into Mauritius and forasmuch as that the act of Piracy was one of the Perils covered by the said Policy of Insurance he the Plaintiff pretended that he was entitled to recover from your Petitioners the said Sum of Fifteen thousand three hundred and forty three Pagodas thirty eight fanams and thirty bash so insured by your Petitioners as aforesaid together with an Interest which he the Plaintiff pretended had arisen and grown due thereon your Petitioner by Protestation not confessing or acknowledging all or any of the matters and things in the said Bill contained to be true in such sort manner and form as the same were therein and thereby charged alleged and setforth As to so much of the said Bill as did seek to compel your Petitioners to pay the said Sum of Fifteen thousand three hundred and forty three Pagodas thirty eight fanams and thirty bash, and the Interest thereon and as to any relief

in

in and by the said Bill prayed touching the said Policy of Insurance by your Petitioners or by their said representatives executed as aforesaid your Petitioners Did Plead in Bar and for plea did Say that upon an application by Messieurs Chase Sewell and Chase to the office of your Petitioners to insure a Risk on the Stock and Block of the said ship the Ceres they the said Messieurs Chase Sewell and Chase Did by Letter then in the possession of your Petitioners amongst other things represent to your Petitioners or to their Representatives that the said Ship the Ceres had on board besides her compliment of Seamen a party of Twelve Seapoys (native Soldiers) And your Petitioners did say that upon the said representation and others by the said Messieurs Chase Sewell and Chase made to your Petitioners or their representatives your Petitioners Did consent and agree to cover a Risk on the Stock and Block of the said Ship the Ceres to the amount of Fifteen thousand three hundred and forty three Pagodas thirty eight fanams and thirty Cash And your Petitioners Did over that Eight of the said Seapoys instead of being on board the said Ship the Ceres on the said thirtieth day of January and at the time when she was as aforesaid surprised and seized on and carried away by the said Pirates were actually on shore at Manilla and not on board the said Ship the

Ceres

Ceres as they ought to have been to guard and protect the same For your Petitioners did say the fact did so appear by the Plaintiff own shewing in and by a protest a copy whereof was annexed to his said Bill and by him prayed to be taken as part thereof And your Petitioners Did therefore plead a breach of the said Representation touching the said Twelve Seapoys (native Soldiers) and matters aforesaid in Bar to the Plaintiff said Bill and did humbly Demand the Judgement of the said Mayors Court whether they would be compelled to make any further or other Answer to the complainants said Bill of complaint And your Petitioners not waving their said Plea but wholly relying and insisting thereon for further Plea did say that according to the usage and customs established in the Merchants service and by the under writers understood and relied on to be strictly observed that a good and suffecient Watch should be kept on board every ship both in a harbour and in open roads particularly in the time of War and during the time of night as a proper and indispensably necessary security to every such Ship and to the Cargo thereon loaded against any Sudden surprise of Pirates Privateers and Men of war and various other accidents to which shipping are in every situation liable And your Petitioners Did aver that the Plaintiff who was Captain and Owner of the

Said

Said Ship the Ceres Did neglect the observance of the said usage and Custom touching the keeping of a good and sufficient Watch on board the said Ship the Ceres and that on the night of the thirtieth of January One thousand seven hundred and ninety four and at the time the said ship the Ceres as charged in and by the Plaintiff Bill was surprised and seized on by Pirates there was only one man upon the Deck of the said Ship the Ceres as a Watch For your Petitioners did say that the fact did so appear from the Plaintiffs own shewing in and by a Protest copy whereof was annexed to his Bill and by him therein prayed to be taken as part thereof and your Petitioners Did plead such neglect and the matters aforesaid in Bar to the Plaintiffs said Bill and the relief therein and thereby sought for to be obtained and your Petitioners did Demand the Judgement of the said Mayors Court whether they should be compelled to make any further or other answer thereto and your Petitioners not waiving or departing from the said several Pleas but wholly relying and Insisting thereon for answer to the residue or such part of the complainants Bill as your Petitioners were advised were material or necessary for them to make answer unto Did answer and say that some time on or about the Twenty seventh day of November which was in the year of our Lord One thousand Seven hundred an ninety three an

application

application was made by Messieurs Chase Sewell and Chase at the Office of your Petitioners to insure a certain Rish on the Block and barge of the ship the Ceres stating that the said Ship might possibly leave Manilla about the end of the said Month of November and probably not before the middle of December that she was a fine new vessel coppered well manned and navigated by very able and experienced seamen that she maunted Twelve four Punders beside swivels and that she had beside her Compliment of seamen Twelve Seapoys (natives Soldiers) as would more fully and at large appear by a Copy of the said Application made by the said Messieurs Chase Sewell and Chase to your Petitioners said Plea and Answer annexed and by them prayed to be taken as part thereof And your Petitioners Did say that in consideration of the premises they did agree to cover a Rish on the Stock and Block of the said Ship the Ceres to the amount of Fifteen thousand three hundred and forty three Pagodas thirty eight fanams and thirty Cash From Manilla to Calcutta at a premium of Twelve per Cent engaging to refund two per Cent if the Ceres should leave Manilla after the thirtieth day of the said Month of November as would more fully and at large appear by the Copy of a Letter addressed to the said Messieurs Chase Sewell and Chase by your Petitioners

Petitioner Thomas Chase as Secretary to and under the direction of the Insurance Company to your Petitioners said Plea and answer annexed And your Petitioners did say that they did thereupon execute a Policy of Insurance marked n.° 599. and bearing date the thirtieth day of the said Month of November One thousand Seven hundred and ninety three in the names of Messieurs Colvins and Bazzett by their Agents or Attornies the said Messieurs Chase Sewell and Chase under the Instructions of them the said Messieurs Chase Sewell and Chase declared to have been received for that purpose from the said Messieurs Colvins and Bazzett a Copy whereof your Petitioners did annex to their said Plea and answer And your Petitioners did say that they did afterwards that was to say On the Eleventh day of March which was in the year of our Lord One thousand Seven hundred and Ninety four in Consideration of the premises and of the further premium of five per Cent on Account of the said Ship the Ceres paid by the said Messieurs Chase Sewell and Chase for and on account of the said Messieurs Colvins and Bazzett agree to permit the said Ship the Ceres to touch at Madras in her voyage from Manilla to Calcutta and did engage to refund four and a half per Cent of such additional premium if the said ship the Ceres should perform in safely the Original Voyage as Stipulated in the

Said

Said Policy as by an Indorsement on the back of the said policy reference being thereunto had your Petitioners did say would appear And your Petitioners did further say that they did not know otherwise then as they were informed thereof by the Complainants said Bill of Complaint that the said ship the Ceres had on the thirtieth day of January which was in the year of our Lord One thousand seven hundred and ninety three Completely taken on board her returning Cargo water and Stores and obtained Bills of Lading and Port Clearances or that the said ship the Ceres had unmoored and that every thing was in a State of readiness to put to sea and say that they did not know further [illegible] as they had been informed by the Complainants said Bill of Complaint that he the Complainant did address a Letter to the Chief Officer of the said ship the Ceres informing him of his intention to weigh the next morning Nor did your Petitioners know nor could they admit that about ten of Clock of the night of the said thirtieth day of January the said ship the Ceres was suddenly surprised and boarded by a Number of armed men consisting principally of French prisoners and Spanish Deserters amounting nearly to forty five who found means to escape from the shore as set forth by the Complainant in and by his said Bill of Complaint

For

For your Petitioners Did say it appeared by the complainants own shewing in and by the Protest to his said Bill of complaint annexed that at Eleven o'clock of the night of the said thirtieth day of January nothing extraordinary had occurred on board the said Ship the Ceres For that at that hour the Chief Officer of the said Ship the Ceres was on Deck and that then and at that time every thing was Quiet And your Petitioners Did say that they did admit it might be true for ought they knew to the contrary that certain Pirates might as aforesaid by means that did not appear and that were unknown to your Petitioners have surprised and taken posfession of the said Ship the Ceres and that for ought your Petitioners knew to the contrary the said Pirates might have carried the said Ship the Ceres from Manilla where she then lay at anchor to the Mauritius And your Petitioners Did further admit that the Act of Surprisal and Piracy was one of the Perils covered by the said Policy of Insurance But your Petitioners did not admit that thereby or by reason of the premises they your Petitioners were in any wise liable to pay the amount by them covered by the said Policy of Insurance For your Petitioners did say that the printed words in the Policy of Insurance upon which the complainant rested his claim on your Petitioners that was

was to say "Beginning the adventure upon the said Bottom "goods and Merchandizes whatsoever From and immediately "following the loading thereof on board the said Ship" were as your Petitioners were advised totally inapplicable to the matter in Question which stood upon its own ground and was taken entirely out of the said printed bause as appeared by the declaration in writing at the foot of the said Policy of Insurance in the words and figures following that was to say "this Insurance is declared to be on "the Stock and Bloch as Interest may appear We the "Asurers engaging to refund two per bent if the Ceres leaves "Manilla after the thirtieth of November" And your Petitioners did say they were advised that as it was frequently necefsary to insert written Clauses in printed Policies of Insurance in order to expref's the meaning of the Parties to the Contract which in some particulars the printed form might not sufficiently explain such written clauses and conditions so inserted were to be considered as the real Contract and were suffered to controul the Printed words in Policies of Insurance And your Petitioners did say that the printed Clause in the said Policy of Insurance as relied on by the complainant was indefinite as to the thing thereby meant to be insured and did not expref's the intention of the parties for taking

taking the said Clause together and it could not as your Petitioners did say they were advised be severed and it would appear that your Petitioners had covered a Risk not only upon the Stock and Block of the Ship thereres but also upon the Goods and Merchandize laden therein the words in the said Clause being as follows. "In the "name of god Amen Mess.rs Chase Sewell and Chase for "and on account of Miss.rs Colvins and Bazzett as well "in their own name and in the name and names of "all and every person and persons to whom the same "doth may or shall appertain in part or in all Doth "make Assurance and Consent themselves and them and every of "them to be insured lost or not lost from Manilla to Calcutta "upon the Body Tackel Apparel Ordnance Ammunition "Artillery Boat and other furniture also the Goods and "Merchandizes of and in the Good Ship or vessel called "the Ceres burthen Tons or thereabouts whereof is "Master under God for this Present voyage Captain "Wright or whosoever else shall go for a Master in the "said Ship or by whatever other Name or Names the said "ship or the Master thereof is or shall be named or called "Beginning the Adventure upon the said Bottom goods "and Merchandize whatsoever." And your Petitioners did say that it was evident from the matters and things herein

herein before setforth and from the shewing of the Complainant that your Petitioners had not covered or meant or intended to cover any Risk upon the goods and Merchandize laden on board the said Ship thereres but upon the Stock and Block thereof and such only being the Intention of the Parties insured at the time they applied to effect the Insurance aforesaid and of your Petitioners who were the Assurers at the time they executed the said Policy of Insurance and as such intentions were not nor could be expressed by the said printed clause for the reasons therein before stated it became necessary to make a special clause for the specific purpose and the same was accordingly made in writing at the foot of the said Policy as herein before mentioned And your Petitioners did say that the said written Clause shewed the time your Petitioners had in contemplation when the said Policy was effected and that it shewed also that an actual bona fide departure from Manilla was meant and understood by the parties in order to commence the rest For that your Petitioners in and by the said written clause engaged to refund the Sum of Two per Cent if the said Ship the Ceres should leave Manilla after the Thirtieth day of November by which it was evident and the truth was that your Petitioners imagined that the

the said Ship might possibly sail earlier than the said thirtieth day of November and that in such case the risk would be greater as the passage through the Streights would not be so safe nor so expeditiously performed and therefore your Petitioners engaged to refund two per cent if the said Ship the Ceres should remain at Manilla until the Month of November and not leave that Port until after the thirtieth of the same Month and by the words "leaving Manilla" an actual and bonafide sailing from thence was in the minds of the Parties at the time the said Insurance was effected and that until such actual and bonafide sailing should have taken place the said Risk was not meant or intended to have commencement and therefore your Petitioners did Submit to the said Mayors Court that the attempt of the Complainant to take an advantage of the said Printed Clause and to assert from thence that the said Risk commenced from and immediately following the loading of the said ship was unfair and unjust First because as your Petitioners had already shewn such pretended commencement of the said Risk was not within the meaning or intention of the Parties at the time the said insurance was effected and Secondly because the said printed

printed cause not being capable of shewing particularly the thing Insured the same was declared and expressed by a clause in writing at the foot of the said Policy of Insurance whereby the said printed Clause became controlled and rendered Null and void And your Petitioners Did say that their said Intention was further explained and Demonstrated by a further Clause or Declaration on the back of the said Policy and herein above refered to whereby your Petitioners Did for the additional premium therein setforth engage to permit the said Ship the Ceres to touch at Madras on her voyage from Manilla to Calcutta and to refund Four and one half of such additional premium if the said Ship the Ceres should perform her Original voyage as stipulated in the said Policy which said Original Voyage as appeared in the body of the said Policy was from Manilla to Calcutta and an actual Sailing from Manilla after the thirtieth day of November as appeared by the said written clause or covenant at the foot of the said Policy and which expressed "if the Ceres leaves Manilla after the thirtieth of November" And your Petitioners did say that they were advised and have always understood and believed the fact so to be that it was the intention and not the Letter that was the true rule by which a

Policy

Blicy of Insurance was to be construed and that should there appear good proof that a Blicy did not accord with the clear and evident intentions of the parties the same might be rectified and the same had often been done both by the Courts of Law and Equity and thereupon your Petitioners did say in further proof of the intentions of the Parties Afsurers and Afsured that by the Letter of Instructions from the said Mefs.rs Colvins and Bazzett to the said Mefs.rs Chase Lewell and Chase and Chase to effect the said Insurance herein above referred to it was stated that the Risk was to commence from Manilla and the said Mefs.rs Chase Lewell and Chase as the Agents of the said Mefs.rs [illegible] their application to the Office of your Petitioners as herein above setforth Did direct the said Insurance on the said Ship the Ceres to be made from Manilla to Calcutta and both the Instruction and Application mentioned the probable time of her departure from Manilla the objects intention therefore of the said Mefsrs Colvins and Bazz was clearly to cover a risk on the said Ship from Manilla to Calcutta and had no manner of consideration as to the time of her being loaded the Seas at that period being alike infested with Privateers or they were expected to be in the Streights or Bay of Bengal and it was the War risk that made the said Parties so anxious to insure the said Ship the Ceres and which induced your Petitioners to require and the said Mefsrs Colvins and Bazzett to give so high a premium and there was not nor could have been any danger to be apprehended on account thereof during the time the said Ship the Ceres might remain in the said Port of Manilla and the same being also in the contemplation of your Petitioners and their meaning at the time they insured the said Ship and that the risk was to commence immediately on departure of the said ship the Ceres from Manilla your Petitioners did humbly submit to the said Mayors Court that they ought not to be liable to a greater loss than that against which they were required to insure and against which they did accordingly insure that was to say the risk on the said Ship from the time of her Sailing from Manilla and your Petitioners did submit to the said Court that had it been the intentions of the said Colvins and Bazzett to insure the said Ship during the time she might remain at Manilla or from the time of her completing her loading there as well as during her voyage from thence they would doubtless have been particular in their said Instructions and directed the Insurance to be made at and from Manilla generally or at and after a particular day as it was clear from what your Petitioners had already shewn that there was a probability the said Ship the Ceres might remain in part some time after having taken in her

her cargo and she would consequently have been exposed during that period to some risk. And your Petitioners Did further submit to the said Court that it was not probable that your Petitioners could have meant or intended to take upon themselves such risk and much less that they should have agreed to refund a part of the premium received in case such risk should be intended for by the said Policy they agreed as before shewn to refund two per cent if the said Ship the Ceres should leave Manilla after the thirtieth of November but as it was the meaning of your Petitioners that the risk against which they intended to insure should commence the moment the said Ship should sail from manilla and conceiving that by sailing early the risk might be increased they agreed to refund the said two per cent of the premium if the said ship should leave Manilla after the thirtieth day of November And your Petitioners Did say that it appeared by the Complainants own shewing that the said ship the Ceres had not left the Port of Manilla nor as your Petitioners were advised had she even broke Ground For that your Petitioners did say that they doubted not of proving to the said Court that in the case where a Ship was moored the heaving up one Anchor was not breaking Ground for that your Petitioners were advised that breaking Ground was moving from a

Situation

Situation in which a ship had been for some time moored or riding at Anchor to some other though the difference as to distance should be very trifling And your Petitioners did submit to the said Court that even if it were true that the heaving up of one Anchor was breaking Ground that would not alter the case in favor of the Complainant as it would not bring it within the meaning and Intention of the said Policy of Insurance and of the parties at the time of executing the same And your Petitioners did say that they had ever understood and believed that all questions regarding Insurances submitted to the decision of a Court of Judicature should stated candidly and fairly and that there should not be any concealment on the part of the Plaintiff as to the intention if the parties at the time of executing the Policy that was when such Policy might admit of any doubt or where any doubt was stated thereon because in such case it was the Intentions of the parties at the time that must explain such doubts And your Petitioners did say that they doubted not of manifesting to the said Court that the Complainant had actually not only concealed his knowledge but his own conviction of the intentions of the parties relative to the Policy in question with a view of insuring your Petitioners and had endeavoured with the same view to take an advantage of the printed Clause in the said

Policy

Policy which so far from conceiving it to be expressive of the Intention of the parties at the time of the execution of the said Policy he never attempted to bring in the course of several of his former applications to your Petitioners but rested his claim upon breaking ground and circumstances relative to the Port of Manilla For your Petitioners did say that on the Twelfth day of august which was in the year of our Lord One thousand Seven hundred and Ninety five Messrs. Chase Sewell and Chase as the agents of the said Messrs. Colvins and Bazzett did by letter addressed to the Secretary to the Insurance Committee of your Petitioners Demand payment of the amount covered by your Petitioners on the Bloch of the said Ship the Ceres and at the same time an extract of a Letter from the said Messrs. Colvins and Bazzett and the protest of the Complainants but the same being unsatisfactory your Petitioners did accordingly refuse to comply with the said Demand stating as their reason for so doing that it did not appear by the said protest that the voyage was commenced as the unmooring and taking up one Anchor only did not constitute breaking ground And your Petitioners did say that some time afterwards the said Messrs. Chase Sewell and Chase

and Chase did again by letter apply to your Petitioners through their said Secretary for payment as aforesaid and did accompany their said Letter by several papers as strengthening and supporting their said application and that one of the said papers appeared to be the copy of a Letter from the Complainant to the said Messrs. Colvins and Bazzett in which he the Complainant after attempting to shew that the heaving up of one Anchor was actually breaking ground and that by cause of unmooring the ship was not in a state of such perfect security as when moored she was consequently at the risk of the Under writers he changed that ground and endeavoured to establish his Claim upon another for in and by his said Letter he stated "Besides this the ship "Ceres after having remained upwards of three months "at cavita the Port of Manilla where she unloaded her "outward Cargo Had sailed from the above Port of Manilla "agreeable to the customary usage and was at the time of "her Capture riding at Anchor in the Road of Manilla "Distant from Cavita the port of Manilla at least three "leagues I therefore conceive that even viewing it agreeable "to their own Ideas the objection of the underwriters must "fall to the ground as the ship sailing from the Port of "Manilla Distant at least three leagues will certainly be "esteemed to be breaking Ground Cavita is the Port of Manilla where

"where ships usually lay and it is only at a certain season
"and for a quick Dispatch in lading that has occasioned
"the custom of moving to the Roads to corroborate this
"inclose you a letter I addressed to two old and experienced
"seamen who had been long Commanders in the Manilla
"trade with their Answers which I hope will prove
"Satisfactory and induce the underwriters to Settle
"the loss without further Delay" a copy of which said
Letter your Petitioners did annex to their said Pleas and
answer. And your Petitioners did say that the said two
several paper writings said to be copies of the Letters
above alluded to and which your Petitioners did believe
to be the fact were in the possession of your Petitioners
and contained the following Questions that is to say
"What is understood by the Ships breaking ground what
"part is generally understood to be the Port of Manilla Is
"it usual and customary for ships trading to Manilla
"after having Discharged or unloaded the outward Cargo
"at cavita to sail from thence to the Road of Manilla to
"load the homeward bound Cargo. Suppose you had a Ship
"at Manilla on which you have made an Insurance upon
"the Block from Manilla for Instance to Madras whereby
"you suppose the Risk of the underwriters to commence"
And your Petitioners did submit to the said Mayor Court
that

that the Complainant when he made his former applications
to your Petitioners for the amount of the Risk by them
covered by his own shewing was fully convinced in his own
mind that the printed clause in the said Bliey of insurance
had nothing to do with the thing insured that was to say
the Stock and block of the said Ship the Ceres and that
the same was not within the Intention nor mind of the
Parties at the time the said Bliey was executed by your
Petitioners as aforesaid and that the parties at the time
when the said Insurance was effected meant and
intended and so the truth was that the said written
clause at the Bottom of the said Bliey of Insurance
should alone be binding in regard to the thing by them
insured and in regard to the commencement of the Risk
and impressed with such conviction the Complainant
was therefore desirous of shewing only first that by heaving
up one Anchor he had actually broke ground and that
by breaking ground after having taken out his Port
clearances and being ready to sail the next day was to
be understood sailing and Secondly that the only
port in Manilla was Cavita and that having landed
his Cargo there and Sailed from thence to the Roads
of Manilla although he had not taken in his Cargo
at Cavita was Sailing within the Sperit of the Policy

So

So as to commence the Risk covered by your Petitioners and your Petitioners believed that the principal reason on the part of the Assured in causing the said Insurance to be effected was to cover the said ship the Ceres against the War risk and that the intention of your Petitioners positively were and so they firmly believed the intention of the Assured to have been at the time the said Policy of Insurance was effected that the Commencement of the risk covered by your Petitioners as aforesaid on the Stock and block of the said Ship the Ceres was to take place the Moment the said Ship the Ceres should leave Manilla and not before and that the said Insurance Rested solely on the said written Clause at the foot of the said Policy and had no reference to the printed Clause

And your Petitioners Humbly Shew unto your Most Excellent Majesty in Council that to your Petitioners said Pleasand Answer the Complainant Did exhibit and File his Replication and did therein and thereby state That in reply to your Petitioners said first Plea he did by his said Attornies admit that when Instructions were given Respecting the Insurance in Question it was represented that the said Ship Ceres besides her Compliment of Seamen had a party of twelve Sepoys

Sepoys and which was really and truly the Case the Complainant having sailed from the port of Calcutta with that Number on board But the Complainant did say that the said Representation was made merely with a view of shewing that the said Ship was well prepared to resist attacks from Privatiers and was not intended as a Warranty as to the said Sepoys always Remaining on board and which from the nature of the Sea Service was a thing not to be expected nor that it did appear that your Petitioners ever considered the Circumstance of the Vessel having twelve Guns and so many Sepoys as a Condition they wished strictly to be adhered to otherwise it was to be presumed they would have taken care to have that put in the body of the Policy and the Complainant did say that he was advised it was not the usage to consider Instructions or any verbal or written stipulation as a warranty without they were entered in the Policy and made part of the Contract and upon those principles therefore the Complainant did say that the said Plea was altogether misconceived and thereupon did pray that it might be over Ruled And the Complainant by his said Attornies did deny that there was any thing apparent on the face of the said Protest to warrant the Second Plea of your Petitioners in Bar of the

Complainants

complainants Bill and the relief thereby sought For the complainant did say that on the Night of the said thirtieth day of January when the said Ship Ceres was surprised and taken it was stated that the usual and Ordinary watch of a Seacunny was placed and that it was consistent with the regulations and Customs of the Country Service while a Ship was at an anchor to give charge of the Deck to a Seacunny who was considered to be a person of Responsibility and was a station similar to that of a Quarter Master on board one of your Majestys or one of the Honorable Companys Ships the charge of stowage and of steering the vessel being committed to them And the complainant did say that in these warm climates the Crews of the Country Ships generally sleep on Deck and hence it became unnecessary to partition them into watches while at an Anchor since if any particular duty was required of them the whole were ready at a call and therefore he did humbly contend that the Second Plea was altogether futile and was a species of Cavil or defence which no Insurer who meant to contest a Demand upon fair principles would ever think of resorting to and therefore the complainant did pray that the same might be Over Ruled And for Replication to your Petitioners Said Answer

Answer the complainant by his said Attorneys did say That is your Petitioners had admitted that the premium mentioned by the complainant in his Bill of complaint was received by them and that they Executed the policy copy whereof was annexed thereto that they were bound to pay the Sum Insured with legal Interest thereon as charged by the complainant from the time the loss happened And the complainant did admit that it was frequently necessary to insert written Clauses in Policies of Insurance in order to express clearly the meaning of the parties to the Contract and which in many Cases the said Printed form was insufficient to do And he did further admit that such clauses and conditions so inserted were considered as the real contract and in Policies of Insurances were suffered to control the Printed Words, but the complainant did deny that under those Principles or according to that doctrine the written Clause at the foot of the Policy upon which the present action was founded did Control the printed words insisted on by the complainant which words in a clear distinct and Explicit manner fixed the time when the risk was to commence that was to say "On the Bottom Goods Wares and Merchandizes from and immediately after the loading thereof"

thereof Whereas that the written clause at the foot of the said Policy had been entered for the Sole purpose of distinguishing the subject of Insurance and not the Commencement of the risk which the Insurer at the time of filling up and executing the said Policy had obviously left to the Printed words to explain And therefore the Complainant by his said Attornies did contend that as the said printed Words respecting the Commencement of the Risk stood uncontrolled they should prevail and have due effect both as to Construction and evidence of the intention of the Insurers at the time of entering into the Contract And the Complainant did deny that the circumstance of Returning two perbent if the beres left Manilla after the Thirtieth of November did warrant the construction which your Petitioners had placed on it Namely that an actual and Bonafide Departure was meant and understood by the parties in order to Commence the Risk For the Complainant did say that it evidently appeared by your Petitioners own shewing that they had in Contemplation some extraordinary risk which they apprehended the said ship Beres was likely to meet with and experience either in the China Seas or Streights of Manilla if they left Manilla before that

that period and which had induced them to return two perbent if she sailed after the Thirtieth of November and to Mention the same of their own accord in the written Clause at the foot of the Policy in their capacity of Insurers and therefore the Complainant did humbly contend that the stress which your Petitioners had laid on that Contingency and the Constructions which they had made thereon favorable to their own purpose Did by no means lessen the advantages which the Complainant derived from the printed words fixing the Commencement of the Risk as aforementioned And the Complainant did further state that he did not pretend to deny that where evident mistakes had crept into policies of Insurance Contrary to the instructions and real intention of the parties that such mistakes might be and had been Rectified But that there was no mistake to rectify in the present Case the said Policy being made out in Conformity to the Terms of the said Instructions And the Complainant said that your Petitioners had mis-stated the Letter of Instructions from the said Messrs. Colvins and Bazzett which did not express that the Risk was to Commence from Manilla As was untruly alleged in and by the said Answer for on reference to the Extract of the said Letter copy whereof was to the Answer annexed the words would

would appear as follows "We should be glad to cover half a
"lack of Rupies on the Bloch and bargo of the ship beres
"captain Thon Wright from Manilla to this meaning the
"Port of Calcutta and the complainant did humbly submit
"that the said Letter did not admit of the construction
"which your Petitioners would insinuate that it conveyed
"to the said Policy Inas much as the word From" could
only be construed to Shew that the Port of Manilla
was a place where the beres lay and from whence she should
of course depart being governed by the Subsequent words
in the said Policy to wit "Beginning the adventure upon
"the Bottom goods and Merchandizes whatsoever from and
"immediately following the lodding thereof on board
"the said Ship" and which beyond the Shadow of doubt
determined the circumstance which was to fix the commence
ment of the Risk and the complainant did further say
that although the War Risk was no doubt the
particular object which the parties insured and assured
had in contemplation when the said Insurance was effected
yet the complainant conceived that it did not nor could
not banish or preclude altogether the consideration of
the danger which Ships even while in a Harbour were
from various causes subject to But as that risk was very
Small

Small when compared with the other It would appear that
your Petitioners Thomas Chase and Henry Sewell and
the other two members of the committee of the Madras
Insurance Company who executed the Policy thought very
little of it and in consideration of the very high premium
which was paid being at the rate of Twelve per cent under
wrote the Policy in the Terms which they had done thereby
taking upon themselves every risk which the said contract
expressed And the complainant denied that he had
concealed his knowledge or the conviction which he enter-
tained of the Original intention of the Parties or that he
took any undue advantage as had been wrongfully
impuled to him by your Petitioners in their said answer
for that he had not seen the Policy when the resolution
of the said New Madras Insurance Company Not to pay
the loss was first communicated to him And that
your Petitioners grounded their refusal upon the
circumstance of the risk not having commenced that he
did then oppose to that the usage of the Manilla Trade
by which it was understood that the homeward voyage
commenced the Moment the Ship left Caculta to take
in her loading And in order to establish what the
complainant conceived to be a material fact he admitted
to have addressed certain Queries to Captains Ede and
Bacon

Bacon two old and very experienced Commanders who had long frequented that Port and who were consequently well acquainted with the usage and Custom thereof And that the Complainant did hope that a consideration of that usage would have had the effect of inducing the said Company to pay the loss without the interference of Law But when he found the intention of the said Company was to resist the payment of the Claim and that they were making constructions favourable for their purpose It then behoved the Complainant in Justice to himself, as legal measures became indispensible, to take the best advice on the subject of his Claim And the Complainant did further state that notwithstanding the assertions of your Petitioners with respect to what constituted breaking ground yet the Complainant did submit whoever duly reflected on the subject would be of opinion that when a Ship was unmoored for the express and avowed purpose of proceeding on her destined Voyage that was to every intent and purpose breaking ground and constituted an inception of such voyage and of any risk that was to take place on the Commencement thereof since it was obvious that a Ship could not be in the same state of Safety while at Single Anchor as she was while moored And the Complainant did state that it was unnecessary for your

Your Petitioners to have enlarged so much in their answer upon the mistake which had crept in respecting the time when the said ship was Surprised as the insertion of the words Ten instead of Twelve was very evidently a clerical error Besides it was very immaterial to the Question at which of the said hours the said Ship Ceres was surprised and taken And the Complainant did pretend that it was extradinary your Petitioners should Defend the present suit upon the principle of the risk not having commenced whilst at the same time they had not paid the premium of Insurance into Court nor had they in their answer said that they had always been and were ready to Return the said premium which they ought to have done for nothing could be clearer than that that if the risk had not Commenced that your Petitioners could have no Right to retain the Premium And the Complainant did pretend that your Petitioners did in their Consciences well know that the whole of the Cargo of the said Ship Ceres was actually on board the said Vessel on the thirtieth day of January the several Bills of Lading and invoices of the said Cargo being annexed to the Original Protest which was in the Possession of the Complainants Attornies But which were in the first instance transmitted to your Petitioners

Petitioners Thomas Isham Henry Lovell and Richard Shaw
by the said Defts. Calvins and Bazzett And Lastly the
complainant did state that no other construction could be
drawn thin that the risk commenced on the bottom of the
said Ship beres from and immediately following the loading
being
of the cargo such the express Tenor of the printed words
and which words stood uncontrolled by any written clause
wherefore the complainant did pretend that he had an
unquestionable right to Recover the Sum for which he
had brought his action -

And your Petitioners Humbly Shew unto your most
Excellent Majesty in Council that to the complainants
said Replication your Petitioners did Exhibit and file their
Rejoinder and did therein and thereby amongst other
things state that the complainant in and by his said
Replication did aver that the Representation touching the
said twelve Sepoys on board the Ship the beres as set forth
in the Plea of your Petitioners was made merely with a view
of Shewing that the ship the beres was well prepared to resist
the attacks of privateers and that it was not intended as a
warranty that the said Sepoys should always remain
on board which your Petitioners stated was an unfair
attempt to do away fact by arguments and further that
when the said Representation was made to the Office of
your

your Petitioners he the complainant did not give to your Petitioners
any explanation regarding the particular Duty to be perform-
ed by the said Sepoys nor the period they were to remain
on board the said Ship and that your Petitioners therefore
could only draw from the General fact a General conclusion
that the said Sepoys were to guard and protect the said
Ship the beres against all dangers to which she was liable
to be exposed and against which she was then about to
be insured at the Office of your Petitioners And your
Petitioners did say that in the application made to the
Office of your Petitioners to Insure the said Ship the beres
there was the following Representation She is a fine New
"Vessel Coppered well manned and Navigated by a very
"able and experienced Seaman and maints Twelve four
"pounders besides Swevels and has beside her compliment
"of men a party of Twelve Sepoys" And your Petitioners
did Submit to the said Mayors Court that the complai-
nant might is well with equal propriety have said that
the said Twelve Pounders Swivels and Seamen were not
always to remain on board the said Ship the beres as
that the said Twelve Sepoys were not intended to guard
and protect the said Ship the beres against every
description of Enemies and particularly against those
worst of Enemies Pirates which was one of the Risks covered
by

by your Petitioners in and by the said Policy upon which
the complainant had brought his present Action and
your Petitioners did say that it was more particularly
be expected that the said Sepoys would always be and
remain on board the said Ship the beres notwithstand-
ing the suggestion of the complainant to the contrary
as much as that they the said Sepoys could not from
the nature of the thing have any duty to perform on
shore their duty being confained to the Ship which they
were intended Solely to guard and protect and for that
purpose and no other did your Petitioners consider the
the said Sepoys to have been placed in the said Ship
the beres And in further Rejoinder to that part of the
complainants said Replication wherein he stated "that
"did it appear that your Petitioners ever considered
"circumstance of the vessel having Twelves Guns and
"so many Sepoys as a condition they wished strictly to
"be adhered to or they would have taken care to have
"that part in the body of the Policy" your Petitioners did
that although they did not enter any part of the said
representation respecting the said Ship the beres in
the Body of the said Policy yet it was to be presumed
and so your Petitioners did declare the fact to be the
in

In covering a risk on the said Ship the beres they were guided entirely
by the said Representation and not only wished but expected
that the whole and not any particular part thereof would be
adhered to and upon such Representation and in such expectation
they required a lesser Premium then they otherwise would have
Demanded to cover the risk proposed And your Petitioners did
say that the Representation made by the party desirous of effecting
an assurance was the only means within the powers of assurers
whereon to from their Judgement regarding the thing to be insured
and therefore if the party in his said Representation did
conceal any material facts necessary to the information of
the assurers or if he did therein give more favorable state-
ments than the thing would admit of and that thereby the
assurers relying thereon should effect the Insurance required
the Policy was voidable And your Petitioners did say that
the endeavours of the complainant to take partial extracts
from the said Representation in order to promote the Objects
of his said Bill of Complaint were in every way unjustifiable
as contrary to the known and established usage and custom
of Merchants in one instance and in Opposition to the Doctrine
of Evidence in the other For your Petitioners did say that
although the said Representation did consist of Many
particulars yet that those particulars could only be
considered

considered as forming one Aggregate whole And they did further say that whenever a party suetor in a Court of Judicature did refer to written evidence he was not allowed nor would any Court endure him to select therefrom such parts as might be serviceable to his own purposes only but he was concluded by every part thereof And your Petitioners did say that they did admit that it was not according to the usage of Merchants to consider any verbal or written stipulation as a warranty unless the same was entered in the Policy and formed a part of the Contract And your Petitioners thereupon did say that they had not in and by their said Plea as insinuated by the Complainant pleaded a breach of the said Representation upon which they did agree to cover and had accordingly covered a risk upon the said ship the Ceres And your Petitioners did say that a breach of Representation did According to the law and usage of Merchants vitiate and render void the Policy effected thereon and your Petitioners did therefore plead a breach of the said Representation touching the said Sepoys and thereupon did say that the prayer of the Complainant that the said plea of your Petitioners might be overruled was unfounded and that your Petitioners said Plea did operate in Bar to the Complainants said Bill of Complaint

And

And your Petitioners did therefore humbly insist as in and by their said Plea they had humbly insisted thereon And your Petitioners for further rejoinder did say that notwithstanding the denial of the Complainant the Protest to the Complainants said Bill of Complaint annexed did carry on the face of it evidence sufficient on which to ground a plea in Bar to his the Complainants said Bill of Complaints And your Petitioners Second Plea did therefore rest thereon supported by the several matters therein set forth For your Petitioners did say that it was stated in the said Protest that on the night in which the said Ship the Ceres was Surprised and taken by pirates as stated and charged by the Complainants said Bill of Complaint there was only one man upon the Deck of the said Ship the Ceres as a watch and although the said Protest might state as the Complainant did in and by his said Replication urge the fact to be that the said man so placed as a watch was a Seacunny and the usual and ordinary watch yet your Petitioners Did say that it was not such a watch as was actually requisite and indispensably necessary and such as might with the greatest case and convenience have been kept on board the said ship the Ceres to guard and protect the said Ship against those accidents to which a Ship was at all times and in all Situations liable when the size of the said Ship the Ceres and

the

the compliment of Seamen was considered and when it was also considered that over and above the said compliment of Seamen she had belonging to her Twelve Sepoys And your Petitioners did say that they did not admit that it was consistent with the Custom and Regulations of the Country Service to give charge of the Deck to a Seacunny and that in the very act of giving the charge of the Deck to a petty Officer implied an intention that he was in that Situation to carry some kind of command And your Petitioners did further say that it would be some what singular to give a man a command and not place any person under him and that whatever might be custom and Regulations of the Country Service it was the custom of Merchants in General and so understood and relied on by underwriters that a good and Sufficient watch should be kept on board every ship both in a Harbour and in open Roads and particularly when in a foreign Port and in the Night time and During the time of War otherwise the Assurers might be ruined by the Negligence of the party Assured And your Petitioners did say that it was not Sufficient that the Crew of a Ship Sleep upon Deck for that in case instead of being a watch for the Safety of the Ship they Requir a watch over themselves as it was not to be imagined

Imagined that people could watch when they were asleep nor was it Sufficient that they would be ready as the Complainant suggested at a ball because there might be no one to give that call for indefendant of accidents that might happen from natural causes to the Seacunny who should be left in charge of the Deck he might be suddenly attacked and totally Deprived of the power of uttering a syllable and which seemed to have been the cases at the time of the seisure of the said Ship the Ceres as the Pirates who seised her appeared to have been in Complete possession of the said ship the Ceres and had fastined down some of the Gratings thereof long before the Officers on board were apprized of their unfortunate situation For Remy McBleish the Chief Officer of the said Ship the Ceres Did in and by the said protest declare "that about ten Oclock of the night in which the said Ship the Ceres was seized "as aforesaid he was upon Deck and directed the Seacunny "to call him at three Oclock in the Morning That about "Twelve Oclock he was awoke by a strange and uncommon "noise upon the Deck of the said Ship and that in "attempting to get upon Deck he found that the grating "had been put upon the companion Scuttle and that "the foremast of the Hatchway grating was put on also"

And

And your Petitioners did say that Notwithstanding the suggestion of the Complainant whereby he would make it appear that on the night the said ship the Peres was Surprized and taken as aforesaid it was evident from the Declaration of the said Henry McCleish in the said protest contained that the people were not sleeping upon Deck for the said Henry McCleish in and by the said protest Declared that after he had got upon Deck that was after he had forced open the Hatchway he found himself without any Assistance the greatest part of the Ships Company being below the gratings And your Petitioners did say that their said second plea was not as asserted by the Complainant "a species of cavil or defence which no Insurer who "meant to contest a Demand upon fair principles would "ever think of Resorting to" But on the contrary that the same was founded upon first principles and arose out of the Complainants own shewing And your Petitioners Relying upon their said Plea and the insufficiency of the Replication of the Complainant thereto Did humbly pray as in and by their said Plea they had already prayed And your Petitioners did Submit to the said Mayors Court that if the Complainant had been advised that the said two several Pleas of your Petitioners were Misconceived he ought to have demurred thereto but not having done so and having replied thereto he did admit the said several Pleas of your Petitioners to be well pleaded and by his said Replication Did put your Petitioners upon the proof as to the matters of fact in their said several pleas contained And your Petitioners did say that the proof necessary to be adduced by them in Support of the said matters of fact was deducible partly from the Complainants own shewing as therein above setforth and partly from his admission of the representation made to your Petitioners as aforesaid and upon which the Policy in Question was effected and thereby and by reason thereof your Petitioners did humbly submit to the said Mayors Court being so advised that their said several pleas were established both upon Law and upon fact and that therefore the Complainants Said Bill ought to be Dismissed And your Petitioners for further Rejoinder did say that although they had admitted the receipt of the premium by the Complainant setforth in and by his Bill of Complaint and that they executed the said Policy upon which the said Bill of Complaint was grounded yet they did deny that they were thereby or by reason thereof bound to pay to the Complainant either the Principal or Interest of the amount therein Mentioned to have been insured and did also deny as in and by their said Answer they had already

already denied and for the reasons therein setforth that the risk by them covered on the Bottom of the said Ship the Beres did commence immediately after said Ship the Beres had taken in her bargo or that it could have commenced until the said ship should have got under weigh and was actually sailing for the destined Port and did say as in and by their said Answer they had already said and for the reasons therein setforth that the written clause at the foot of the said Policy upon which the complainant had brought his said Bill of complaint did control the printed words in the body of the said Policy contained as insisted only the complainant and which did not in a clear and explicit manner or otherwise fix the time when the Risk was to commence Notwithstanding the explanation he had in and by his said Replication attempted to give thereon and which explanation did appear to be at variance with the matter of fact as in and by your Petitioners Answer the same was particularly setforth and that Notwithstanding the Assertion of the complainant to the contrary that the circumstance of Returning two per cent if the said Ship the Beres should leave Manilla after the thirtieth of November did warrant the construction of your Petitioners thereon as contained in their said

Answer And that the Arguments adduced by the complainant in support of such his Assertion were altogether ill founded and irrelevant and your Petitioners had clearly and fully established the facts in and by their said Answer that there were not only mistakes to rectify but that certainly also was to be established in and upon the said Policy in order to ascertain the thing thereby meant and intended to be insured and which could only be done by a written clause at the foot thereof and which was done accordingly And your Petitioners did say that they were not conscious of having as insisted on by the complainant Mis-stated the Letter of Instructions from the said Messrs Colvins and Bazzett nor could they have availed themselves of any such Mis-statements had it really taken place in so much as that your Petitioners had made a proffer of the Original Extract then in their possession and to Oyer whereof the complainant was at all times entitled But your Petitioners did submit to the said Mayors Court that it did appear by the complainants own shewing that they your Petitioners had not Mis-stated the Instructions alluded to But that they had according to the complainants own shewing only given to those Instructions a construction which the complainant suggested was not warranted

thereby

thereby But your Petitioners did say that such the Suggestion of the Complainant was not the fact and so the same would appear by reference to the said Instructions which did not require the aid of Construction And your Petitioners did diny that the words in the said Instructions contained could be construed to mean any thing more then what they did positively express or that they were governed as the Complainant would it appear by the words set forth in the printed part of the said Policy or that it was possible that the said Instructions could be governed but by the reversing of order and the nature of the things that your Petitioners did admit That on account of the War they did Demand a much higher Premium than they would have required had they not agreed to cover that risk and which was expressive of the Intention of the Complainant at the time he procured the Insurance to be effected and that the said Policy did carry upon the face of it Evidence that they had in Contemplation every risk therein and thereby Contracted for and that the said premium did apply to the whole of the said Risks collectively and not to any one seperately although the war risk was the prominent feature thereof And your Petitioners did say that Notwithstanding the denial of the Complainant he the

the Complainant had concealed his knowledge and his own Conviction of the Intention of the parties Relative to the Policy in question in manner and form as the fact was stated in their said Answer and that the Assertion of the Complainant in his said Replication contained "that he had not seen the Policy in question when the resolution of the Madras Insurance Company not to pay the loss was first communicated to him." instead of doing away the fact in your Petitioners said Answer contained did Corroborate and Support the same in as much as that the Complainant not having the said Policy before him did speak purely from his own Conviction as to what was the intention of the parties at the period when the said Policy was effected And your Petitioners did say that if it was understood as the Complainant would Suggest the fact to be and which he contended still deserved Support that the Port of Cavitta was the Port of Manilla and that the Risk Commenced in quitting that port then and in that case the Sailing from thence to the Roads of Manilla distant about three leagues in order to take in Cargo would be considered and held as a Deviation and the Policy of Course become and be void that the Complainant did admit that under the impression that the Risk had

Commenced

bommenced at the time the said ship the Ceres sailed from the said Port of Cavitta he did apply to the Office of your Petitioners for payment of the loss upon the Risk covered by the said Policy and he shewed that he never entertained an Idea that he would set up any Demand against your Petitioners upon any other ground until finding that the Office of your Petitioners had refused to Comply with his the Complainants said Application he took legal advice and it appeared by his own shewing that then and not till then he shifted his ground and chose that on which his said Bill of Complaint was founded And your Petitioners did say as is and by their said Answer they had already said that the unmooring of a Ship by having upone of her Anchors did not constitute the breaking of Ground nor was the Inception of the voyage nor any risk that was to take place at the commencement thereof constituted thereby and that if a ship was not safe when riding at a Single Anchor as while she was moored it was at the risk of the party and not of the underwriters who insure "From and not At and From or port and that to commence a Risk in such case there ought to be an actual and bonafide Sailing That in answering the Complainants said Bill of Complaint your Petitioners were under the necessity of remarking the variance

between

Between the charges in the said Bill contained and the Protest thereunto annexed and they did humbly submit to the said Court that in doing so they had not enlarged thereon further than the nature of the thing required and whether such variance was or was not material your Petitioners did not take upon themselves to Determine that they were advised that it was not Necessary for them to pay the premium into Court in so much as that they were at all times liable and by usage and custom of Merchants bound to pay the same to the Complainant and that the payment thereof to the Complainant would be event of his the Complainants said Bill of Complaint being Dismissed and that they were then and at all times had been ready to pay the same to the Complainant that Notwithstanding the suggestion of the Complainant to the Contrary they did not know that the whole of the Cargo of the said Ship the Ceres was actually on board of the said Vessel on the said Thirtieth day of January but it might have been on board thereof for aught they knew to the Contrary and that whether the said Cargo was or was not on board the said Ship the Ceres on the said Thirtieth day of January was not a matter in issue for your Petitioners did say as in and by their said

Answer

Answer they had already said that the Risk on the said ship the Ceres did not Commence From and immediately following the loading of her Cargo but that the same was meant and intended to Commence from and immediately after the sailing of the said Ship the Ceres from Manilla on her destined Voyage as expressed in the said Policy by the written Clause at the foot thereof—

and your Petitioners Humbly Shew unto your Most Excellent Majesty in Council That upon the pleadings aforesaid being had Issue did Join in the Cause and Rules did pass for the Examination of Witnesses One Witness was Examined on the part of the Complainant whose deposition on the hearing your Petitioners shew was on motion by your Petitioners Attorney suppressed—

and your Petitioners Humbly Shew unto your Most Excellent Majesty in Council that Publication having thereupon passed in this Cause the same was set down for hearing and the same having accordingly come on to be heard by and before the said Mayors Court on the Fifteenth day of March in the year of our Lord one thousand Seven Hundred and Ninty The said Mayors Court did think fit to Order and Decree and did accordingly order and decree that your Petitioners should pay unto the Complainant the full and just Sum of Seventeen thousand four hundred and five Pagodas One fanam and Seventy Six Cash together with all such Interest as then was or should thereafter become due thereon also 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 More fully and at large Appears

and your Petitioners Humbly Shew unto Your Most Excellent Majesty in Council That your Petitioners did conceive themselves much aggrieved by the said order and Decree of the said Mayors Court and did on the day of and year of our Lord One thousand Seven hundred and Ninety six Appeal therefrom to the Court of Appeals of Madraspatnam aforesaid For the following among other Reasons—

First, Because the Action of the Complainant was founded on an alledged under taking of your Petitioners for a Consideration received to hold the Complainant harmless from certain Perils and Hazards which might befall the Ship Ceres in a given and definite Voyage and which alleged undertaking of your Petitioners as stated by the Complainant to have been reduced to writing and was by him turned a Policy of Insurance and was so declared on by the said Complainant in his Bill And your Petitioners did

did Shew to the said Court of Appeals that the undertaking of your Petitioners evidenced by the said Policy was to insure the Bottom of the said Ship the Ceres From Manilla to Calcutta against the several Perils mentioned in the said Policy To have rendered your Petitioners therefore liable to the action of the said Complainant on the said Policy or written undertaking of your Petitioners for and on account of any loss which might have happened to the Ceres the said Mayors Court ought to have had clear and distinct evidence before them that the loss so happening to the said Ship was in direct consequence of one or more of the Perils described and by your Petitioners undertaken to be eventually sustained and borne in and by the said Policy and in a prescribed Course And your Petitioners did shew that there was not any Evidence before the said Mayors Court to shew that the loss of the said ship was occasioned by any of the Risks or Perils against which the Complainant had caused himself to be Assured in and by the said Policy For your Petitioners did shew that the loss of the said Ship the Ceres was stated by the said Complainant in his Bill and was manifested further by the Protest annexed to the same to have been occasioned by an Act of Piracy done and committed on the

the said Ship while she lay at Anchor at Manilla But the undertaking of your Petitioners as did appear by the said Policy and as your Petitioners had therein before Shewn was to insure the said ship From Manilla / that was on her departure from Manilla including the intermediate and intervened Risks / until her arrival at Calcutta and not to cover antecedent Perils in and at the Port of Manilla your Petitioners did therefore humbly Contend that as the Commencement of the risk undertaken by your Petitioners in the said Policy depended upon the Event of the Departure of the Ceres from Manilla and as the said ship was lost on the unequivocal allegation of the said Complainant perior to the occurrence of that event your Petitioners were altogether free and Exonerate of all and every damage and insury which the Said Complainant might have suffered by means of the loss of the said Ship in the manner and form alleged such loss and its consequences not having been induced or brought on by one or any of those Perils undertaken in and by the said Policy to be covered by your Petitioners —

Secondly, Because the Risk as described by your Petitioners in the preceding Reason and as defined and marked out by the words From Manilla to Calcutta in the said Policy was the only Risk undertaken by your

your Petitioners and so understood by the Agents of the said complainant at the time of their procuring the said Policy to be subscribed And your Petitioners did shew that such intermediate Perils and such intermediate Perils only as might occur to the said ship the beres from and after her departure from Manilla until her arrival at Calcutta (that was from Port to Port) were in the actual contemplation of the Assured when the Policy in Question was effected And your Petitioners Did shew that the Extract of the letter from Messieurs Colvins and Bazzett of Calcutta under date the Eleventh day of November One thousand Seven hundred and Ninety three, and addressed to their Agents at Madras directing the said Insurance to be made on the beres explained decidedly the definite adventure which was intended by the party complainant and his Agents to be insured in the following Words "We should be glad to cover "One and a Half Lacs of Rupies on the Block and Cargo of "the ship beres Captain John Wright from Manilla to this" meaning Calcutta from which place the said Letter of the said Colvins and Bazzett appeared to have been directed And your Petitioners did further shew that in pursuance of such Original Instructions from Colvin and Bazzett of Calcutta aforesaid on the behalf as it is since alleged of Captain John Wright communicated to the Agents of the said

Colvins

Colvins and Bazzett at Madras Application was made in writing to your Petitioners as appeared on the face of the Pleadings in the said Cause to undertake the said proposed adventure on the said ship And the said Application in writing which was the Letter of Messieurs Chase Sewell and Chase under date the Twenty seventh day of November in the said year of Our Lord One thousand Seven hundred and Ninety three was in further Corroboration of the intent of the party Assured at and previous to the time of the said Policy being made and Subscribed and the said Letter as far as Regarded the point in question was in words of the following Tenor. "Having received directions to insure a "considerable amount on the Block and Cargo of the beres "Captain Wright From Manilla to Calcutta we request "to know on what Terms your Committee will cover a part "of the risk &c. &c. so that your Petitioners did humbly presume "from the said Letter it was manifest that the Assured at the time of causing the said Policy to be made and for the Consideration therein expressed had nothing further in view than to insure the said vessel in and during her intended from the Port of Manilla to the Town of Calcutta And that your Petitioners meant to cover and undertook to cover such intervinient Perils only as might

occur

Occur in the said intended Voyage that was from the departure of the said Ship the Ceres From Manilla until her arrival at Calcutta and which was not only evident on the face of the said Policy but from the Letter of the Secretary of your Petitioners in reply to the said Application on the part of the said Complainant respecting the said Insurance then in contemplation and which was in words of the following Tenor." The Committee of the new Madras Insurance Company will cover Rupees Fifty Thousand or Pagodas "Fifteen Thousand three hundred and forty five Thirty "Eight fanams and Thirty bash on the Block of the Ceres "From Manilla to Calcutta at a premium of Twelve "perbent engaging to refund Two perbent if the Ceres "leaves Manilla after the Thirtieth of November." And your Petitioners did shew that the said letters and extract of a letter herein above Referred to by Consent of and for the Convenience of the parties Complainant and Defendants were admitted on a special motion made in that behalf in the progress of the said Cause through the said Mayors Court as good and lawful evidence and so to be Received and read before the said Mayors Court in the final adjudication to be had and made in the said Cause between the said Complainant and your Petitioners

Petitioners And your Petitioners did humbly contend that the said Letters and Extract were strong and conclusive Evidence of the adventure meant to be assured and of the Risk engaged to be done and sustained between the parties to and in the said Policy and which Adventure was a voyage intended from the Port of Manilla to Calcutta and the Risk undertaken by the Insurers your Petitioners was against such Perils as were stated in the Policy or any of them which might occur or happen in the said intended voyage and after the same should have commenced namely on the Departure of the said Ship the Ceres From the Port of Manilla aforesaid And your Petitioners did shew that when a doubt should arise on a Policy of Insurance the same being regarded in the eye of the Law as a mere Parole contract it was According to the Custom and Usage of Courts of Law to let in circumstances and proofs collateral to the Policy to expound and explain the same And your Petitioners did contend that if any doubt or uncertainty should be observable in the said Policy subscribed by your Petitioners such doubt and uncertainty must be removed by the Letters and writings therein before refered to by your Petitioners and to the benefit and advantages of which under the circumstances therein before set forth your Petitioners alleged that they were fully and legally intitled And your Petitioners did humbly shew unto the

the said Court of Appeals that the fair and equitable presumption from the Premises just mentioned was in favor of your Petitioners if the Letter of the said Policy which it did not had run counter to the meaning contended for by your Petitioners for it could not reasonably be concluded that your Petitioners would have spontaneously undertaken extraordinary risks where unto they had not even been requested by the said Complainant or his agents for one and the same Premium that was when they were desired to Insure the Beres in and during the Course of the voyage from Manilla to Calcutta that they should have volunteered other Perils of which the party Complainant and his Agents at the time of effecting the said Policy were altogether careless and your Petitioners did further Shew unto the said Court of Appeals that the words common to Policies of Insurance and Instruments of a like nature from Judicial decisions numerous concurrent and uniform had acquired a definite legal acceptation and currency and of which Acceptation the parties to a Policy were supposed to be Acquainted And your Petitioners were advised that the word "From" Seperately considered did in all policies intend a bonafide and Actual departure and nothing less than a Departure would Satisfy and that the along course of legal decision authorised such an Interpretation of the Term And your Petitioners were further advised

advised when any risks were meant to be assured previous to Departure that it was customary an usual to have such Risk denoted in the Policy under the Term "At" which also had Received a current and precise legal meaning including all risks and Hazards after arrival and during the Continuance in Port and was in all respects as referring to a Policy opposite to and Contra distinguished from the word "From" which did extend as your Petitioners had shewn to all Hazards out of Port And your Petitioners did humbly shew that the said Risks being ever regarded as distinct and different risks were Subject to different and distinct premiums or one premium apportioned to the two Risks intended to be covered and although it might not be usual to express on the face of the Policy the precise premium paid upon each Risk yet it was always required that such distinct Risks should be setforth and described in Seperate Terms in and on the said Policy or Instrument by which the objects of the insurance were described and as certained And your Petitioners having shewn that at and from were to opposite Terms in Policies that they intended two risks that for every several Risk a several premium was required and that every risk insured against on the part of the assured should appear in and upon the Policy And your Petitioners having

having therein before shewn that in the Policy in Question they had only covered the beres From Manilla and that it did appear by the Policy itself as well as by the said Letters immediately referred to that the Premium received by your Petitioners was for an Assurance of the said Ship from Manilla and as it did also appear that the beres was lost as stated by the said Complainant by an act of Piracy at Manilla your Petitioners therefore did humbly contend that they were not in any wise chargeable for or on account of the loss of the said Ship they neither having Conditioned in the said Policy to insure the said Ship against any loss which might happen at Manilla nor having received any premium in Consideration of such risk and any condition of Insurance entered into on the part of your Petitioners except on a premium received would be Null and void to every legal purpose as being without a Consideration –

Thirdly Because the time and circumstance of the Commencement of the risk being accurately and clearly described in the loading words of the Policy and being defined according to the intentions of the parties to the same as your Petitioners had endeavoured to shew in the proceding Reasons no forced construction drawn from subsequent words in the said Policy ought to be allowed

allowed to operate in disfavour of your Petitioners in violation of the plain Sinse and meaning of the words precedent and in direct Contradiction of the intention of the parties to the Instrument And your Petitioners Did humbly shew that the Construction as to the Commencement of the risk insured by your Petitioners as contended for by the said Complainant was harsh and strained instead of bearing a liberal and equitable construction which ever should provail in the interpretation of such an Instrument For the said Complainant had insisted in the Pleadings exhibited on his behalf in the said Mayors Court that the General Words in the said Policy "Beginning the Adventure upon "the Bottom Goods and Merchandizes whatsoever from "and immediately following the loading thereof on board "the said ship &c" extended the Risk which your Petitioners had engaged to cover in the Outset of the Policy and had introduced a new event from which the inception of the Adventure assured was to arise Namely from and immediately after the loading of the Goods and Merchandizes on the said Ship the beres But your Petitioners did humbly Contend that as the words foregoing in the policy did plainly speak the meaning of the parties to the policy and the precise adventure covered that according to the

the Rule of Law no Subsequent words could control and change the same And your Petitioners were advised that when any letter clause in a writing was contradictory of a clause forerunning, that legal practise warranted either that such clause should be altered as to correspond with the forerunning clause to prefect the Interest of the parties or where the Interest of the parties was manifest to reject the contradictory clause from the writing as surplusage and your Petitioners Did further shew that the words from which the said complainant had taken up the construction by him contended for as to the commencement of the risks were General words and [illegible] Policies which insure against a General loss as well of barge as of the vessel And that the complainant in the event of any loss of any Goods and Merchandizes if the said words were supposed to have any operation in the policy might by virtue of the said words and the said clause in the Policy as well have called on your Petitioners to make good such loss as for any particular loss in respect to the said ship the said words in the Policy importing the adventure to be on the Bottom Goods and Merchandizes But your Petitioners did shew that the adventure was restricted and restrained to the Bottom of the beres and

and as appeared by the written Clause at the foot of the Policy and which written Clause did declare the particular Risk assured namely the stock and Block and confirmed the Intention of the parties made known in the loading paragraph of the policy in defining by the word "Leave" the exact nature and commencement of the risk And your Petitioners did humbly premium that from the principle paragraph in the Policy wherein the Insurance intended to be made was setforth to wit "Domake Assurance and cause themselves to be Insured Lost or not Lost From Manilla to Calcutta" aided assisted and Supported by the Letter and written Application on the part of the Assured and of the written Answer of the Insurers your Petitioners alluded to in the two first Reasons assigned by your Petitioners complied with the concluding written Paragraph in the said Policy to wit "if the beres leaves Manilla after the thirtieth of November" it was clear and evident that an actual Departure was the event in the Understanding of the parties to the policy which was to lead and induce the Risk undertaken by your Petitioners And your Petitioners did further shew in a later Insurance effected on the said ship the beres and by the same parties and which was

made

made or written on the Back of the said Policy the adventure
covered by your Petitioners was expressed in plain and
Single Terms and not liable to any other than one Inter-
pretation and which was the Interpretation on which
your Petitioners had therein before Insisted For the
Indorsement in the said Policy did state for a certain
consideration paid your Petitioners did permit the Ceres to
touch at Madras in or voyage from Manilla to Calcutta
and that they would Return a certain part of the additional
premium if the Ceres performed in Safety the Original
Voyage as Stipulated in the said Policy So that the
Declaration of the Intention of the parties to the policy
in the said Indorsement nearly four Months after the
Subscription of the Policy of what had been assured by
the one and undertaken by the other party in the said
Instrument could not leave the vestage of a doubt as to
the particular Risk Insured it not being simply declared
in the said Indorsement that the Ceres might touch at
Madras in her voyage From Manilla to Calcutta
but such voyage was explained and emphatically stated
"the Original Voyage as stipulated in the Policy" And
your Petitioners did therefore humbly Contend that as the
voyage from Manilla to Calcutta so explained was the

Adventure

Adventure undertaken by them the Actual departure of the Ceres
from Manilla was understood and alone could be understood
as the Inception of the voyage or Adventure under the Terms
and Conditions of the Policy And your Petitioners did humbly
shew unto the said Court of Appeals that from the haste in
which Insuance Contracts were often times drawn and
Executed and the difficulty of making any given Policy to
answer the purposes of every Person or Persons desirous of
making an Insurance the Courts of Law in the Custom of
Merchants had allowed a peculiar force and operation to
the written clauses in a Policy of Insurance and that it was
an indisputable rule at that day that such written clauses
in a Policy should Govern and Control the formulary or
printed parts of the same And your Petitioners did humbly
insist that the written Clause at the foot of the said Policy
Demarking the particular extent and Nature of the
adventure did over rule and supersede the Generals printed
Clause in the Policy out of which the Complainant had
drawn his Constructions of the Commencement of the risk
for if the said Clause was not over ruled and superseded
it must have stood and Operated wholly and entirely and
not partially or so far only as to serve the Construction
aimed at by the said Complainant and if so the said Clause

Rendered

Rendered Your Petitioners liable and Responsible for the Goods and Merchandizes on the said ship of which the said blause was cautious and provisory But your Petitioners had shewn by the said Letters therein before referred to by your Petitioners as well as by the concluding paragraph of the Policy that the goods and Merchandizes were not in any Sort the Objects of the said Insurance on the behalf of the said Complainant And therefore the said blause as Referring to objects foreign to the Intent of the parties to the Insurance ought to have been Rejected or over ruled by the blause in writing at the foot of the policy or should have been altered So as to be reconcilable in correspondence with the Tenor of the Instrument And hena Your Petitioners did conclude that the construction of the said Complainant from the said words of generality in the Policy was partial confined and erroneous and ought not to have prevailed in the Interpretation of the said written Instrument but that the same should have been broken so as to render it conformable to the Intentions of the parties at the time of making the same and not to their Intentions at a Subsequent period which might have been deferent or discordant According to circumstance Accident or changes of Interest —

Fourthly Because

5

Fourthly, Because the said construction as to the commencement of the Risk of your Petitioners set up by the said Complainant in opposition to the Intention of the Parties to the Policy at the time of making the same was in a great decree abandoned by the said Complainant or at least not depended on by his afterwards resorting to other Grounds and Suggestions And your Petitioners did humbly shew to the said Court of Appeals that the said Complainant did first suggest that the said Risk of your Petitioners did commence from the Departure of the said ship the Ceres from Cavitta to the roads of Manilla and that unmooring the said ship that was by raising one of the Anchors of the same and which was termed by the said Complainant a Breaking Ground was an Inception of the voyage from Manilla and a commencement of your Petitioners Risk But your Petitioners did state to the said Court of Appeals that if the Departure from Cavitta to the Roads of Manilla was considered as a departure from Manilla (Cavitta being described to be the port of Manilla) the Sailing to and stay of the Ceres in the Roads of Manilla for the purpose of taking in Cargo as set forth was a palpable Deviation from the voyage insured and as such made Contract of Insurance void the said Policy precluding

Such

Such an act And your Petitioners did further state that the mere unmooring of a vefsel by raising one Anchor did not as insisted on by the said Complainant Constitute a breaking Ground for the Term of breaking ground in legal sense and phranology was tantamount to and equivolent with sailing and was useds indifferently and indiscriminately for the last mentioned word And this your Petitioners were ready to shew from a varrity of authorities And your Petitioners did humbly Contend that the said Complainant having had recourse to the said suggestions was a proof unwillingly Drawn from him that an Actual Departure was Necefsary to be sheum in order to bring the lofs which had happened within the Peril of the Policy for if the loading of the Goods on the said Vefselhad been unquestionably Evidence of the Commencement of the Risk whence the Necefsity incumbent on the Complainant to prove a Departure and in which your Petitioners did again contend he had utterly failed—

Fifthly That if the risk of your Petitioners could have been Supposed to Commence on any of those events ennumerated by the said Complainant That from the Circumstance under which such risk Commenced your Petitioners would be altogether Discharged

in the said policy mentioned For your Petitioners did shew that at the time of effecting the said Insurance on the beres The Agents of the said Complainant Did represent to your Petitioners that the said ship had on board besides her Compliment of Seamen a party of Twelve Sepoys And your Petitioners in Consideration of the Circumstance did Calculate their risks Accordingly and did undertake to cover the said ship from the hazards Described in the Policy But your Petitioners did shew that from the Evidence on the part of the Complainant it appeared that Eight of the said Sepoys were on shore and from the ship at the time of the surprisal and seizure of the same And your Petitioners did therefore humbly contend that such Misrepresentation on the part of the Asured in regard to the said Sepoys having been Material and important as to the nature of the insurance was in its Consequence and effect as a fraud and deceit on your Petitioners and of Course destructive of the Contract and the contract being thereby void in Law that the Complainant could not be intitled to any advantage under the Same—

Lastly, Because the Lofs of the said ship the beres in the way and manner as alleged by the said Complain-

should the risk even have been supposed to have commenced in the due Course would not from a view of the whole case have been chargeable to your Petitioners For your Petitioners did shew that at the time of the seizure of the vessel One Seacunny only was in actual charge and custody of the Deck a negligence of such a Nature as to Demonstrate a total disregard on the part of the Assured for the safety of the vessel And your Petitioners did shew that the Complainant being the master as well as proprietor of the said vessel by an implied contract with your Petitioners ought to have Exhibited sufficient and due care towards the preservation of the ship which from the said circumstance it is clear that he did not And therefore as the Law abhors that any man should benefit by his own wrong doing the Said Complainant ought not to have been allowed to Draw an advantage by reason of the said Policy of Insurance from his own negligence and want of caution –

And your Petitioners most humbly Shew unto your Most Excellent Majesty in Council that your Petitioner did thereupon in and by their said Petition of Appeal Humbly pray that the said Court of Appeal would revers the said decree of the said Mayors Court and grant unto your Petitioners such further and other relief in the premises –

premises as to them should seem Meet –

And your Petitioners Humbly Shew unto your Most Excellent Majesty in Council that to your Petitioners said Petition of Appeal the Complainant did exhibit and file his Answer and did therein and thereby admit that he did on or about the Nineteenth Day of March and year of our Lord One thousand Seven hundred and Ninety five by his Attornies aforesaid Robert Woolfe Daniel Crawford and Robert Forbes Exhibit and file his said Bill of Complaint in the Mayors Court of Madraspatnam against your Petitioners and the said William Harcourt Torriano Thomas Parry William Dring Vencata Narrain Ravanapah Modelly of Madras Inhabitants as the members composing the New Madras Insurance Company and that he did therein and thereby state that on or about the Twenty Eighth day of June which was in the Year of our Lord One thousand Seven hundred and Ninety three the Complainant being then sole owner and Commander of the ship Ceres left Calcutta in the Kingdom of Bengal in order to proceed on a voyage to Manilla in the Island of Luconia that previous to his leaving the said port he directed his Attornies messieurs Colvins and Bazzett of the same place Merchants to effect an

Insurance

Insurance on the body of the said ship the Beres on her returning voyage In consequence whereof the said Colvins and Bazzett caused an application to be made to the New Madras Insurance Company by means of their Agents Chase Sewell and Chase and that in consideration of a premium of Twelve per Cent Thomas Chase John Hamilton Hugh Innes and Henry Sewell then Members of the said New Madras Insurance Company and the immediate acting Committee thereof did sign and execute the Policy upon which the present Action was founded whereby they undertook to cover and Insure the Valued Sum of Fifty Thousand Sicca rupees upon the Body of the said Ship Beres From Manilla to Calcutta against the several perils and adventures in the said Policy Mentioned the risks being stipulated by the said Policy to commence from and immediately after the loading being completed And the Complainant did in and by his said Answer to your Petitioners said Petition of Appeal Did further admit that he did in and by his said Bill state that on the thirtieth day of January which was in the year of Our Lord One thousand Seven hundred and Ninety four the said ship Beres having then completely taken on board her returning Cargo Water and Stores the Bills of Lading and Port Pleasances being also obtained the

the ship unmoored and every thing in a state of readiness to put to sea that about ten o'clock at Night on the same Evening the said ship the Beres was suddenly surprised and boarded by a Number of Armed men consisting principally of French Prisonies and Spanish Deserters who carried her to sea and afterwards to the Island of Mauritius Notwithstanding every possible execution was made by the Complainant to prevent it And the Complainant did further admit that by reason of the premises he did charge your Petitioners and others the Defendants in his said Bill named to stand indebted unto him the Complainant in the Sum of Seventeen thousand four hundred and five Pagodas One fanams and Seventy six bash Current Money of Madras and for the recovery whereof he did file and exhibit his said Bill of Complaint in manner and form as aforesaid And your Petitioners most Humbly Shew unto your most Excellent Majesty in Council that the Complainant in and by his said Answer to your Petitioners said Petition of Appeal did further admit that your Petitioners being Served with process to appear and answer to the Complainants said Bill of Complaint Did Accordingly appear and did Exhibit and file two Several pleas

and

And an answer the first plea founded (as the Complainant did very unfairly pretend) on the following futile and insufficient grounds that was to say that in the Original Letter from Edwins and Bazzett to Thomas Chase Henry Sewell and Richard Chase directing the Insurance in Question and in the immediate application from them to your Petitioner Thomas Chase in his capacity of Secretary It had been represented that the Ceres besides her Complainant of Seamen had a party of twelve Sepoys and that it appeared from the protest that Six of those Sepoys were on shore at the time the Ship was surprised which they considered as a breach of representation that exonerated them and therefore pleaded the same in Bar That as Cause of Second plea the Complainant did say your Petitioners did aver that there was not a Sufficient watch at the time the said Ship Ceres was Surprised and taken It appearing by the protest that there was only one man upon the Deck of the Ceres at the time she was Surprised and therefore they pleaded the same in Bar of the Complainants said Bill and the relief thereby sought and Demanded the Judgement of the said Mayors Court whether they your Petitioners, should be compelled to make any further or other answer thereto And the Complainant did in and by his Said

Answer

Answer to your Petitioners said Petition of Appeal further admit that your Petitioners did in their said Answer to the Complainants said Bill State that although they your Petitioners might have executed the said Policy and that certain Pirates might as pretended by the Complainant have surprised and taken posession of the said ship the Ceres and have carried the said Ship the Ceres from Manilla where she then lay at Anchor to Mauritius yet they did deny that they were thereby or by reason of the premises Rendered liable to pay the amount by them covered by the said Policy of Insurance For that your Petitioners did contend that the printed words in the Policy of Insurance upon Which the Complainant rested his Claim on your Petitioners that was to Say "Beginning the Adven-" ture upon the said Bottom Goods and Merchandizes "whatsoever from and immediately following the loading "thereof on board the said Ship" were totally inapplicable to the matter in question which stood upon its own ground and was taken entirely out of the said printed Clause as appeared by the declaration in writing at the foot of the said Policy And the Complainant did further admit that your Petitioners did in and by their said Answer to the Complainants Bill state that it

was

was frequently necessary to insert written clauses
printed policies of Insurance in order to express t
meaning of the parties to the Contract where the pri
forms were not sufficiently explanatory and that su
written clauses or Conditions so inserted were to becom
as the real Contract and were suffered to Control the
That the printed Clause in the said Policy of Insurance
printed Words in policies of Insurance as relied on
the Complainant was indefinite as to the thing there
meant to be Insured and did not express the intenti
of the parties taking the said clause together and it
could not be severed that as your Petitioners intention
respecting the Insurance in Question could not be
expressed by the printed words that it became neces
to make a special clause for that specific purpose and
the same was according by made in writing at the
foot of the said Policy which written clause shewed the
Risk that was in Contemplation when the said Policy
effected and that an actual and bona fide departure
from Manilla was meant and understood by the parties
in order to commence the Risk And that until such
actual and bona fide Sailing should have taken
place the said risk was not meant or intended to have
had Commencement and that therefore the attempt of the
Complainant

Complainant to take an advantage of the said printed clause and to
assert from thence that the said Risk commenced from and immediately
following the loading of the said Ship the Ceres was unfair and unjust—
And your Petitioners further Humbly Shew unto your Most Excellent
Majesty in Council that the Complainant in and by his said
Answer to your Petitioners said Petition of Appeal did also admit
that your Petitioners did in their said Answer to the Complainants
said Bill of Complaint state That it appeared by the Complainants
own shewing that the ship the Ceres had not left the Port of
Manilla nor as they were advised had she ever Broken Ground
For your Petitioners did state that they doubted not of proving that
the case where a ship was moored the having up of one Anchor
was not breaking ground for that they were advised that breaking
Ground was moving from a Situation in which a Ship had been
some time moored or riding at Anchor to some other the difference
as to distance however trifling but that even if it were true the
heaving up of one Anchor was breaking Ground that would not
have altered the case in favor of the Complainant as it would
not bring it within the meaning and intention of the said—
Policy of Insurance and of the Parties at the time of executing
The Same—
And your Petitioners further Humbly Shew unto your Most
Excellent Majest in Council that the Complainant having
in aid by his said Answer to your Petitioners said Petition of
appeal

appeal admitted the several other matters and things stated in your Petitioners said Answer to the complainants said Bill of complaint as have been herein before by your Petitioners recited and set forth did further admit that to your Petitioners said pleas and Answer he did exhibit and file his Replication and did therein and thereby he did state that it did not appear that your Petitioners ever considered the circumstance of the Vessel having Twelve Guns and so many Sepoys a condition they wished strictly to have been adhered to otherwise it was to have been presumed (as the complainant pretended) your Petitioners would have taken care to have had that part in the body of the Policy that it was not the usage to consider Instructions or any verbal or written stipulation as a Warranty without they were entered in the policy and made part of the contract and upon those principles the complainant did pretend) that the said Plea was altogether Misconceived And the complainant did deny that there was any thing appearent on the face of the said protest to warrant the second plea of your Petitioners in Bar to the complainants said Bill and the Relief thereby sought For that it was stated that the usual and ordinary watch of Seacunny was placid And the complainant did say that the Second plea of your Petitioners was altogether futile and was a species of cavil or defence which no Insurer who Meant to contest a Demand upon fair principles would ever think of resorting to And the complainant did state

That

That he did admit that it was frequently necessary to insert written clauses into policies of Insurance in order to express clearly the meaning of the parties to the contract and which in many cases the said printed form was insufficient to do But the complainant did deny that under those principles or according to that doctrine the written clause at the foot of the Policy upon which the present Action was founded did control the printed words insisted on by the complainant which words the complainant did pretend) did in clear distinct and explicit manner fix the time when the Risk was to commence that was to say on the Bottom Goods Wares and Merchandizes from and immediately after the loading thereof Whereas the written Clause at the foot of the said Policy had been entered for the Sole purpose of distinguishing the Subject of Insurance and not the commencement of the Risk which the Insurers at the time of filling up and executing the said Policy had obviously left to printed words to explain And therefore the complainant did contend that as the printed words respecting the commencement of the risk stood uncontrolled they should prevail and have due effect both as to construction and Evidence of the intention of the Insurers at the time of entering into the contract And the complainant in his said Replication did further state that Notwithstanding the Assertions of your Petitioners with respect to what constituted Breaking Ground He was convinced that

Whoever

whoever duly reflected on the subject would be of opinion that when a ship was unmoored for the express and avowed purpose of proceeding on her destained voyage that was to every intent and purpose Breaking Ground and constituted an exception of such voyage and of any risk which was to take place on the commencement thereof since it was obvious that a ship could not be in the same state of Safety while at Single Anchor

And your Petitioners most Humbly Shew unto your most Excellent Majesty in Council that the complainant in and by his said Answer to your Petitioners said Petition of Appeal did further admit that to the complainants said Replication your Petitioners did exhibit and file their Rejoinder and that as the same was fully recited and setforth in your Petitioners said Petition of Appeal the complainant did pray leave to refer thereto and did further pray that the same might be taken as part and parcel of his the complainants Answer in the said Court of Appeals—

And your Petitioners most Humbly Shew unto your most Excellent Majesty in Council that the complainant did in and by his said Answer to your Petitioners said Petition of Appeal state That in order to prevent the delay and expence which must have attended an Examination to prove that the Loading of the ship Ceres was completed at the time she was Surprised and taken as well as other points on which the

the complainant depended it was mutually agreed upon that the Original Protest should be delivered into the said Mayors Court and received as good evidence any thing contained in the Pleadings to the contrary Notwithstanding and that it was further agreed that the several Letters annexed to and exhibited with your Petitioners said Plea and Answer should be admitted as evidence as much so as if the hand writing had been proved And the complainant did in and by his said Answer to your Petitioners said Petition of Appeal further state that on the fifteenth day of March and in the said year of Our Lord One thousand Seven hundred and Ninety five the Original Protest was delivered in and the following minute entered on the record of the said Mayors Court that was to say, "The Attorney for the Complainant delivers "into Court the Original Declaration and Protest of John Wright "Henry McCleish Robert Weir and Joachim de la Cruz sworn "to before Sir William Duncan one of the Justices of the supreme "Court of Calcutta And it is Agreed to by and between the parties "complainant and Defendants that the matters in the said "protest stated shall be read and Received as good Evidence "on the part of the complainant and Defendants any thing "setforth in the pleadings to the contrary in any wise Not- "withstanding and it is further Agreed to by and between "the parties complainant and Defendants that the Letter "annexed to the Answer purporting to be a Letter from Messieurs

Chase

"Chase Sewell and Chas to Thomas Chase Secretary to the New
"Madras Insurance Company shall also be read as Evidence
"in as much as if the hand writing had been proved and in
"like manner the Letter from Thomas Chase to Chase Sewell
"and Chase also the exhibit purporting to be an extract of a
"Letter from Colvins and Bazzett to gether with the Letter
"signed John wright Ordered Accordingly." And the
Complainant did thereupon in and by his said Answers to
your Petitioners said Petition of appeal further state that
the substance of the said Declaration and Protest made
by the Complainant Henry M Cleish Chief mate Robert
Weir second Officer and Joachim de la Cruz late a Seacunny
and received as good Evidence as aforesaid was as follows
that was to Say That on or about the Twenty Eighth day of
June in the year of Christ One thousand seven hundred
and Ninety three the Declarants sailed in the said ship
the Ceres in the several Capacities aforementioned with
a Cargo on board on a voyage to Pulo Penang and
Manilla That they arrived at the Port of Manilla in
the Island of Luzcaria on or about the Twenty fifth
day of August in the year of Christ One thousand Seven
Hundred and Ninety three where they landed the Cargo
and took in a fresh Cargo as hereafter is particularly
Mentioned That on the Thirtieth day of January last the

Said

Said ship having completely taken on board her Returning
Cargo and having Regularly cleared out the ship from the
said Port by having obstained the usual Port clearances from
the proper Officers of the Spanish Government and having
on board all the Water and every other Store for the
Voyage with a sufficient Compliment of men the Ship
having Broke Ground and then only lying at a Single
Anchor with her Sails all bent for the purpose of proceeding
the winds and weather permitting from the Roads of
Manilla aforesaid to Bengal on the following day this
Complainant did write a Letter to Henry M Cleish aforesaid
informing him of such his intention And the said Henry
M Cleish for himself did Declar that on the said
Thirtieth day of January last the said ship the Ceres having
been unmoored as aforesaid was riding at a Single Anchor
in the Road of Manilla about one mile from the Shore
with her Sails all bent and every thing ready for going to Sea
at a Minutes warning when he received a Letter from the
Complainant who was at such time very Ill ashore
Directing him to hoist in the Boats belonging to the said
Ship Ceres and to get every thing ready for Sailing the
following morning And the said Henry M Cleish and
Robert Weir in their said Declaration further Declared
that having set the Ordinary watch of a Seacunny upon

Deck

Deck they about Ten Clock at Night retired to their Respective
Cabins the said Henry M Cleish having directed the said
Seacunny to call him at three Clock in the morning that at
Eleven Clock on the same night it being then very dark
he went upon Deck and finding the Seacunny or watch and
every thing quiet he went to bed That about Twelve Clock of
the same night he was awoke by a strange and uncommon
noise upon the Deck of the said Ship the Ceres that he
thereupon immediately got up and went into the Steerage
in Order to get upon Deck to learn the Occasion of the
noise above when he Saw somebody standing between
the after hatch way and the Companion but it being very
Dark he could not distinguish who it was but upon
enquiry found him to be the other Declarant Robert Weir
when the the said Henry M Cleish in attempting to get
up the Ladder struck his head against something which
occasioned his Slipping off the Ladder when upon looking
up he discovered that the Grating which was not on when
he went to bed was put upon the Companion shuttle upon
which he the said Henry M Cleish went to the after
Hatch way and desired the second mate to Assist him in
removing the Grating which had also been put on that he
Might get upon deck he the Declarant imagining and
believing that the noise was Occasioned by a Guard from the
Corrigedore

Corrigedore or Magistrate to see if there were any women from
Manilla on board it being prohibited by the Government
there And the said Henry M Cleish in his said Declaration
and protest further said that with the Assistance of the said
Robert Weir they shewed up the foremast after Hatch ways
Grating and he got upon Deck and passed to the Star Board
Gangway where he stood for some little time and saw many
people aft in much confusion talking french and heard the
Spanish guards or custom house Officer speaking to the people
about him in a Supplicating tone and the said Henry M Cleish
further Declared that finding himself without any Assistance
the greatest part of the Ships Company being below when seeing
no possibility of doing any thing in that situation either for the
defence of himself or the ship he Slipped down by a Rope
into the water and got to a vessel called the constantia a
Spanish Vessel that was lying within a Quarter of a mile of
the Ceres and told the people on board what had happened
and requested Assistance offering every man that would
go back with him to the Ceres in their ships Boat One
Hundred Dollars each but could not prevail on any of the
people to do so that almost immediately upon his getting
on board the Constantia he the Declarant saw the people
loosing the Ceres's Sails and knew that they had cut her cable
as the ship casted upon which he requested the people of
the

the Constantia to put him on shore in their Boat that he might go
from them
assistance and begged they would fire some Guns to alarm the
Fort but he was told their Guns were not in readiness and they
did not fire or give any alarm whatever That he went on
shore and got to the house of the Complainant about one hour
after the people had got on board the Beres as before mentioned
and informed him of the circumstance And the Complainant
and the said Henry M Cleish in their said Declaration and
protest did further declare that after many delays and
much trouble they procured a Brig then laying there and
as they understood ready for Sea and made Sail after the Beres
at about Day break in the morning having on board the
said Brig Seventy people in all that shortly after they made
sail in the said brig they found they had only one Cask
and a very little more of fresh water on board although
the Owner had reported her ready for sea which obliged
them to return without effecting the object they had in
view And the Declarant Robert Weir in his said declaration
and protest did declare that immediately after the other
Declarant Henry M Cleish had got upon Deck in the
manner before mentioned he attempted to follow him
but was twice beat back at the last time he fell down
and was stunned with the fall and that about half one hour
after / as he believed / as he was laying upon the Deck Four
frenchmen

Frenchmen came down below with a Light and searched the Great
Cabin / as he imagined / after the Captain and other Officers and at
day light confined him the Declarant under a Guard in the great
Cabin where he remained until about Ten Oloch in the
morning when observing some of the people belonging to the Beres
getting into the Long Boat he entreated the Frenchmen to suffer
him to go with them and to which they at length consented and
he did actually quit the Beres then out at sea and arrived at
Manilla with three Seacunnys One Tindal One Syrang and
about fourteen men belonging to the Beres on or about the third
day of February in the year of Christ One thousand Seven
hundred and Ninety four And the Declarant Robert Weir further
did declare that the said ship the Beres was carried out to Sea
almost immediately after her being boarded in the manner
aforesaid and that the Persons who boarded the said Ship
and carried her away consisted of as he belived Twenty five
Frenchmen some spanish Soldiers and some Indians alto-
gether to the Number of Forty Five -

And your Petitioners further most humbly
Shew unto your most Excellent Majesty in Council that
the Complainant did further in and by his said Answer to
your Petitioners Said Petition of appeal State that upon the
facts setforth and stated in and by the said protest Issue
did Join in the said Cause and Rules did pass for the Examination
of

of such Witnesses as the Complainant did pretend the parties Complainants and Defendants might find it expedient to produce in Order to prove any matters relevant to the Cause and which the said Protest had not established And the Complainant did state that as your Petitioners in their Answer to the Complainants Bill of Complaint had laid much stress upon the Letter written by Messieurs Chase Sewell and Chase to Thomas Chase in his capacity of Secretary Copy whereof was to your Petitioners said Plea and Answer Annexed And as your Petitioners contended and inferred therefrom that the said Letter exhibited the fullest evidence of their Intentions as to the Commencement of the Risk which was not to take place until after the Departure of the Vessel the Complainant Deemed it necessary in order to away as he did pretend its effects as well as to shew the Conduct which another Public Body namely the Old Madras Insurance Company had manifested under Similar Circumstances to annex the Copy of an original Letter written by your Petitioners Thomas Chase Henry Sewell and Richard Chase to the Secretary of the said Company which was verbatim the same as that addressed to your Petitioners Thomas Chase And the Complainant having in her said Replication shewn that the said Madras Insurance Company had not attempted to place the Same unwarrantable

unwarrantable Construction thereon which your Petitioners had done But did allow the Complainant the full benefit of their Policy and of every clause therein contained that it became necessary in Order to support his allegation as well as to prove the letter so written to Examine a witness thereto that Accordingly Interrogatories were exhibited to George Chalmer a member of the Committee of the said Old Madras Insurance Company who being Examined did Depose as follows that he was a Member of the Madras Insurance Company and that he had been a Member of the Committee of the said Company in the Month of November in the year One thousand Seven hundred and Ninety three that he had looked at the paper [illegible] of his Examination purporting to be a Letter from Messieurs Chase Sewell and Chase to the Secretary of the said Company and said that an Insurance was effected in Consequence of the said Letter to the amount of Ten thousand Pagodas and for which a premium of Eleven per Cent was given that he the Deponent was one of the Members of the Committee of the said Company who Signed the said Policy that a total loss did ensue thereon in Consequence of the ship Ceres having been surprised and carried off by pirates while laying at Manilla and that the said loss was ajusted and paid off by the said Company to Messieurs Chase

Chase Sewell and Chase three of the Defendants in this Suit
And the Complainant did state that no other witness was
Examined on his part He the Complainant having Declined
as is insinuated by him from entering into any Examination
Publication did thereupon pass and the Cause was set down
for hearing And the Complainant did admit that on the
fifteenth day of March last past the said Cause came on
to be heard before the said Mayors Court and that the
said Mayors Court was pleased to order and Decree
and did Accordingly order and Decree in manner and
form as by your Petitioners hath been herein before recited
and Set forth —

And your Petitioners Most Humbly
Shew unto your most Excellent Majesty in Council
that the Complainant in and by his said Answer to your
Petitioners said Petition of Appeal after having stated and
admitted several matters and things as have been herein
before recited and setforth by your Petitioners Did —
proceed to Answer the severall Causes or Reasons Assigned
by your Petitioners of Appeal from the said Decree of
the said Mayors Court to the said Court of Appeals And
in Answer to the first Cause or Reason Assigned by
your Petitioners for Appeal The Complainant did state
that he did admit the present Action was founded on an
undertaking

Undertaking of your Petitioners for a Consideration Received to hold
harmless those who were Interested and Concerned in the Policy
in Question from certain Perils and Hazards which might
befal the Ship Ceres in a certain Voyage in the said Policy
Described And the Complainant for further answer did admit
that the undertaking of your Petitioners evidenced by the said
Policy was to insure the Block of the said Ship against
the several Perils therein mentioned And the Complainant
did further agree with your Petitioners That in order to render
them liable to the Action of the Complainant on the said
Policy Proof and an Account of any Loss which might have
happened to the said Ship the Ceres It was necessary that the
said Mayors Court should have had Clear and Distinct
evidence before them that the same was in Consequence of
one or more of the Risks or perils Described and by
your Petitioners undertaken to have been eventually
Sustained The Complainant did say That the said Mayors
Court had had before them Clear Distinct and irrefragable
proof of those facts and did thereupon give their Judgement
First from the matters appearing on the face of the Policy
and Secondly from the Protest therein before shewn to
have been Received and admitted as good Evidence the
Complainant did say that the Act of Surprisal and
Barratry were Perils which the Insurers in that as in all
other

other Policies of Insurance undertook to Secure the Assured against a fact which indeed the Complainant did pretend was admitted by your Petitioners themselves in Answering to one of the Interrogatories in the Complainants said Bill of Complaint contained being in the Words following And "these Defendants further admit that the Act of Surprisal "and Piracy is one of the Perils covered by the said Policy." And the Complainant Did say that the said Policy expresly Mentioned that the said Risk was to have commenced upon the Bottom "From and immediately following the loading of the "Cargo." while the said Protest stated That the time when the said ship was surprised and boarded The Cargo was all on board That Bills of lading were Granted Port Clearances obtained and the Vessel unmoored for the express purpose of proceeding on her voyage Those Circumstances therefore to every Intent and purpose constituted an Inception of the voyage and formed the Commencement of the Insurers Risk and not an actual sailing or Departure from the said Port of Manilla as was alledged by your Petitioners—

And to the Second Reason adduced by your Petitioners as cause of Appeal from the Decree of the said Mayors Court and wherein it was alleged and said by your Petitioners that such perils and accidents as might occur Between Manilla and Calcutta were the only Risks undertaken by them and as understood by the

by the Complainants Agents the Complainant for Answer thereunto did pray leave to observe That your Petitioners Thomas Chase Henry Sewell and Richard Chase were the Agents of the Complainant that were to effect the said Insurance if such therefore were the Ideas which they entertained of the Risk in Question namely that it was not to take place until after an Actual departure from Manilla and that the intervenient Risk between that Port and Calcutta were the only Perils which they understood they were to bear It was extraordinary that they did not express their Intentions more clearly and which could easely have been done acting as they were without control in the double capacity of Insurers and Agents to the Assured And the Complainant did further submit that the Letter upon which so much stress had been laid from Messieurs Colvins and Bazzett to Messieurs Chase Sewell and Chase an extract whereof was annexed to your Petitioners plea and Answer when impartially viewed could be considered in no other light than as a General letter to effect an Insurance leaving the said Messieurs Chase Sewell and Chase a discretionary power to complete the same in such Manner as to them should appear Most advantageous The following words being parts of the said Letter." And wish you to act accordingly for us in this situation "as your would for Yourselves Assuring you that we shall "confirm to what your shall Thank adviseable to be done in the

business

"business" And the Complainant by his said Attornies Did further submit to the said Court of Appeals that it was not the letter written by Thomas Chase and his partners Henry Sewell and Richard Chase under the form of Chase Sewell and Chase to the said Thomas Chase in his capacity of Secretary to the said New Madras Insurance Company that ought to be allowed to regulate the construction of the Policy But the Instrument itself which it was to be presumed was executed under fair impressions and with the view of giving those that were Interested therein the full Benefit of every Clause which the said Policy contained that was not specifically excepted to The Complainant said it frequently happened that various communication passed verbally and in writing between an Insurer and the Parties who applied for Insurance previous to the Execution of a policy but when that was once completed those communications were forgot and it was the Instrument so completed which must have Demonstrated the intention of the parties and which the Complainant did submit could not be altered unless in cases of Fraud or where plain and Obvious mistakes had crept in But then mistakes even of that nature were not to be rectified by the immediate act of the Party who was to be benefited therefrom for that would be contrary to the established Laws of Evidence as well as to every

Every principle of Justice And the Complainant by his Attornies did further say that your Petitioners Thomas Chase and Henry Sewell who were on the Committee at the time the Insurance in question was made must or ought to have known the effect and operation of the Policy which their Company had adopted as a form and they must or ought to have known that every printed Clause thereof unless where controlled by written words clearly expressed was conclusive against them the Printed words of the said Policy then shewed that all risks whether on Block or Cargo Commenced from and immediately following the loading thereof And therefore it became necessary where the parties insurers and assured were desireous of fixing the Commencement of the risk to different periods to control the printed words by some specific clause in writing such as the risk to commence upon a particular day or after the departure of the Vessel from the Port where she lay And the Complainant for further answer to the said second reason did deny that your Petitioners did volunteer or take upon themselves any risk which they were not aware and fully sensible of and for which An ample premium was paid And thereupon the Complainant did Submit how extremely hard his case would have been if your Petitioners Thomas Chase Henry Sewell and Richard Chase who acted as the Agents of the Complainant in effecting the

the Insurance in question should in their capacity of Insurers be allowed to say that any particular clause was inoperative merely because it did speak in favor of the Claim which the Complainant had on them upon and under the say policy —

And for answer to the Third Reason or cause of appeal from the Decree of the said Mayors Court the Complainant by his said Attornies did Deny that he had endeavoured to place a wrong Construction on the said Policy or to draw a Meaning thereout in any respect different from what the words of the said Policy do and literally warranted The Complainant did submit to the said Court of Appeals that the word From in the said Policy contained and upon which your Petitioners had so much emphasis to mark the commencement of the risk was in print and consequently became subject to the explanation and control of the Subsequent printed words fixing the commencement of the Risks under the said Policy whether on Block and Cargo or the loading thereof And the Complainant Did further say that the printed form adopted by the said New Madras Insurance Company differed in that respect materially from the forms which were generally adopted by other Insurers. in as much as all or most other Policies a distinction was made between the goods and the Block the Formulary or printed words fixing the Risk to commence on the Goods and Merchandize from immediately following the loading thereof and upon the said ship

Leaving a blank space wherein the specific period was to be inserted And the Complainant did further Say that if the said Company had adhered to that General form no difference of opinion could have arisen in respect to the Commencement of the risk Because it being clearly ascertained That the Block and not the Cargo was the subject of Insurance there would have been a blank space for the Insertion of the necessary words upon Block and Cargo — Respectively that was if they had adopted that form which was generally used It would have necessarily occurred to the said Parties in filling up the said Policy the necessity of fixing some specific period but as the said New Madras Insurance Company had thought proper to make choice of a printed form wherein the Block and Cargo were blended instead of being made distinct and sperate Insurances it was fair and Just that they would be concluded by their own acts and thereupon the Complainant did submit that so far from the Complainant having given the said Policy a Harsh or unfair construction that it was your Petitioners who had attempted to do so by Rejecting as surplusage that part of their policy which expressly told in favor of the Complainant And the Complainant did further say that the greatest part of the Arguments used and adopted by your Petitioners in their said third Reason were fallacious and unjust particularly in that part where your Petitioners allege "That the words upon which the

Complainant

complainant had taken up the construction as to the commence-
"ment of the Risk were General Words and common to Policies
"which Insure against a General Loss as well on the bargo as
"the Vessel and that the complainant in the event of any loss
"of goods and Merchandizes/ if the said words were supposed
"to have any operation in the Policy/ might by Virtue of the
"said words and the said clause in the Policy as well have
"called upon your Petitioners to make good such loss as on the
"said Ship." The complainant for Answer thereunto did pray
leave to observe that if no written clause had been entered
at the foot of the Policy to Distinguish the subject of Insurance
that the clause in the said Policy contained and by your
Petitioners alluded to would undoubtedly have had the
operation and effect which your Petitioners had alleged
and the Petitioners in such case would have been liable
to pay the loss whether on Block or bargo But in respect
to the Vessel your Petitioners themselves had shewn in the
course of their pleadings as did the Policy that the adventure
was restricted to the Bottom hence the said pretended clause
fixing the commencement of the risk could only have
applied as to the Block as it would also have done upon
the bargo if that had been the specific thing Insured And
the complainant did deny that the written clause at the foot
of the said Policy contained stating that Two per Cent was to be

returned

Returned if the Vessel left Manilla after the Thirtieth of November
did shew that an actual Sailing therefrom was the circumstance
which was to form the commencement of the Risk as was untruly
alleged by your Petitioners For the complainant did say it was
evident from your Petitioners own shewing that they had some other
serious peril or danger in contemplation which they were
apprehensive the vessel might sustain or meet with by sailing
previous to the Thirtieth of November and which had induced
them to agree to return two per Cent in the event of her not
sailing before that period Hence the complainant did Say that
it was evident it was no risk while the vessel lay at Manilla that
your Petitioners were afraid of encountering And therefore that
they would have had no intention at the time of executing the
said Policy of precluding such as were Interested therein from
the advantages which might accrue from all or any of the
printed clauses thereof And the complainant did admit the
further matters stated and set forth in and by the said Reason
to wit," that from the haste in which Insurance Contracts are
"often times drawn and executed and for the other causes in
"the said reason assigned that the Courts of Law as well as
"the Custom of Merchants had allowed a peculiar force and
"operation to the written clauses of a Policy and that such
"written clauses did control and govern the printed parts of
"the same." But the complainant did maintain that so far

as

as those printed or formulary words remained uncontrolled they must have prevailed with equal force both as to construction and evidence of the Intention of the Insurers who ought surely to have been acquainted with the effect and operation of their printed form and therefore it was their own fault if they did not word the written clause so as that all doubts respecting the Intentions of the parties should have been removed and the subject made clear And the Complainant did submit to the said Court of Appeals that if written clauses were allowed to be worded ambiguously and then made subject to the construction which every Interested person might be inclined to give them it would have been the same of continual embarassment and have opened a door to endless litigation the law and Custom of Merchants requires that where as parties Insurer and Assured intended to controll any printed clause by written words that they must have done so in clear and precise terms And with respect to the matters stated in and by the fourth reason or cause of Appeal and wherein your Petitioners had alleged that the Complainant did in a great degree abandon or at least not depend upon the Ideas which he first entertained of the commencement of the risk But did afterwards resort to other grounds and suggestions The Complainant for answer thereunto did say that in his replication it had already been shewn that the

the Complainant had not seen the Policy when the Resolution of the said New Madras Insurance Company not to pay the loss was first communicated to him But understanding that their motives for refusal were founded on the circumstance of the voyage not having commenced the Complainant did admit that in a Letter addressed by him to Messrs. Colvins and Bazzett copy whereof was to your Petitioners said Plea and Answer annexed He did then mention the usage of the Manilla Trade by which it was understood that the homeward voyage commenced the Moment the Ship left Cavitta And the Complainant did say that he was in hopes those Suggestions Shewing what was the usage of the Manilla Trade supported by the Opinion of Two old and very experienced Commanders would have had the effect of inducing the said New Madras Insurance Company to pay the loss without the interferance of Law and when he found their intention was to resist the payment of the claim The Complainant Deemed it expedient before he commenced proceedings at Law to take the best advice on the subject And the Complainant said it did appear in and by the said Letter Copy whereof was annexed to your Petitioners said Plea and Answer and by them prayed and admitted to be received as Evidence that the Complainant had not at that time seen the Policy for the said

Letter

Letter stated. "I cannot take a full Opinion of Council on the
"Case not having a Copy of the Policy." and he concluded the
said Letter by Saying. "I will thank you to desire your
"Correspondent at Madras to send a Copy of the Policy on
"the Block of the Beres." And the Complainant did Say
that having obtained a Copy of the Policy which he had
not seen before he submitted the same with a state of his
Case to the Advocate General in Bengal who gave an opinion
to the following effect. "That he had read the Case and
"a copy of the Policy and was of opinion that the Sum for
"which the Block of the Ship was insured ought to be
"paid by and might be recovered from the underwriters
"that his Opinion was founded upon the express stipulation
"in the Policy stating that the risk should Commence from
"and immediately following the loading of the Ships"
which freed his mind from all doubts on the Question
And the Complainant did further say that in Consequence
of this opinion of the Advocate General and not before he
yielded up the Ideas which he had formed previous to his
seeing the same and pursued the Course by him Suggested
and herein the Complainant did submit that it could
not in any manner militate against his claim that in
the framing of the present action he had followed the opinion
and the Rule prescribed by an able and learned Lawyer rather

than his own Ideas of the Question And the Complainant
did humbly conceive that in an equitable point of view
his claim still D~~e~~erived support from such usage and
that if the homeward bound voyage did Commence
upon the Ship leaving Cavitta which was the port
where the ship lay that the ship in proceeding to the Road
of Manilla for the purpose of completeing her Cargo was
not guilty of a deviation And to that part of your Petitioners
said fourth Reason wherein it was alleged that because
the Complainant did say the "Act of Unmooring constituted
"Breaking Ground and formed an Inspection of the Voyage
"that it was a proof unwillingly drawn from the Complain
"nant that an Actual and bonâfide departure was necess-
"ary to be shewn in order to bring the loss which had
"happened within the Perils of the Policy For that if the
"loading the goods on the said Vessel had been unquestion-
"able Evidence of the Commencement of the Risk whence
"the Necessity of shewing that the risk had begun by the
"Vessel unmooring." The Complainant for answer thereunto
did say that the clause in the said Policy contained fixing
the Commencement of the risk upon the Cargo being loaded
and the circumstance of breaking Ground were distinct
Questions and were to be considered as seperate and distinct

Counts

bounts which the Complainant had a right to depend upon and avail himself of For if it should have been Determined that the said Clause was inoperative as your Petitioners would infer that it was the Complainant did then insist that the vessel having Unmoored and it being admitted by your Petitioners that that was done for the avowed purpose of proceeding on her Distined voyage that the Insurers Risk did thereupon commence upon the said Bottom And the Complainant did further say that although your Petitioners did in their said plea and answer pledge themselves to prove that where a ship was moored the heaving up of one Anchor did not constitute breaking Ground yet having failed in that proof and having consented to the said Protest being received as Evidence wherein it was stated and sworn to that the said vessel did actually break Ground the Complainant did submit to the said Court of Appeals that those Circumstances did shew direlection in your Petitioners of the Sentiments which they appeared to have entertained respecting what Constituted breaking Ground of their acquiescence in the Opinion of the Complainant respecting the same And the Complainant did submit to the said Court of Appeals that as a ship by the Laws of Insurance was allowed Twenty four hours to moor after her arrival at a Port and as she was all that time at the risk of the underwriters

that

That by fair inferrance she aught also to be so after she was unmoored when it was admitted as in the present case that the act was done in order to proceed on the voyage Insured against And to the Fifth Reason or Cause of appeal wherein it was alleged by your Petitioners that even on the Supposition of the risk having commenced on some of the events enumerated by the Complainant that still they were as the Assured Exonerated on the ground "of Mis representation the Agents of the Complainant having "stated in their Original application that there were Twelve "Sepoys on board beside her usual Compliment of Seamen "while the protest shewed that Six of them were on shore "at the time vessel was Surprised." The Complainant for Answer thereunto did say that although the letter from Colvins and Baggett to your Petitioners Chase Sewell and Chase and from them to the said Thomas Chase in his Capacity of Secretary did represent that fact yet it was not stated in the said Letter nor could it be understood by implication that those Sepoys were to be debarred the previledge of going on shore And the Complainant did further say that there was no distinction in the the Laws of Insurance better known then that which existed between a Warranty and Condition which made part of a Policy

and

And a representation of the base the former must have been strictly attended to and the terms literally complied with But a performance in Substance would Satisfy a condition expressed in a representation But in the present base there was no Warranty it was only Representing what might be the state of the ship as to force which she had on the outward bound voyage and it would have seemed that your Petitioners were perfectly satisfied as it did not appear from any thing set forth in the pleadings that they troubled themselves further on the subject And the complainant did further say that if any of the Seprs had deed in the bourse of the voyage the complainant would have lost the benefit of his policy if the Doctrine of your Petitioners was suffered to prevail which Doctrine in its principle was altogether so absured that no attention as the complainant did Submit ought to have been paid thereto -

And for answer to the last Reason or bause of appeal the complainant did deny that there was any negligence manifest on his part which could Demonstrate a disregard to the Safety of the said ship for the complainant had shewn by the protest on oath that the Ordinary watch was kept and that the Seacunny who was in charge of the Deck

Deck was considered as a Petty Officer in the ships in the bountry Service being a station similar to that of a Quarter Master on board of one of his majesties or the Honourable bompanys Ships And the complainant did further Submit that it would open a Door for endless bavils and litigation if pretended neglect should be Supposed to liberate the Insurers In the bourse of a Maritime Adventure it is often impossible to distinguish the Degrees of fault or to draw the line between fault and accident and no instance of loss could occur where there might not be room for dispute and litigation upon the pretence of faulty negligence in the Master or brew and the proof in such cases would be inextricable accordingly mercantile people as the complainant was advised seemed to be agreed in rejecting a defence of that nature against the claim of the Assured And Lastly the complainant did pray to call the attention of the said Court of appeals to the Insurance which was effected in the Office of the Old Madras Insurance bompany upon the said ship beres under circumstances exactly Similar to the present that was to say upon the letter written by your Petitioners Thomas Chase Henry Sewell and Richard Chase

chase to the Secretary of the said Company which Letter also mentioned From Manilla But the said Company having granted their Policy which like the one in Question also stated the Rish whether on Block or Cargo to commence from and immediately following the loading thereof that they did not attempt to do away that Solemn act by a retrospect to pretended Original intentions but chearfully paid the loss thereby adhering to spirit of Insurance which had for its object the Protection and encouragement of Commence - And your Petitioners humbly shew unto your most Excellent Majesty in Council that the complainant did thereupon pray that the said Court of appeals would be pleased to affirm the said Decree of the said Mayors Court and dismiss your Petitioners appeal with Costs —

And your Petitioners Shew that your Petitioners said appeals and the complainants Answer did come on to be heard before the said Court of appeal on the Eighteenth day of July and year aforesaid when the said Court did affirm the said Decree of the said Mayors Court and dismissed your Petitioners appeal with Costs as by a Copy of the said Order hereunto annexed may appear —

By which said Order Decree of the said Court of appeals your Petitioners do conceive themselves much aggrieved and

and do therefore appeal therefrom to your most Excellent Majesty in Council For the following amongst other Reasons —

First — Because the action of the said complainant by his said Attornies is brought for the Indemnification of a certain loss which is stated to have been incurred by the ship Beres while at Anchor at Manilla and which is founded on a Policy of Assurance subscribed by your Petitioners and by which said Policy the said complainant has insisted in the pleadings exhibited on his behalf your Petitioners had undertaken and Assured to bear him harmless of the loss which has occurred For that your Petitioners had covered and insured the sum Declared for in the said Policy complaint on the Block of the said Ship the Beres From Manilla to Calcutta — against the several Perils and adventures in the said Policy Mentioned the rish to commence from and immediately after the loading being completed as by the said Policy so Subscribed by your Petitioners the said complainant did say would appear And for that the said Ship the Beres at the time of the loss happening had her Cargo completely on board and further the said Ship was unmoored and at Single Anchor and ready to proceed to Sea when the said Loss occurred —

But your Petitioners Humbly Shew unto your Most Excellent Majesty in Council That at the time at which the said loss Declared on by

On by the said Complainant grew the risk of your Petitioners under the fair and liberal interpretation of the said Policy had not Commenced or began For your Petitioners in and by the said Policy of Insurance did undertake to indemnify for a Consideration Received Certain and definite losses which might happen to the said Ship the Ceres from and after a known and Discribed event to wit the departure of the said Ship from Manilla and not any loss or losses Antecedent or prior to that event - And as the said Loss encountered by the said ship the Ceres even as alleged by the said Complainant the same having been represented to have happened by an Act of Piracy while the Ship or Vessel lay at Anchor in the Roads of Manilla) was a loss previous to the event which in the Consideration of your Petitioners was to induce their Risk or Adventure your Petitioners humbly Contend under the said Policy or Instrument of Insurance that they are not chargeable therewith or in any sort liable to afford an Indemnity to the said Complainant for the accident sustained - and your Petitioners further Shew unto your Most Excellent Majesty in Council that from the Letter of the Instrument of Insurance it is evident that the Departure of the Ceres from Manilla was the actual and real event which was to lead the Risk undertaken by your Petitioners and

And in the Premisses to the said Insurance Contract it is stated that "Messieurs Chase Sewell and Chase For and on "account of Messrs. Calvins and Bazzett as well in their own "name as for and in the name and Names of all and every "person and persons to whom the same doth may or shall "appertain in part or in all Doth make Assurance and "causeth themselves and them and every of them to be insured "lost or not lost From Manilla to Calcutta - &c. &c." which doth in the apprehension of Your Petitioners clearly mark out and Define what was Extent and the precise object of the Insurance in the Contemplation of the parties thereto at the time of making the Same to wit An intermediate and inclusive Assurance from Port to Port And in a Subsequent written Clause at the foot of the Policy the Sense of the parties to the same is further manifested and Explained by words of the following Tenor. "This Insurance is Declared to be upon the "Stock and Block as Interest may appear we the Assurers "engaging to Refund two per Cent if the Ceres leaves Manilla "after the Thirtieth of November." And the meaning of the parties Assurers and Assured being so Declared in the Out set and at the Conclusion of the Policy as to the nature of the adventure assured and plainly and clearly expressed could not be charged or Rendered void and nugatory by any seperate

Seperate intermediate Clause in the Policy as insisted by the said Complainant But your Petitioners humbly contend that the intended Commencement of their risk is made out therefrom beyond all Controvercy being the bonâ fide Departure of the said ship from Manilla. The Policy informing by the word From an Action or moving out of Port and the written clause at the foot of the Same moreover settling and fixing that event as the beginning of the adventure by the Term leave looking as it were again to the Departure as inferred by the forerunning Paragraph in the Policy. and your Petitioners Humbly Shew unto your Most Excellent Majesty in Council that by a Second Insurance indorsed on the back of the said Policy the Intent of the parties in the first Insurance Contract is particularly specified For by the said Second Insurance it is Declared that the adventure borne by your Petitioners in the former Assurance was the voyage from Manilla to Calcutta without any reference or aspect to precedent Risks. and it is Conditioned in the same if the Ship performs in safety The Original Voyage them and in such case from and a half per Cent of the additional premium to be returned And the said second Insurance not only stiles the voyage from Manilla to Calcutta the Original insured voyage as the voyage Stipulated by the Policy and which But expressly Describes such voyage

Said

Said subsequent Insurance made several Months after the anterior Insurance between the same Parties and touching the same object is as your Petitioners humbly conceive a strong proof of what the parties to the Instrument meant to Insure and understood to have been covered in and upon the same and which were the inclusive Risks that might happen to the Vessel between the place where she was represented to your Petitioners to be and exist at the time of the said Policy being effected and her final Destination the River or Town of Calcutta and such inclusive Risks only —

and your Petitioners further Shew unto your most Excellent Majesty in Council that if there had existed any Doubt from the mere wording of the Policy aforesaid as to the exact adventure undertaken by your Petitioners the same ought to have been obviated or explained by the plain and open Intention of the parties made known to and with each other at the time when the said Contract of Insurance was executed and which was Demonstrated in and by various written Correspondence exchanged between the parties to the Policy and formally admitted as good and sufficient evidence in the progress of the said Action in the said Mayors Court And your Petitioners shew that by a letter from Messrs. Calvins and Bazzett on whose account the Insurance is said to be made Dated Calcutta and addressed to Messieurs Chase Sewell

Sewell and Chase at Madras and bearing date the Eleventh day of November in the year of our Lord One thousand Seven hundred and Ninety three Copy of which was annexed to the Answer of Your Petitioners the Risk sought to be insured is unequiocally lain down in the opening of the letter. "We should be glad "to cover One and a half Lacs of Rupees on the Block and "Cargo of the ship Ceres Captain John Wright from Manilla) "Fifty thousand on the Block and One hundred Thousand "on the Cargo) to this "intending the Town of Calcutta — and the said risk is further marked out by the letters of Messieurs Chase Sewell and Chase of the Twenty seventh day of November and year of our Lord One thousand Seven hundred and ninety three addressed to the Secretary of the New Madras Insurance Company of which your Petitioners Respectively are members and which as far as regards the matter in question is in the following Terms — "Having received Directions to insure a "Considerable amount on the Block and Cargo of the Ceres "From Manilla to Calcutta we request to know on what "Terms Your Committee will cover a part of the risk" and — which said Extracts from the said Letters of the said Calvins and Bazzett and of Messieurs Chase Sewell and Chase are unquestionable and undeniable evedence of what the insured desired and wished to be covered by your Petitioners in the Assurance then contemplated and afterwards effected on their behalf and

And by the letter of the Secretary of the said New Madras Insurance Company Copy whereof is also annexed to the said Answer the definite and particular Risk which your Petitioners did agree and engage to indemnify in case of Loss is explained and set forth in this words "the Committee will cover fifty "Thousand Rupees or Fifteen thousand Three hundred and forty "five Pagodas thirty Eight fanams and thirty Cash on the "Block of the Ceres from Manilla to Calcutta at a premium "of Twelve per Cent P.a P.a" and which said written corrispon- dence which so evidently and clearly ascertained what the minds of the parties were at the Execution of the Contract should and ought to have carried a weight and consideration with the said Mayors Court and Court of Appeals in their several and respective Adjudications in the said Cause and which it doth not appear to have done And more especially as a Policy of Insurance being a mere Contract of Indemnity & in the Eye of the Law regarded only as a Parole agreement [contrary to the general rule obtaining as to other — written obligations] Parole Evidence is ever admitted to explain the same and the words of the Contract are — allowed to be controled or supplied by the intent and spirit of the engagement the usage of Merchants and by judicial Determinations which are the strongest inducia or proofs of the Law Merchant And your Petitioners humbly

contend

contend that if the said Letters had received the Credit and
Authority to which your Petitioners conceive they were Intitled
and that if the Spirity of the Policy made apparent by the said
Correspondence had been Consulted and weighed Deliberately
your Petitioners might have assured themselves of a favourable
Decree For by the said written Communication it was plain
that the Insureds were desirous of covering the Block of the Vess
from Manilla to Calcutta and were not Solicitous from any
thing shewn of Covering any prior or other risk and for
which they offered one certain and given premium and which
said sole Risk they requested through their Agents that your
Petitioners would insure on the tendered and which
premium
Secretary did finally agree to Receive And it would
be as Derogatory to the understanding of your Petitioners as they
Consider it would be Contrary to and inconsistent with Law
that they should be supposed to have solicited Risks which
they had not been Requested to Sustain and for the Indemnifica-
tion of which they had not even been Tendered much less had
they Received any additional premium or Consideration that
from the motive of the Insured in seeking the Insurance and the
intent of the Insurers in agreeing thereto so explained it must
Reasonably be supposed by both the parties to the Policy afterward
executed on such Application and Agreement that the Instrument
spoke their mutual sense and meaning And if it did not
clearly

clearly speak the same that the premitive understanding of
the Parties should have been collected from Collatual sources
did exist and which in the case of your Petitioners they
humbly conceive that they have shewn And your Petitioners
therefore conclude that even had there been a clause in the
said Policy Contradictory of or Repugnant to the Risk understood
that the said Contradictory Clause ought on an equitable and
well known rule of Construction to have been rejected from the
Instrument and the Deed reduced to the Intent of the partis contracting
and your Petitioners further shew unto your most Excellent
Majesty in Council that from many concurrent Decisions of
the Courts of Law and Equity the words and stipulation Comm on
to Policies of Insurance have acquired a known and accepted
meaning and a defined and Regulated Force And your Petitioners
shew that the usage of Law and the Custom of Merchants are
as your Petitioners are advised directly opposite and counter to
the Supposed Commencement of the risk of your Petitioners
under the Terms of the Policy as maintained by the said
Complainant and as argued from the Clause of the Policy
"Beginning the Adventure upon the said Bottom Goods and
"Merchandizes whatsoever from and immediately after the
"loading thereof" For that your Petitioners are advised that
the said clause or the Substance of the same is introduced
into every Policy of Insurance of common use and acceptance
in

In the City of London— And Notwithstanding the same when the Insurance is declared in the loading clause of the Policy to be from One port to another the said Letter clause "Beginning the adventure and so forth." doth not in any Sort extend or enlarge the risk so previously and premarily Declared— And your Petitioners are further advised that the construction of Law is consonant to the said usage and Custom of Merchants and that from a variety of legal decisions the Commencement of the risk of underwriters under particular Terms in policies are Determined and ascertained And your Petitioners Shew unto your most Excellent Majesty in Council That an Insurance is generally made in two ways - From a Port - or At and From a Port - and that an Insurance From a Port whether on Ship or Goods is by the practice of England understood to mean from the time "the Vessel Breaks Ground in Sailing from that Port" and that At and From when applied to a Ship includes period of her stay in that port from the time of her arrival there - And that At and From when applied to Goods means from the time those Goods are put on board the Vessel— And your Petitioners further shew that the most accurate and enlightened writers on the Elements of Insurance uniformly support and favour alike construction of the words "From" and "At" in a Policy as immediately set forth and explained by your Petitioners - by the first Term Defining the Adventure insured to begin from the Departure of the ship and by the latter from her arrival at and Continuance at any given Port or Place And as to the beginning or Commencement of the risk under various expressions or Terms in policies— One of the most correct and versant Authors in the Law of Insurance states a comprehensive base whereon the Common losses chargeable to underwriters are deduced from words incident to General Instruments of Insurance And your Petitioners shew that Millar adopting the exposition of Molloy in respect to the Commencement of the Insurers Risk says That if a ship be insured From the Port of London to Cadiz and before she breaks ground takes fire "and is burent the insurers on such ship shall not answer "for the adventure began not till the ship was gone from "the Port of London - But if the words had been At and From "the Port of London they would have been made liable If such "an Insurance be made from London to Cadiz and the ship "had Broke Ground and afterwards been driven by storm "to the Port of London and there had taken fire the insurers "must have answered for the Breaking Ground was an "Inception of the Voyage" Hence your Petitioners humbly Contend— that as they meant and did insure the ship heres from Manilla to Calcutta and did not intend to cover

cover any Port Risk or Risks - And as the Policy subscribed to by your Petitioners under Interpretation or construction of Law - Described the adventure assured to commence after the departure of the ship - And as the Policy used by your Petitioners is substantially like the Policies in force in London and is by express agreement in the same Declared to have a similar Efficacy and effect And as the clause "Beginning the adventure and "set forth" is a General and common clause in London Policies nothing can be argued from the said latter clause in the Policy as favouring the construction of the complainant which would fix another Event for the commencement of your Petitioners Risk to wit From and immediately following the loading of the Goods and Merchandizes upon the said ship For such construction your Petitioners humbly shew would Defeat the well known definition of Perils to be borne by underwriters under certain established Terms in a Policy — accurately laid down by eminent authorities confirmed by Judicial determinations and understood or supposed to be understood by the whole Mercantile World —

Secondly. Supposing that your Petitioners Risk as insisted by the said complainant was in any way affected by the said Clause in the Policy "Beginning the adventure &c. &c." the said complainant in order to have benefited or advantaged himself thereof was bounden and necessitated to prove that there was an Inception of the Adventure under his construction of the Clause in Question that is that the said ship the Ceres at the time of her being cut from her Anchor in the Roads of Manilla had the whole of her loading on board And your Petitioners Shew unto your most Excellent Majesty in Council that there was not any Evidence exhibited on the behalf of the said complainant full and competent to establish that Material Point which in the mind of the said complainant was to bring on and introduce the Risk of your Petitioners as by him contended — And your Petitioners Shew that the only supposed proof adduced by the said complainant of the Ceres having had her full entire and intended Cargo on board at the time of her being lost by the act of Piracy as charged by the said Bill of complaint was afforded through the means of a Protest made by the said complainant and several his Officers at Calcutta more than five months after the loss of the said ship And although the said Protest and the matters therein contained were by admission of parties allowed to be received as Evidence and so to be read at the hearing of the cause in the said Mayors Court yet your Petitioners Humbly state that there was nothing therein contained of matter of fact or Evidence to shew that the loading of the said ship such as was intended by the said complainant to be laden upon her was fairly and bonâ fide on board on the night of the said Thirteth day of January when the loss is said

Said to have happened — And so much of the said protest as apparently aims to Shew the circumstance of the loading having been entirely shipped at the time of the loss is in the following Words "And the said John Wright [to wit the said complainant] Declared that on the thirtieth day of January last the said Ship (the Ceres) having completely taken on board her returning Cargo as by the Invoices thereof annexed and her having Regularly cleared out the ship from the said Port by having obtained the usual Port clearances from the proper Officers of the Spanish Government &c. &c. —

"And the said John Wright for himself Declared that the proper writings herto annexed are the real and true Cargo which was on board the ship Ceres at the time she was boarded and Seized And that the signature Pierre Street to them Respectively set are of the proper hand writing of the said Pierre Street" — And your Petitioners humbly Shew if the Declaration of the Party complainant contrary to the plain Rule in such cases can be Received as Evidence On the said Admission of the parties in the Original suit in the said Mayors Court yet in the nature of the thing it can be entitled to better credit on behalf and on the contrary as it goes to a fact which a variety of indisputable unbiased Testimony could from the appearance of circumstances otherwise make out if such fact had really existed the

The said Declaration must be received as your Petitioners are advised under considerable Doubt and Suspicion But if the Declaration of the complainant were undeniable and impartial Evidence the same could Advance only so far to the Establishment of the fact intended to be proved as such matters of fact contained therein and given in Evidence would go if they had been spoken to by other fit and competent witnesses And your Petitioners humbly contend that the said Declaration so taken and which is the only way wherein as your Petitioners are advised it can be taken does not tend to prove that the loading of the Ceres was on board in the night of the said Thirtieth day of January which the complainant meant to establish thereby For the said Declaration states "the said ship having — "completely taken on board her returning Cargo as by "the Invoices thereof annexed" And which periphratical and circuitous mode of speaking and mere reference to a correlative object arguing and Reasoning that the circumstance meant to be established must by inference have existed — is not *in modo* the direct and positive Testimony which the Law Requires for the proof of any given thing And in point of Substance as to the support and establishment of a Desired matter of fact is radically Defective For the said words in any Sense of them only.

Shew

Shew." that the returning Cargo as by the Invoices thereof annexed "was Completely taken on board." And Admitting the said cargo According to the Invoices was on board it would not be any proof further than that the Cargo on board was Corrispondent to and with such Invoices — It would not shew what the Complainant was bounden to prove that the whole entire Cargo of the Ceres to be shipped at Manilla was actually on board when the ship was lost And not having shewn this the loss which has happened cannot be included in and amongst the Perils Insured by the Policy in Question —

And your Petitioners further shew unto your most Excellent Majesty in Council that the said Evidence in regard to the Cargo of the Ceres having been shipped on board her at the time of the said loss is not in any wise Aided or Assisted by the Additional Declaration of the Complainant "that the ship was cleared out from "the said Port — He the Complainant having Obtained the "usual Port Clearances from the proper Officers of the "Spanish Government." For your Petitioners shew that every Court of Law and Equity Doth require and Demand in all Cases for the Satisfaction of their own Consciences the production of the best Evidence that the thing is capable of And the Port Clearances themselves previously Authenticated were the best evidence that could have been procured to Substantiate the fact of the ship having been cleared out And your Petitioners shew that it was the more necessary that the same should have been exhibited and proven here as the said Complainant in his Bill of Complaint had alleged them to be in his possession — And your Petitioners further shew that even had the said Port Clearances been proven in legal form that they would not have afforded any proof that the loading was complete — And at best would have been but a matter of Inducement to a Supposition of that Circumstance from the ship being in a State of preparation to sail But the eagerness and forwardness of the said Complainant in this and other Instances to give Testimony in his own behalf would in a case of Difficulty and Difficiency of proof be a Circumstance rather of distrust than a Reason for Rational behalf — But where other Manifest good and lawful evidence might be obtained at Hand as the said Port clearances and the Deposition of the Officers of the Ceres to such matters of which they were Conversant would be the very nonproduction of such Testimony would infer a Suppression on the part of the Complainant of such Evidence for sinister or private purposes or would argue if they were produced that some counter Circumstances would come out on Examination or Cross Examination which might work more harm than the Testimony thereof if produced could effect an Advantage to

him

him But your Petitioners Humbly Contend that the Evidence of the Complainant himself Directed as it should seem to the maintenance of the Case insisted on doth not establish that event which was (in his Contemplation) as he says to induce your Petitioners risk namely- the Complete loading of the Cargo on board the Ceres under the words From and immediately following the loading thereof and therefore on his own data the said Complainant has failed to bring the loss which has happened within the Pale and compass of the Policy -

Thirdly. Because the Unmooring of the ship being one of the Events which the Complainant has laid down as introductory of the risk of your Petitioners (although the same should appear to have been unmoored) could not as your Petitioners are advised either under the Letter of the Policy or the understanding of the Parties - Insurers or Insured be reasonably supposed an Issue whence the Commencement of your Petitioners adventure was to proceed unless in the Term Unmooring the Complainant recognized and understood an actual Departure And your Petitioners humbly shew that the said Complainant evenced his meaning of unmooring by indiscriminately and indifferently using it in his said Protest and the pleadings exhibited in his behalf with the Term "Breaking Ground" as if it were of equal import the same Signification and import But your Petitioners humbly state That "Unmooring" and "Breaking Ground" in the Language of Merchants

Merchants and in Construction of Law are of opposite and Distinct Use the one being a necessary provision precedent to Sailing and the other Betokening the Act of Sailing or Departure And as it is more particularly Described by your Petitioners in their first Cause or Reason of Appeal And your Petitioners most humbly Shew to your most Excellent Majesty in Council that the Reason assigned by the said Complainant that the Ship the Ceres when unmoored was at the immediate Hazard of your Petitioners is futile unfounded namely That in such situation being exposed to more Peril than when she had both Anchors down she ought from that Instant to be at your Petitioners charge For your Petitioners shew if the underwriters Risk in a Policy similar to your Petitioners might be induced or brought on by the lifting or heaving up an Anchor at the will of the Insured your Petitioners might be exposed to all the usual Hazards of a Port risk without a premium for the same by the mere act of the Assured while the Object of the Insurance would be in a more perilous plight in riding at Single Anchor than ships usually are in Port when they are at the stipulated Hazard of the Insurers And your Petitioners humbly shew that in the case of the Ceres the said Ship was as appears by the Protest very unnecessarily and wantonly put into a State of Danger for it is mentioned in the said Protest "That she was

lying

Lying at Single Anchor with the Sails all bent for the purpose
of proceeding (the winds and weather permitting) from the
Roads of Manilla to Bengal on the following day." And your
Petitioners humbly Shew That if the unmooring was to constitute
the Commencement of your Petitioners Risk, the said
ship not having been insured against Port Risks the said
Ship ought not to have been unmoored but at the Instant
previous to Departure - But the Departure of the Beres as
explained by the said Protest depended on an event which
might or might not have happened for several days Weeks
or Months to come - namely fair Wind and weather And thus
your Petitioners would in such the Complainants consideration
be rendered liable to loss for such Season or Period which
was never contemplated nor intended by them And for the
undertaking of which No premium had been paid or received
And your Petitioners humbly shew if such a construction
could obtain that there would be no necessity at any time
of the Insertion of the word "at" in Policies - and which is
always introduced as your Petitioners are advised when
a Port Risk is meditated since without which by the
partial Act of the Insured the Adventure of the Insurers
might at any time and under any circumstances be brought
on But your petitioners humbly shew unto your most
Excellent Majest in Council that by endeavouring to state

the risk of your Petitioners from the Act of unmooring in the
Complainants sense of the Term the Complainant has manifested
that he understood not the risk to commence but from the
Departure of the ship and which was the instant where from
your Petitioners did ever consider that their adventure took its
Birth For had it rested on the loading of the ship as first
contended by the Complainant the unmooring of the
vessel did in no sort serve to shew the Inception of the risk
But your Petitioners have endeavoured and they humbly
hope they have made out that Breaking Ground and
Sailing are Synonimous Terms And it is in proof that
the Beres had not sailed at the time when the loss happened
For the Protest Describes her as in a certain posture propo-
sing to proceed and which Demonstratively shews that she
had not yet sailed - And moreover at the Period of the
loss two of the Officers of the Spanish Government were
on board to prevent the loading of any Contraband Goods
which would if it had not been otherwise proven have inferred
by a necessary implication that the ship had not began her
voyage And therefore as the adventure of your Petitioners
was to Commence from the time of the Beres sailing and
not previously And as the Beres was out off prior to that
Event Your Petitioners under the clear understanding of the
Contract are not responsible to the Complainant for the loss endured -

And

and your Petitioners further most Humbly Shew unto your Most Excellent Majesty in Council that the various suggestions of the said Complainant as to the supposed Inception of your Petitioners adventure are so many involuntary Proofs that he the Complainant would be indemnified whether the Policy did or did not bear him out For the said Complainant first set up that the Departure From Cavitta was the beginning of the voyage from Manilla And next that the Ship in unmooring felt to your Petitioners Change — And not content with these Expositions of the Policy the Complainant lastly relied that from and after the loading of the ship your Petitioners Responsibility indubitably began And your Petitioners most humbly Contend that the palpable and violent struggle on the part of the said Complainant to include the loss which has accrued within the Peril of the Policy leaves a fair and Simple Conclusion that in the plain Ouvert meaning and spirit of the Policy the loss of the Beres under the circumstances attending the same could never be considered as embraced thereby —

Fourthly — Because if the adventure of your Petitioners was induced by either or any of the Events Described by the said Complainant the same Commenced under other Circumstances than expected or Calculated by your Petitioners and as was and is more particularly set forth and shewn in the fifth Reason of your Petitioners Petition and appeal to the said Court of Appeals at Madras and as is herein before recited And your Petitioners most humbly Shew to your most Excellent Majesty in Council that in the written application for Insurance from Messieurs Colvins and Bazzett and repeated in the further application of Messieurs Chase Sewell and Chase to the Secretary of the New Madras Insurance Company and to which said Letters your Petitioners have herein before most humbly referred it was Represented to your Petitioners that the Beres besides her Compliment of Seamen had twelve Seapoys on board and which said Representation your Petitioners humbly contend was made by the Assured to Diminish your Petitioners apparent risk and to impress them with extraordinary Ideas of the Safety of the Vessel under the protection of such additional force and your Petitioners humbly state that they Accordingly Calculated and estimated their adventure on such the Complainants Representation And your Petitioners humbly shew that at the time when the said loss happened to the Beres and as appears by the said protest Eight of the Seapoys so represented to belong to the said ship were from and out of the said Vessel and were on shore at Manilla together with the Captain Commander and reputed owner of the said Vessel his third Officer and a part of the Crew And your Petitioners therefore humbly Contend that if your Petitioners Adventure should be

Considered

considered to have began in the absence of such Eight Sepoys from the ship that the same did commence in fraud as it regards your Petitioners For your Petitioners humbly state that the risk in such case that would be actually ran by your Petitioners would be greater than the risk undertaken and in respect to the said Sepoys would not be the same Risk And your Petitioners further say that the representation of the said Complainant being of Materiality and turning out in the issue false the supposed Insurance Contract between your Petitioners and the said Complainant is to every legal intent and purpose null and void - And your Petitioners humbly Contend that it were but equitable and reasonable to conclude that if the said Sepoys had been on board the Ceres on the said Thirtieth day of January that the ship or Vessel might have been preserved But whether or no the absence of the said Sepoys did altogether conduce to the Loss of the Ceres would be a question difficult perhaps of proof and certainly in the case of your Petitioners unnecessary to be investigated For the Risk ran by your Petitioners not having been the same which they had engaged themselves to run Your Petitioners with Deference insist that they are wholly Discharged and exempt of every presumed undertaking in the said Policy And Nothing which respects Insurances your Petitioners are advised is more absolutely established than this Maxim that if a variation be made from

from the exact Representation and Supposing the thing in which the variation was made would imply no greater Risk than the one insured and Supposing no provable loss happened in respect to the thing varied but in regard to some other foreign matter And although the underWriter should not appear to be a loser even by the Variation yet it is a fixed and invariable Rule that the Assure becomes free and that the Policy is vacated - And on the principle already setforth by your Petitioners - "That the risk run must not only be no greater than that understood but it must be the same" -

And your Petitioners most Humbly Shew unto your most Excellent Majesty in Council that besides the failure of the said Complainant in not complying literally and substantially with the said Representation made to your Petitioners at the time of making the said Policy of Insurance in regard to the said Sepoys there was exhibited on the part of the Assured and at the time of the Loss such a gross positive and palpable Disregard and Negligence as to any and every thing which concerned the Immediate Safety of the Vessel as would on every Principle of Justice and Equity vitiate every agreement or Contract which might have Originally existed between the said Complainant and your Petitioners - For it appears by the said Protest not only that the Complainant the

(the Alleged owner of the beres) was on shore at Manilla at the time of the Loss happening – and when as the said Instrument states "the ship was ready for going to sea at a Minutes warning" But that Eight Sepoys (the Represented and the anticipated Safeguard and Protection of the said ship) the Third Officer and part of the Crew were also abstracted from the Vessel and occasioned on Some foreign employment on Land – And that the Ship herself insured by your Petitioners and at the Risk (as it is said) and Peril of your Petitioners – in a foreign Harbour where surprizals are ever to be expected left and intrusted to the sole Guardianship of a Single Drawsy seacunny or native Seaman while the European Officer of the ship and such crew as the beres might have were sleeping between the Decks careless and improvident of the Security of the ship either from Accidents within or from Assail or Attack without And your Petitioners most humbly Shew that it appears also from the said Protest that the Seacunny the Solitary Guard of the vessel and who is equal only in importance and consideration on board to a Quarter Master was left not as a temporary substitute in the Absence of a Principal Officer of the Ship But a Stationary and fixed Sentinel Watch Judge and Master of all which might affect the will being or Injury of the vessel The said Protest Relating "That henry McCleish and Robert Weir (intending the Chief and Second Officers of the beres) having set the Ordinary Watch of a Seacunny on Deck they about Seno'clock at Night retired to their respective Cabins the said Henry M.Cleish having Directed the Seacunny to call him at Three Clock in the Morning so that for five Successive Hours the ship as it is Evident was to be confided to the Custody of an Individual who in the Case of approaching Danger was from the Nature of the thing to quit his station leave the Deck without protection and seek for any Assistance that he might be able to find of the Dosing Officers and such of the ships company as were left on Board and asleep beneath the Hatches

And your Petitioners Most Humbly Shew to your Most Excellent Majesty in Council That in all Insurance Contracts there is an Implied undertaking on the part of the Assured that he will use every proper and Suitable Care and Diligence towards the Preservation of the Object Insured And where there is any Restriction of such Necessarily implied Assumption on the part of the Insured your Petitioners need not affirm that the same is such a breach of Contract on his part as doth absolve the Insurer from any Conditions which he might have entered into in the Original Agreement And your Petitioners state that in the Case of the Complainant as immediately noticed by your Petitioners there was a breach of Covenant manifest and Notorious deducible from

from his own Evidence on the face of the said Protest And
the said Complainant would be allowed to seek Indemnifi-
cation from your Petitioners by vertue and force of the Bill
on Account of the Loss sustained and in the manner and
as charged by him he would be intitled to Indemnity for
an Injury self brought on and Suffered to Draw advantage
which the Law abhors from his own wrong doing — And
therefore your Petitioners humbly Insist that by such non-
compliance with the Representation made to your Petitioners
in respect to the said Sepoys — And from such faulty neglect
or Barratry and non performance of the implied undertakings
of and by the said Complainant to Exhibit a due and sufficient
caution to the Safety of the Ship That they your Petitioners are
liberated and absolved from all and every the conditions
Stipulated on their parts in and upon the said Policy on
which the Complainant has instituted his said Action

Fifthly. Because it doth not appear in and upon the Policy upon
which the Complainant hath rested his Action And which as
your Petitioners are advised (under the Act of the Twenty
Eighth year of your Majestys Reign) it ought to have
Done that the Policy in Question was made or effected for
and on account of the said Complainants or of any other
Person or Persons having Interest in the Ship But your
Petitioners most Humbly state that on the said Policy it is
Declared that an Insurance is thereon made for and on Account of
Messieurs Colvins and Bazzett and not with any reference express
or implied to any Interest of the said John Wright and it is
no where in proof nor has it been attempted to be proven that
the said Messieurs Colvins and Bazzett did make the Assurance
upon the said Policy for and on the behalf of the said Complainant
and therefore it did not appear to the said Mayors Court of
Madras or the said Court of Appeals that the said Complai-
nant in Consideration of the said Policy had any right of
action against your Petitioners - and as no Right of action was
made known by the said Complainant it could not reasonably
be presumed And therefore Your Petitioners most humbly
contend as there was no internal Evidence
external proof exhibited to Demonstrate that the said Complainant
had any Interest or Title in the Policy or to any indemnity thereby
Secured — that the said Decrees and Orders of the said Mayors
Court and Court of Appeals in the Premises are erroneous and
should and ought not to affect or in any wise operate against
Your Petitioners

Sixthly. Because in every Contract of Insurance it is necessary
that the Insured shall have a positive and Direct Interest and
Right in the subject of Assurance or otherwise that the Policy
ab initio will be void And your Petitioners further Most
humbly Shew that in the Policy in Question the Insurance is
Rated

Rated and valued and Declared to be on the Stock and Block as Interest shall appear - And your Petitioners humbly observe that although the same was valued yet from the nature of the Action as well as from the Stipulation in writing at the foot of the Policy it was absolutely incumbent on the said Complainant to shew some Evidence of Interest in the Stock and Block on which the said Insurance was so Declared But your Petitioners most Humbly state that no proof of Interest whatever was adduced to the said Mayors Court or Court of Appeals to shew that the said Complainant had any Right Title or Interest in the thing Insured That not any Ships Papers Bill of Sale Deed of Conveyance or assignment or any other written Document were produced to prove a circumstances which was the Gest of the Complainants Action Nor were there any living Witnesses or Witnesses Examined Thereto

And your Petitioners Most Humbly Shew unto your most Excellent Majesty in Council that there was not only a Difficency of legal Evidence as to the fact of Interest in the said ship the Ceres being in the Complainant But that there was nothing shewn from which Such fact could in any Reasonable or Probable manner be inferred or argued and that the only allegation which could in the most distant way insinuate that the property of the Ceres was at any time in the Complainant was the Protest of the said Complainant and his said Officers and that on the mere assertion of the Complainant himself - and in the following Terms "And first "the said John Wright for himself said that he was Late "Commander and Sole owner of the said Ship Ceres" - And your Petitioners Humbly Contend that the said allegation even were it true does not in any way establish what the Complainant was baunden to Substantiate Namely that he was owner of the Ceres at the time of the Insurance being made and at the period when the Loss happened For your Petitioners humbly observe that he might have been late owner of the Ceres and yet not Owner at either of these two Epochs at which he was obliged by Law to Shew that an absolute Ownership was vested in him in Order to be Intitled by Law to Indemnity under the said Policy and therefore your Petitioners Most Humbly Contend as the said Complainant hath not made out any Interest in the Subject of Insurance that he has failed to prove that which could alone have given him a Right of Recovery of the Amount Insured by the Policy and therefore that the said Decrees and orders of the said Mayors Court and Court of Appeals which pronounce the said Complainant as intitled to recover the said Amount are inconsistent with Law and Contrary and repugnant to Evidence and therefore ought

ought to be Reversed —

And Lastly — Because That an Interest is allowed and computed under the said Orders and Decrees of the said Mayors Court and the said Court of Appeals on the Same Insured from the Thirtieth Day of January One thousand Seven Hundred and Ninety four when the Loss of the Beres is said to have happened to the time of the Date of the said Decrees — whereas upon the Face of the Policy if the Said Complainant had a right or Title to any thing thereunder it is conditioned that the Sum insured was not payable by yaur Petitioners until Six Months after notice And as no Notice was proved to have been given previous to the filing of the complainants Bill such Notice could only be presumed to have been communicated by the filing thereof and therefore an Interest should only have been computed or reckoned from and after Six Months following the date when the said Bill was Exhibited in the said Mayors Court —

For all which Reasons and such others as may be offered at the Hearing of this yaur Petitioners Petition of Appeal yaur Petitioners most humbly pray that yaur most Excellent Majesty in Council will vouchsafe to reverse the said Orders and decree of the said Mayors Court and Court of Appeals and that yaur Most Excellent Majesty in Council will further be pleased to grant unto yaur Petitioners such further and other relief in the premises as in the royal wisdom of yaur most excellent Majesty in Council shall seem Meet —

(Signed) Emanuel Samuel
Solicitor for Appellant Extract

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 20th day of October Anno Domini 1795 —

Present

Benjamin Roebuck Esqr. Mayor
William Webb Andrew Ross and
Richard Chase Aldermen

Mr. Alderman Chase being interested goes off the Bench —

John Wright by his Attornies Robert Woolf Daniel Crawford & Forbes
Evers

Thos. Chase Benjamin Sulivan & Others

The Attorney for the complainant Delivers into Court the Original Declaration and Protest of John Wright — Henry Mc. Lush Robert Weir & Joachim De La Cruz Sworn to before Sir William Dunken One of the Justice of the Supreme Court of Calcutta — And it is agreed to by and between the parties complainant and Defendants that the Matters in the said protest stated shall be read and Received as good Evidence on the part of the complainant & Defendants any thing Set forth in the pleadings to the Contrary in any wise Notwithstanding And it is further Agreed to by and between the Parties complainant and Defendant that the Letter Annexed to the Answer purporting to be a Letter from Messrs. Chase Sewell and Chase to Thomas Chapt Secretary to the New Madras Insurance Company shall also be read as Evidence in as much as if the hand

Writing

Writing had been proved and in like manner the Letter from Thomas Chase to Chase Sewell and Chase also the Exhibit purporting to be an Extract of a Letter from Messrs. Colvins and Bazzett together with the letter Signed John Wright Ordered Accordingly —

A True Extract

Extract

Extracts from the Minutes of a Court Held at the Town Hall on Tuesday the 15th. day of March Anno Domini 1796 —

Present

James Daly Esqr. Mayor
James Ball William Webb
Andrew Ross John Mitford
Alexr. Cockburn & Jos: Greenhull
Aldermen

John Wright by his Attorneys Robert Woolf Daniel Crawford and Robert Forbes
Agts

Benjamin Sulivan Richd. Chase Thomas Chase and Henry Sewell —

Bill with Copies of three Exhibits annexed Read
Plea & Answer with copies of four Exhibits annexed Read
Replication Read —
Rejoinder Read —
Interrogatories on the part of the Compr.ts — with an Exhibit Annexed Read —
One Deposition taken thereto Read
Protest Invoice and Bills of Lading Read
Policy of Insurance Read —
Extract of the 20th. October 1795 Read —

The Court being of Opinion that the following Lines introduced in the Replication commencing with the Words "And this Repliant saith that in consequence of the above application —

"Application the said Old Madras Insurance Company took a
"Risk of Ten thousand Pagodas on Goods and Merchandize on the
"said Ship Ceres at Eleven per Cent and this Repliant Saith
"that although the said Letter, his Verbatim the same as that
"which was addressed to the said Thomas Chase in his Capacity
"of Secretary yet the said Old Madras Insurance Company
"did not by any Written Clause Attempt to Controul the
"Words of their printed Policy But Executed it as it was and
"thereby Subjected themselves to all the perils which the
"printed words expressed And thes Repliant further Saith
"that upon the same pretence of intention which is set up
"by the said New Madras Insurance Company That is to say
"on the Orginal application the said Old Madras Insurance
"Company might have prayed the said Policy to be Rectified
"and themselves exonerated But a different Conduct —
"Governed them they did not Cavil upon pretended Original
"intentions and set such Intention up in Opposition to their own
"immediate Acts But chearfully paid the loss thereby adhering to the
"Spirit of Insurance which has for its objects the protection and en-
"couragement of Commerce" — as also the Opinion of the Advocate general
at Bengal are irrelevant to the Cause it is Ordered that the same be
expunged there from with Costs — Mr. Alderman Webb dessents
to the first part being of Opinion that it is Material to the matter
in question and ought therefore to form part of the Proceedings —

A true Extract

(Sig.) George Taylor Reg.r

Court of Appeals
at
Madraspatnam

Monday the 18.th day of July
Anno Domini 1796.

Between Benjamin Sulivan
William Harcourt Torriano Richard
Chase, Thomas Chase, Henry Sewell
Vencata Narrain Ravanapah
Chitty and Moodoo Moodilly
Appellants and John Wright of
Calcutta Manner by his attornies
Robert Woolf Daniel Crawford and
Robert Forbes of Madras Merchants
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 and Appeal And Answer and
the Several Exhibits of the Honble the Mayors Court together
with the Decree of the said Court given in this Cause on
Tuesday the 15.th day of March Anno Domini 1796.
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

and doth Accordingly Order and Decree
And Decree that the said Decree of the Ramble the
Mayors Court do Stand Affirmed And that the Appel-
lants Petition be hence Dismissed with Costs

Ecur (Signed) J Webbe Clk

To the Kings Most Excellent Majesty in Council

Between John Wright of
Calcutta mariner by his Attornies
Robert Wolf, Daniel Crawford
and Robert Forbes of Madras
Merchants Complainants and
Benjamin Sulivan William Harcourt
Toriano Richard Chase, Thomas
Chase Thomas Parry
William Dring Henry Dewell,
Venceta Narrain Ravanapah
Chitty and Moodoo Moodelly
of Madras Inhabitants Defendants

The Answer of John Wright the Above Named Complainant to the Petition and appeal of Benjamin Sulivan Richard Chase Thomas Chase and Henry Dewell four of the Above named Defendants

This Respondent admits that he
did on or about the nineteenth day of March in the year of our Lord one
thousand Seven hundred and ninety five by his
attornies Robert Wolf Daniel Crawford and Robert
Forbes Exhibit and file his Bill of Complaint in the
Honble

Filed in my Office
the 17th August 1796
J Webbe Clk

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To

Honble the Mayor's Court at Madraspatnam against the said
Appellants - and the said Marcourt Lorriano Thomas Parry
William Doring Vencata Narrain, Ravanapah Chitty
and Moodoo Moodelly of Madras Inhabitants as the
members composing the new Madras Insurance
Company and did therein and thereby state and
set forth that on or about the twenty eighth day of June
which was in the year of our Lord One thousand Seven
hundred and ninety three This Respondent being
then Sole Owner and Commander of the Ship Ceres, Lift
Kingdom of Bengal in order to proceed on a Voyage to Manilla in the
Calcutta in the Island of Luconia, That previous to
his leaving the said Port he directed his attornies
Messrs Colvins and Bazzett of the same place
merchants, to effect, to effect an Insurance on the
body of the said Ship Ceres on her returning Voyage.
In consequence whereof the said Colvins and Bazzett
caused an application to be made to the new Madras
Insurance Company by means of their Agents Chase
Sewell and Chase, and that in consideration of
a premium of Twelve per Cent, Thomas Chase John
Hamilton

Hamilton, Hugh Jones, and Henry Sewell then
members of the said new Madras Insurance
Company, and the immediate acting Committee
thereof did as their representatives on the thirtieth day
of December in the said year Sign and duly
executed the Policy of Insurance upon which the
present Action is founded Copy whereof is annexed
to the Bill of Complaint whereby they undertook
to cover and Insure the valued Sum of Fifty thousand
Sicca Rupees upon the Block of the said Ship Ceres
from Manilla to Calcutta against the usual
perils and adventures in the said Policy mentioned
the risk being stipulation in and by the said Policy
to commence from and immediately after the loading
of the Cargo and this Respondent for further Answer
to the said Petition and Appeal admits that he
did in his said Bill further state that on the thirtieth
day of January Which was in the year of our Lord
one thousand Seven hundred and ninety four the
said Ship Ceres having then completely taken on
board her returning Cargo Water and Stores the Bills

of

of Lading and Port Clearances being also obtained,
the Ship unmoored and every thing in a State of
readiness to put to Sea. That about ten at night
on the same evening, the said Ship Ceres was suddenly
Surprized and boarded by a number of armed men
consisting principally of french Prisoners and
Spanish Deserters, who carried her to Sea and
afterwards to the Island of Mauritius notwithstan-
ding every possible exertion was made by this
Respondent to prevent it.

And this Respondent doth admit that by reason
of the premisses he did by his said attornies charge
the said Appellant to stand indebted to this
Respondent in the full and just Sum of Seventeen
thousand four hundred and five Pagodas one
fanam and Seventy Six Cash Current money of
Madras for the recovery whereof as is Stated by the
Appellants he did file and exhibit his Bill of
Complaint in the said Honble Mayors Court.

And this Respondent by his said attornies for
further

further Answer to the said Petition and Appeal
admits that the Appellants being served with
process to appear to and Answer this Respondents
Bill of Complaint did Accordingly Appear, and
did on or about the Nineteenth day of may
Exhibit and file two pleas and an Answer
The first plea being founded on the following feeble
and very insufficient grounds to wit That in the
original letter from Colvins and Bazett, to
Thomas Chase, Henry Sewell and Richard
Chase directing the Insurance in question
and in the immediate application from them
to Thomas Chase in his capacity of Secretary
it had been represented that the Ceres besides her compliment
of Seamen had a party of Twelve Seapoys, and
that it Appeared from the Protest, that Six of
these Seapoys were on shore at the time the Ship
was Surprised Which they considered as a breach
of representation that exonerated them and
therefore pleaded the same in bar. That as cause
for a Second Plea they did allege that according

to

to the usage and customs established in the Merchants Service, and by the underwriters understood and relied on to be strictly observed. That a Good and Sufficient Watch should be kept on board every Ship to guard against any Sudden Surprise of pirates privateers and men of war as well as various other Accidents to which a Ship was liable. The observance of which usage the said Defendants did aver was altogether neglected by this Respondent as there was no one Seaman upon deck at the time She was Surprised and thereupon the said Appellants did plead such neglect in bar to the said Bill and the relief thereby sought, and demanded the Judgment of the said Mayors Court, whether they should make any further or other Answer thereto. And this Respondent by his said attornies further saith that the said Appellants did in their said Answer admit the execution of the said Policy and did further admit that it might be true for ought they knew to the contrary, that certain privates might have

have Surprised and taken possession of the said Ship the Ceres, and that the said pirates might have carried the said Ship the Ceres from Manmella where she then lay at Anchor to the Mauritius and they did further admit that the Act of Surprisal and piracy was one of the perils covered by the said Policy of Insurance, but the said Appellants denied that thereby or by reason of the premisses they were in any wise liable to pay the amount by them covered by the said Policy of Insurance: For the said Appellants did contend that the printed words in the Policy of Insurance upon which this Respondent founded his claim on the Appellants that is to say "Beginning the adventures upon "the said Bottom, Goods and merchandizes "whatsoever from and immediately following "the loading thereof on board the said Ship" were totally inapplicable to the matter in question which stood upon its own Ground and was taken entirely out of the said printed clause as appeared by the Declaration in writing at the foot

foot of the said Policy, and the said Appellants did in their said Answer further alledge that they were advised that it was frequently necessary to insert written clauses in printed Policis of Insurance in order to expres the meaning of the parties to the Contract, where the printed forms were not sufficiently explanatory and that such written clause and conditions inserted were to be considered as the real contract and were suffered to controul the printed words in policies of Insurance, and the said Appellants thereupon alledged that the printed clause in the said Policy of Insurance as relied on by this Respondent was indefinite as to the thing thereby meant to be Insured and did not expres the intention of the parties tatering the said Clause together, And it could not as the Appellants said they were advised be severed, And the said Appellants did further allege that as their intentions respecting the said Insurance in question could not be expresed by the printed words

words that it became necessary to make a Special clause for the specific purpose, and that the same was Accordingly made in writing at the foot of the said Policy which written clause Shewed the risk that was in Contemplation when the said Policy was effected, and that an actual bonafide departure from Manilla was meant and understood by the parties in order to commence the risk and that until such actual and bonafide sailing should have taken place the said risk was not meant or intended to have commencement, And therefore that the Attempt of this Respondent to take an Advantage of the said printed clause, and to Assert from thence that the said risk commenced from and immediatly following the loading of the said Ship the Ceres, was as the said Appellants alledged unfair and unjust And this Respondent admits that the said Appellants did further allege in their said Answer that it Appeared by this Respondents own Shewing that the Ship the Ceres had not left the Port of Manilla nor as the Appellants were

advised

advised had she even broke Ground: for the said Appellants did say that they doubted not of proving to the said mayors Court that in the case where a Ship was moored the heaving up of one Anchor was not breaking Ground, for that they were advised that breaking Ground was moving from a situation in which a Ship had been some time moored or riding at Anchor to some other tho' the difference as to distance Should be very trifling But that even if it were true that the heaving up of one Anchor was breaking Ground that would not alter the case in favor of this Respondent as it would not bring it within the meaning and intention of the said Policy of Insurance and of the parties at the time of executing the same. And the said Appellants further said that they had ever understood and believed that all questions regarding Insurances Submitted to the decision of a Court of Judicature Should be stated candidly and fairly and that there Should not be any

any concealment as to the intention of the parties at the time of executing the Policy that was when such Policy might Admit of any doubt or where any doubt was Stated thereon because in Such case it was the intentions of the parties at the time that must explain Such doubts. and the Appellants thereupon alledged that they doubted not of manifesting to the said mayors Court that this Respondent had actually not only concealed his Knowledge but his own conviction of the intentions of the parties relative to the Policy in question, with the view of injuring the Appellants and had endeavoured with the same view to take an advantage of the printed clause in the said Policy which so far from conceiving it to be expressive of the intention of the parties at the time of the execution of the said Policy this Respondent never attempted to bring in the course of Several of his former applications to the Appellants but rested his claim upon breaking Ground and other Circumstance relative to the

Port

Port of Manmilla. And in explanation thereof the said Appellants did say that on the twelfth day of August One thousand Seven hundred And ninety five Messrs. Chase Sewell and Chase as the Agents of the said Messieurs Colvins and Bazzett did by letter addressed to the Secretary to the Insurance Committee of the Appellants demand payment of the Amount covered by them on the Block of the said Ship the Ceres and at the same time forwarded an Extract of a letter from the said Messieurs Colvins and Bazzett and the Protest of this Respondent but the same being unsatisfactory the demand Stating as their reason for so doing that it did not Appear by the said Protest that the Voyage was commenced as the unmooring and taking up one Anchor only did not constitute breaking Ground And this Respondent by his attornies further saith that many other matters were by the said Appellant set forth and alledged by way of defence to the said Bill as by the said answer relation being thereunto had doth and will more fully

the appellants did accordingly Refuse to Comply with

fully and at large Appear.

And this Respondent doth admit that to the appellants said Plea and Answer this Respondent did file and Exhibit his Replication and for reply thereto said that it did not appear that the Appellants ever considered the circumstance of the Vessel having twelve Guns, and so many Seapoys as a condition they wished strictly to be adhered to, otherwise it was to be presumed they would take care to have that put in the body of the policy. That it was not the usage to consider Instruction or any verbal or written Stipulation, as a warranty, without they were entered in the Policy and made part of the Contract and upon these principles this Respondent did contend that the Plea was altogether misconceived And this Respondent by his said attornies did deny that there was any thing apparent on the face of the said Protest to Warrant the second Plea of the Appellants in bar to this Respondents Bill and the relief thereby sought. For that it was stated that the usual and Ordinary watch

of

of a Seaumny was placed And that it was
consistent with the customs and regulations of the
Contrary Service while the Ship was at an Anchor
to give charge of the deck to a Seaumny Who was
considered to be a person of responsibility and was a
Station similar to that of a Quarter Master on board
of one of his majestys or one of the Honble Companys
Ships. the charge of stowage and of Steering the Vessel
being committed to them And thereupon this Respon-
dent did contend that the Second Plea was
altogether futile and was a species of Cavil or
defence which no Insurer who meant to contest a
demand upon fair principles would ever think of
of resorting to. And this Respondent in replying
to the merits did admit that it was frequently
Necessary to insert written clauses into Policies of
Insurance, in order to express clearly the meaning
of the parties to the Contract, and which in many
cases, the said printed form was insufficient to
do. But this Respondent denied that under
these principles or According to that doctrine the

written clause at the foot of the Policy upon which
the present Action was founded did controul the
printed words insisted on by this Respondent, which
words in a clear distinct and explicit manner fixed
the time when the risk was to commence that was
to say on the Bottom Goods, Wares and merchandize
and immediatly after the loading thereof Whereas the
written clause at the foot of the said Policy had been
entered for the sole purpose, of distinguishing the
Subject of Insurance, and not the commencement
of the risk which the Insurers at the time of
filling up and executing the said Policy had
obviously left to the printed words to explain. And
therefore this Respondent did contend that as the
printed words respecting the commencement of
the risk stood uncontrouled they should prvail
And have due effect both as to construction And
evidence of the intintion of the Insurers, at the
time of entering into the Contract. And this
Respondent in his said Replication did further
state that not withstanding the assertions of the

Appellants

Appellants with respect to what constituted breaking Ground, he was convinced that whoever duly reflected on the Subject would be of Opinion that when a Ship was unmoored for the express and avowed purpose of proceeding on her destined Voyage, that was to every intent and purpose breaking Ground and constituted an inception of such a voyage And of any risk which was to take place on the commencement thereof Since it was obvious that a Ship could not be in the Same State of Safety, while at Single Anchor And this Respondent further admits that he did in his Replication state that it was unnecessary for the Appellants to have enlarged so much in their Answer upon the mistake which had crept in respecting the time when the said Ship was surprised, as the insertion of the word Ten instead of Twelve, was evidently a clerical Error besides it was very immaterial to the question at which of the said hours the said Ship the Peres was Surprised and taken and this Respondent admits that he did remark that it was extraordinary the Appellants Should defend the present Suit upon the principle of the risk not having commenced, whilst at the Same time they had not paid the premium of Insurance into Court, nor had they in their Answer said that they had always been and were ready to return the said premium which they ought to have done for nothing could be clearer than this that if the risk had not commenced the Appellants could have no right to retain the Premium And this Respondent admits that by his said Attornies he did further remark that the Appellants did in their consciences well know that the whole of the Cargo of the said Ship Peres was actually on board the said Vessel on the thirtieth day of January the Several Bills of Lading and Invoices of the said Cargo being annexed to the Original Protest which were in the possession of this Respondents Attornies, But which were in the first instance transmitted to the Appellants Thomas Chase Henry Sewell And Richard = Chase

Richard Chase by the said Messieurs Colvins and Bazzett. and this Respondent further admitts that he did remark that no other construction could be drawn than that the risk commenced on the bottom of the said Ship the Ceres from and immediatly following the loading of the Cargo Such being the expres tenor of the printed words and which words stood uncontrolled by any written clause wherefore this Respondent did insist that he had an unquestionable right to recover the Sum for which he had brought his Action.

And this Respondent further admits that to the said Replication the Appellants did exhibit and file their Rejoinder wherein they attempted to support the hereinbefore in part recited Pleas and did contend that they were not introduced as Cavils But on the contrary that the said Pleas were founded upon just principles and arose out of this Respondents own Shewing and therefore relying thereon the said Appellants did Submit to the said Mayors Court, that their Several Pleas were established,

and

and that therefore this Respondents said Bill ought to be dismissed. And the Appellants for further Rejoinder said, that although they admitted the receipt of the premium by this Respondent setforth in and by his Bill of Complaint and that they executed the said Policy, upon which the said Bill of Complaint was grounded yet they denid that they were thereby or by reason thereof bound to pay to this Respondent either the principal or Interest of the Amount therein mentioned to have been Insured And the said Appellants further said that notwithstanding the Suggestion of this Respondent to the contrary they did not know that the Whole of the Cargo of the said Ship the Ceres was actually on board of the said Vessel on the said thirtieth day of January but they did admit that it might have been on board thereof for ought they knew to the contrary. But that Whether the said Cargo was not on board the said Ship the Ceres on the said thirtieth day of January was not a matter in issue Inasmuch as that

the

the risk on the said Ship did not commince from
and immediatly following the loading of her Cargo
but that the same was meant and intended to
commence from and immediatly after the Sailing
of the said Ship the Ceres from Manilla on her
destined Voyage as expressed in the said Policy by the
written clause at the foot thereof And this Respondent
denies that upon the pleadings rested in the said
Petition and Appeal issue did Join in the cause
and that rules passed for the examination of
Witnesses as in truth alledged and set forth in
and by the said Appellants Appeal to your Most
Excellent Majesty in Council For this Respondent
that as the fact
saith Appellants had declined admitting the Cargo
to be on board on which the Gist of this Respondents
case particularly rested that it would have been
incumbent on him to prove the fact. Yet as the
delay and expence which must have attended
an Examination by Commission to Foreign
parts to Establish that the loading of the said
Ship Ceres was completed at the time She was

Surprised

Surprised and taken aswell as on other points upon
which this Respondent would have been very great
depend
It was therefore Agreed upon by and between this
Respondent and the said Appellants that the original
Protest should be delivered into the Mayors Court
And Received as good Evidence any thing contained
in the pleadings to the contrary Notwithstanding
And this Respondent further saith that in pursuance
of the intentions of the said parties the said Original
Protest was on the fifteenth day of March and in the
said year of our Lord one Thousand Seven hundred
ninety five delivered in and the following
Minute entered on the record of the Said
Mayors Court that is to say "The Attorney for the
"Complainant delivers into Court the Original
"Declaration and Protest of John Wright, Henry
"Mc Clush Robert Weir and Joachim dela Cruz Sworn
"to before Sir William Duncan one of the Justices of
"the Supreme Court of Calcutta and it is agreed
"to by and between the parties Complainant and
"Defendants that the matters in the said Protest
Stated shall be read and received as Good
Evidence

" Evidence on the part of the Complainant and
" Defendants: any thing Setforth in the pleadings to
" the contrary in any wise notwithstanding and it is
" further Agreed toby and between the parties
" Complainant and Defendants that the letter
" Annexed to the Answer purporting to be a letter from
" Chase Sewell and Chase Secretary to the new
" Madras Insurance Company shall also be read
" as Evidence in as much as if the hand writing had
" been proved and in like manner the letter from
" Thomas Chase to Chase Sewell and Chase also
" the Exhibit A purporting to be an Extract of a letter
" from Colvins and Bazzett together with the
" letter Signed John Wright ordered Accordingly"
And this Respondent further Sheweth unto your
Most Excellent Majesty in Council that the said
Declaration and Protest made by this Respondent
and by Henry McClish Chief Officer Robert weir
Second Officer and Joachim del [illegible] have late a Seaman
and received as Good Evidence [illegible] sion to [illegible] and to every
intent and purpose prove and Suppo [illegible] V. of the this
Respondents ease, But as the same is contradictory

Respondent doth therefore pray leave to set forth the substance
thereof, And this Respondent saith that the said Protest did
state that on or about the Twenty eighth day of June in the
year of Christ one thousand Seven hundred and ninety
three this Respondent and the other Declarants sailed in
the said Ship the Ceres on a Voyage to Puls Penang and
Manilla in the Island of Luconia where they arrived
on or about the Twenty fifth day of August in the year
of Christ one thousand Seven hundred and ninety three,
where they landed the Cargo and took in a fresh Cargo.
That on the thirtieth day of January last the said Ship
having completely taken on board her returning Cargo. And
having regularly cleared out the Ship from the said Port
by having obtained the usual Port clearances from the proper
Officers of the Spanish Government and having on board
all the Water and every other Store for the Voyage with
a sufficient Complement of men the Ship having been
Ground and then only lying at a Single Anchor with
her Sails all bent for the purpose of proceeding, the winds
and Weather permitting from the Roads of Manilla
aforesaid to Bengal on the following day This Respondent

did

write a letter to Henry McClish aforesaid informing him of such his intention And the said Henry M Clish for himself did declare that on the thirtieth day of January last the said Ship the Ceres having been unmoored as aforesaid was riding at a Single Anchor in the road of Manila about one Mile from the Shore with her Sails all bent and everything ready for going to Sea at a Minutes Warning when he received a letter from this Respondent who was at such time very ill onshore directing him to hoist in the long Boats belonging to the said Ship Ceres and get everything ready for Sailing the following Morning, and the said Henry M Clish and Robert were in their said declaration further declared that having set the Ordinary Watch of Seacunny upon deck they about ten Oclock at Night retired to their respective Cabins. the said Henry M Clish having directed the said Seacunny to call him at three Oclock in the morning That about twelve Oclock of the same night he was awoke by a strange and uncommon Noise upon the Deck of the said Ship the Ceres that he thereupon immediately got up and went into the Steerage in order to get upon deck to learn the occasion of the Noise above.

That

That with the Assistance of the said Robert Weir they shoved up the foremast after hatchways Greating and he got upon deck and passed to the Starboard Gangway where he stood for some time and saw many people aft in much confusion talking french and heard the Spanish Guards or Custom house Officer speaking to the people about him in a Supplicating tone; and the said Henry M Clish further declared that finding himself without any Assistance the greatest part of the Ships Company being below and seeing no possibility of doing any thing in that Situation either for the defence of the Ship or the safety of himself he slipped down by a rope into the Water and got to a Vessel called the Constantee a Spanish Vessel that was lying within a Quarter of a mile of the Ceres. That he afterwards went onshore and got to the house of this Respondent, about one hour after the people had got on board the Ceres as before mentioned and informed this Respondent of the Circumstance, And this Respondent and the said Henry M Clish in their said Declaration and Protest did further declare, that after many delays and much trouble they procured a Brigand made Sail after the

Ceres

write a letter to Henry McElish aforesaid informing him
of such his [redacted] said Henry McElish for
Ceres, at about day Break in the morning having on
board the said Brig Seventy people in all. That Shortly
after they made Sail in the said Brig they found they
had only one Cask and very little more of fresh water
on board although the Owner had reported her ready
for Sea which obliged them to return without effecting
the object they had in view. And the Declarant Robert
Weir after stating the manner in which he got clear of the
said Ship did say She was carried out to Sea almost
immediatly after her being boarded in the manner
aforesaid and that the persons who boarded the said
Ship and carried her away consisted of as he believed
twenty five frenchmen, Some Spanish Soldiers and
some Indians altogether to the number of forty five

And this Respondent further saith that
upon the facts set forth and stated in and by the said
Protest Issue did Join in the said cause, and rules
passed for the examination of such Witnesses as the
parties Complainant and Defendants might find
it expedient to produce in order to prove any matter
relevant to the cause and which the said Protest had
not established. And this Respondent saith that as
the

the Appellants in their Answer to this Respondents Bill
of Complaint, had laid much stress upon the letter
written by Messieurs Chase Sewell and Chase to Thomas
Chase in his capacity of Secretary Copy whereof is to the
Appellants said Plea and Answer annexed. And as
the Appellants contended And inferred therefrom that the
said letter exhibited the fullest evidence of their intentions as
to the Commencement of the risk which was not to take
place until after the departure of the Vessel this Respondent
deemed it necessary in order to do away its effect as well
as to shew the conduct which another Public body namely
the old Madras Insurance Company had manifested
under similar Circumstances to annex the Copy of an
Original Letter written by the Appellants Thomas Chase
Henry Sewell and Richard Chase to the Secretary of the said
Company which was Verbatim the same as that addressed
to the Appellant Thomas Chase, And this Respondent
having in his said Replication Shewn that the said Madras
Insurance Company had not attempted to place the same
unwarrantable construction thereon which the Appellants
had done, But did allow this Respondent the full benefit
of their Policy and of every clause therein contained. That

it

it became Necessary in order to support his allegation as well as to prove the letter so written to examine a Witness thereto, That accordingly Interrogatories were Exhibited to George Chalmer a member of the Committee of the said Old madras Insurance Company who being examined did depose as follows, that he was a member of the madras Insurance Company, and that he had been a member of the Committee of the said Company in the month of November in the year one thousand Seven hundred and ninety three that he had looked at the paper writing Shown to him at the time of his examination purporting to be a letter from Chase Lowell and Chase to the Secretary of the said Company and said that an Insurance was effected in Consequence of the said letter to the amount of Ten thousand Pagodas and for which a premuim of Eleven per cent was given that he the deponent was the one of the members of the Committee of the said Company who Signed the said Policy that a total loss did ensue thereon in consequence of the Ship Boreas having been Surprized and carried off by pirates while lying at Manmila, and that the said loss was adjusted and paid off by the said Company to Messieurs Chase Lowell and Chase

Chase three of the Defendants in this Suit. And this Respondent further Sheweth that no other Witness was Examined on his part and the Appellants having declined entering into any examination, Publication did thereupon pass and the cause was set down for hearing and the same Accordingly came on to be heard by and before a full Court of aldermen on the fifteenth day of march in the year of our Lord one thousand Seven hundred and ninety Six when the said Mayors Court did think fit to order and Decree and did Accordingly order and Decree that the Appellants Should pay unto this Respondent the Sum and just Sum of Seventeen thousand four hundred and five Pagodas one fanam and Seventy Six Cash, together with all such interest as thereon was or Should hereafter become due thereon also all Costs of Suit, as by a copy of the said Decree to the Appellants Petition and Appeal Annexed relation being thereunto had doth and will more fully and at large appear. And this Respondent further admits that the said Appellants did appeal from the decision of the said Mayors Court to the Honble the Court of Appeal at Madras and did for cause of appeal Assign Such

Reasons

reasons as in the said Appellants Petition and appeal as setforth and stated To which Petition and appeal this Respondent admits that he did by his said attornies put in his Answer and that the said Petition and appeal and this Respondents Answer came on to be heard by and before the said Court of Appeal on the Eighteenth day of July last past when the said Court of Appeals were pleased to affirm the Decree of the said Mayors Court And dismiss the Appellants Appeal with Costs as by a copy of the said Decree to the said Appellants Petition and Appeal To your Most Excellent Majesty in Council annexed Relation being thereunto had doth and will more fully And at large Appear And this Respondent denies that the Appellants are Aggrieved by the said Decree of the Court or that they have any just cause or reason to appeal therefrom.

And for answer to the first reason addued by the Appellants as cause of Appeal to your Most Excellent Majesty in Council. This Respondent by his said attornies admits, that the Action of this Respondent is brought for the indemnification of a certain loss incurred by

by the Surprisal and Seizure of the Ship Ceres of Manilla roads. founded on a Policy of Insurance Subscribed by the Appellants Whereby they covered and Insured the Sum declared for in the Bill of Complaint of this Respondent on the Block of the said Ship Ceres Against the Several perils in the Policy mentioned. The risk upon the said Block being stipulated to commence from and immediatly after the Loading being completed. And this Respondent by his said Attornies denies that he has attempted to place any unfair construction on the said Policy, or to demand from the Appellants as the Insurers of the Block of the said Ship any indemnity, Which he is not strictly authorised to do by the said Policy, as is contrary entirely Asserted by the said Appellants. But this Respondent saith that the Appellants in order to favor their own improper designs. and With the intention of violating the fair claim of this Respondent upon them. have attempted to place an interpretation on the said Policy, as regards the commencement of the risk which neither the letter or Spirit of it Warrants them doing And this Respondent further saith that if an Actual departure from Manilla was intended to form the

Commencement

against [illegible]
Should [illegible] that direct effect ought to have been introduced expressly in a term
Policy to Govern and Controul the General printed Clause in the said Policy
Contained fixing the Commencement of the risk
Commencement of the Risk, Whether on Block and
Cargo from And immediatly following the loading
thereof For although the Policy in question doth run in
the manner described by the Appellants Towit messeurs
Chase Sewell and Chase for and on Account of messeurs
Colvins and Bazzett. as well in their own name as for
and in the name of all and every person whom it shall or
may concern doth make Insurance from Manilla,
yet it is to be observed that the word from is not a
written word, purposely introduced to controul any
printed Clause, but forms part of the Policy in its
Original, Naked State before any written clause descriptive
Voyage is entered And consequently becomes Subject to the
to the explanation of the Subsequent becomes Subject to the
Explanation of the Subsequent printed Words fixing the
Commencement of the risk as aforementioned But
the said Appellants in the Several Reasons adduced
by them for Reversing the Decree of the Mayors Court. as
well to your Most Exellent Majesty in Council as in
those offered to the Court of Appeals at Madras have said
this clause respecting the commencement of the risk
Must be considered as mere Surplusage, in the Policy and
altogether

altogether inoperative. For if it is allowed to prevail and
have effect, we Appellants became Insurers of the Cargo
as well as the Block and which clearly never was
intended. The word from must therefore rule and Govern
the construction of the Policy as to the commencement
of the risk and that word shews that an actual
departure was meant. The folly and absurdity of
which reasoning this Respondent doth Submit to your
Most Excellent Majesty in Council is Made
Apparent by the clause at the foot of the said Policy
contained specifying the Block as the Subject of Insurance
and not the Cargo. And this Respondent by his said
Attornies prays leave to state unto your Most Excellent
Majesty in Council. That it appears from the Policy
upon which the Suit is brought. And also from the
pleadings in the cause that the Appellants are part
of a body of men, who have associated themselves
together for the purpose of Insuring, under the name
and discription of the New Madras Insurance
Company. That for their own convenience they have
adopted a particular printed form of a Policy, which
it is their practice to modify by written clauses

According

and Bloth and

According to the Nature of the different Adventures they Insure Shall them a body or Society of this discription, be allowed / When it Suits their purposes / to tell an Assured party that part of the printed form is inoperative and mere Surplusage If this were allowed It is clear that on most Occasions they would escape from paying a loss by placing constructions thereon favorable to their own Views to the great injury of commerce, and of those who have trusted in the form of their Policy. This Respondent therefore humbly Submits unto your Most Excellent Majesty in Council, that such unfair interpretations of the Policy adopted by the said New Madras Insurance Company ought not to be Suffered. But that every printed clause thereof unless Where controuled by some clear Specific writing, Must be considered as speaking their intentions, and be binding on them. And to that part of the Appellants Petition and Appeal Wherein they have observed to your Most Excellent Majesty in Council that if there had existed any doubts from the mere wording of the policy,

as

as to the exact Adventure undertaken by the Appellants the Same ought to have been obviated or explained by the plain and open intention of the parties, made known to and with each other at the time when the said Contract of Insurance was executed, and which was demonstrated in and by various written correspondence exchanged between the parties to the Policy, and particularly by the letter of Colvins and Bazett to the said Appellants Thomas Chase Henry Sewell and Richard Chase, which the Appellants alledge unequivocally lays down the risk sought to be Insured. This Respondent by his said Attorneys for Answer thereunto prays leave humbly to Submit to your Most Exellent Majesty in Council, that the said letter upon which So much stress has been laid when impartially viewed can be considered in no other light than as a General letter to effect an Insurance on the returning voyage of the said Ship Ceres from Manilla leaving the said Thomas Chase Henry Sewell and Richard Chase discretionary power to complete the Same. The following Words being part of the said letter And Wish you to "act Accordingly for us in this Situation as you

Would

"would for yourselves Assuring you that we shall
"conform to what you shall think it adviseable to be
"done in the busines" And this Respondent by his attornies
"further Answering saith it appears from the pleadings
in the Suit that the said Appellants Thomas Chase Henry
Sewell and Richard Chase being thus authorised did
on the twenty Seventh day of November Which was in
the year one thousand Seven hundred and ninety three,
prepare two letters of the same tenor, one of which they
addressed to James Daly Esquire Secretary to the
old Madras Insurance Company and the
other to the appellant Thomas Chase in his capacity
of Secretary to the New Madras Insurance Company.
That it appears from the pleadings in the Cause and
particularly from the evidence given by George Chalmer
as member of the Committee of the said Madras
Insurance Company that they took a risk of Ten
thousand Pagodas on Merchandize for which a
premuim of Eleven ℔ Cent was given. And it also
appears that the said Appellants Thomas Chase Henry
Sewell and Richard Chase acting in the double Capacity
of Agents of the Assured and as the Committee of the

said

said New Madras Insurance Company did
appropriate to themselves a premuim of twelve per Cent
of the monies of this Respondent for Insuring the
Restrun question on the Block being one ℔ Cent more
than what was given to the other Company on the
Goods. and that they thereupon issued the Policy upon
which the present Action is founded The benefit of
which According to a fair and liberal interpretation,
this Respondent only claims and nothing more.
But this the Appellants seek to deprive him off
by placing constructions on the said Policy suited to
their own purposes and different from what it
imports, And this Respondent prays leave to your
Most Excellent Majesty in Council that as a
peculiar force and operation is given to the written
Clauses of a Policy of Insurance Which by the Law and
Custom of Merchants are allowed to Govern and
controul the printed words it is fit they should be
entered clearly and distinctly so that no doubt
can arise as to entention of parties. For this Respondent
Submits that if written clauses are allowed to be
Ambiguously Worded, and then made Subject
to

Subject to the construction which every interested
person will be inclined to place on them If would open
a door to cavil and (an) less litigation the law therefore requires
that where the partys Insurers and assured intend (to control the printed)
by written words that they must do so in clear and
precise terms otherwise the printed words must prevail
both as to construction and as evidence of the intention of
the parties. and this Respondent Submits to your Most
Excellent Majesty in Council that if it had been the real
intention of the Appellants to preclude the said New
Madras Insurance Company from bearing any risk
on the said Ship Ceres while at Manilla that they
would by a written clause have explicitly said it is
hereby understood that the risk is to commence upon
the departure of the Vessel which would have effectually
controuled the printed clause and removed every doubt
on the Subject and this Respondent Submits that the
reason of entering the said Clause upon which the
Appellants have laid so much Stress is made clear by
their own shewing by matters stated in their Rejoinder
And that the same was done not on account of any
dangers which they apprehended the said Ship would
Sustain

Sustain While she lay at Manilla. But an
apprehension of some extraordinary risk if the
Vessel quitted Manilla before the thirtieth of
November and which induced them to agree to
return two ℔ Cent if she sailed after that period
hence it is evident that it never could have been
originally in the contemplation of the Appellants
as Insurers that any additional premium was
Necessary for the time she might happen to
Remain at Manilla after the Cargo was on board
and this Respondent prays leave to observe to your
Most Excellent Majesty in Council that the
Navigation of the China Seas during the month
of November is rendered dangerous from the
Shifting of the Monsoon which occasions violent
Tuffoons and it might probably have been owing
to that cause that they consented to return the Two
per Cent in the event of her sailing after that period.
For this Respondent is advised that the Insurers in
India have considered the risk of the China Seas
So great at that time that it has been a practice

in

in some parts to warrant that Ships upon their
return from China and Manilla shall not sail
after the 20th of November and this Respondent by his
said Attornies for further Answer to the reason assigned
by the Appellants as cause of Appeal to your most
Excellent Majesty in Council saith that although it
laid down by Millar in his Elements that Insura
is generally made two ways, from a Port or at and
" and that an Insurance from a Port whether or
" Goods is understood to mean from the time the vess
" ground in sailing from that Port, yet this Respon
" saith that these observations are merely the dictum
" a Compiler and Commentator whose authority this
Respondent is advised does not stand so high as th
who have written on the Subject, But even this auth
on whom the Appellants have placed such reliance
does not speak absolutely on the Subject, he only ob
that these rules with regard to the commencement
a risk are generally adopted But then he points
Exceptions where a contrary rule prevails as for Ins
" of a Ship being Insured from the Greenland

or Davis Straight the risk homeward commences
from the time the fishing Season ends And this
Respondent by his said Attornies prays leave to observe
that although Insurances may be effected on the
two modes stated by the Appellants That is to say
during the whole time a Ship lays at a Port, and
also upon her departure or sailing, yet surely this
cannot operate to prevent the parties from fixing other
periods for the commencement of the risk when they see
proper, on the contrary we find it laid down from
much higher authority than that cited by the Appellants
namely Park and Magons, that the risk "on the
" body of a Ship according to the form of the Policy received
" in practice is to commence from her beginning to load,
" Now the only difference between this cited form and
" the Policy of the new madras Insurance Company
" upon which the present Action is brought is That in
the former the risk on the Ship commences upon
her beginning to load. And on the latter not until the
loading is completed But it is clear that the
Commencement of a risk from the nature of Insurance

depend upon the disposition of the parties suited to the nature of the risks they sub to cover. a doctrine which Mr Parks in his system of the law of Insurance has made a very Judicious observation upon The says in respect to the Commencement of a risk it is so variable that nothing certain can be said upon the point depending as it always has and always must upon the inclination of the parties. And this Respondent for further answer to the first reason or cause of Appeal to your Most Excellent Majesty in Council prays leave to observe. That if Parol Evidence is allowed to explain or alter the words of Policy of Insurance It must be such Parol Testimony as is not liable to legal exceptions now this Respondent humbly Submits that there is no Shadow of Evidence brought forward to contradict or do away the effect of the Policy in question save what is stated by the Appellants Thomas Chase Henry Sewell and Richard Chase the partners composing the firm of Chase Sewell and Chase, who indeed have Sworn in their Answer, that they meant an actual departure from Manilla Should fix the commencement of the risk

and

and not the intermediate clause depended upon by the Respondent. But would it be fair or consistent with the rule of Evidence that this Respondent Should be concluded by the Testimony of persons Swearing in their own cause, and more especially Where the matter Stated and Sworn to in their Answer are in opposition to the words of the Contract entered into by them. And the hardship of this Respondents case he humbly Submits to your most Excellent Majesty in Council would be the greater if he were to be concluded by the oath of the said Thomas Chase Henry Sewell and Richard Chase acting as they were in a double capacity, and who are the only parties Defendants who have attempted to enforce their construction by Solemn Asseverations. And this Respondent by his said attornies Submits to your most Excellent Majesty in Council, that as the Madras Insurance Company paid the Amount Insured by them on the Ceres that the said Appellants are equally liable. The Insurance having been effected on a letter similar to that which was addressed by the said Chase Sewell and Chase to the said Thomas Chase And upon Which so much stress

has

has been laid The only difference being the Subject of
Insurance which is no wise material. The Appellants
in their first reason as cause of Appeal to your most
Excellent Majesty in Council having shewn that where
an Insurance is made from a Port whether only
or Cargo The risk commences upon the Vessel breaking
Ground which the Appellants would construe to
be an actual departure. And herein this Respondent
humbly prays leave to call the attention of your most
Excellent Majesty in Council to the Evidence given
by the said George Chalmer who proves that the
Insurance was effected under the said Letter to the amount
of Ten thousand Pagodas And that he was one of the
members of the Committee who Signed the said Policy
That a total loss did ensue in consequence of the Ship
being cut out of Manilla Roads, which loss was
adjusted and paid off by the said Madras Insurance
Company to the said Appellants Thomas Chase
Henry Sewell and Richard Chase upon what
just pretence than can the said Thomas Chase Henry
Sewell and Richard Chase refuse to indemnify
this

this Respondent for the loss he has sustained, or
attempt to say that the risk undertaken by the
New Madras Insurance Company had not
commenced when they actually claimed and
received payment of a loss on an Insurance
made under exactly similar circumstances Lord if there
had been any dissimilarity in the cases this Respondent
doth humbly Submit to your Most Excellent Majesty
in Council that the said Thomas Chase Henry
Sewell and Richard Chase would have stated
where it lay in their Rejoinder to the Replication of
this Respondent pointing out the facts.

And for Answer to the Second Reason
Adduced by the Appellants in their Appeal to your
Most Excellent Majesty in Council And wherein
it is asserted that there was not any Evidence exhibited
on behalf of this Respondent full and competent to
establish that material point which in the mind
of this Respondent was to bring on and to introduce
the risk of the Appellants. This Respondent for
Answer thereunto Saith that the Protest delivered
on and received as Evidence doth afford the most

clear

clear and irrefragable proofs of the Cargo being completly
on board at the time the Seres was Surprised, the Appellants
Should now attempt to dispute after the mutual Agreement
of the parties made part of the record of the said mayors Court.
And this Respondent by his Attornies prays leave to call
the attention of your most Excellent Majesty in Council to
the circumstances which led to the introduction of the said
Protest This Respondent finding that the Answer of the
Appellants did not admit that the Cargo was on board
took occasion to observe in his Replication "That the said
"Defendants did in their ... "Whole of the Cargo was on board on the thirtieth day of January
"the several Bills of Lading and Invoices of the Cargo and
"to the Original Protest which in the first Instance was
transmitted to the said Thomas Chase Henry Sewell And
Richard Chase by the said Messieurs Colvins and
Bazze &c. But on the Rejoinder to the Replication the
Defendants instead of openly Admitting or denying the
fact did say "that notwithstanding the Suggestions of the
"Complainant to the contrary they did not know that the
"Whole of the Cargo was on board on the thirtieth day of
"January But it might have been on board for aught they

knew

"knew to the contrary But that whether the said Cargo
"was or was not on board was not a matter in issue" and
this Respondent prays leave to observe to your Most
Excellent Majesty in Council that as the very Gist of his
Demand hung on this circumstance or at least the material
Count in his Bill and upon which this Respondent
placed the greatest dependance, that this mode of admission
of the returning Cargo having been completely laden was
by no means Satisfactory and therefore this Respondent
by his said Attornies came to the determination of
examining Witnesses thereto as well as to other parts of his case
which afterwards became unnecessary the Appellants having
Agreed that the Protest should be received as good evidence
any thing in the pleadings contained to the contrary
notwithstanding and this Respondent prays leave
to call the attention of your most Excellent Majesty in
Council to the Extract of the Minutes of the Honble the
Mayors Court of the Twentieth of October One thousand
Seven hundred and ninety five and which was read at
the hearing and forms part of the record and of the
Decree then pronounced. And from which said Extract

This

Extract This Respondent Submits it is manifest that it was the intention of the Appellants to admit in the most unqualified manner every matter stated in the Protest and to allow any Allegations in the pleadings which did not correspond therewith to be Governed and controuled thereby. And this Respondent Submits to your Most Excellent Majesty in Council Notwithstanding the litigious Suggestions of the Appellants to the contrary that no Set words however carefully framed could demonstrate in a clearer Manner than the Cases of the Ceres was all on board than what the following words of the Protest tend to do Viz't And the said John wright "declared that on the thirtieth day of July last the said "Ship having completely taken on board her returning "Cargo as by the Invoices thereof annexed And having "Regularly cleared out the said Ship from the said Port "by having obtained the usual Port clearances from the "proper Officers of the Spanish Government and having "on board all the Water and every other Store for the Voyage "With a Sufficient Compliment of Men The said Ship "having broke Ground" And this Respondent doth

Submit to your Most Excellent Majesty in Council that as the matter in the said Protest Stated were by Agreement of the parties received as Evidence that the production of the Port clearances or the adducing of any further proof in Support thereof would have been every improper The object of the Minute entered on the records of the said Mayor's Court on the Twentieth of October being to admit every matter Stated in the Protest as facts in Order to avoid the expence and delay attending an Examination of witnesses With what propriety then the Appellants have offered these extraordinary Observations respecting the Necessity of further proof of the Said Port clearances, It will be for your Most Excellent Majesty in Council to decide on And With respect to What the Appellants have alledged about the eagerness and forwardness of this Respondent to give Testimony in his own behalf, Which the Appellants Say Would in a case of difficulty and deficiency of proof be a circumstance rather of distrust than a reason for rational belief. This Respondent for Answer thereunto Saith that he has offered no Evidence But What the Appellants Agreed to receive

as

as herein before has been Shown, and with respect to the
Protest he did no more than what the law and custom of
Merchants requires in cases of loss namely taking the earliest
opportunity of declaring before a Notary Publick, and Setting
forth in detail the Several Circumstances which led to the
Surprisal of the said Ship Geres and Authenticating the same
upon oath. And here this Respondent prays leave to observe
that the oaths of the parties thereto can give no additional
weight to the said Protest which receives its force and
operation as Evidence in this cause from the voluntary Act
of the Appellants in agreeing to receive and take it as good
Testimony contrary to the General rule which respecting
the admission of Exparte Evidence. This Respondent doth
therefore humbly Submit to your Most Excellent Majesty
in Council that while the Observations of the Appellants
in respect to the conduct of this Respondent Appears altogether
unfounded and improper they do at the Same time
demonstrate a very unjust and Litigious behaviour in
them.

And to the third Reason adduced by the Appellants
as cause of Appeal to your Most Excellent Majesty in
Council and wherein the Appellants allege that this

"Respondent by endeavouring to date the risk of the
"Appellants from the Act of unmooring has manifested
"that he understood not the risk to commence but from
"the departure For had it had rested on the loading of
"the Ship as first entended. The unmooring of the Vessel did
"in no sort serve to Shew the inception of the risk" This
Respondent for Answer thereunto Saith, that these
Observations afford another Strong instance of the disingenuous
conduct of the Appellants in drawing conclusions which
they imagine are favorable to their purpose. But which
the pleadings in the Suit clearly demonstrate to be
false For this Respondent Saith that he has uniformly
endeavoured to Shew that the clause in the said Policy
contained fixing the Commencement of the risk upon
the Cargo being on board, and the circumstance of breaking
Ground were distinct Questions and were therefore to be
considered as Seperate and distinct Counts which this
Respondent mentioned he had a right to depend upon
and avail himself of Inasmuch as if it should be
determined that the said clause was inoperative as
the Appellants endeavoured to establish, That then
this Respondent did insist that the Vessel having
unmoored

unmoored. And it being Shewn by the Evidence of the Protest that this act was done for the Avowed purpose of proceeding on her destined Voyage That the Insurers risk did thereupon commence. And for a further illustration of this Subject and and of what constitutes breaking ground According to the ideas of this Respondent, so as to produce an inception of the Voyage Insured. this Respondent prays leave to refer to the Answer given by him to the fourth Reason in the Appellants Petition to the Court of Appeals at Madras. as also to the Respondents Replication in the Mayors Court. And this Respondent for further Answer saith that he hath already fully ex- And Shewn that when he stated that the risk on the Cargo took place on her leaving the Port of Cavita. It was previous to his seeing the Policy which then was in the possession of the Appellants Consequently this Respondent was unacquainted with its form and therefore when it was reported to this Respondents that the said Appellants had refused payment of the loss under the pretence that the risk had not commenced at the time the Ship was surprised and that an actual departure was necessary in order to hold them as Insurers Answerable, under their Policy, This Respondent did then oppose the usage of the Manilla Trade. Whereby it is understood, that the homeward Voyage commences after leaving the Port of Cavita But when a Copy of the Policy was produced and the best legal Opinion taken thereon then this Respondent found that under it the risk commenced upon the loading of the Cargo which induced him to depend more particularly on that clause And this Respondent humbly Submits, that this circumstance cannot militate Against his just claim But on the contrary, as great regard is paid by the Laws and custom of Insurance to the usage of Trade that it derives additional force therefrom And this Respondent denies that he has Shewn any palpable or violent Struggle in the prosecution of the Suit as is untruly Set forth by the Appellants unless that Anxiety I can be termed so which must naturally prevail where a man is Struggling for his all, and where he finds Opposed to an honest claim every Species of Chicanery.

And for Answer to the fourth reason or cause of Appeal this Respondent Saith that the matters therein Set forth afford another strong proof of the Litigious conduct And cavilling disposition of the Appellants Thomas Chase Henry Sewell and Richard Chase. For if it were true as they now assert, that they did calculate and estimate their Adventure upon the representation made by Colvin and Bazett of there being twelve Sepoys on board the Ceres

Besides

besides her Compliment of Men. And that they deemed it essential to the safety of the Adventure, that they Should Always remain on board. Why they did not insert the representation in the body of the Contract. In Which case, it would have operated as a Warranty And however absurd and preposterous in its nature, Shall the condition being a Warranty, must have been adhered to and Strictly complied with. And this Respondent further saith that the circumstance or information depended upon by the Appellants as cause of vacating the Policy was merely a representation of what might be the State of the Ship as to what it had been on the outward bound Voyage, And was certainly performed in Substance Which is all the law requires in such a case, for although some part of the Sepoys were on shore at the time the Vessel was surprised and seized, yet it Appears that she had the actual number belonging to her that was represented. And this Respondent Saith that if the doctrine of the Appellants were to prevail upon the same principles would a Policy be rendered void upon any of the Mariners of a Vessel quitting her for a Short time, a circumstance Which certainly was never yet yet contended for in any adjudication on the Subject of

Insurance. And this Respondent prays leave humbly to observe to your most Exellent Majesty in Council that Sepoys owing to their peculiar Customs never could be prevailed upon to proceed on any Voyage if they had not the fullest Assurances of being permitted to go on Shore when convenience allowed to lay in their water and great part of their food, which on Shipboard is always kept a part. a matter of fact Which this Respondent has deemed it necessary to point out with the view of Shewing that if so unreasonable a requisition had been made to the said Colvins & Bazett it would not have been complied with, or that if the said Thomas Chase Henry Sewell and Richard Chase, acting as they were without controul, had taken upon themselves to make a Warranty of it by inserting in the Policy that the Sepoys were always to remain on board that they would have become personally liable for every consequence. And to that part of the said fourth reason Wherein the said Appellants have alledged That Nothing Which respects Insurance is more absolutely established than this Maxim That if a variation be made from the exact representation "And "Supposing the thing in Which the variation is made, "would only imply no greater risk than the one Insured

that

"that the Policy is thereby vacated upon the principle that the
"risk run must not only be no greater than that understood
"but it must be the same." This Respondent for Answer
thereunto saith that the pretended maxim of the
appellants and the dictums offered in support thereof are
altogether inapplicable. They come under the head of alteration
or Deviation in Millars Elements, the Author formerly cited
by the Appellants Page 392. And have not the most
distant connection With or analogy to the question of
representation. But it has been the object of the Appellants
from the very institution of this Suit to mislead and impose,
as is evident on the present occasion; for if they had cited that
that part of their author, which Applies to this case, they
would have found a very Different principle laid down
by Lord Mansfield namely that Verbal Communication
and every Clause, engrossed upon a Seperate paper is held
to be a mere extraneous representation, Which if performed
in Substance is held to be Sufficient. That a Seperate Writing
does not form a warranty, or a condition absolutely to be
performed altho' it should have been Shewn to the underwriters
at the time of Signing May even if it Should have been
rolled up in the Policy or wafered to it. And this Respondent

for further Answer denies that there was any Negligence
manifested in respect to keeping a proper Watch on the
night which the Ship was Surprised, as is untruly alledged
There could be little Apprehension of danger in a friendly
Port consequently no Occasion for Setting any other watch
than what was usual and consistent with the custom of the
Country Service. and the Protest States that the Ordinary watch
was Set. And this Respondent having fully Observed upon
this head in his Answer to the Reasons adduced by the
Appellants in the Court of Appeals at Madras prays leave to
refer thereunto and will only add that this Respondent as is
Shewn by the Protest was then extremly ill as he had been
for some time before. And therefore no Negligence can With
any degree of reason or propriety be imputed to him

And for Answer to the Fifth reason or cause of
Appeal this Respondent by his said Attornies Submits
to your Most Excellent Majesty in Council, that the
Objection offered by the Appellants to the Policy upon
which the Action is founded, are irregularly offered on
this Appeal For if they could have been Supposed to
Carry any Weight they Should have been urged and
insisted upon in the Mayors Court, But the Appellants

were

were fully aware: That had they done so That the
Respondent could have shewn by the most ample
That the mode pursued in this instance is consistent with
general practice of Insuring in India but more par-
at Madras And which practice seems also to have prevail
England until the 25th year of your Majesty's Reign when
an Act passed requiring the name of the person in whose
interested in the Policy to be inserted therein which Act
afterwards repealed And this Respondent humbly conce
that neither the Act passed in the 25th Twenty fifth year of
your Majesty's Reign nor that which has since passed in
the Twenty eighth year Cited by the Appellants were
by the Legislatures to operate in India, or in any of your
Majesty's Colonies But from the wording of the said
they are evidently confined to the making of Insurances in
England Hence this Respondent humbly submits that
According to the practice of India The words in the said
Policy contained Lo Wit In the name and names of
all and every person or persons To whom the same
doth shall or may Appertain Have as much effect
and effect as if this Respondent's name had been
Specifically inserted And this Respondent Begs leave

to submit to your Most Excellent Majesty in Council
that the Appellants do in their conscience well know
that Insurers in India are not affected by any act of
parliament unless Where it is specially stated that the
Act extends to them: Otherwise the Appellants must be
Sensible that they have long been in the habit of acting
illegally by forming themselves into a Copartnership for
the purpose of Insuring under the firm of the New
Madras Insurance Company, and which is contrary to
and expressly prohibited by the Statute of the 6th of Geo. 1. C 18
And for Answer to the Sixth reason adduced
by the Appellants This Respondent saith that his
Complaint sets out with declaring that he was owner of the
Ship Ceres and that previous to his leaving Calcutta on
the outward bound Voyage he gave instructions to his
Agents to effect an Insurance on the Body of the Ship
upon her returning Voyage, Which they accordingly did.
and a valued Sum of Fifty thousand Rupees was
Agreed upon and Insured According And this
Respondent further saith in no part of the pleadings
on the said Mayor's Court is the Interest of this
Respondent in the Policy in question or of his being
owner

Owner of the said Ship Ceres Attempted to be denied. But if it had this Respondent humbly Submits that the Protest received as Good Evidence by the Agreement of the parties as aforementioned doth prove the facts. The said Protest stating that this Respondent was Sole Owner of the said Ship Ceres. Wherefore any further proof of a Circumstance so admitted would have been Superfluous And unnecessary and this Respondent saith that the question of Interest is not agitated in the proceedings before the Court of Appeals at Madras. Which affords and additional proof of the Appellants having been originally Satisfied in that respect And that the present Objections are mere quibbles which it has very lately occurred to them to offer.

And to the Last reason or cause of Appeal this Respondent saith that as the matters therein set forth were not urged in the Courts below that it is irregular in the Appellants to insist upon them in this last Appeals For this Respondent saith that if objections had been made to the Account in the proper Stage of the Suit he would have found no difficulty in obviating them by proving

proving Notice And that it was made upon just principles. This Respondent however doth Submit to your Most Excellent Majesty in Council that the Appellants have endeavoured Most palpably to Misconstrue the provisionary clause in the said Policy contained the Object of which is to allow the Insurers Six Months for the payment of a loss when they admit the claim. But when litigation ensues no abatement is admitted as is evident from the said clause which states that the full Sum is to be paid any use or custom to the contrary Notwithstanding. And this Respondent prays leave to observe that by the Appellants own Shewing it Appears they had due Notice of the loss given them Six Months previous to the Institution of the present Suit the letter annexed to the Plea and Answer Signed John Wright and bearing date the twelfth day of September One thousand Seven hundred and Ninety four demonstrating the fact beyond every Shadow of doubt And this Respondent Submits that this letter having on the twentieth of October One thousand Seven hundred and ninety five been received as Evidence at the time the Protest was and at the instance

of

of the Appellants it is conclusive with them—

And Lastly this Respondent doth
Submit to your most Excellent majesty in Counsel
That the Aldermen of the Mayors Court of Madras
Constituted under your Royal Charter are composed
of Merchants who are generally well acquainted with
the practice of Insurance and who from their situation
as residents in Madras were certainly good Judges how
far the construction insisted upon by the Appellants in
respect to their Policy was proper And this Respondent
Sheweth unto your Most Excellent Majesty in Council
that a full Court of Aldermen were Summoned to decide
on the cause And that such as were then at Madras did
attend the hearing and did unanimously determine that
this Respondent was entitled to the Sum sued for and
Decreed accordingly The construction appearing to them
to be harsh and Arbitrary—

For all which reasons and
Such others as may be offered at the hearing
this Respondent most humbly prays that your
Most Excellent Majesty in Council will be pleased
to affirm the Orders and Decrees of the said
Mayors Court and Court of Appeals and that the
Appellants Petition and Appeal may be dismissed
with Costs to be paid by the Appellants.

(Signed) George Chalmers
Solicitor for Respondent

To

To the Right Honorable Lord Hobart

President in Council

In the Honorable the Court

of Appeals at Madraspatnam

Fort Saint George

Between Madapawkum Vottia=

=nawjah Moodelliar of Madras

and

Inhabitant Complainant, George=

=Pasley: one of the Attornies of

the Honorable the Mayors Court at

Madraspatnam. Defendant.

The humble Petition and Appeal of the=

abovenamed Defendant.

Most Humbly Sheweth

That the abovenamed Complainant did

Filed in my Office the 2. May 1796

J Webbe Clk

some time on or about the fourteenth day of April. and in the present year of Our Lord One thousand Seven hundred and ninety Six exhibit and file a certain Bill of Complaint in the Honorable the Mayors Court of Madraspatnam Against your Petitioner and did therein and thereby set forth, allege, and charge, that your Petitioner being indebted unto him the said complainant in the Sum of Six hundred and Seventy Six Pagodas, and forty four fanams. did for securing the repayment thereof, execute unto him the said complainant two Bonds or Obligations bearing date respectively the fifteenth day of December which was in the year of Christ one thousand Seven hundred and ninety four. for the principal Sum of three Hundred and thirty eight Star Pagodas. and twenty two fanams. each; one of the said Bonds being payable in Six Months from the date thereof, and the other in twelve Months from the date thereof, with Interest at and after the rate of Twelve per Cent per Annum; as by the said Bonds or Obligations three Copies Whereof were to the complainants said Bill of Complaint annexed, and the Originals in the possession of the said complainant, and ready to be produced when required, relation being thereunto had (he did say) it would more fully and at large Appear - and your Petitioner Sheweth that the said complainant did in and by his said Bill of Complaint further set forth and state that in order the more effectually to Secure the payment of the said two Bonds unto him the said complainant

your

your Petitioner did by his to certain warrants of Attorney each bearing equal date with the said two Bonds authorize and empower any one of the Attorneys of the said Mayors Court to Appear for him (your Petitioner) and in his name to confess Judgment and allow Decrees to pass, and Executions thereupon to issue Against him in due form of Law, upon each of the said Bonds respectively, and with full effect until payment of Debt, Interest and Costs of Suit was made. And the said Complainant did in and by his said Bill of Complaint further allege and charge that your Petitioner had not paid off or discharged all or any part of the said Bonds but that he did them (Lowt. at the time of the filing and exhibiting of the said Bill of Complaint by him the said Complainant) stand justly and truly indebted unto him the said Complainant in the full and just Sum of Seven hundred and seventy eight Star Pagodas, Nineteen fanams and Seventy Nine Cash. Current Money of Madras, Making in Sterling Money of Great Britain at the rate of Eight Shillings to every Pagoda the Sum of Three hundred & eleven pounds & seven Shillings or thereabouts. as would more fully and at large Appear (as the Complainant in and by his said Bill of Complaint did state) by the Copy of an Account Current thereunto annexed for the inspection of the said Mayors Court. and to which he the said Complaint did crave leave to refer. and did pray that the same might be taken as part of this said Bill of Complaint. And further that he the said Complainant had frequently and in a amicable Manner demanded payment from your Petitioner of the said Sum of Seven hundred and Seventy eight Star Pagodas Nineteen fanams and Seventy nine Cash. but that your Petitioner had obstinately and wilfully refused to pay the same or to give him the said Complainant any manner of Satisfaction touching the premises. Wherefore, the said Complainant did in and by his said Bill of Complaint pray that your Petitioner might upon his bodily Oath true. direct and perfect Answer make to the same. And did further pray that your Petitioner might be decreed to pay unto him the said Complainant the said Sum of Seven hundred and Seventy eight Star Pagodas, nineteen fanams and Seventy nine Cash. With all Such Interest as then was, or Should thereafter become thereon, as also all Costs of Suit. And your Petitioner Sheweth that Shortly after

after the filing and exhibiting of the said Bill of
complaint a Summons did issue from the said
Mayors Court commanding your Petitioner to appear
thereto and at a certain time and place to be prefixed
by the said Mayors Court then and there to Answer the
complainants said Bill and to abide by such Decree
therein as to the said Mayors Court should seem meet
& right should first meet

And your Petitioner humbly Sheweth
to this Honorable Court that such Summons as aforesaid
commanding your Petitioner to appear before the said
Mayors Court on the nineteenth day of the month of
April now last past, was accordingly served upon
your Petitioner, and your Petitioner in obedience thereto
did apply to Robert Williams one of the Attornies
of the said Mayors Court to Appear and Answer
for your Petitioner on the said nineteenth day of
April, and Which your Petitioner Sheweth that the said
Robert Williams was then and there ready and did
offer to do: But your Petitioner Sheweth that in the
Summons being returned Served, one George Mac
Mahon also an Attorney of the said Mayors Court
did deliver into Court, as he did state, two warrants of
Attorney to confess Judgment, with the Affidavit
of one William Ithen, one of the subscribing
witnesses, as was stated, to the Execution of the said
warrants of Attorney. And your Petitioner Sheweth
that his said Attorney the said Robert Williams did
object to the appearance of the said George Macmahon
and did pray that he the said Robert Williams might
be allowed to Appear and Answer for your Petitioner, but
which the said Mayors Court (two of the four Judges then
present objecting) would not permit: and by which your
Petitioner doth submit that he is greatly injured and
aggrieved and doth therefore appeal therefrom, and
from all and every the Subsequent proceedings in the
said Cause being as your Petitioner doth consider unjust
and severe. and your Petitioner for cause of Appeal
Sheweth.

First ..... That the Complainant in his said Bill
of Complaint having prayed that your Petitioner might
upon his Corporal Oath full, true, direct and perfect

Answer

Answer Make to all and singular the matters and
things in the said Bill of Complaint alleged and
that your Petitioner might be summoned to Appear in
Court on the said Nineteenth day of April. and then and
there to Answer the said Bill. and the said Complainant
having caused your Petitioner to be Summoned. and
your Petitioner having been accordingly Summoned.
and having placed such Summons in the hands of
the said Robert Williams for the purposes therein
require To wit to Appear for your Petitioner and Answer
the said Bill of Complaint in express obedience of
Orders and directions of the said Mayors Court. the
prevention of the Appearance of your Petitioner by his
said Attorney the said Robert Williams on the said
Nineteenth day of April was a direct contradiction to
the Orders contained in the said Summons so issued
as aforesaid from the said Mayors Court, which
directs that your Petitioner should Appear and answer
unto the said Bill - And your Petitioner Sheweth
unto this Honorable Court that it is in the election of
the Defendant whether he will make his Appearance
either

either in person or by an Attorney. and by which
Attorney such Defendant shall think proper
to prefer and your Petitioner Sheweth that if such
the order of the said Mayors Court were to be
confirmed, and thereby rendered a precedent for the
guidance of the said Mayors Court in their future
decisions it might be productive of consequences
highly injurious in as much as the same would.
beyond all remedy exclude a Defendant in
questioning the propriety or justness of a complainants
demand: and would prevent the possibility of
showing that the warrant of Attorney upon which
Judgment should be prayed. was obtained by duress.
fraud. or any undue means whatsoever.

Secondly Because the said warrants of Attorney
would not seem to authorize the Complainant
to enter up Judgment for a greater Amount than
the sums therein respectively specified together
with Interest at and after the rate of twelve per cent
per annum. the one for the space of six months. and
the other for the space of twelve months from the
fifteenth day of December one thousand Seven
hundred

hundred and ninety four whereas by the Account annexed to the Complainants Bill it appears that Interest is calculated on both from the said fifteenth Day of December one thousand Seven hundred and ninety four to the fifteenth day of march one thousand Seven hundred and ninety Six the period of fifteen Months.

Thirdly ..... Because Amongst other the Objections which your Petitioners said Attorney did pray to offer to the said Mayors Court he did beg to shew that the said Mayors Court had no proof of the execution of the said Bonds: and that only unnecessary Copies of the said Bonds had been exhibited, and that the Original Bonds on Which the Complainant grounded his Demand ought to have been delivered into Court, and proved, in order that upon your Petitioner rendering such Satisfaction as the said Mayors Court Should direct upon the said Bonds being proved, then that the same Should be given up to your Petitioner to be cancelled and destroyed.

Fourthly ..... That independent of the want of proof of the

the execution of the said Bonds your Petitioner Sheweth that the Affidavits of the said William Ithen were deficient and unfit to have been received: for your Petitioner Sheweth the Law directs, that if the Judgment is not entered up within a year and a Day after the warrant of Attorney given, it cannot be done, but upon motion which must be upon Affidavit of the Debt being due, or a part thereof unsatisfied, the due Execution of the warrant, and the Defendant being alive which the said Complainant hath omitted, as will appear by reference to the Affidavits of the said William Ithen filed in the said Mayors Court on the said nineteenth day of April.—

Fifthly ..... That if the warrants of Attorney together with Sufficient Affidavits were competent to authorize the said Complainant upon motion to enter up Judgment Against your Petitioner, and to preclude your Petitioner from entering into any defence thereto then your Petitioner submits that the said Bill of Complaint is not only an obscurety in

requiring

requiring your Petitioner to appear and Answer but is together with the useless annexations thereto an additional and unwarrantable Expence and grievance to your Petitioner.

For all Which Reasons and Such others as may be offered at the Hearing your Petitioner humbly prays this Honble Court will be pleased to reverse the said Decrees of the said Mayors Court of the said nineteenth day of April (an attested Copy of Which is herewith annexed) for the inspection of this Honble Court And to Which your Petitioner prays leave to refer and that the same may be taken as part of this his Petition and Appeal And that this Honorable Court will be pleased to order and direct that your Petitioner be allowed to

his appearance in the said Mayors Court, and to put in his Answer to the Complainants said Bill of Complaint, and will be pleased to grant to your Petitioner such further and other relief in the premises as to this Honble Court shall seem meet.

Signed Robert Williams
Solicitor for Appellant

Extracts

Extract from the Minutes of a Court held at the Town Hall on Tuesday the 19th Day of April Anno Domini 1796.

Present

James Daly Esqr. Mayor
Andrew Ross John Mitford &
William Abbott Aldermen

Madapawkam Vardarawjah Moodeliar
vers
George Pasley

Bill with Copies of two Bonds and an Account Current Annexed filed between the days of Adjournment Summons issued thereupon returned Served. The Defendant Appears by his Attorney Mr. George Mc. Mahon who delivers into Court two warrants to confess Judgment with the Affidavit of William Fichen one of the Subscribing Witnesses to the Execution thereof Sworn to before the Mayor the 18th Instant and filed this Day. The Attorney for the Complainant thereupon prays that a Decree may pass warrants of Attorney read and filed Mr. Williams prays leave to enter his Appearance for the Defendant and to offer certain objections in writing on the part of the Defendant which the Court are of Opinion is irregular and therefore that it be overruled Messrs. Aldermen Ross & Mitford dissent to the Resolution of the Court being of Opinion that Mr. Williams ought to be allowed to enter his Appearance and that he should have permission to give in such Objections as he may think necessary Bill Read. The Attorny for the Complainant prays that a Decree may pass Ordered Accordingly

The Defendant by his Attorny Mr. George Mc. Mahon being in Court and Acknowledgeing the Justness of the Complainants Demand, This Court doth therefore think fit to Order and Decree, and doth Accordingly Order and Decree that the Defendant do pay unto the Complainant the full and Just Sum of Seven

Hundred

Extract from the Minutes of a Court held at the Town Hall on Tuesday the 19th Day of April Anno Domini 1796.

Present

James Daly Esqr. Mayor
Andrew Ross John Mitford &
William Abbott Aldermen.

Madapawkam Vardarawjah Moodelear

vers

George Pasley

Bill with Copies of two Bonds and an Account Current Annexed filed between the days of Adjournment Summons issued thereupon returned Served. The Defendant Appears by his Attorney Mr. George Mc. Mahon who delivers into Court two warrants to Confess Judgment with the Affidavit of William Ithen one of the Subscribing Witnesses to the Execution thereof Sworn to before the Mayor the 18th Instant and filed this Day. The Attorney for the Complainant thereupon prays that a Decree may pass. warrants of Attorney read and filed Mr. Williams prays leave to enter his Appearance for the Defendant and to offer certain objections in writing on the part of the Defendant which the Court are of Opinion is irregular and therefore that it be overruled Messrs. Aldermen Ross & Mitford dissent to the Resolution of the Court being of Opinion that Mr. Williams ought to be allowed to enter his Appearance and that he should have permission to give in such Objections as he may think Complainant prays that a Decree may pass Ordered Accordingly

The Defendant by his Attorny Mr. George Mc. Mahon being in Court and Acknowledging the Justness of the Complainants Demand, this Court doth therefore think fit to Order and Decree, and doth Accordingly Order and Decree that the Defendant do pay unto the Complainant the full and Just Sum of Seven Hundred

Hundred And Seventy eight Pagodas Pardaus
And Seventy Nine Cash / Pags. 778. 79. 7 /
with all such Interest as now is or shall hereafter
become due thereupon until full Payment and
also all Costs of this Suit

A True Extract
/ Signed / G. B. Ashburner Secy

To the Right Honble Lord Hobart
President in Council
Fort Saint George

In the Honble the Court of
Appeals at Madraspatnam

Between Madapauhum
Vordarawjah Moodelliar
of Madras Inhabitant
Complainant.
and
George Pasley one of the Attornies
of the Honble the Mayor's Court
at Madraspatnam Defendant

The Answer of the abovenamed Complainant To the Petition and Appeal of the abovenamed Defendant.

Filed in my Office
the 26th May 1796
J Webbe Clk

This Respondent for answer to the Appellants said Petition and Appeal or unto so much thereof as he is advised is material for him to make Answer unto Answereth and saith That he Admits that he on sometime on or about the

the fourteenth day of April last past Exhibit
file his Bill of Complaint in the Worshipful
Mayor's Court at Madraspatnam Against this
Appellant And did thereon and thereby Charge him
to be indebted unto this Respondent in the sum
just Sum of Six hundred And Seventy Six Pagodas
and forty four fanams Current Money of Madras
which said Sum of Six hundred and Seventy Six Pagodas
And forty four fanams With Such Interest as the
was or Should thereafter become due thereon and also
all Costs of the Suit. This Respondent doth in his
Bill pray a Decree for the particulars of which said
Bill being fully Set forth and recited in the Appellants
said Petition and Appeal this Respondent prays
leave to refer thereunto.

And this Respondent for further Answer
admits that a Summons did issue from the
said Mayors Court upon the said Bill of Complaint
in manner and form as is Set forth and stated by
the Appellant in his said Appeal.

And this Respondent further admits that
such Summons as aforesaid was Served on the
Appellant, and that in Consequence thereof he might
have Applid to Mr. Robert Williams one of the Attornies
of the said Mayor's Court to Appear to and Answer
the said Bill, and that in Conformity to such
Instructions the said Robert Williams might have been
ready and did offer to do so: and this Respondent also
admits that on the Summons being returned by the
Sheriff Served, Mr. George Macmahon also an Attorney
of the said Mayor's Court did Appear for the Defendant
and delivered into Court Two warrants of Attorney to
confess Judgment, with the Affidavit of William Sparrow
one of the Subscribing witnesses to the due Execution thereof,
and that the said Robert Williams did thereupon object to
the Appearance of the said George Macmahon and did
pray that he the said Robert Williams might be allowed
to Appear and Answer for the Appellant but which the
said Mayor's Court refused to permit.

And this Respondent denies that the Appellant
is injured or Aggrieved by the Decree of the said Mayors
Court or that he has any just Cause or reason for appealing
therefrom

therefrom

And for Answer to the first reason adduced by the Appellant as Cause of Appeal. This Respondent saith that upon all Suits of this nature where warrants of Attorney to confess Judgment have been granted. Whether the invariable practice of the mayor's court, Since its institution to issue a Summons on the Bill of Complaint in like manner as it done in other Suits where no warrants have been granted. That the only Specifick rule of practice which the said mayor's Court have been pleased to frame respecting Warrants of Attorney Is that the same shall be in the Language of the Party granting them, and the Oath of one or both of the Subscribing witnesses to the due Execution thereof. a Copy of which rule of Practice this Respondent hath hereunto annexed for the inspection of this Honble Court. Which he prays may be taken as part and parcell of this his Answer: And this Respondent saith that it is and always has been the practice of the said mayor's Court When the Summons is returned Served. For the Attorney to whom the Plantiff may have Committed the [illegible] to appear for the Defendant and file the same which being a full authority for him to confess the debt. the Court do thereupon pass a Decree: And this Respondent further saith that the warrants in question being directed generally to any of the attornies of the said Mayor's Court That Mr. George Macmahon one of the said attornies was retained by this Respondent, and upon the Summons being returned Served did Appear for the Defendant and file the said two warrants of Attorney, The Execution whereof being duely proved by one of the Subscribing witnesses. as is required by the aforemention Rule of Practice. The said mayor's Court did thereupon as is usual in such cases Decree the Defendant to pay unto this Respondent the Sum by the said attorney confessed to be due. And this Respondent denies that a Defendant has in such cases an election to Appear by himself or by any attorney he may chuse to nominate, so as to prevent Judgment passing as is untruly alledged by the Appellant in and by his said Petition and Appeal For this Respondent doth Submit that if he were permitted to do so It would render nugatory this Solemn Instrument. The intent of which is to prevent litigation, and is to be viewed and considered as

as an irrevocable authority from a Debtor to
to appoint some person to Appear and confess
for Which the warrant is granted and thereupon to
Execution to issue in due form of Law and no Appeal to
made therefrom The Judgment therefore must be
entered upon the confession of the Attorney who files the
Warrant and if the party is Aggrieved thereby That the
warrant was Obtained in duress or by any undue means
or if Judgment is entered up for a larger Sum than
is due, he is not without
or Bill of Complaint state the peculiar Circumstances
of his case and if the Court below see Good reasons the
Matter being confined to their Jurisdiction they would
no doubt direct the Judgment to be set aside or grant them
such relief as to them should seem Meet. And this
Respondent doth humbly Submit that if the Appellant
is aggrieved he ought in that regular mode to have sought
redress and not by Appeal to this Honble Court which
by his own acts he has expressively precluded himself
from. But the object of the appellant is evident, and
to Seek a redress of grievances But by an appeal to

Suspend and protract the payment of his Bond. And this
Respondent Saith that this mode of proceeding on warrants
of Attorney is not a novel practice of the said Mayors Court
but was adopted on its first Institution and has since
been uniformly pursued, not with Consequences injurious
to the Subject as the Appellant would infer, But on the
contrary with highly beneficial effect; and this Respondent
further Saith that the said Court have always discountenanced
attempts of this nature and when attempted to be practiced
have followed up the Strict letter of the warrant of Attorney
by ordering Execution to issue forthwith instead of passing
a Decree only, Several Instances of which there are now
on the Record of the said Mayors Court—

In Answer to the Second Reason or Cause of
Appeal this Respondent Saith that the warrants of
Attorney Convey an authority to enter up Judgment for
principal, Interest and Costs and with respect to the
period of Six and Twelve months This Respondent
doth Submit to this Honble Court that the same cannot
be Applied to the interest which is to run on the said Bond
But merely to denote and mark the time of payment
before which a Cause of Action did not Accrue against
the

the Defendant at the Suit of this Respondent

For Answer to the third reason this Respondent Saith that he did in Conformity to the practice of the said mayors Court annex to his Bill of Complaint Copies of the Bonds upon Which the Suit is brought and did therein allege that the originals were in his possession ready to be produced When required But as they were not asked for he did not deliver them in, And this Respondent for Answer to that part of the Appellants third Reason wherein he doth allege that it was necessary to have had proof of the Bonds Saith that even in Cases when Judgment goes by default the said mayors Court doth not nor doth the Court of Chancery require proof of the Execution of a Bond, But pass their Decree on the matters Charged and Set forth in the Bill of Complaint which are taken Pro Confess and this Respondent thereupon humbly Submit that if proof of a Bond is not in Such Cases required by law that it cannot be necessary in a Case like the Present where the Defendant Appeared by his Attorney and Confessed the debt. and this Respondent further Saith that the Appellant is not precluded from from calling for the Bonds Which upon Satisfying

the Judgment will as a matter of Course be delivered up to him to be Cancelled—

And for Answer to the fourth reason or Cause of Appeal this Respondent Saith that the Affidavit of William Etches is made in strict Conformity to the practice of the said Mayors Court and therefore Cannot be considered as insufficient and with respect to what the Appellant terms Law in entering up Judgments within a year and day This Respondent Saith that he has alledged on that behalf is nothing more than an explanation of the practice of the Court of Kings Bench in such Cases, and Which Cannot be supposed to rule or govern the Mayors Court who by the Charter of his late Majesty under which it is Constituted have authority to form rules of practice for its own guidance—

And to the fifth Reason this Respondent Saith that he has faithfully pointed out the mode of bringing actions in the said Mayors Court on Cases of this nature But whether the said mode is absurd or not It is not the province of this Respondent to determine, and With respect to the Bonds which the said Appellant has termed useless annexation. This

Respondent

Respondent will only observe that they were Annexed in Conformity to the practice of the said mayors Court and which the Appellant doth well know being one of the Attornies thereof. and here this Respondent doth Submit to the Consideration of this Honble Court How far it is proper for the Appellant to Arraign and Condemn as a Guilor that practice which he follows as an Attorney.

And Lastly this Respondent Prays leave to call the attention of this Honble Court to the Prayer of the Appellant which is that he may be allowed to enter his appearance and to answer the said Bill a prayer altogether inconsistent With his obligations to this Respondent as appear by the said Warrants of Attorny to Which this Respondent Craves leave particularly to refer.—

For all Which matters and Such others as may be offend at the hearing this Respondent humbly prays that the Decree of the said Honble Mayors Court may Stand affirmed and that the appellants Petition of Appeal may be dismissed with Exemplary Costs to be paid by the Appellant

Court

Extract from the Rules and Practice of the Mayors Court

Ordered that in future that it be a Standing rule of Court that all warrants of Attorney delivered into Court for the purpose of confessing Judgment be written in the Language of the person executing the same and that an Affidavit of the due Execution thereof be made by one or more of the Subscribing Witnesses.

A true Extract
Signed G. C. Symes
Dy Regr.

Court of Appeals

Madraspatnam } Monday the 18th day of July Anno Domini 1796.

Between George Pasly one of the attornies of this Honble Court Appellant And Madapaukum Verdarawjah Moodeliar of Madras Inhabitant Respondent

The Attorney for the Appellant moves for Cause to withdraw his Appeal on payment of Costs and the Attorney for the Respondent having consented thereto—

The Court

Signed S. Webb