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Thursday the 8th day of December 1796

Present

The Right Honble Lord Hobart

Edward Saunders and Ernst Wm Tollofield

To the Right Honourable Lord Hobart

Governor and Council of

Fort Saint George

In the Court of Appeals }
at Madraspatnam }

Between Thomas Hays a Captain in the First Battalion of Artillery in the Military Service of the united Company of Merchants of England Trading to the East Indies under their presidency of Fort St George Complainant and Thomas Gils a Lieutenant Colonel of Artillery in the Service of the said united Company of Merchants of England under their said Presidency of Fort St George Defendant—

Filed in my office
the 26th April 1796
J Webbe Clk

Sheweth

The humble Petition and appeal of the above named Defendant

That

That the Complainant above named did
some time on or About the thirteenth Day of September and
year of Our Lord One thousand Seven hundred and ninety
four Exhibit and file his Bill of Complaint in the
Mayors Court at Madraspatnam against your
Petitioner and did therein and thereby Setforth that
Sir Charles Oakely Baronet being Governor of Fort St George
aforesaid and president of the Council thereof and
Earnest William Folloefield and George Westcott Esquires
being also Members of the said Council to wit
on the Twenty Second Day of august in the said
year of our Lord one thousand Seven hundred and
Ninety four at Fort Saint George aforesaid did by their
Certain Indenture by them duly Executed in their
said Capacity of Governor and Council of Fort Saint
George and on behalf of the aforesaid united Com-
pany of Merchants of England in Consideration
of the Costs and Charges the Complainant had
already been at and should thereafter be at in
building and finishing a Brick Messuage or
Tenement on Certain Ground by the said Deed
of

of Indenture leased unto the Complainant in making
other improvements on the said Ground and in Consider-
ation of the Sum of Five Pagodas Current Money of
Fort St George aforesaid to them the said Governor and
Council paid by the Complainant for the use of the said
Company at or before the Sealing and Delivery of the
said Deed and also for and in Consideration of the
further Sums yearly Rent and Covenants in the
said Indenture Reserved and Contained on the part
and behalf of the Complainant his Heirs Executors
administrators and Assigns to be paid done and performed
they the said Governor or president of Fort Saint George
aforesaid and the Council thereof did by their said
Indenture Demise lease let and to farm Let unto the
Complainant his Heirs Executors administrators and
assigns all that peice or parcel of Ground situated
and being in the Village of Adumbaukum bounded
on the North side by Chengleput Road and the
late Colonel Moorhouses Garden on the south side by
Waste Ground on the East side by the said late Colonel
Moorhouses and Major Tuttls Grounds and on the
West

West side by Waste Ground and of the form and Dimensions Expressed in a Drawing annexed to the said Indenture Containing in the whole Two hundred and forty Eight thousand five hundred and thirty Superfecial Square feet or Saint Thome Cawnies four and one Quarter and three thousand Seven hundred and thirty Superfecial Square feet or thereabouts To have and to hold the said peice or parcel of Ground together with all benefit and advantage of the same or to arise therefrom unto the Complainant his Heirs Executors administrators or Assigns from the said Twenty Second Day of August in the year of our Lord one thousand Seven hundred and Ninety four Aforesaid unto the full end and term of Ninety nine years from thence next ensuing and fully to be Completed and Ended The Complainant yielding and paying therefore yearly and every year unto the president and Council of Fort Saint George for the time being the Rent of Six Pagodas thirteen fanams and forty Cash on the Twenty Second Day of August in every year if the same should be Lawfully Demanded and further yielding and

paying

paying therefor at the end and Expiration of Every Thirty years of the Term by the said Indenture Leased unto the said president and Council of Fort St George for the time being for the use of the said united Company the full and Just Sum of thirty Pagodas Currents Money of Fort Saint George aforesaid that by the said Indenture the Complainant did Covenant promise and agree to and with the said Governor or president and Council of Fort Saint George aforesaid on behalf of the said united Company that therefor his Heirs Executors Administrators or Assigns should and would well and truly pay or Cause to be paid unto the said president and Council of Fort St George aforesaid on behalf of the said united Company the said yearly Rent and Monies by the said Indenture Reserved at the time and in the manner and form aforesaid According to the said Reservations during the term of the said Demise and further that the Complainant his Heirs Executors administrators or Assigns should and would at his and their own proper Costs and Charges well and Sufficiently

finish

finish the said intended Messuage or Tenements and the same being so finished should and would at his the Complainants own proper Costs and Charges or at the proper Costs and Charges of the Complainants said Heirs Executors Administrators or Assigns well and sufficiently uphold support sustain Maintain and amend the same from time to time and at all times During the term by the said Indenture Demised and the Complainant did setforth that the said Indenture did provide that in the event that the Complainant his Heirs Executors Administrators or Assigns should at any time or times During the term of the said Demise fail in the performance of all or any of the Covenants and Agreements which on the part and behalf of the Complainant his Heirs Executors administrators or assigns were or ought as aforesaid to be done and performed that then and in such Case it should and might be Lawful for the said president and Council for the time being on the part and behalf aforesaid into and upon the said Demised premises or any part of the same in the name of the whole to renter and the same

to

to have again Repossess and Enjoy as if the said Lease had never been made to the Complainant and the Complainant did state that in Testimony of such Indenture so Entered into by the said president and Council with the Complainant that they the said president and Council did Respectively set their hands thereto and did Cause the Common Seal of the said united Company of Merchants of England aforesaid to be to the said Indenture affixed in Fort Saint George aforesaid the Day and year herein before setforth and which Indenture was thereupon duly Entered and recorded in the Office of George Parry Esquire Superintendant of the said Companys Lands Number One hundred and nineteen as an reference to the said Record would fully Appear and as by the said Deed of Indenture in the possession of the Complainant and ready to be produced and proved whenever the said Mayors Court should require the same would morefully Appear — and the Complainant did state that being so entitled to the said Demised premises and in the possession and occupancy of the same premises the Complainant did in pursuance of

the

the Covenants in the said Deed Contained whereby the Complainant did bind himself to build and Complete a Brick Messuage and Tenement on the said Ground Employ various workmen and Artificers to that end and did Expend various Sums of Money in purchasing the several materials required and did make various Advances to such workmen and Artificers and that having so prepared himself to perform his said Covenant and when actually Employed upon the said Ground and premises to wit on the Thirtieth Day of August in the said year of our Lord One thousand Seven hundred and Ninety four that your Petitioner of Saint Thomas's Mount a Lieutenant Colonel of Artillery in the Service of the said united Company of Merchants of England under their said presidency of Fort Saint George did on the said Thirtieth Day of August in the year last above said cause an armed force to wit one Serjeant of the Corps or Battalion of artillery under his your Petitioners Command and several of the private Soldiers of the said Battalion the said Serjeant and

and private soldiers Respectively Carrying Musquetts with fixed Bayonets forcibly to Enter into and upon the said Ground and premises as aforesaid Demised to the Complainant and in the Complainants possession then being and which armed force did Declare to the Complainant that they were so sent upon the said Ground and premises by the orders of your Petitioners Then the then Officer of the Main Guard then Stationed at Saint Thomas's Mount aforesaid with orders to prevent the Complainant and his Workmen and Labourers from Clearing the said Ground and premises and to Dispossess the Complainant thereof and further to inform the Complainant that they the said Military force were Compelled from the Orders of your Petitioner so as aforesaid given to Expel and Remove the Complainant and his said workmen and Labourers from off the same premises by force of arms and the Complainant did state that he did thereupon in a peaceable Manner Represent to the said Serjeant and armed force aforesaid on the premises aforesaid then being his the Complainants

Right

Right and title to maintain and keep his possession
of the said Ground and premises under the Grant
and Demise hereinbefore setforth and that the Complainant
did then and there produce to the Serjeant and
armed party the said Deed under the seal of the said
United Company as aforesaid and inform them of the
Nature and import thereof and that it was on Grant
of the Government of Fort Saint George aforesaid to the
Complainant of the said Ground and premises and
that he did further Desire the said Serjeant and
armed force to Return to the Commanding officer of the
said Mainguard who had at the instance of your
Petitioner as aforesaid Detached them for the purpose
hereinbefore setforth and not to attempt or use any
further force or violence against the Complainant
and his said Workmen and Labourers being solely
Employed on the said premises in the lawful busi-
ness of the Complainant and in no wise answerable
or Accountable to your petitioner in the premises and
the Complainant did state that the said Serjeant
did returne to the said officer of the Main Guard

aforesaid

aforesaid leaving the said party of private Soldiers
upon the said premises and that the said Serjeant
did shortly afterwards to wit in the space of
Fifteen Minutes or thereabouts Returne to and
upon the said premises and did then and there
inform the Complainant That your petitioner had
Ordered and Authorized the forcible Entry so
as aforesaid made upon the Complainants said
Grounds and premises and had further given his
your petitioners Express orders to Drive the Com-
plainant and his said workmen and Labourers
from off the said Grounds and premises and
not to permit or Suffer the Complainant any
Longer to Retain the possession thereof and that
the said Serjeant having so Delivered to the
Complainant his said Orders Did Demand of
the Complainant to Remove from off the said
premises in lease as aforesaid to the Complainant
and the Complainant did admit that he did
peremptorily Refuse to Comply with such Orders
or to quit the possession of his said Ground and

premises

premises whereupon the Complainant did pretend that the said Serjeant did by word of Command and at the instance of your Petitioner as aforesaid order his said party of Soldiers armed and on the premises aforesaid being to advance upon the Complainant with fixed Bayonets and to Drive the Complainant by force of arms off the said Ground and premises and that thereupon the said Serjeant and his said party of Soldiers did advance upon the Complainant with fixed Bayonetts and then and there to wit on the said Thirtieth Day of August in the year last aforesaid upon the premises aforesaid with force and arms did Assault the Complainant and amove Eject and Expel him from off the said Ground and premises against the peace of Our Lord the King and the Complainant being so Assaulted amoved ejected and Expelled your petitioner had by Military force maned to Keep and still and then did Keep the Petitioner from his said Ground and premises amoved ejected and Expelled that by all which actings and doings of your petitioner the Complainant did

did charge that he had been injured by your Petitioner to the Damage of the Complainant of Twenty thousand Star Pagodas and the Complainant did thereupon in and by his said Bill pray that your petitioner might be Decreed to pay unto him the Complainant the said Sum of Twenty thousand Star Pagodas together with all Costs of this suit and your petitioner sheweth that being served with process to Appear to and Answer the Complainants said Bill of Complaint your Petitioner did accordingly appear thereto and Exhibit and file his answer and did therein state that your Petitioner was on the thirtyeth Day of August and for some years prior thereto and then was the Commanding Officer of the Cantoonments at Saint Thomas's Mount in the Complainants Bill Mentioned and of the Troops there Stationed and that he your petitioner was Appointed to the Command of the said Cantonments at Saint Thomas' Mount and of the Troops there stationed and had Continued and did then continue to hold the same under and by virtue of the Orders of the Government of Fort Saint George and that the

Complainant

Complainant then was and had for a considerable length of time been an officer belonging to the said Contoonment and under the Command of your petitioner and your Petitioner did state that being as aforesaid Commanding Officer of the said Contoonment and of the troops there stationed it was his Duty to give protection and support to the said troops and to all persons living and residing in the said Contoonments against any act of violence or oppression that might be offered to them by any persons whatever living and residing within the said Contoonment and particularly any officer Soldiers or others under his your Petitioners more immediate Authority as Comman. ding Officer as aforesaid and to prevent any outrage or Disorders in the said Contoonments of any Descrip. tion or nature whatsoever until such time as your petitioner could or might Receive the Commands of the said Government of Fort Saint George thereon and your petitioner did state that sometime on or before the Twentieth Day of the Month of August now last past several persons followers belonging to the said Contoonment that was to say persons attached

To

to or Connected with the Troops there Stationed did Complain to your petitioner of the Conduct of the Complainant informing him your Petitioner that he the Complainant had threatened to pull down or set fire to their houses which your petetioner Considered as a Measure that tended not only to Deprive individuals of their property but to Disturb the General o.. peace of the Contoonment also that it was Contrary to good order both Civil and Military and that your petitioner was therefore in Duty bound to prevent such proceedings so far as it might lie in his power so to do and to notify the same to Government to the end that such methods might be Adopted as in their Wisdom might appear Necessary Effectually to secure the parties Complaining against the violence threatened and Maintain the General tranquility of the said Contoon. ment that in pursuance thereof he did on the said Twentieth Day of august Determine on Addressing and did Accordingly address the said Government of Fort Saint George thereon a Copy of which your Petitioners said address your Petitioner did annex

To

to this said Answer for the inspection of the said Mayors Court and did pray the same might be taken as part of your petitioners said answer and your petitioner did state that he did Apprise the Complainant of such his Determination thro the means of his your Petitioners Orderly Serjeant and at the same time and by the same Means Desired the Complainant not Disturb the said persons followers of the said Cantoonment in their possessions but that the Complainant Regardless of such the information given and the Requisition made by your Petitioner to him on the thirtyeth Day of the said Month of August did as your Petitioner was then informed proceed to Carry his threats into Execution and attempt to pull down the houses of the said followers for that on the said thirtyeth Day of the said Month of August several persons followers of the said Cantoonment did personally Complain to your petitioner against the Complainant stating that he then was Actually pulling down their

houses

houses that thereupon your Petitioner did send his Orderly Serjeant to the Complainant with a Message Requiring him to Desist from so outrageous a proceeding and Judging from the Contempt with which the Complainant had treated aformer Requisition of your petitioner of nearly a similar tendency as hereinbefore setforth that he the Complainant would not Desist but would Continue his Disorderly Conduct and pull Down or set fire to the houses of the said followers of the said Cantoonment did at the same time send his your Petitioners Adjutant Lieutenant John Sinclairs to the Officer of the Main Guard Directing him to afford protection to the said followers of the said Cantoonment if necessary and which was Accordingly done in manner and form as hereinafter setforth as your Petitioner had been credibly informed and verily believed the fact so to be and which he Doubted not of proving to the satisfaction of the said Mayors Court and your Petitioner did further say that the said Grounds on which the houses of the said followers of the said Cantoonment were built and which the Complainant did threaten to pull Down and Destroy and did commence

Carrying

Carrying such his threats into Effect as hereinbefore
mentioned and setforth had in a manner been
allotted to be occupied by and in the possession of the
followers of the said Contoonment for or Considerable
Number of years and your petitioner did state that
it appeared by the Complainants own shewing that
at the time when he first threatened to pull down
or set fire to the houses of the said followers of the
said Contoonment and Disturb them in their quiet
and peaceable possessions as hereinbefore setforth he
the Complainant had no manner of legal or other
Right so to do for that he the Complainant did as
hereinabove stated first threaten to pull down or
burn the houses of the said followers of the said
Contoonment on or before the Twentyeth Day of the
said Month of august and by his said Bill o..
it Appeared that the Title Deeds under which
he pretends to be Entitled to the said Ground bare
date the Twenty Second Day of the said Month of
August and with regard to that part of the o..
Complainants said Bill of Complaint which reciting

the

the Deed said to have been Granted by the president
and Council of Fort Saint George aforesaid Expressed
that in Consideration of the Costs and Charges which
the Complainant had already been at and should o..
thereafter be at in Building and finishing a Brick
Message or Tenement and in making other improvements
on the said Ground and for other Considerations the
said Governor and Council did Demise lease let
and to farm let unto the Complainant the said
Ground your petitioner did say that to the best of
his information and belief that the Complainant did
not previously to the Execution of the said Deed
lay out and Expend any Sum of Money whatever on
the said premisses and that he had not been put
to any manner of Charge on Account thereof save and
Except a promise of the sum of Sixteen Pagodas which
your Petitioner had heard and verily believed the
fact so to be was by the Complainant made to the
Inhabitants of the Adjacent Village or Villages upon
the Condition that they the said Inhabitants would
Assist him the Complainant in Dispossessing the said

followers

followers of the said Contoonment That your Petitioner
did not Admit that the Complainant ever was in the
possession or Occupancy of the said Ground as stated in
his said Bill of Complaint but on the Contrary that
he had heard and verily believed the fact so to be that
he the Complainant never was in the possession or Occupancy
of the said Ground but that the said followers of the
said Contoonment was on the day of the Date of the
said deed and for a Considerable time previous to the
Execution thereof had been in the Occupancy and
peaceable and undisturbed possession of the said Ground
that he your Petitioner did not know what might have
been the intention of the Complainant as to the Disposing
thereof or the uses to which he intended to Apply it but
your Petitioner said he was Credibly informed and
verily believed the fact so to be that the various workmen
and artificers Employed by the Complainant in the
premisses were Lascars belonging to the honourable
Company Stationed in the said Contoonment under the
Command of your petitioner as aforesaid and that
their Employment was to Throw up a few yards of

Ditto

Ditch and therefore your Petitioner did not Admit
nor did believe that the Complainant made any
advances to the said Workmen and artificers as they
were Denominated by the Complainant and further that
your Petitioner did not admit nor believe that the Complai
nant did ever purchase any Materials for erecting
any building on the premisses That your Petitioner did
not admit that he did on the Thirtyeth Day of the said
Month of August as was setforth in the Complainants
Bill of Complaint or on any other Day cause an armed
force to wit one Serjeant of the Corps or Battalion of the
Artillery under his your Petitioners Command and
several of the private Soldiers of the said Battalion
the said Serjeant and private Soldiers Respectively
Carrying Musquets with fixed bayonets forcibly to enter
on the said premisses neither did your Petitioner
admit or believe that any Serjeant or private Soldier
did as Charged in the Complainants Bill say to the
Complainant that they were so sent upon the said
premisses by the orders of your Petitioner through the
then officer of the Main Guard with Orders to Dispossess

the

the Complainant and his workmen thereof or that any Serjeant or private Soldiers did say to the Complainant that they were Compelled by the Orders of your Petitioner to remove the Complainant and his Labourers from off the said premisses by force of Arms nor did your petitioner admit nor believe that the Complainant did shew to any Serjeant or armed force sent by the said officer of the Main Guard to the said Ground on the said thirtyth Day of August the deed in his said Bill of Complaint setforth nor that he did enter into any Explanation thereof as the same was asserted in his said Bill of Complaint or that he did Desire any such Serjeant and private Soldiers to Return to the Commanding Officer of the Guard and not to attempt or use any further force or violence against him the Complainant and his said Workmen and Labourers for that on Repeated Complaints of the said followers of the said Contoonment that the Complainant was actually pulling down their houses he your Petitioner did send his Orderly Serjeant to the Complainant to Desire him to Desist from such outrageous proceedings and did at

at the same time send his your Petitioners Adjutant to the officer of the Main Guard to give protection to the poor people who had preferred their Complaints as aforesaid and that his your petitioners orders to the said Officer of the Main Guard were in the words or to the purport or Effect following that is to say" you are to give immediate protection to the Contoonment Followers and to prevent their houses from being pulled down or set fire to and your Petitioner did state he did not believe nor admit that the Complainant and his workmen and Labourers were at the time Aforesaid solely Employed on the said premisses in his the Complainants Lawful business but on the Contrary that your petitioner had heard and verily believed the fact so to be that the Complainant and his said workmen and Labourers that was to say the said Lascars belonging to the said honourable Company were then Employed in the most illegal and outrageous Measurers to wit in pulling down and Destroying the houses of the said followers of the said Contoonment and molesting and Disturbing them in their possessions and thereby and by reason thereof Disturbing the General quiet of the said Contoonment

for

for that the said followers then were and for a Long time previous thereto had been in the peaceable possession of the said premisses and as he your petitioner had heard and verily believed the fact so to be that the Complainant never was in the possession thereof notwithstanding his Assertion to the Contrary. in his said Bill of Complaint Contained and that your Petitioner did not admit nor did he believe that the Serjeant as in the Complainant said Bill was mentioned did return to the Officer of the Main Guard leaving a party of private Soldiers upon the said premisses and that the said Serjeant did shortly Afterwards Return to the said premisses and then and there inform him your petitioner had ordered and authorized the forcible Entry Aforesaid upon the said Ground of him the Complainant for that the only orders by him given regarding the Complainant were as hereinbefore setforth to protect the said followers of the said Cantoonment and to prevent the Complainant from pulling down or setting fire to their houses and for that your Petitioner knew that the possession of the said Ground then was and for a Long time previously thereto had been vested in

in the said followers of the said Cantoonment and your petitioner did aver he never did give any orders at any time whatever to Drive the Complainant and his said workmen and Labourers from the premisses and not to permit or suffer the Compt any longer to Retain the possession thereof for that the orders by him given were to protect the said followers and prevent the Complainant from pulling down or setting fire to their houses and further that he your petitioner did well know that the said followers and not the Complainant were in the possession of the said premisses and your petitioner did state that he did not believe nor admit that the said Serjeant did by word of Command order his party of Soldiers to Advance upon the Complainant with fixed Bayonets and Drive him by force of arms off the said Ground and premisses and that if the said Serjeant and Soldiers did act against the Complainant in such manner as by him stated your petitioner positively Denied that they did so at his Instance and your petitioner did say he did not admit nor believe that the Complainant ever was

Ejected

Ejected from the said Ground as insisted in his said Bill of Complaint for that the said followers there were and for a long time previously thereto had been in the possession of the said premisses and that the Complainants never was in the possession thereof and Consequently he could not have been Ejected therefrom and thereupon your petitioner Denied the Assertion in the Complainants said Bill Contained that your petitioner had by military force Continued to keep and did keep possession of the said premisses and your Petitioner did state that the Sentinels that had been posted in the said Ground to protect the said followers and to prevent the Complainant from pulling Down or burning their houses as aforesaid have long since been with Drawn therefrom so that there was not nor had been any force there posted by the orders of your petitioner or of any person Acting under his authority — And your Petitioner did state that he was under the necessity as Commanding the said Cantoonments to send Respectful Messages to the Complainant regarding the Matters in question and did always Accompany them with a Requisition to the Complainant —

Complainant that he would settle with the said followers and that he your Petitioner would Consider himself as Exonerated from giving them any further protection and that it was some what Extraordinary that the Complainant should lay his Damages at Twenty thousand Pagodas for having been ejected as he called it from premisses that did not Cost him as your petitioner had heard and verily believed more than Twenty Pagodas and that he had not been at any further Expence on Account thereof —

And your petitioner Sheweth unto this Honourable Court that to your petitioners said answer the Complainant having filed a General Replication and your petitioner a General Rejoinder Issue did Join upon the said pleadings and Rules did pass for the Examination of Witnesses and Witnesses were Examined Accordingly both on the part and behalf of the Complainants and of your Petitioner —

And your Petitioner Sheweth that Alexander Falconer Deputy Civil Secretary and George Parry Junior Merchant both in the Civil Service of the united Company of Merchants of England trading

to

to the East Indies under their presidency of Fort Saint George being produced on the part and behalf of the Complainant to the Second Interrogatory did severally Depose that they had seen the Exhibit marked A shewen to them at the time of their Examination that the Signatures of Charles Oakely Earnest William Follofield and George Westcott set and subscribed to the said Exhibit were of the proper hands Writting of the said Charles Oakely Earnest William Follofield and George Westcott and that the said Deed was drawn According to the form of like Deeds or Grants of Land and the said George Parry further Deposing to the third Interrogatory did state that he surveyed in his Capacity of Superintendant of the Companys Lands on the Eighteenth Day of August last the land and premises in the said Deed granted Dated the thirtieth of August that he drew and caused to be annexed to the said Deed the Survey thereunto Appearing that the same was Sufficient to Describe the Ground so granted that a Conversation took place between the Head Inhabitant of Anthempauhum and the Deponent when he surveyed the Ground and

some

some pariah people who had Huts on a part thereof that he understood it had been Customary for the pariahs to pay a tax to the Inhabitants of Anthempauhum on Account of the said Huts and that the said Inhabitants having disposed of the Ground in question to the Complainant promised to allot to the said pariahs other Ground at a small Distance from the Contonment free of any Charge and that they would give a Writting to that purport that the Complainant was with the Deponent and Expressed himself Regarding the said pariah people that they were willing to Remove their Huts

And your petitioner sheweth that Venkatachellum Moodelliar produced on the part and behalf of the Complainant to the fourth Interrogatory did Depose that he knew the Ground in question that he the Deponent did prepare story to the Complainants obtaining Grant thereof with the Inhabitants for their good Will of the same that a Request was made to Deponent by such people as had Huts thereon for ten Days time to remove the same but that the Complainant Granted only Eight days that he the Deponent knew of some preparations having been made by the Complainant in Enclosing the Ground about three or four days previous to the thirteenth of August that no opposition was made thereto

previous

previous to the said Day that he the Deponent received Orders from the Complainant to procure Materials for building an House: that five hundred Pagodas was advanced to Deponent by Complainant and that Deponent advanced out of that sum two hundred Pagodas for Bricks And your Peticioner Sheweth that Seebramony and Raya Moodelly to the fifth Interrogatory on the part and Behalf of the Complainant did severally Depose that they were the Heads of the Village Inhabitants of Aulthemparkum that they knew of a piece of Ground there situate Being Granted by Government to Complainant and of Certain people who had huts upon the said Grounds having Requested permission of one Weeks to remove them that Deponents and other Inhabitants had Appointed another spot for their Removal and that the pariahs had began to Remove but that they were prevented by your Peticioner —

And your peticioner sheweth that Leonard Vanderhold antony and Mootoo three Witnesses on the Exhibited on the part and behalf of the Complainant to the Sixth Interrogatory did severally in substance Depose that they knew the Complainant did a few Days

Days previous to the thirtyeth of August Employ Tanks Digger in Enclosing the Ground in question that they attended the Complainant his Labourers and Workmen on the said Ground on the said thirtieth day of August that the pariahs who had Huts on the said Ground did Commence to pull Down the same and remove therefrom and that no objection was made by them nor Opposition what ever given to the proceedings of the Complainant and his Labourers in Enclosing and Clearing the said Ground that on the said thirtieth Day of August an armed force Entered upon the said Ground and that the Serjeant Commanding the said party did say that he was Directed by the Officer of the Main Guard to prevent any Body from Molesting the Inhabitants or pulling Down the Houses on the said Ground that the Complainant did thereupon reply he had purchased and had a grant of the Ground and shewing the Serjeant a paper Writing which he told him was the grand Ordered him not to Enter the Ground but to return and inform the officer of the Main Guard thereof that the Serjeant accordingly Left the premisses but soon afterwards Returned again and informed that it was the order of your Peticioner not

not to permit any person to pull down any Huts on the said Ground and that the Serjeant having Entered the Ground the Complainant and his Workmen left the premisses and that Centinels were posted on the said Ground to prevent any Huts being pulled Down—

And your Petitioner sheweth that Ulick Burke to the Seventh Interrogatory on the part and Behalf of the Complainant did state that he believed he Commanded the Main Guard of the Artillery at the mount on the Twenty ninth Day of August last that he knew the Ground in Dispute that he Received orders on the Day he was in Guard from your petitioner to the following Effect that the Inhabitants had Complained to your Petitioner that the Complainant had threatened to throw down and burn their Houses to prevent which your Petitioner ordered to post a Lascars Centry or two if necessary to protect the Inhabitants and their Houses and if force was used the Deponent to March with his own Guard to their protection and that he the Deponent had no orders for preventing by Military force the Complainant from Enclosing the Ground—

And your petitioner sheweth that

List

Lieutenant John Hammond to the Eighth Interrogatory Exhibited on the part of the Complainant after Deposing to his having been in Command of the Main Guard on the thirtieth Day of august last and Receiving orders to protect The Inhabitants on the Ground in question to the purport and Extent as Deposed to by the preceding Witness did Declare that hearing the Complainant was on the said Day Employed with his Labourers and Servants in Enclosing the same and pulling Down and Removing the Huts therefrom he did send a Military force to Remove him from the premisses that the said orders were as the Deponent believed Executed by protecting the Inhabitants and preventing their Houses from being pulled Down and that the Deponent ordered Centinels to be posted on the said Ground to prevent further Disturbance happening That after the said day a paper was Brought to Deponent Relating to the matters in issue that he believed the purport of it was to Contradict something that the Complainant had asserted in his Bill of Complaint that he was Requested by the person who Brought the paper to sign the same but that Deponent did not Comply therewith because it Contained matter which he could not

speak

speak to with Respect to what the party might have done on the Ground. that several Signatures were Subscribed to the said paper and that a person who had signed it told the Deponent he was not acquainted with its Contents —

And your petitioner sheweth that to the ninth Interrogatory Exhibited on the part and behalf of the Complainant Lieutenant Andrew Macantyre did Depose nearly in manner and form as the preceding Witness had done save and Except the Matters Regarding the paper Writing to which he appeared not to have been interrogated unto —

And your petitioner sheweth that John Lefford Corporal to the Tenth Isaac Astler Gunner to the Eleventh and Elias Bradley to the Twelfth Interrogatories on the part and behalf of the Complainant did in substance severally Depose that they were sent on the thirtieth day of August last by the Officer of the Main Guard to the Grounds in question to prevent the people Employed by the Complainant from Destroying Houses on the said Grounds that on the arrival thereof the Deponents they found the Complainant and his servants in the act of pulling Down several Houses that the Deponent John Lefford did inform the Complainant the orders he and the Deponents had received to prevent such

proceedings

proceedings but that the Complainant shewing a paper Writing and telling the Deponents the ground was his property Directed them to return and inform the officer of the Guard thereof that Deponents did Leave the premises and go to the officer of the Guard but being again ordered by him to return and prevent the Complainant from pulling down the Houses or Disturbing the Inhabitants they did so and that thereupon the Complainant Left the Ground and your petitioner Sheweth that the said Deponents lastly did Depose to a paper Writing having been sent to them on behalf of your Petitioner for their Signature which although they admit after perusal to have signed yet on being further interrogated by the Complainant what the Contents of the said paper Writing were they pretend to have no Knowledge thereof —

And your Petitioner sheweth that William Tabes Serjeant and Thomas William Clarke Matross to the thirteenth Interrogatory on the part and behalf of the Complainant did Depose to their having Carried a paper Writing which the said William Tabe particularizes in his Deposition to be an Extract of the Bill filed by the Complainant with a Certificate stating that the said

Extract

Extract was false and Groundeless to Lieutenant John Hammand for his Signature but which the said John Hammand had refused to Comply with until he should have seen your petitioner and the said William Tukes further Deposing to the said Interrogatory did say that he had afterwards Carried the said paper Writing to the party of Men who had been Detached with Certain Orders on the thirtyeth Day of august last to the ground in question and procured them to Sign the said paper Writing —

And your Petitioner Sheweth that Ramasawmy to the fourteenth Interrogatory on the part of the Complainant did — Corroborate the Depositions of Vencatachellum Moodelliar to the fourth Interrogatory and of Subramany and Rajah Moodelly to the fifth Interrogatory with Regard to the people who had Huts on the said Ground having sued for time to Remove them and of Certain other Ground having been allotted to them for the purpose as hereinbefore is recited and setforth —

And your petitioner Sheweth that Same Dum Mootoo and Nelloorah to the Fifteenth Interrogatory on the part and behalf of the Complainant after Deposing to their knowledge of the premisis in question having been Granted by Government to the Complainant and of the Companys Surveyor having

having Surveyed the same did State that they had Houses on the Ground in question that they did Applay to the Complainant for time for Removal of them to another Spot that was Granted to them by the Villagers that a — Writing was Executed to that Effect that the said Writing was given by the pariahs to your Petitioner for his perusal that Tank Diggers were Employed by the Complainant in Enclosing the said Ground but that the Deponents did not Remove therefrom because your petitioner would not permit them to Build Huts on the Ground so allotted them and that the Reason Assigned by your Petitioner for such his Refusal was as Deposed to by the said Samee Dum that the said Ground was too near the Barracks

And your Petitioner Sheweth that Nonaiah to the said fifteenth Interrogatory on the part of the Complainant after Corroborating the Depositions of the said Samee Dum Mootoo Nelloorah did further Depose that the paper Writing — alluded to by the foregoing Witnesses to be Delivered to your Petitioner was so Delivered to him when he the Deponent and other pariahs made a Complaint to your Petitioner against the Complainant —

And your Petitioner Sheweth that

Thomas

Thomas Gillon Serjeant to the Sixteenth Interrogatory on the part of the Complainant did Depose that he had carried Message from your Petitioner to the Complainant to Desire he would Desist from pulling some Houses which were on the said Ground as your Petitioner had Addressed Government on the Subject and Expected an answer in a few Days that to which Message the Complainant Replied that he had acquainted the black people to whom the Houses before Mentioned appertained that he had Applied to Government for a Grant of the Ground in Dispute and which Grant he had obtained —

And your Petitioner sheweth that Eastaine Lindsay Clarke to the Seventeenth Interrogatory on the part and behalf of the Complainant did Depose that Complainant shewed the Deponent a few days previous to the thirtyeth Day of August a Grant of the Ground in question that During the time the Complainant was Employed on the Ground he observed an armed party Approach the said Ground and halt a few yards of a line Drawn as a Boundary to the said Ground that he heard the Complainant shew a paper Writing and inform the Serjeant that the same was a Grant of the Grounds in question which he stated was his property and that he would

Defend

Defend it to the last Drop of his blood that a few Minutes afterwards the Serjeant went back but that in a few Minutes he again Returned with his party and Entered on the said Ground where the Complainant was Employed in pulling down one of the Huts on the said Ground - that from the situation in which the Deponent stood he stated he could not say that he saw the Serjeant push the Complainant away from the said Hutt but that the Complainant quitted it immediately and came to the Deponent and informed him that he the Complainant had been forced off his Ground that whilst the Complainant came up to the Deponent he the Deponent observed the Serjeant post a Centinel over the Hutt which the Complainant had been in the act of pulling Down and that previous to the Entry of the said armed party on the Ground he observed several pariah People Removing Materials from off the said Ground and others in the act of pulling down Huts which were on the said Ground —

And your Petitioner Sheweth that William Dring to the Seventeenth Interrogatory did state that on the Twenty Eighth or Twenty ninth day of August last he was with the Complainant who with his Labourers and

Servants

Servants was Employed in Enclosing the Grounds in ques-
that he saw or Grant of the said Ground that he did
see During the time the Complainant was Employed on
the Ground any armed party Enter thereon that the serv-
of the Complainant told him in presence of the Depon
that some of the pariah people Expressed their Readings
to Remove and that others said that they had received
an intimation from your Petitioner that there was not
any necessity for them to Remove off the said Ground
and that he the Deponent did not observe any
outrageous or Violent behaviour in the Complainant on the
said Day or at any other time During his the Deponents
Knowledge of the Complainant —

And your petitioner Sheweth that Serj
and Adjutant John Sinclair to the Eighteenth Interrogato
on the part and Behalf of the Complainant did
Depose that he Carried a Message from your o
Petitioner to Complainant Regarding two letters written
by the Complainant to your Petitioner which he believed
Related to the Removal of some people who were on the
Ground in Dispute and that the said Message so
Carried by the Deponent to Complainant was that the

Village

Village people were Dissatisfied and that your Petitioner
desired he would Satisfy them and not turn them out of
their Huills that in answer thereto the Complainant
Replied that the Village people were satisfied and that
he had pointed out a piece of Ground where they were
to Remove to and further that the Ground in question was
his property —

And your Petitioner Sheweth that Lieu-
tenant Colonel David Smith to the Nineteenth Interro-
gatory on the part of the Complainant did Depose
that your Petitioner did offer to give the said Ground
to the Deponent but he did not Recollect whether your
Petitioner did or did not offer to Remove the pariah
People therefrom who had Casually taken up their abode
on the said Ground - and that he the Deponent
Declined the said office because the Deponent was
not Desirous of having any Ground and also that he
did not believe your Petitioner had any Authority to
Dispose of the same —

And your Petitioner sheweth that
Robert Clarke and John Cox to the Second additional
Interrogatory on the part and Behalf of the Complainant
did

did severally Depose in substance and form as John Lafford Isaac Astley and Elias Bradley had done to the tenth Eleventh and Twelfth Interrogatories hereinbefore Recited and setforth –

And your petitioner Sheweth that on the part and Behalf of your Petitioner fourteen Witnesses namely John Peters Drummer Mootoo Velloovaran Chitty Mooniyan Chandan Bamah Irepolie Tunjooran Mootoo Tillah Venceatachellum Mootoo Vattooran Godvery and Pomeran to the Second Interrogatory did severally in substance Depose that a Complaint was made to your Petitioner by the Generality of them the Deponents and other followers of the Cantoonments purporting that the Complainant had forcid and wanted to force their Huttis from the Ground where they then stood to another Place and that your Petitioner informed them that the Complainant would never force them in the manner they Represented and your Petitioner Sheweth that to the third Interrogatory the said several Witnesses did likewise in substance Depose that the Complainant did on or about the Twentyeth Day of August Last

past

past Enter upon the Ground upon which the Deponents Houses and the Houses of the followers of the Cantoonments then stood in a Violent manner and threatned to pull Down or set fire to the said Houses that the Deponents did in Consequince thereof go to the House of your Petitioner in Company with a Number of other followers and prefer a Complaint against the Complainant that your Petitioner in answer thereto informed them he would send a Guard to protect the said Petitioner and that the Deponents Claimed the protection of your petitioner against the Complainant to put a Stop to his proceedings

And your Petitioner Sheweth that to the fourth Interrogatory the said several Witnesses did in substance Depose that the Complainant on the thirtyeth Day of August did again Enter upon the said Ground Accompanied by his Servants and did threaten to pull Down or set fire to the Houses of the Deponents and the Houses of the other followers of the said Cantoonment that the Complainant did pull down the whole of some Huttis on the said Ground and a

part

part of Each of the Houses thereon that the said Houses did belong to the followers of the said Contoomments that the Deponent and others the followers of the said Contoomments did in Consequence again Complain to your Petitioner against the Complainant and Require Redress that your Petitioner did in Consequence of the second Complaint send a Guard of Europeans to the said Guard for the purpose of preventing the Complainant from pulling Down the Houses or removing the Deponents and the other followers therefrom and that the Deponents and the followers had been in possession of the said premises from fifteen to Twenty years and your Petitioner sheweth that to the fifth Interrogatory the said several Witnesses did Depose that they heard the Complainant had filed a Bill against your petitioner Regarding a Certain piece of Ground and that they believed it was the Ground in question on which their Houses stood and of which they had Remained in possession immolested and undisturbed for a series of years—

and your Petitioner Sheweth that John Lefford Corporal to the Sixth Interrogatory on the part of your Petitioner did Depose that he was Ordered by the Officer Commanding

Commanding the Main Guard on the thirtyeth Day of August last past to take a party and proceed to the Ground in question and prevent any people from Destroying the Houses on the said Ground as it was your Petitioners positive Orders that the said Houses should not be Destroyed To the Seventh Interrogatory that he the Deponent did proceed to the said Ground and Enter the same with fixed Bayonetts but not forcibly that Deponent saw the Complainant there that he the Deponent did not tell the Complainant he was sent by your Petitioner with orders to prevent him the Complainant and his Workmen and Labourers from Cleaning the said Ground and to Dispossess him thereof and Expell him and his Workmen and Labourers from of the said premisses by force but that the Deponent told the Complainant that he had Received Orders from the said Officer of the Main Guard to prevent any person from pulling down the Houses on the said Ground To the Eighth Interrogatory that there were several Labourers with the Complainant on the said Ground on the said thirtyeth day of August when

when Deponent arrived there Employed in pulling down the Houses on the said Ground and making a ditch.

And to the Ninth Interrogatory that he the deponent did not inform the Complainant that your petitioner had Ordered him the Deponent to Enter forcibly the said Ground and Expressly to Drive him the Complainant and his Workmen and Labourers therefrom and not permit or suffer the Complainant any Longer to Retain possession thereof nor that he the Deponent did Order and Direct the Complainant to quit the same and did Depose that he Ordered the party to Advance upon the said Ground with fixed Bayonets but not upon the Complainant to Drive him off from the said spot of Ground and further that when he Delivered his orders to the Complainants the Complainant told the Deponent that the first person who Advanced beyond a line which was on the said spot of Ground either he or the Complainant should fall and that he the Deponent did thereupon in Consequence thereof Return to the officer Commanding the said Main Guard -

And your petitioner Sheweth that Isaac Astler Benjamin Filby Joseph Davis John Marrison John

John Cox Robert Claister patrick Macarmick Elias Bradley and John Farr who were the privates that were Detached under the aforegoing Witness John Lafford to the Ground in question to preserve order and prevent the Destroying of any of the Houses on the said Ground did to the said Sixth Seventh Eighth and Ninth Interrogatories on the part and behalf of your Petitioner very materially support and Corroborate the Deposition of the said preceding Witness John Lafford as afore recited and setforth - And your Petitioner Sheweth that John Sinclair Lieutenant and adjutant in the first Battation of artillery to the Second additional Interrogatory on the part and Behalf of your Petitioner Did depose that your Petitioner was Commandant of the whole of the Honourable Companys artillery Serving on the Coast of Coromandel and had been Commandant thereof since January last that the said Corps of Artillery were stationed at Saint Thomas's Mount and had been so stationed there since the Month of June one thousand Seven hundred and ninety four and that your Petitioner was the Commanding Officer of the said Cantonment and artillery stationed there That the Complainant was an officer Belonging to the Artillery stationed at

stationed at the mount and that Deponent supposed the Complainant was by Reason of such his situation under the Command of your Petitioner as Commanding Officer of the Contoonment at the said place and of the said Troops stationed there and that it was the Duty of your Petitioner to give every support and protection to the said Troops and to all persons Residing in the said Contoonment and to Lascars and others Denominated the followers thereof against any act of Violence or oppression that might be offered to them by any persons or person whatever living and residing within the said Contoonments and particularly any Officer or Soldier under his your Petitioners more immediate authority as Commanding Officer To the third Additional Interrogatory the said Deponent did say that it was a part of his your Petitioners Duty as Commanding Officer as aforesaid to hear all Complaints of persons living and Residing in the said Contoonments and particularly of Soldiers and followers Belonging thereto of outrages or violence offered or Committed by any person Residing in the said Contoonments and particularly by Officers and Soldeirs Belonging thereto and to

Redress

Redress the same as far as may be in his power so to do and to prevent Every outrage such as pulling down Houses or Setting fire thereto or Disturbing the occupiers thereof and Report the same to Government when he Cannot Otherwise — To the fourth additional Interrogatory the said Deponent did say that your Petitioner did Address a Letter to Government on or about the Second Day of August last past Regarding the Subject of a Complaint that had been made to your Petitioner by the followers of the Contoonment at the Mount and further that your Petitioner did subsequent to the said Twentyeth Day of August address a Letter to Government and upon the same subject as the one to which he had Before Deposed that the purport of such Letters were that he your Petitioner had Addressed Sir Charles Oakley the late Governor of Fort Saint George and had not Received an Answer thereto he became anxious to Receive an answer as the Complainant had Commenced an action against him your Petitioner in the Mayors Court stating at the same time that he your Petitioner thought it his Duty as Commanding Officer of the Contoonment to protect the followers who had Complained against the

Complainant

Complainant till he heard from Government on the
Subject and that your Petitioner had in his said Letters
stated what he had Done to prevent any person from
pulling down or setting fire to the Huts of the said followers
To the Sixth additional Interrogatory the said Deponent
did Declare that he was and had been Adjutant to the
first Battation of Artillery since the Month of February
One Thousand Seven hundred and Ninety one that he did
on the thirtyeth of August last Carry a Message from
your Petitioner to the Officer Commanding the Main Guard
of the said Cantonment and that the purport thereof
was that your Petitioner was surprised he the said Officer
of the Guard had not paid attention to the orders he
had Received from the Relieving Officer Respecting
protection being Given to the followers that the officer
told the Deponent that the Relieving Officer had
omitted to give him Orders to that Effect that the Deponent
did in Consequence thereof Deliver him an order from
your Petitioner to give immediate protection to the followers
and prevent their Huts from being pulled Down
or setfire to that Deponent Knew two Centinels were
posted

posted on the thirtyeth day of August last past and remained
there for several days but not to keep Complainant
from possession of the said Ground only to prevent the
Houses on the said Ground from being Distroyed that
your Petitioner did not at any time previous to the said
thirtyeth Day of August past post or Cause to be posted
any Guards or Centinels on the said Ground to prevent
the Complainant from taking or Enjoying possession of
the said Ground or for any other purpose that the followers
of the Contonments then were in possession of the said
Ground and were in possession thereof on the Thirtyeth
Day of august and had been so since the year One
Thousand Seven hundred and Eighty Seven that the
said followers did Complain to your Petitioner previous
to and on the thirtyeth Day of August Regarding the
Conduct of the Complainant towards their and that
the particulars of such Complaint previous to the
thirtyeth day of August were as the Deponent recollected
that the Complainant wanted to remove them from the
Ground in Dispute to another piece of Ground and
that it would be very hard upon them to be Removed
from

from the ground on which they had been so long in
possession and for which they had paid Rent to the
Village People to whom the Ground belonged and that
the Import of the Complaint on the thirtyeth Day of
August was that the Complainants Servants were
actually pulling Down their Houses on the said Ground
and your petitioner Sheweth that Barry Close adjutant
General of the Honourable Companys Service to the
Second Additional Interrogatory on the part and
behalf of your Petitioner did Depose that your petitioner
was Commandant of the whole of the Honourable
Companys artillery serving on the Coast and had been
Commandant thereof about Six Weeks that the said
Corps of artillery were stationed at Saint Thomas's Mount
and your Petitioner was the Commanding Officer of
the Contoonment at Saint Thomas Mount and of
the artillery stationed there and had so been and
Continued to be the Commanding Officer as aforesaid.
upwards of two years that the Complainant was an
Officer Belonging to the said Artillery stationed as
aforesaid and had Continued to be so about ten Months
and that Complainant by reason of such his situation was
under

under the Command of your petitioner as Commanding
Officer of the said Contoonments and of the Troops stationed
there that he the Deponent Conceived it to be the
Duty of your petitioner to give Every Necessary support
and protection to the said Troops and to all persons
Residing in the said Contoonments and to the
Lascars and others Denominated the followers thereof
against any act of Violence or oppression that might
be offered to them by any person or persons whatever
living or residing within the said Contoonments
and more particularly by any officers or Soldeir
under his your Petitioners more immediate
authority as Commanding officer aforesaid To the
third additional Interrogatory the said Witness
did Depose that he Conceived it to be the Duty of
your Petitioner as Commanding officer to hear all
Complaints of Soldeirs and followers Belonging
thereto of outrageous Violence offered or Committed
by any person living and Residing within the
said Contoonment and particularly by officers and
Soldeirs Belonging thereto and to Redress the
same

same so far as in his your Petitioners Military Situation he might be Capasiated to do and to prevent every discription of outrage in the said Contonments such as pulling Down Houses or setting fire thereto or otherwise Disturbing the occupiers thereof and in some Cases that your Petitioner might find it proper to Report the same to Government—

And your Petitioner sheweth that John Herman Second in Command a Lieutenant in the first Battalion of Artillery did to the said Second and third additional Interrogatories on the part and behalf of your Petitioner Repeat the facts which the preceding Witness Barry Close had Deposed to and to the Seventh additional Interrogatory did state that he was the officer Commanding the Main Guard at Saint Thomas's Mount on the thirtyeth Day of august last past that he did Receive an order from your Petitioner thro his Adjutant Regarding the Contoonment followers to send a party from the Main Guard to protect the Inhabitants in the patechcherry and to prevent any person from Molesting them or pulling down their Houses and that he the Deponent did Accordingly send a Sergeant and nine or ten Men with the orders aforesaid—

And your Petitioner sheweth that

William

William Collins Jackson in the Civil Service of the united Company of Merchants of England trading to the East Indies and Military Secretary under their presidency of Fort St George did to the fourth Additional Interrogatory on the part and behalf of your Petitioner Depose that your Petitioner did Address a Letter to Government Regarding a Complaint made to him by the followers of the Contonments of Saint Thomas's Mount but the particulars of which he did not Recollect and that he the Deponent Believed to have seen Another letter from your Petitioner to Government Also on the same subject but Could not Depose when the same was written nor Could he Remember the Contents thereof no Letters relating to the Matters in Dispute between the Complainant and your Petitr being to his Knowledge on the records of the Military Department—

And your Petitioner further Sheweth unto this Honourable Court that upon the Aforegoing Evidence had on the part and behalf of the Complainant as well as of your Petitioner Publication Did pass in the said Cause and 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 Eighth Day of the present Instant

April

April and year of our Lord One thousand Seven hundred and Ninety Six the said Mayors Court was pleased to Order and Decree and did Accordingly Order and Decree that your Petitioner should pay unto the Complainant the sum of Five hundred Pagodas Damages together with all Costs of Suit as by Copy of the said Order and Decree hereunto annexed for the inspection of this Honourable Court to which your Petitioner humbly begs leave to Refer and prays the same may be taken as part of this his Petition and Appeal may Appear—

By which said Order and Decree of the said Mayors Court your Petitioner doth Conceive himself very materially aggrieved and injured and doth therefore appeal therefrom for the following amongst other Reasons—

First..... Because the said Complainant having brought his said action against your Petitioner for a pretended forcible Entry on and a Detainer of Certain Lands Alleged to have been leased to him to his Particular Damage of the Amount Setforth and mentioned in his said Bill ought to have Clearly Shewn to the said Mayors Court a right in the Premisses in Question But your Petitioner humbly Sheweth unto this Honourable Court that the said Complainant Exhibited no other shew of Right in the said Premises Alleged to have been Leased to him than the Single Instrument by which he insisted that the same had been Demised to him unsupported by any Collateral Evidence whatsoever and your Petitioner humbly Contends that the said Complainant as he pretended Title as Lessee and in no other Relation to the said Premises in order to have made good the same was bound to produce Proof of the Right of his alledged Lessors For the mere exhibition of an Instrument though it be Legally proved to have been Duly Executed and under all Solemnities Common to such a Writing by the parties to the same is no Evidence of itself as to the property in the thing Discribed to be granted or Conveyed by the Apparent granters in the face and body of such Instrument or fictitious Titles might be every day made to the Creation and begetting of and less Confusion and Although it might possibly have been in the said Complainants power to have shewn to the said Mayors Court the Right of Property in his Alleged Lessors to the

to the Land and Grounds in Question yett he hath not done so and therefore he hath not manifested that whereby his action should Principally be maintained and your Petitioner humbly Sheweth that the thing which doth not Appear in the Contemplation of the Law is regarded as a thing altogether out of Existence

Secondly. Because Even had the said Complainant Shewn to the said Mayors Court that he had any Right or Title as Lessee in the Premises in Dispute which your Petitioner trusts that he hath in the foregoing Reason Demonstrated that the said Complainant hath not made to Appear the Complainant did not Discover what is the Gist of his said Action his Possession of the said Land Setforth to have been Demised to him by his said alleged Lessors and your Petitioner humbly Sheweth unto this Honourable Court that as the said Complainant has Rested his Plaint that he hath been amoved and Dispossessed of the said Premises mentioned in his Bill it was incumbent on him to have made out that he was in possession thereof at the time Suggested in the Bill But your Petitioner saith that it is Apparent from the Evidence adduced on the part of the said Complainant as well as on the behalf of your Petitioner that the said Complainant was not at any time in the Possession of the said Premises in Dispute previous

previous to or after the alledged Lease Set up and by him Relied on and your Petitioner humbly Observeth that in Saying that the said Complainant was not in possession of the Premises in Dispute your Petitioner meaneth and intendeth such possession as the Law will recognise and your Petitioner Sheweth that a possession According to Law must be peaceable and easy and not "forcimano" by reason of power and force and your Petitioner humbly Sheweth unto this Honourable Court that the said Complainant in his said Bill has Described the Premises in Difference as one indivisible parcel of Land and as the fact is and it was in proof Before the said Mayors Court that on such parcel of Land various persons had erected Houses and had been and were in the quit undisturbed Occupancy thereof for the Space of Several years previous to and at and after the time of the Date of the said Lease under which the said Complainant claimed and your Petitioner is Advised that the said Land being in one Single Parcel the Occupants of the said Houses on the said Land for the Length of time given in Evidence were in the true and Lawfull Possession of the same and although it may have been Shewn in

Evidence

Evidence that the said Complainant Entered on such Oc
yet such Entry even under the Circumstances setforth Expli
and Deposed to by the Witnesses on the behalf of the said C
plainant is Directly Opposite and Contrary to the first
Principle of Law and any Possession obtained under it is
only Repudiated and Disowned in every legal Considerati
but the person making such Entry and afterwards keeping
Possession by Colour thereof induces an Injury of a Civil an
Criminal nature whatever might be his right and however
Clear and manifest on a Judicial Inquiry his Title might
be to the same your Petitioner therefore humbly Conceives
that as the said Complainant was not on Possession of
said Land or Premises in Question at the time mentione
in the said Bill when his Eviction or Ejectment from the
same is pretended and Alleged but on the Contrary as
Possession of the said Premises is Shewn to have been
the said Occupants of the said Houses Erected on the same
this said Complainant has failed altogether in as much
as the Possession of the Complainant the Life of the
action not being proven no Dispossession or Ejectment
Excavations nor Could possibly be Demonstrated and
which

Thirdly

which ought to have been Demonstrated if the said Complainant Could have Sustained his action —

Because the Occupants of the said Houses Erected on the said Premises as Setforth by your Petitioner in the proceeding Cause or Reason having been in the quiet and undisturbed Possession of the same for Several years antecedent to and at the Entry of the said Complainant in the manner as afore shewn by your Petitioner they the said Occupants were Legally Entitled to resist the Entry of the said Complainant and to Call in such aid as they might Enable to procure to Cooperate with them in the Resistance of the said and your Petitioner humbly Sheweth unto this Honourable Court that he was Solicited and Requested by the Occupants of the said Houses to Protect their Possession against the forcible Entry of the said Complainant and that by reason of such Solicitation and Request that your Petitioner did give Orders that the said armed Party mentioned in the Bill should proceed to the said Premises to protect the Occupants of the said Houses so being in possession in their said Habitations and Dwellings and your Petitioner

humbly

humbly Contendeth that in Consideration of the Premisses your Petitioner did no more than what was Strictly Lawful For your Petitioner sheweth that it was in Evidence before the said Mayors Court That your Petitioner was the Commandant of a Large Military Station and bounden by the nature of his office to preserve the quiet of such Station and to quell every Disturbance which might have tendency to a Breach of the Peace and your Petitioner Sheweth that the Entry of the said Complainant on the said Occupants of the said Houses was Contrary to Law and had a manifest tendency to a Breach of the Peace and therefore that your Petitioner was obliged from the nature of his Situation and Command to prevent the said Entry of the Complainant as aforesaid and your Petitioner humbly Sheweth unto this Honourable Court that your Petitioner was armed by his office of Commandant of such military Station with a Concurrent authority with one of his Majestys Justices of the Peace where Civil Jurisdiction is prevalent and maintainable and that Civil Majestrates are Commanded by several Statutes made in that behalf to Protect those in Possession for a Certain time mentioned in the said Statutes against the forcible Entry of Persons over them by Colour of any Right in such Persons pretended or Alleged and your Petitioner therefore further Contendeth it was particularly Required of him in such his Relation to one of the Kings Majestrates to Afford Assistance to the said Occupants in Maintaining and Keeping their Possession of the said Premisses and that in Affording such assistance your Petitioner hath barely Exercised a legal Power incident to his Station and by the fair and Legal Exercise of which not liable to the suit or action of the said Complainant—

Fourthly Because it was in Evidence before the said Mayors Court that the Intent of your Petitioner in sending the said armed Party on the Premisses in Question was for the Sole Protection of the said Occupants of the said Houses thereon and not with any view to Disturb any Supposed Possession of the said Complainant or to Remove the said Complainant from out his said Supposed Possession and your Petitioner humbly Sheweth unto this Honourable Court that the Depositions of Lieutenant Sinclair who conveyed immediately the orders of your Petitioner to the Officer Commanding the Guard by whom the said Armed

Party

Party was immediatly sent to the said Premisses and of the said officer Commanding the said Guard who Detached the said armed Party as well as of the non Commissioned Officer in the Actual Command of the said Party are unquestionable Evidence of the said Intent of your Petitioner and if any thing Can be presumed from the other Depositions taken in the said Cause that the said armed Party Exceeded the orders Committed to them to Execute your Petitioner humbly Contendeth that he is not Chargeable in any Civil Injury from any thing which might have happened in consequence of the said Party Exceeding the said orders issued and given by your Petitioner but for such acts only as were done and in pursuance of and in Compliance with your Petitioners Orders or Commands But that the said actings and doings of the said Party not authorised of your Petitioners Commands were the actings and doings of the said Party from their own mere motive and not of your Petitioner nor in any wise imputable to him —

Lastly ... Because the pretended Damage of the said Complainant as alleged by his Bill of Complaint is stated to have arisen from his Deprivation of the use and Enjoyment of the Premisses in Difference by the act of your Petitioner and for the Loss of Certain Sums of money alleged to have been Laid out by him in the Improvement of the said Premisses and to have Entitled himself thereto the said Complainant ought to have made out a Clear Right in and Lawfull Possession of and amovement from as well as the Expenditure of Certain Sums in and on the Improvement of the said Premisses which your Petitioner humbly Contendeth doth not appear and therefore and by reason of the Premisses your Petitioner Saith he is advised that the said Complainant ought not and was not Entitled to Recover any thing in this said Action —

For all which reasons and such others as may be Offered at the hearing of this your Petitioners Petition of Appeal your Petitioner most humbly Prays that that the said order and Decree of the said Mayors Court may be Reversed and that this honourable Court will be pleased the Premises Considered to grant unto your Petitioner such further and other Relief in the Premisses as to this Honourable Court shall Seem Meet

(Signed) Emanuel Samuels
Solicitor for Appellant

Mayors

Mayors Court at
Madraspatnam

Friday the 8th day of April
Anno Domini 1796

Present

James Daly Esqr. Mayor
James Ball. William Webb
Andrew Ross. John Mitford
Benjamin Roebuck. Alexr Cockburn
& Richard Chase Aldermen

Between Thomas Hayes of Saint Thomas Mount a Captain in the first Battalion of Coast Artillery in the Military Service of the united Company of Merchants of England trading to the East Indies under their Presidency of Fort St George Complainant and Thomas Giels of Saint Thomas Mount a Lieutenant Colonel of Artillery in the Service of the said united Company of Merchants of England under their said Presidency of Fort Saint George Defendant

This Cause Coming on to be Heard and Determined this Day in the Presence of the Attornies on both sides on reading the Complainants Bill The Defendants Answer The Replication The Rejoinder The Interrogatories and Depositions on the part of the Complainant with one Exhibit annexed The Interrogatories and Depositions on the Part of the Defendant On Hearing the Pleadings read 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 sum of Five hundred Pagodas (Pagodas 500) Damages together with all Costs of this Suit

Pr Cur
(Sig) George Taylor Regr

In

In the Hon^ble the Court of Appeals at Madraispatnam

The Answer of Thomas Hayes a Capt^n in the first Battalion of Artillery on the Military Service of the united Comp^y of Merchants of England trading to the East Indies under their Presidency of Fort Saint George to the Petition and Appeal of Thomas Geils a Lieutenant Colonel of Artillery in the Service of the said united Company of Merchants of England under their said Presidency of Fort St. George—

This Respondent admits that he did at or about the time in the Appellants said Petition of Appeal Setforth Exhibit and file his Bill of Complaint in the Honourable the Mayors Court at Madraspatnam against him the Appellant Setting forth as in the said Petition is Expressed that Sir Charles Oakely Bart being Governor of Fort Saint George and President of the Council thereof and Ernst William Fallofield and George Westcott being also Members

Filed in my Office the 5th July 1796
J Webbe Clk

Members of the said Council had on the twenty Second Day of August One thousand Seven hundred and Ninety four at Fort Saint George aforesaid by their Indenture duly Executed in their said Capacity of Governor and Council aforesaid and for and on behalf of their Employers the United Company of Merchants of England trading to the East Indies demised and Leased to this Respondent for the Considerations in such Indenture Expressed the Lands thereby Granted being the Lands in question in the Cause And this Respondent doth Admit that the said Petitioners Petition of Appeal hath Sufficiently Discribed and setforth the nature of the said Grant and the Several Covenants and agreements in the Same Contained and this Respondent admits that his said Bill of Complaint did further state that havingly Vertue of the said Indenture became Entitled to the premises by the Same Demised and Accordingly Entered upon and possessed himself of the same that he this Respondent did in pursuance of the Covenants

in

in the said Indenture Contained to that End Employ Various Workmen and artificers and did Expend various Sums of Money in purchasing Requisite Materials to build and did make Various advances on such Account and that having so prepared himself for the performance of the several Covenants by by his Lease incumbent on him to do and whilst actually Employed upon his said Ground to wit on the Thirtieth Day of August one Thousand Seven hundred and Ninety four that he the Appellant did Cause an armed force the same as in the said Petition of Appeal is Described to Enter in and upon the said Ground and this Respondents possession of the Same and that the same Armed force had so Declared to this Respondent that they were so sent on the Ground by Order of the Appellant thro' the Officer then Commanding the main Guard with orders to prevent this Respondent from Clearing the same And this Respondent admits that he did as in the said Petition of Appeals is Stated thereupon Represent to the said Serjeant and armed party

party his right and Title to maintain and Keep his possession of the said Ground by Virtue of his aforesaid Demise and that he did Shew and produce to the said Serjeant and party his Deed or Instrument of Demise Aforesaid under the Signatures Aforesaid and bearing the Seal of the Government aforesaid thereupon Requiring of the said Serjeant and Party to Desist from Carrying their Orders into Execution and that the said Serjeant did return to the Main Guard to Receive further Orders but did thereafter again Return and Declare that the Appellants Orders were to Drive this Respondent and his said Labourers and workmen off the Ground nor longer to permit them to Retain the Possession of the same - And this Respondent did as in the said Petition of Appeals Stated admit the Refusal on his part to Obey the said Order and that the said Serjeant and Armed party did in Consequence of such Refusal advance upon this Respondents said Ground and possession with Fuzees and fixed Bayonetts and not pretendedly as in the said Petition of Appeal is setforth but actually then and there with force and arms did Assault this Respondent and

Amove

amove and Expell him from the possession of his
Ground against the Peace of the King and to the Damage
of this Respondent as by his said Bill he did Charge
of Twenty Thousand Star Pagodas wherefore he did
Declare and so forth And this Respondent admits
that to such this Respondents said Bill the appellant
did put in the answer in his said Petition of Appeal
set forth and that a General Replication and General
Rejoinder having put such Bill and answer in Issue
Witnesses in Support of the same Respectively were
Examined And this Respondent Sheweth that in
Support of his said Bill he did first Examine to the
Solidity of his Entry on the Lands in Question and to
that End did obtain the Respective Evidence of
Alexander Falconer Deputy Civil Secretary to the Govern-
ment of Fort Saint George and of George Parry the then
Superintendant of the English East India Companys
Lands the first of whom to the second Interrogatory did
Depose in substance as follows that the Exhibit A. to which
he has Examined being this Respondents Lease or grant
from the Government of Fort Saint George was an Indenture
made between Sir Charles Oakeley Bart Governor of

Fort

Fort Saint George and President of the Council thereof
and the rest of the said Council for and on behalf of
the United Company of Merchants of England trading
to the East Indies of the One part and this Respondent
of the other part and that the Respective Signatures
to the said Deed Subscribed to wit Charles Oakely
Ernest William Fallofield and George Westcott were
Respectively of the proper hand Writing and Signatures
of such Subscribing Parties and that he the Deponent
had also set and Subscribed his name to the Indenture
in the Capacity of Examiner in the office of the said
Honourable Companys Civil Secretary that the same
might Certify that the Deed was Correctly drawn
and According to the Established form of Like Deeds
or grants of Land from the said English East India
Company within their Jaghire under their said Presidency
of Fort Saint George And the said George Parry by his
Deposition to the same Interrogatory did in like manner
Establish the Authenticity of the said Exhibit A and
that he the witness had also subscribed his name to the
said Deed as being the Superintendant of the Lands
of the said English East India Company and in order

to

to Certify that the grant was regularly Entered in the Superin:
dants office and that the same was of the like purport
and Established form of all other the said Companys grants
of Land within their Jaghire And this Respondent sheweth
that the same Witness George Parry to the third Interro
gatory did Depose that in his Capacity of Companys
Surveyor aforesaid and by the Order of the Board of Revenue
he did on or about the Eighteenth day of august in the
said one Thousand Seven hundred and ninety four
Survey the Lands and premises in and by the aforesaid
Deed granted to this Respondent that During such his
Survey & Conversation took place Between the head
Inhabitants of authumbaukum and the said Witness as
also Between some Pariah People who had huttes
on a part of the Ground and that such Conversation was
Explained to the witness to be that it had been custo:
mary for the said Pariahs to pay a tax to the Inhabitants
of Authumpaukum on Account of the said hath and
that the said Inhabitants having Disposed of the
said Ground to this Respondent had promised to the
said Pariahs other Ground at a small Distance from
the

the Contonment on which they should live free of
any Charge and that they would give a Writing
to that purpose - That after the witness had
Compleated his said Survey and whilst at the
Mount that one Ramasawmy Maistry
Described by the Witnesses to be his Surveying assistant
Come to him and informed that the said Pariahs
and Inhabitants had Settled Regarding the new Grounds
to be occupied and that all parties were Satisfied
and this Respondent Sheweth in Confirmation of
the Last Mentioned Evidence of George Parry to
the third Interrogatory that his therein Mentioned
Surveying assistant Ramasawmy Maistry was
Examined on the part of this Respondent and
to the fourteenth Interrogatory did Depose that
he did as maistry attend the said George Parry
Esquire Companys Land Surveyer to Survey a
piece of Ground Situated at authumpaukum at
Saint Thomass Mount on the Eighteenth Day
of August one Thousand Seven hundred and ninety
four and which Ground had been Since as the
Deponent understood granted to this Respondent
by

by the Government of Fort Saint George that he the
witness did there see this Respondent who was as
he understood the purchase of the said Ground that
he the witness was present when Certain Pariah People
having Huttes on the said Ground requested of this
Respondent permission of Eight Days to Remove
their said huttes off the said Ground and that
such permission was granted them by this Respon-
dent and that there was no opposition or Objection
made by the said Pariahs to this Respondents having
possession of the Ground and the same Witness
to the Last Interrogatory did further Depose that the
Inhabitants of Authumpauhum did Allott
Ground to the said Pariah People in room of that
in which their huttes were Situated some what to -
the westward of the Former Situation of their
huttes and did give a Writing to the said Pariah
People for that purpose at which time of so giving
the Writing the witness and one Vencatachellum Moodely
were present and this Respondent Sheweth that
the said Vencatachellum Moodelliar having been
also Examined on this Respondents behalf did to the

fourth

fourth Interrogatory Depose that he knew the
piece of Ground Situate at Authembauhum Saint
Thomas mount in Dispute in this Cause and for
which this Respondent had Obtained a Grant
from the Government of Fort Saint George that he the
witness had preparatory to this Respondents obtaining
Such Grant treated with the Villagers and Inha-
bitants of Authempauhum for their good will of the
Same That he did know of some Pariah People at
that time having such huttes thereon and that a request
was made by such Pariah People for Ten Days time to
Remove their huttes to some other place but that this
Respondent would allow them no Longer period
than Eight Days for such purpose That he the
witness was present when the said Ground was
Surveyed by George Parry Esquire the Government
Surveyor to which no objection was made by any person
or persons nor did any person or persons deny the
Right of this Respondent to the Exclusive possession
of the said Ground and this Respondent in further
Corroboration of the above Evidence for quiet possession
of the Ground Sheweth that he did Examine the Cause

on

on his behalf Soobramony and Reyah Moodelly who to the fifth Interrogatory did severally Depose that they were Heads of the Village of authumpaukum and that they knew the piece of Ground there Situate granted by Government to this Respondent the same being the Ground in Question in this Cause that they knew of Certain Pariah People having huttes upon the said Ground and of such Pariah People having Requested of this Respondent permission of one to remove such huttes and that such Request was by this Respondent Complied with that they the witnesses and other the Inhabitants of Authumpaukum did Appoint another piece of Ground for the said Pariahs to remove to and that thisaid pariahs did begin to remove thereto and were afterwards prevented so doing by the Appellant as they the Witnesses were informed by the Pariahs themselves And this Respondent in aid of all the foregoing Clear Testimony Sheweth that he did Examine Saum Daum Munniah Mootoo and Villoorah being four of the Pariah people having having huttes on this Respondents said Ground all of whom do Depose to the fifteenth Interrogatory that they are of the Pariah People

People who had Temporary huttes of the Ground that they were present when the Ground was Surveyed by the Companys Surveyor aided by a native assistant and in the presence of this Respondent that they did then understand that this Respondents was about to build thereon and that they and others the Pariah Occupiers of such huttes on the Ground did Apply to this Respondent for Eight Days to remove such huttes to another Piece of Ground and that this Respondent Did Comply with Such Request That the New Ground to which they were so to Remove their Huts was pointed out to them and agreed for with the Villagers of Authumpaukum and that a writing to that Effect was actually Executed That such Writing was Shewn to the appellant who Kept it and that the purport thereof was that a new piece of Ground was allotted in Lieu of that they then occupied and that they were to pay the Villagers of Authumpaukum half a fanam per month for Each of their huttes that they shall remain on the said Ground because the Appellant would not Suffer them to occupy the new Ground assigned them to Remove to- And this Respondent Sheweth that having Entered on the Lands in Grant to him that he

did

did Establish by Several Witnesses that he was on his said Land Employed in fencing and Clearing the same for many days previous to the Appellants Disturbance thereon and to Such proof is the Second Depositions following — Leonard Vanderhold to the Sixth Interrogatory Deposes that previous to the Day of the Trespass Committed on the thirtieth day of august one Thousand Seven hundred and Ninety four that this Respondent did Employ thirty Tank Diggers in Enclosing his Ground with a Ditch and that the persons so Employed were Common Tank Diggers and not Lascars as by the answer of the Appellant was asserted in the Service of and attached to the Corps of artillery under the appellants Command That he the Witness did attend this Respondent his Labourers Servants and workmen on the Ground on the Day the Trespass was by the appellant Committed and that the greatest part of the Pariah People who had Casually Erected huts upon the said Ground were then peaceably Employed in pulling down the same and Removing and that no objection was made by any of them against so doing nor any

Opposition

Opposition given to the proceedings of this Respondent and his Labourers and Workmen in Enclosing and Clearing the said Ground and Improving his Grant thereof Anthony another Witness to the same Sixth Interrogatory Deposes that two or three days previous to the said Thirtieth Day of August one Thousand Seven hundred and ninety four This Respondent did Employ Tank Diggers in Enclosing with a Ditch the Ground in Question Situate at authempauhum Saint Thomas's mount of which Ground this Respondent did allledge he had Obtained a Grant from the Government of Fort St George on the Twenty Second day of the same Month of August That the Number of Tank Diggers so Employed were about thirty that they are Common Tank Diggers and not attached to the Appellants Corps of artillery That the witness did attend with this Respondent his Labourers Servants and Workmen on the said Ground on the thirtieth Day of the said Month of August one Thousand Seven hundred and Ninety four and the Pariah People who had Casually Erected Huts on the said Ground did thereupon peaceably Commence

Commence

to pull down the same and Remove therefrom and that no Objection was by them made to so doing nor was any Opposition whatever on their part given to the proceedings of this Respondent and his said Labourers in Enclosing and Clearing the said Ground and improving his Grant thereof and Moreso another Witness Examined to the said Sixth Interrogatory did Depose that about three Days previous to the said Thirtieth day of August one Thousand Seven hundred and Ninety four that the Day when the Appellants said Trespass took place that this Respondent was upon his said Ground at authenn. pauhuru being the Ground in Question in this Cause that this Respondent was so on the said Ground with Tank Diggers and Labourers Enclosing the same with a Ditch and Clearing it That on the Thirtieth Day of the same Month of August this Respondent was in like manner so Employed with his Labourers and Servants at which time the Pariah Occupiers of huttes Casually Erected on the said Ground were busied in peaceably Removing such Huttes from off the same and that no objection was made to so doing or

Opposition

Opposition to this Respondent in his Labours and Improving of his grant and this Respondent having thus for Established that he was in possession of his said Ground previous to and on the said Thirtieth Day of august one Thousand Seven hundred and Ninety four and that on the said Thirtieth Day of August the Pariah People having Huttes thereon had began to Remove the same and to quit the said Ground This Respondent will now proceed to Shew the Trespass of the Appellant by means whereof the said Pariah People were prevented from c. Entirely quitting the same and in Consequence whereof many people do still Continue on the said Ground To the Eighth Interrogatary Lieutenant John Hammond did Depose That on the Thirtieth Day of august one Thousand Seven hundred and ninety four he was at Saint Thomas's Mount in Command of the Main Guard That Lieutenant John Sinclair then was Adjutant of the first Battalion of the Coast artillery there Situate That he doth recollect a Cantonment Order Issued by Lieutenant Colonel Gells the Appellant notifying that all orders would Issue thro the said Lieutenant and Adjutant Sinclair and that such Orders were to be Obeyed and witness believed such

Order

Order was Issued in the Month of June or July preceding
That on the said Thirtieth Day of August and about the
hour of nine in the forenoon he did receive from the Said
Lieutenant and adjutant Sinclair Orders to send a party from
the Main Guard on the Ground in Dispute to protect the
Inhabitants who were thereon and to prevent their houses
from being pulled Down Witness saith he Cannot pretend
to say to what Extremity the said orders would have Obliged
him to proceed in the Event of this Respondents Endeavouring
to Compleat the Enclosing of and Clearing the said Ground
witness heard and did believe that this Respondent on the
said Thirtieth Day of August had a right and title to the
said Ground in Consiquence of a Grant of the same from
the Government of Fort Saint George witness heard that this
Respondent was on the said Ground on the said Thir-
tieth Day of august and thereon Actually Employed with
Labourers and Servants Enclosing the same with a
Ditch and otherwise preparing and Clearing the said
Ground by pulling Down and Removing the Huts
therefrom with the Intent of getting it in order to build a
House thereon That he the witness did on the said Thirtieth
Day of august about the hour of nine in the forenoon and
whilst

whilst this Respondent was so in possession of thesaid
Ground and there Employed in Enclosing and
Clearing the same Cause a Military force being a part
of the said Main Guard under his the witnesses
Command and armed with Firelocks and Bayonets
to Enter into and upon the said Ground and to
Dispossess this Respondent thereof and to remove
him this Respondent his Labourers and Servants
therefrom That the military force so sent on this
Respondents possession by the witness Consisted of
a Serjeant and of nine or ten men and that he the
witness did by the authority and Direct Order of the
said Lieutenant and adjutant Sinclair so Cause the
said armed force to Enter in and upon this Respondents
said Ground and that he the Witness gave in Charge
to the said Serjeant and partty to Execute the said
orders and that the said party as the Witness believes
did duly Execute the same and that it was Executed
by protecting the Inhabitants and preventing their
houses from being pulled Down the Serjeant having
so Reported to the Witness And the Witness saith that
he did order two European Centinels to be posted on the
said

said Ground and to preventany Disturbance happening thereon and that he posted such Centinels by the order and authority of the said Lieutenant and adjutant Sinclair That in the Course of the forenoon of the said Day he the Witness did write a note to the Appellant informing him that all was quiet and Requesting to be Informed whether the Centinels were to be Continued on the said Ground to which note the witness saith he Received a verbal message directing him to obey the orders he had Received Witness saith that he Delivered the orders above set forth touching this Respondents said Ground to Lieutenant Andrew Mc Intyre who Succeeded him the witness in the Command of the said Main Guard The Witness saith that a Paper Writing was twice brought to him since the said Thirtieth day of august first by a person of the name of Clerk and afterwards by a person Called Fenbes Relating to the matters at Issue In this Cause Deponent Saith that he believes the purport of it was to Contradict something that this Respondent had asserted in his Bill of Complaint Deponent saith that he was requested to sign the same by the said Clerk on behalf of the Appellant but that he the witness did not Comply therewith because it Contains

matter

matter which the witness Could not Speak to with respect to what the armed party had done on this Respondents Ground the Witness himself not having been present with them the witness saith that these were Several names and Signatures Subscribed to the Paper so produced to him but that he doth not particularly Recollect Such names to the same Subscribed but saith that he was told by a person of the name of Ostler that he ostler had Signed the same but that he was not acquainted with the Contents of it and that he had signed it for no Other Reason but because it had been Signed by other persons who were on the said Ground And this Respondent sheweth that to the ninth Interrogatory Lieutenant andrew Mc Intyre Did Depose that he believed he did Believe Lieutenant John Hammond in the Command of the main Guard of artillery stationed at Saint Thomass maunt on the Thirtieth Day of August one Thousand Seven hundred and ninety four that to the best of his the Deponents Recollection he was told by the said Lieutenant John Hammond that a Centry or party from the said Main Guard of artillery was ordered by the Defendant to a Village nearly Opposite to the main Guard with Instructions to protect the Inhabitants

and

and their Houses from being molisted by the Complainant or any of his People or words to that Effect the witness further Recieved Directions from the said John Hammand that in Case the Centry or Pantly then in the Village was not Sufficient for the purpose of protecting the said Inhabitants of the said Village and their said Houses that he the said Defendant had Directed the said John Hammand to Send a Sergeant and Party from the said Main Guard to Reinforce the Centry there and that in Case this Respondent made any attempt on the said Inhabitant or their said Houses and if the said Sergeant and Party were not Sufficient then that he the said Lieutenant John Hammand with the Remaining part of the said Main Guard were to go and present Respondent from Molisting the said Inhabitants or pulling Down their houses or words to the like Effect And the Witness did depose that in Consequence of the orders so Communicated to him by the said Lieutenant John Hammand that he the Deponent would have prevented this Respondent from Molisting the said Inhabitants

of

8

of the said Village or of Insuring their houses in any Respect but the witness Saith that he would not have Confined this Respondent but that he would have beat off any pantly of this Respondents who should attempt to Interfere with the said Village People or their houses and this Witness saith that he did not see the Centinels posted in the said Village but believes that Centinels were there posted with Orders to the above Effect and to the best of the Witnesses Recollection such Centinels were Relieved by other Centinels in the usual manner whilst he the Witness was on Guard but saith that they Recieved no Orders from him because there was no Necessity for them to Report to him the Witness unless this Respondent should molest the Village Inhabitants and the witness Lastly saith that he the witness was relieved in the Command of the said Main Guard by Lieutenant Gourley but does not now Recollect what orders he gave to him as Relieving Officer And this Respondent Sheweth that to the tenth Interrogatory on behalf of this Respondent John Lafford did Depose that he Knew the Ground in Question in this Cause and that he the Witness was on Duty on the main Guard of the artillery at Saint Thomas's

Mount

Mount on the said Thirtieth Day of august one thousand Seven hundred and ninety four and that he there acted on Such Guard in the Capacity of a Serjeant and in Such quality did receive orders from Lieutenant John Hammond the officer Commanding the said Guard Relating to this Respondent and the said Ground in question in the Cause and to which Ground this Respondent did pretend or claim Title That the orders he the Witness so Received from the said Lieutenant John Hammond were to take a party from the said Main Guard and to go to the said Ground and to prevent the People Employed by this Respondent from Destroying the houses on the said Ground That Accordingly he the witness did Enter on this Respondents Ground with nine men armed with Firelocks between the hours of nine and ten in the forenoon of the said Thirtieth Day of august and that he there saw this Respondent attended by Labourers and Servants Employed in pulling Down some houses which were therein Erected. But the Witness said that he did not there see any planks People quitting the said Ground and Removing therefrom with their Huttes but the Deponent did nevertheless say that he did observe that there were two or three Huttes o"

actually

Actually Removed from of the said Ground and placed near the high road The Witness saith that he told this Respondent that he had Orders from the officer Commanding the main Guard to take a Party and to prevent any people from Destroying the houses on the said Ground to which Information the Witness saith that this Respondent did Reply that the said Ground was his the Respondents o" Property and that the first man who Sold Cross a Line which the Witness did say this Respondent had drawn on the Ground Either that he meaning such person as should Cross the same or this Respondent Should fall and that this Respondent did also further Caution the Witness Before he Should further proceed in the Execution of the Orders given him to Return to the main Guard and acquaint the officer in Command that he this Respondent was on his own property and that he had an authority from Government to that Effect and the Witness saith that this Respondent did thereupon produce to him the Witness a Paper which this Respondent did Explain to him the Witness to be such authority And the said Witness did Depose that in Consequence of such this Respondents Representations to him that he the Witness did Return to the said Main Guard leaving on the Ground

the

the said armed party and then Received orders from the said Lieutenant John Hommand to go back to the said Ground and to say to this Respondent that it was Colo. nel Geils Positive orders that the said houses should not be Destroyed And the Witness saith that he did again Return to the said Ground when he was asked by this Respondent what orders he had received from the said officer of the said Main Guard to which he the Witness saith he did Reply by informing this Respondent that it was the Appellants Positive orders that the said Houses should not be Destroyed and the Witness saith that this Respondent did thereupon say that the said Ground being his property that he would not Remove therefrom but by force of arms to which the Witness saith he did observe that his orders being to Prevent the said Houses from being Destroyed that he must and would therefore obey his orders and the witness did Depose that the said Respondent with his Labourers and Servants were at the time of this Conversation Employed in taking Down a house on the said Ground and thereupon he the witness did Order a Centinal to prevent the Destroying of the

Same

same to which this Respondent said that he must desist and the Witness Replied no but you must Desist from pulling Down this house whereupon the Witness saith that this Respondent with his Labourers and Servants left the Ground The Witness then deposes that on this Respondents having so left the Ground That he the Witness did thereupon post three Centinels over the Ground and in charge thereof by virtue of the orders he had to that End received from the said Lieutenant John Hommand the officer Commanding the said main Guard from which he the Witness had been Detached and that the orders that he the Witness left with Such Centinels was that they should not suffer any person to pull Down the houses on the said Ground and the Witness Saith that having thus Executed the Duty assigned him that he did Return to the said main Guard from which he had been so as aforesaid detached when He did report truely and faithfully the manner of Executing the aforesaid duty Committed to him And this Witness did further depose that Subsequent to the said Thirtieth Day of august a Paper Writting touching the matters in Issue by this Respondents suit against the appellant was brought to him by one Serjeant Fewkes to sign on

behalf

behalf of the said Appellant and the Witness saith that he did Sign the same thoke does not now recollect the contents but that the same was read to him by the said Serjeant Jenkins and the Witness Concludes such his Deposition by Saying that he understands the said Paper Writting was Signed by the whole of the armed party under his the Witnesses Command in the Execution of the said Duty done on this Respondents Ground on the said Thirtieth Day of August one Thousand Seven hundred and ninety four And this Respondent Sheweth that to the Eleventh Interrogatory on the Behalf of this Respondent that Isaac Oster a Gunner of artillery under the appellants Command did Depose that he did on the said Thirtieth Day of August one Thousand Seven hundred and ninety four Serve in the Capacity of a Corporal under the Command of the foregoing Witness John Lafford that he was on the said John Laffords Detachment Employed on this Respondents said Ground and which the Witness says was in this Respondents possession That when the armed party arrived at this Respondents said Ground that they there found this Respondent with his Servants and Labourers Employed in pulling Down Some houses and that the said

Lafford

Lafford told this Respondent that he was ordered to prevent such proceeding and to protect the Inhabitants and that this Respondent replied that nothing but force of arms should prevent him from going on for that the Ground was his property and that he had authority for holding the same from the Government of Fort Saint George at the same time Shewing a Paper said to Contain such Authority that this Respondent told the said John Lafford to go back to the Officer of the Main Guard and to Represent the matters that had passed That Lafford did Accordingly return to the Main Guard and that having Shortly again Returned that he did Inform this Respondent that he had Received Positive Orders from the Officer Commanding to prevent him this Respondent from pulling Down the said houses or from Disturbing the Inhabitants and that in Consequence he would do his Duty and prevent him from such proceedings that thereupon this Respondent said he would obey and that this Respondent did thereupon leave the Ground That he did not See any pariah People Removing their Huts from off the said Ground but

that

that he did see two or three huts which had been
Removed and which lay at Some short Distance near
the main road and that this Removal had taken place
previously to the said armed partys Entrance on the
said Ground The witness saith that a Paper Writting
was produced to him Subsequent to this Execution of
Duty of the said Thirtieth Day of august that the
Same was produced to the Witness by a Serjeant
Fewtrell and that he Signed but neither knowes the
Contents nor even heard it read or Explained and
that he understood all the rest of the said armed
party had Signed it and therefore he did the
like and this Respondent Sheweth that Elias
Bradley a Private Soldier Serving in the Detachment
under the said John Lafford having been Examined
to the Twelfth Interrogatory on behalf of this
Respondent did Depose in Substance and
Effect nearly as the aforesaid Isaac Astley and
that he did not know the Contents of the Papers
produced to him to sign by the said Serjeant Fewtrell
Subsequent to the Execution of the said Duty by
the

the said armed party performed on the said Thirtieth
Day of August one thousand Seven hundred
and ninety four and this Respondent Sheweth
By the Evidence of Serjeant Thomas Gillow to the
Sixteenth Interrogatory on behalf of this Respondent
that the said Appellant well knew of this Respondent
Title to the Ground in question previous to this Commission
of the said Trespass on the said Thirtieth Day of
August one Thousand Seven hundred and ninety
four for the said Thomas Gillow Deposes that he
was orderly Serjeant to the Appellant and did
by the Appellants orders on the Twenty fifth Day
of the said Month of august bring to this Respondent
a message from the said Appellant regarding this
Respondents said Ground to wit to Desire of this
Respondent to Desist from pulling Down some
Houses which were on the said Ground as he the
Appellant had Addressed the Government on the
Subject and shortly Expected an Answer to which
Message from the said Appellant to this Res-
pondent the said Witness doth say that this
Respondent made a verbal answer Desiring that
he

he the Witness would inform the said Appellant that he this Respondent understood the appellant had complained against him to Government that this Respondent had had informed the Black people who had Houses on the Ground that he had Applied for and actually obtained a grant of the said Ground and the Witness adds that he did truly Deliver such this Respondents answer to the said appellant and this Respondent Sheweth That Tredway Clarke a Captain in the said Corps of artillery under the said Appellants Command having been Examined in the Cause on this Respondents behalf did to the Seventeenth Interrogatory Depose that on the Thirtieth Day of August one thousand Seven hundred and ninety four he did See this Respondent with Labourers and Servants Employed in Enclosing and Clearing the Ground in Question in this Cause That some Days previous thereto this Respondent did shew to him the witness a Grant for the said Ground Executed to him this Respondent by the Government of Fort Saint George that During the time he the witness so saw this Respondent on his said Ground Employed as aforesaid on the said Thirtieth

Day

Day of August he did observe an Armed Party Consisting as he the Witness did best Recollect of a Serjeant and Twelve men Armed with Fuzees and fixed Bayonets on Approach the said Ground When the Witness observed the said Serjeant to halt his said party within a few yards of a Line drawn as a Boundary to the said Ground and go up himself to the Hedge of the said Line Close to which this Respondent at the time stood That he the Witness was at too great a Distance to hear what the said Serjeant said to this Respondent but that he the Witness did hear this Respondent Reply Loudly shewing at the same time a Paper and telling the Serjeant that the same was a Grant of the Ground and pointing to the bottom of the said Paper Shew the Several Signatures of Sr Charles Oakely and Evan William Tallefield and that therefore the Ground was his property and that he would Defend it to the Last Drop of his Blood That a few Minutes After the Witness saw the Serjeant go back to where he had halted his armed Party and from thence proceed to the Main Guard from whence he again Returned in about five minutes and therefrom with his Party Entered on the

Ground

Ground where this Respondent was Employed in
pulling Down one of the huts That from the Situation
in which the Witness stood at the time he Could not
positively say that he saw the Serjeant push this
Respondent away from the Hut but that this Respondent
quitted it immediately and Came over to him the Witness
who was at the time in Company with a Captain Carlisle
and a Lieutenant Prescott when this Respondent told
them that he had been forced off his Grounds That
whilst this Respondent was Approaching the Witness he the
Witness observed the Serjeant post a Centinal over the
Hut which the Complainant had been Just before in the
act of pulling Down Saith that previous to the Entry of
the said armed party on the said Grounds that he the
Witness observed Several Pariah People Removing materials
from off the said Grounds and others of them in the act
of pulling Down Huts which were on the said Ground
and the Witness did lastly Depose that neither on the
said Thirtieth Day of August nor at any time previously
thereto did he observe any Outrageous or Violent Behaviour
in this Respondent tending to Disturb the good Order
and Tranquility of the Contonment at Saint Thomas's

Mount

Mount and this Respondent in further proof of the
Violence used by the said Serjeant and armed party
in Driving this Respondent his Labourers and Servants
off his said Ground Doth shew that the herein before
named Leonard Vandenhalde Anthony and mostos
did Respectively further Depose to the Last past of the
Sixth Interrogatory Exhibitted to them in Substance
as follows That on the said Thirtieth Day of August
one Thousand Seven hundred and ninety four they did
Observe an Armed force Consisting of a Serjeant and
Several men Enter upon this Respondents said Ground
wherein this Respondent with his Labourers and Servants
was as aforesaid Employed that they Respectively heard
the said Serjeant in Command of such Party tell this
Respondent that he was Ordered by the Officer Comman-
ding the main Guard to prevent the houses from being
pulled Down and that they Respectively heard this
Respondent reply that he had purchased the Ground
and had got a Companys Grant for it and which
Grant they saw this Respondent thereupon shew to the
said Serjeant this Respondent Desiring him at the
same time to return back to the Guard from whence
he

he had been sent and to Inform the officer therewith that thereupon the said Sergeant was prevailed upon by this Respondent to return to the Main Guard but that he shortly again Returned to the said Grounds and told this Respondent that Positive orders were given him by Lieutenant Hammond to prevent this Respondent from pulling Down the Huts on the ground or from Enclosing the same That this Respondent was Immediately before the time of the Entry of the said armed force on his Grounds in possession of the Same and that this Respondent his Labourers and Servants so in possession of the same was by order of the said Sergeant to the said Party Dispossessed By the said Party with fixed Bayonetts of the said Ground and premeses and forced to Abandon and retreat from off the same that several Centinels were thereupon posted on the said Grounds and put in Charge thereof and did so Continue in Charge and possession of the same for Several Days and which Centinels did Declare to the Witnesses that they had the Huts in Charge and to prevent them from being Removed And this Respondent Sheweth that to the Like Effect is the Several Depositions

of

of Robert Clouter and John Cox and that previous to the force and Eviction of this Respondent by the said Sergeant and armed Party that the said Parcels People were peaceably moving off this Respondents said Ground and that many of them had actually Carried away their Huts and this Respondent doth further shew that Colonel David Smith did Depose on this Respondents behalf in the Cause and did say that the Appellant had offered him the ground in question but which the Witness Refused to Accept for these Reasons that he neither wanted the Ground nor Supposed it to be in the Appellants power to Grant and this Respondent further answering the said Appellants Petition of Appeal doth admit that the Appellant did offer the Several Evidence in the Cause on his behalf which he hath in his said Petition of Appeal Setforth but this Respondent saith that such Evidence doth not Justify the Trespass Committed as will more fully Appear from this Respondents observations on the Several Causes of Objection by the said Appellant Assigned wherefore this Honourable Court should Reverse the said Decree of the said Honourable

the

the Mayors Court and this Respondent saith that the truth of his Several Evidence in the cause as regards the Desire of the Parish Occupiers of Huts to Remove from of the Ground granted to this Respon. dent may be the more observable of this Honourable Court shall be pleased to Refer to the Report made by the aforesaid George Parry to the Board of Revenue touching the propriety of Acceding to this Respondents Application for the same and this Respondent further Sheweth that he hath as Incumbent on him by virtue of the said Grant paid the quit Rents due by Reservation to the Company as on reference to the Collectors accounts if need full may Appear notwithstanding that this Respondent is no Longer in possession of his said Grounds from the time of the said Deforcement on the said Thirteenth day of august One Thousand Seven hundred and ninety four which said Report of the said George Parry is as this Respondent believes but herein prays to refern to the Original aforesaid as follows" David Halliburton Esqr acting President &c. &c. and Members of the Board of Revenue Gentlemen in Consequence of your Secretarys Letter of the Thirteenth

Thirteenth instant I proceeded to the Mount and have now the honor to Transmit you a Claim of the Ground Applied for by Captain Hayes The Soil is of a Real Species of Gravel which and so for removed from any tanks or Reservoir of water that the Inhabitants have not Cultivate or derevect any benefit from it for upwards is Twelve years The head Inhabitants have in writing waved all objection to Captain Hayes's Enclosing the Ground As the Triangular Spot are some Paraar Huts the Proprietors of which had been Derected some time since in Consequence of their Vicinity to the Parade to remove to some other place more Distant The Inhabitants have allotted to them and the spot of Ground with which they have Declared themselves perfectly satisfied and are now Employed in Removing their huts so that I see no objection to a Compliance with Captain Hayes's application I have the honor to be &c. &c. and Signed George Parry Superintendt. Comp.ys Lands Fort Saint George 20th August 1794

And this Respondent sheweth that the said Collectors Receipt for Quit Rent runs and is in the words and figures following" No 57. Land Granted to Capt.n Tho.s Hayes

&c.

To Quit Rent in 248530 Square feet or 4¼ Cawnies
Situated at Audumbaukum from 22d August 1794 to the
30th of April 1796 being 1 year 8 Months and 9 Days
at 6 Pagodas 13 fanams and 10 Cash Signed Blushington
Acting Secretary Fort St George 1st May 1796 as by the said
Original Receipt in this Respondents is manifest and
this Respondent having thus Shewn as requisite the
Truth of the Evidence and tendency to support his
Case now proceeds more particularly to refute the said
Appellants several Objections in Appeal —
The Sum of the Petitioners first Objection stating
being for that this Respondent having brought his
said Suit for a forcible Entry on and Detainer of the
Lands alledged to be in Lease to him Ought therefore
to have Shewn his right in the premises not only
by the Instrument of Demise but by the further proof of
the Title of his Lessors —

To Which Presumption this Respondent doth
say that even were it so Incumbent on him to shew
but which this Respondent for the reasons hereinafter
alledged doth deny it to be yet this Respondent doth
say that he hath shewn out of what right his grant

arises

arises he will out of the English East India Companys
Jaghire under their Presidency of Fort Saint George a Title
of an high and Acknowledged notoriety in all Respects
unnecessary to be pursued for this Respondent sheweth
that it is in Evidence on his behalf in the Cause by the
Deposition of Alexander Falconer Deputy Civil Secretary
to the Government of Fort Saint George not only that the
Exhibit A this Respondents Grant or Instrument of
Demise Referred to by his said suit was Duly Executed
to him by the then Governor and Council of Fort Saint
George to wit By Sir Charles Oakeley Baronet the
President and by Ernst William Fallofield and George
Westcott Members of the said Council for and on behalf
of the said united Company of Merchants of England
trading to the East Indies but also that the said Exhibit
was Granted by them According to the Custom and form
of all Grants of Land from the said Company within
their Jaghire And this Respondent sheweth that
to the like proof is the Deposition in the Cause of
George Parry the then Superintendant of the Lands
of the said English East India Company within
their Jaghire and that the Witness had Surveyed the

Lands

Lands In question by order of the board of Revenue previous to this Respondents obtaining a Grant of the same —

In as much however as the Appellants said Objection Maintains a principle unobserved by this Respondent the Inattention to which he Conceives does Operate against this Respondents Right to Recover therefore this Respondent under the permission of this Honourable Court will Briefly Expose the nature of and requisites to maintain the action he hath brought being in the manner of Trespass Vi. Et armis at the Common Law for a misfeasance and Disturbance in his Possession By trespass in a Comprehensive Sense of the word is intended any Injury arising to a man in his person or property from the misfeasance or act of another and Every Entry upon the Land of another without the Consent of the Owner is held to be an Injury and though there are Cases in which an Entry may be Lawfull yet if under such right the Party misdemean himself or make an unjustifiable use of the Authority Delegated to him for a Public good he shall be held Trespasser abimilio the Law regarding the subsequent act and thence Discovering the Intention of the first Entry

a

VD

a point to which this Respondent may hereafter have Occasion to pray the notice of this Honourable Court as Applicable to the Acts of the Appellants In the Doctrine of Coke on Littleton Acknowledged by all his Commentators on the nature of the action of Trespass Vi Et Armis It is held that to maintain the suit an Interest in the Soil is not necessary a mere Interest in the profits being Sufficient and so it was Ruled in the Case Cited in this Works of Thirlakendens where Lessee for Life or years has no property in the Trees Growing on the Land and that if Even the Clause in the Lease ran without Impeachment of waste yet that it Operate no further than as an Exemption from Suit but that if a Stranger Cut down the Trees the Lessee may maintain trespass not Indeed for their Value because the property in them is in the Reversioner but for Damages for Crossing and Breaking his Close and it is added and Perhaps also for the Loss of shade so that possession is Clearly a Sufficient Title to maintain Trespass Vi Et Armis and this the Proper action for any Injury done to him that hath the possession as is further manifest from the following Several Selected Cases Harber Vs Risbech Trin Iac 1556 where Plaintiff Assignee of a mine brought Trespass on the Case for taking

the

the Lead and he was nonsuited for being in possession he ought to have brought Trespass Vi Et armis and in Trywell Vs Tash Cro Eliz 639 a Special possessory is Declared Sufficient Title to maintain a Trespass as where a Sheriff had taken Goods in Execution which Defendant Defeated him of and in a Case 2 Rol Ab 563 a Disseisee shall have Trespass against a Disseisor for the Disseis in itself because of his being in possession though an Heir who hath the freehold in Law could not maintain the action untill an Entry for Trespass being a meere possessory action and such possession being once in the Plaintiff is good against a Wrong Doer and in Cary Vs Holt 2 Jhs 1238 Plaintiff Declaring in Trespass on his possession and the Defendant making Title and Giving Colour to the Plaintiff who Replied traversing the Defendants Title yet setting up none in himself but meerly Concluding de Injuria sua propria was held good and again in the Case of Fennor Vs Fisher Trespass quare Clausum fregit where the Defendant Justified that J. W. being Seized in fee had Demised to him and that Plaintiff Claiming by Deed of Feoffment had Entered and been in possession to which Plaintiff Replied that J. W. was not Seized

Seized in fee and though under this Replication the Plaintiff made no Title in himself yet being in possession he Recovered This Respondent thus rests his Refutation of the Appellant said objection humbly Submitting that he hath fully Established that to Entitle the Plaintiffs Recovery in Trespass Vi Et armis no more is necessary than a possession the manner of such having being no way on question as against a Wrong Doer and this Respondent now proceeds to state and answer the Appellants Second Ground of Objection to the Decree of the said Honourable the Mayors Court which goes to the Legality of this Respondents possession of the Land for the Disturbance in which he hath Declared &c and in Order to Abviate such Objection this Respondent might Refer to the Cause herein above Cited for a Disseisees right to maintain the action against a Disseisor did he this Respondent even Come under such a Discription for in such Case Even this Respondents tortious possession would be no Justification to the Appellants Entry as he hath Set up in himself no Right or Interest in the Land —

But this Respondent will Shew the

Legality

Legality of his possession by a short Review of the Law as regards the same the Common Law holds that no Lease for years is Compleat untill an actual Entry Bythe Lessee on the Land the Reason being that tho' the Lessor hath done all on his part to perfect the Contract so that he cannot Afterwards any way Derogate from or avoid it yet till there is a Transmitation of the possession by the actual Entry of the Lessee it wants the Chief mark and Indication of his Consent thereto without which it might be unreasonable to adjudge him in actual possession to all Intents and purposes Since it might so happen that such Lease was made in his Absence and when he Knew nothing of it and perhaps might be Greater than he would be Willing to take or the Estate might be so Encumbered as to bring a Load upon him Rather than any Advantage for which Reasons amongst others vide Bacons abridgment Vol 3d Page 436 the Law doth not cast the Immediate and actual possession upon him Nolens Volens and for this Reason it is that the actual Entry Cannot maintain an action of Trespass or Ejectment because those actions Complaining of an immediate Violation of the possession Cannot be proper for him who hath no actual possession

But

But yet the Lessor having Done all that was requisite on his part to Divest himself of the possession and pass it over to the Lessee hath thereby Transferred such an Interest to the Lessee as he may at any time reduce into possession by an actual Entry for it was perfect and Compleat on the Lessors part and the perfecting of it on the Lessees part was Entirely in his own power and left to his own Discretion to use when and as he thought fit from hence it is Evident that from the Moment of the Execution of this Respondents Lease or Grant of the Land he had a right to Enter on it and his Subsequent Entry thereon being rightfull all opposition or Disturbance Consequently became Tortious and the remedy as has already been Shewn became Immediate by Trespass Vi Et armis for Damages for such infact and substance is the suit brought against the Appellant by this Respondent and this Respondent now proceeds to Shew that he did Actually Inter on his Demised Lands and that he did thereon and previous to the Trespass Complained against Exercise the right of Ownership and did Expend Several Sums of money on Account of the Performance of the Covenants incumbent on him

to

to do by Vertue of the Grant and did begin and actually prosecute untill prevented by the Appellant on the Thirtieth Day of August when the Trespass was Committed the Setting up of his Fold all which matters will fully Appear on Reference to the Several Depositions in Evidence in the Cause Selections from the Same being as follows the aforesaid George Parry to the third Interrogatory Exhibited to him did Depose that During his Survey of the Lands in Question a Conversation took Place Between the head Inhabitants of the Village of Aethumbaukum and the Parish People who had Temporary Huts on an Angle of the Ground That Such Conversation was Explained to the Witness to be That it had been Customary for the Pariahs having Such Huts on the Ground therefore to pay Some Duty to these Inhabitants and that as the Ground was now Disposed of to this Respondent by the Government and a Grant about to be Obtained for the Same by this Respondent that it had been therefore agreed by the Villagers to Allot them other Ground and that a Writing to that Effect

Effect was to be given them and the Witness adds that shortly after he had finished his Survey that He the Witnesses assistant Ramasawmy Maistry Informed him that the Pariahs and Inhabitants aforesaid had finally Settled Regarding the New Ground the former were to Occupy and that the Pariahs were perfect Satisfied And the said Ramasawmy Maistry who Assisted the said George Parry in the measurement of the Ground having been likewise Examined in the Cause did Depose that the Villagers and Inhabitants of Aethumbaukum did allot other Ground to the said Pariah People in room of that on which their Huts were Situated on this Respondents Ground and that a Writing to that Effect had been Given to the said Pariah People in the presence of the Witness and one Venkatachellum Moodelly and that the said Pariahs did pray of this Respondents Liberty for Eight Days to remove away with their Huts to the new Ground Appointed them which Request this Respondent had Granted and the Witness adds that no manner of Opposition or objection was made by the said Pariahs or any others

to

to this Respondents possession of the Grounds And this Respondent sheweth that four Witnesses in the Cause being of the said paniah Occupiers of the said Grounds at the time this Respondent Entered upon and Assumed possession of the Same to wit Saume Daum munniah moatoo and Nellooah did Respectively depose that they and others the Pariahs Occupying the said Grounds having agreed with the head Villagers for Permission to Occupy another Grounds had to that Intent Received a Written Paper of Agreement to the satisfaction of all Parties that they then Requested of this Respondent Eight Days for the Removal of their Huts off this Ground which this Respondent accordingly Granted them and from the Evidence of the said four Pariahs it further appears that the appellant took from this Agreement to Occupy anew Ground nor would Return the same nor yet permit them to Remove their Huts therefrom tho they were Desirous so to do And from the said several Depositions it Likewise further appears that this Respondent did Exercise many and various acts of ownership and possession over the said Ground and that this Respondent was quietly Employed thereon with his Labourers and Workmen in Clearing

Clearing the same and in Setting up his fold or Enclosure of the same and which Labours this Respondent did prosecute untill prevented by the force and Trespass aforesaid Complained against the Appellant and this Respondent doth Shew that a Witness in the Cause Veneatachellum Moodeliar did Depose that previously to this Respondents obtaining his Grant for the Ground that to the Witness did obtain the Good Will of the same from the Villages and Inhabitants of Aathumpaukum That some paniah People having at the time Huts on the said Ground a Request was made by them to this Respondent for a permission of Some days to remain from of the same and this Respondent did Consent to allow them Eight Days That Tanks Diggers were by this Respondent Employed on the Ground Enclosing the same for three or four Days previous to the said Thirteeth Day of August and that no objection or Opposition was previous to the said Thirteeth Day of august made thereto and that the Witness did receive Orders from this Respondent to procure materials for Building a house on the said Ground and that in Consequence a Contract was made and Entered into

Between

Between him the Witness and one Venkatachellum for
the Supplying of Bricks and that the Witness did &c.
therefore pay the said Contractor on behalf of this Respon-
dent a Sum of two Hundred Pagodas and this
Respondent Sheweth that Soobramaney and Tayah
Moodeliar Witnesses Likewise Examined in the Cause
did Depose and say that they were of the head Villagers
of authumpaukum and did assign new Grounds for the
Pariah Occupiers of Huts on this Respondents said Ground
to Remove to and that the Appellant would not &c.
Suffer them to remove tho Willing to do so And this
Respondent Sheweth that from almost the Entire
of the Several Depositions in the Cause both on the
side of this Respondent as well on that of the Appel-
lant it doth Clearly Appears That on the said
Thirtieth Day of august this Respondent was &c.
peaceably on his said Ground the Pariahs being then
quietly Employed Removing their Huts therefrom
and that this Respondent was Clearing the same
Carrying on his Dikes or Enclosure without any
manner of Violence Dispute or Opposition and
this Respondent from the Law and Evidence
herein

herein Setforth doth presume and humbly hope he
hath Established to the Satisfaction of this Honourable
Court that he had Duly Given Effect to his Lease
by an Entry on the Land being all that the Law
Requires for perfecting the same and that any opposition
from the moment of such Entry became a Trespass in all
Concerned for the Law is Clear that an Entry by him
who hath the right Defeats the Estate of Tenant at
will or on Sufferance and such only Could be Considered
in the Highest points of Legal view The Pariah Occupiers thereof
followers having Huts presently removable from place to
Place and that this Doctrine of an Entry to Defeat all such
uncertain possessions as true may be Collected from all the
Books of authority take the following Instances on not Guilty
pleaded to Trespass or Vi Et armis Ruled the Defendant
may give in Evidence a Lease for years but not a Lease
at will for that is as a Licence Countermandable at pleasure
which goes much further than the rights of these Pariahs
for no Title is shewn on their behalf Save an uncertain
Occupancy and per Holt Justice Mod Cases 171 The Licence
will be Determined by the Sale of the Land wherein it was

Given

Given and again Vide Com Dig 331 where it is laid Down that Defendant in Trespass Vi Et armis may Justify admitting that the Plantiff had an Estate yet that the same had been Determined by Condition of his Lease and Entry -

To that part of the Appellants Third Objection which Assumes that by reason that the Parish Occupiers of a part of the Ground demised to this Respondent having been in the quiet and undisturbed possession of the same for Several years anticident to this Respondents pretensions and Entry that Therefore they were Legally Entitled to resist the said Entry of this Respondent and to that intent to Call in all needful aid this Respondent saith that the he needs only to Oppose the Legal principles Lastly above Established namely that by his Rightfull Entry on the Lands he had Effectually defeated their Estate nevertheless this Respondent sheweth from Evidence in the Cause that the Parish Occupiers of his Land in question had no Intention such as the Appellant hath advanced on their pretended behalf and that the same is merely advanced to Justify his owne outrage and to Colour his unwarrantable proceeding for this Respondent hath Shewn that the Head

Head Villagers had given this Respondent their good Will in the Ground and neatly that the Parish Occupiers thereof were Satisfied to quit the same and to Remove to another Ground Assigned them by a Writting from the said Villagers but which Writting the appellant had taken away and not only Refused to Return but by an armed force Compelled them to Continue on the Ground against their Will as this Respondent will now proceed further to Shew for this Respondent saith that Leonard Vanderhald Gunner a Witness Examined in the Cause did Depose to the Sixth Interrogatory that this Respondent did for Several Days previous to the said Thirteenth Day of August one thousand Seven hundred and ninety four Employ thirty Tank Diggers in Enclosing with a Ditch the Ground in Question that the Tank Diggers so Employed were thirty in Number and Common Tank Diggers and not Lascars in the Service of the Company attached to the Corps of artillery That he the Witness did attend this Respondent his Labourers Servants and Workmen on the said

Ground

Ground on the said Thirtieth Day of August when the Greatest part of the Pariah people who had casually Erected Huts thereon had peaceably Commenced to pull down the same and to Remove therefrom and that no Objections was made by any of them against so Doing or any Oppo. sition Offered to the proceedings of this Respondent his Labourers and Servants in Enclosing and Clearing the said Ground until some time in the forenoon of the said Day when the Witness Deposes that he did see an armed party Consisting of one Serjeant One Corporal and four rank and file Enter upon the same this Respondent his Labourers and Workmen at the time of such Entry then being in possession of the Same and thereon Employed in manner aforesaid and not finally and after some Discussion between the said Serjeant and this Res. pondent that he the Witness heard the said Serjeant Command the said Armed party with firelocks and fixed Bayonets to Advance this Respondent and that this Respondent was thereupon Dispossessed of the said Ground and forced to abandon and retreat from off the Same whereupon two Centinels were posted on the

Ground

Ground and put in Charge thereof and so continued ~~Continued~~ in Charge and possession And this Respondent Sheweth that Anthony and Mootoo Witnesses Examined by this Respondent to the Like Interrogatorys at the foregoing Witnesses did Corroborate his Evidence as aforesaid in Every Respect and did shew that this Respondent with his Labourers and Workmen had been for three days previously to the said Thirtieth Day of august in the actual possession and Occupation of the said Ground Clearing the Same and Enclosing it with a Ditch the Pariahs Voluntarily Removing thereof with their huts And this Respondent also Sheweth that Captain Tredway Clerke Likewise Examined in the Cause did Depose that on the said Thirtieth Day of August he saw this Respondent with Labourers and Servants Employed in Enclosing and Clearing the Ground in Question and that During the time this Respondent was so Employed on the said Ground that he the Witness Observed an armed party with Fuzees and fixed Bayonets Approach the said Ground and halt his Party within a few yards of the Line or Boundary thereof that the Serjeant did then Go up to the Hedge of the said Boundary near to which this Respondent stood that the Witness then

Observed

Observed this Respondent Shewing the said Serjeant a paper
Saying it was his Grant of the Ground Executed to him by Sir
Charles Oakeley and other members of Government that thereupon
the Serjeant Leaving his said Party as aforesaid halted Went to the
Main Guard and in about five minutes having Returned
to them that he the Serjeant did march Such Party into and
upon the Ground whereupon this Respondent moved off with
his Labourers and Servants The Witness adds that he was at
too great a Distance to hear what the serjeant said but that
this Respondent Spoke Loud That Centinels were then posted
on the Ground that he the Witness had previously Observed
Several of the Pariah People Removing materials from off the
Ground and others in the act of pulling Down their Huts
thereon Erected and Lastly the Witness Deposed that
neither on the said Thirtieth Day of August nor at any
time previous thereto did he Observe any Outrageous or
Violent Behaviour in this Respondent Tending to Disturb
the good Order and Tranquility of the Contonment at
Saint Thomass mount under the Command of the
Appellant and this Respondent sheweth to the
Like Effect are various other Depositions in the Cause and
particularly

particularly those of John Cox and Robert Clouter Soldiers
Respectively Employed as a part of the said armed force
which Removed this Respondent and which Witnesses
do Severally Depose to the force used to Oust this Respon-
dent from his said possession and that the Pariahs
were previously Employed in Removing off the Ground
with their Temporary habitations and that many of
them were actually Departed and finally that Centinels
were posted on the Ground to prevent their Quitting
the same And to the Latter part of the said Appellants
said Third Objection namely that he the Appellant
was Called upon as Commanding the Contonment
to Protect these Pariahs in their Possession of the Ground
and that in affording such Protection he as such
Commanding officer held a Concurrent Jurisdiction
with his Majestys Justices of the Peace and so
was Warranted in the act of Protection this Respondent
doth Say that the said Appellant hath not shewn
any Reasonable Ground or Cause for his Interference
therein for though it is Acknowledged that a private
Trespass may be Justified on Public Grounds and urgent

Necessity

Necessity such as for Defence against an Enemy to Stop the Progress of a fire or to Remove a Public misance yet it is Apparint from the Evidence that no such Justificatory motive hath Occurid to bear out the appellant and which will be the more Observable adverting to the Deposition of Colonel David Smith in the Cause who says that previous to this Respondents obtaining his Lease for the Ground in Question that he the Appellant did make an Offer of the same to the Deponent from which Offer it Should seem that to the Appellant Claimed or had Title in the Land without Reference to or Consideration of the Pariah Occupiers or of this Respondents aforesaid Lessors the East India Company but which not being pleased if any such Title he had Cannot as this Respondent humbly presumes now avail him nor Can he the Appellant with any Greater shew of Justice pretend that he had solely these Pariahs Rights and Pretensions in View for it is Evident of his own act they were of no Account and the said East India Company had not as yet Came into Contemplation the fourth Objection of the Appellants relies for his Justification

On

On the Spirit and Intent with which he Caused an Armed force to Enter on this Respondents said Possession Namely to protect the occupants of the Ground in their Respective Huts and not with any View to Disturb any Supposed possession of this Respondent in other parts of the said Ground or to remove therefrom and that therefore if the said Armed party had Exceeded the orders Conveyed to them that such Excess was not Imputable to him the Appellant the falacy of which argument this Respondent submits is apparent as well from the foregoing Observed Legal Doctrines as from the Evidence Applied them for this Respondent having Shewn to the Appellant that he had a Lease and that thereunder he had Entered on his Possession which Determined all prior Pretensions it behaved the said Appellant to know the Law which his Assumed into his own hands and the Entry so forcibly made with all its Consequences became immediately his the Appellants own act and of Right imputable to them but it is moreover in Evidence that the same Military force Continued to Operate after such this Respondents Erection and that Centinels were thereupon posted on this Respondents Grounds

In

In reply the Appellants Last Objection touching the Recovery of Damages as Charged by this Respondents Bill of Complaint or Declaration this Respondent saith and humbly insists he hath well maintained his Title to the same and trusts this Honourable Court will be Opinion to a far Greater Extent than hath been awarded him by the said Honourable the Mayors Court For this Respondent sheweth that by various Decisions on the Subject of Damages the following principle is Clearly Established that the nature of the Outrage or Offence is the Chief Consideration for a Jury and not the Damage Actually found to have been Sustained and that there are many Cases in which Exemplary Damages may and ought to be Assessed which Doctrine is Expressly Laid Down By Chief Justice Eyre on a motion for a new trial on Account of the Excessiveness of the Damages in the Case of Huckell and maney in C B Mich 4 Geo 3d and again By the Same Judge in the Case of Beard moreus Earrington and others East 4. Geo 3d and of Beard moreus the Earl of Halifax Hil 5 Geo 3d –

For all which Reasons and such others in Support of the same as shall be Offered at the hearing this Respondent humbly prays that the said Decree of the said Honourable the Mayors Court infavour of this Respondent may not only be Affirmed but also that this Honourable Court will be further pleased to Afford him such other Relief in the Premises as to their Equity and Judgment shall seem meet

(Sig^d) John Wilkinson
Solicitor for Respondent

Court

Court of Appeals
at
Madrasapatnam } for Thursday the 8th day of December
Anno Domini 1796.

Between Thomas Dods of Saint Thomas's Mount a Lieutenant Colonel of Artillery in the Service of the United Company of Merchants of England under their Presidency of Fort St George Appellant and Thomas Hayes of Saint Thomas's Mount a Captain in the first Battalion of Coast Artillery in the Military Service of the said United Company of Merchants of England trading to the East Indies under their said Presidency of Fort St George Respondent —

This Cause coming on this day to be heard and debated before this Court by the Attornies on both sides upon hearing the Petition of Appeal and — answer and the Several Exhibits of the Honble the Mayors Court — together with the Decree of the said Court given in this Cause on Friday the 6th day of April 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 —

Vizt

[Signed] J Webbe Clk

To

131

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

In the Honourable
the Court of Appeals }

Between Paulagery Condaliah Brameny of Madras Inhabitant Complainant and Chalah Kistnayah Brameny of the same place Inhabitant administrator of the Estate and Effects of Chalah Venkatachelliah deceased

Defendant —

The Humble Petition and Appeal of the said Defendant.

Filed in my Office the 9th May 1796
J. Webbe Clk

Sheweth

That Paulagery Condaliah Brameny of Madras Inhabitant the Complainant above named on the Eleventh day of January in the present year of our Lord One thousand seven hundred and ninety six Exhibited his Bill of Complaint into the Honble the Mayors Court of Madrasapatnam thereby setting forth That Challah Venkatachelliah late of Madras Inhabitant your Petitioners said Intestate died in his Life time to wit on

the

the Third Day of January One thousand seven hundred and Ninety one became indebted unto the said Complainant in the Sum of One thousand and three hundred star Pagodas and on the Tenth Day of January in the said year One thousand seven hundred and Ninety one in one other Sum of One thousand Star Pagodas and Afterwards on the third Day of February in the said year in the further Sum of Two thousand and seven hundred Star Pagodas making together the sum of Five thousand star Pagodas and further Charging that the said Chalah Ven-
catachelliah for Securing the Repayment thereof Executed unto the said Complainant a Bond or writting obligatory bearing Date the Third day of February in the said year One thousand seven hundred and Ninety one whereby the said Chalah Venatachelliah became bound to the said Complainant in the said Sum of Five thousand Star Pagodas together with such Interest as might thereafter grow due thereupon at the rate of Twelve per Cent per Annum and payable on Demand and that the said Chalah Venatachelliah having Executed the said Bond Departed this Life Intestate without having paid the said Sum of Five thousand star Pagodas or any part thereof and that the same together with the Interest thereon was due and owing unto the said Complainant and further Charging that after the Decease of the said Chalah Vencatachelliah your Petitioner by the name and Description of Challah Kistnayah Brahmin did Apply for and Obtain from the said Mayors Court in its Ecclesiastical Capacity Letters of Administration of the Estate and Effects of the said Chalah Venkata-
chilah deceased and also Charging that your Petitioner by virtue of the said Letters of Administration possessed himself of the Estate and Effects of the said Chalah Vencatachelliah to a Considerable amount and to a much greater amount as the said Complainant pretended than to Satisfy the sum secured on the said Bond together with the Interest thereof and that there was on the said Eleventh Day of January one thousand seven hundred and ninety six due and owing unto the said Complainant for Principal and Interest upon the foot of the said Bond the sum of Seven thousand Nine hundred and seventy three Star Pagodas and fourteen fanams and that your Petitioner by reason of the Premises and as administrator aforesaid stood Justly and

and truly indebted to the said Complainant in the said Sum of Seven thousand Nine hundred and seventy three Star Pagodas and fourteen fanams and that the said Complainant had frequently Demanded payment thereof from your Petitioner as administrator aforesaid But that your Petitioner refused to pay the same The Complainant by his said Bill of Complaint therefore prayed that your Petitioner might answer the several matters and charges aforesaid and be Decreed by the said Mayors Court to pay the said Complainant the aforesaid Sum of Seven thousand Nine hundred and seventy three Star Pagodas and fourteen fanams with all such Interest as was or should thereafter become due thereon which with prayer of Summons to the Scope of the said Bill as by the said Bill of Complaint Remaining as of Record in the said Mayors Court and to which your Petitioner humbly Refers relation being thereunto it doth and will more fully and at large appear your Petitioner further Sheweth unto this Honble Court that he having been Accordingly summoned to appear to and answer the said Bill of Complaint your Petitioner filed his Plea and answer thereto on the Twenty Second Day of March in the present year of our Lord One

Onethousand Seven hundred and ninety six and for Plea said That by a Certain Charter granted at Westminster in the Kingdom of Great Britain on or about the Eighth day of January in the Twenty sixth year of the Reign of his late Majesty George the second then King of Great Britain and so forth to the united Company of Merchants of England trading to the East Indies it is amongst other things in and by the said Charter ordered Directed and appointed That the Mayor and Aldermen for the time being of Madraspatnam aforesaid should for ever thereafter be and they are thereby Constituted a Court of Record by the name of the Mayors Court of Madraspatnam and that they or any three or more of them whereof the Mayor or the Senior Alderman for the time being then residing thereto be one might and they are thereby authorized to try hear and Determine all Civil suits actions and Pleas between party and party that should or might arise or happen or that had arisen or happened with the said Town of Madraspatnam or within any of the Factories subject or Subordinate unto Fort Saint George or to the Governor or President and the Council of Fort St George aforesaid Except such suits or actions should be Between the Indian Natives of Madraspatnam only in which case his said

Majesty

Majesty willed that the same should be Determined among themselves unless both partys should by Consent submit the same to the Determination of the said Mayors Court and your Petitioner in and by his said Plea did aver that the said Complainant Paulagery Vandaliah Braminy is an Indian Native of Madraspatnam and that your Petitioner said Intestate the said Chalah Vencatachelliah Deceased was in his Life time an Indian Native of Madraspatnam and that the said Chalah Vencatachelliah Deceased did not in his Life time Consent or agree that the said Complainant should sue or prosecute the said Chalah Vencatachilaah in the said Mayors Court for Recovery of the monies in the said Alledged Written Instrument or Obligation mentioned or of any part thereof and your Petitioner did also aver that your Petitioner is also an Indian Native of Madraspatnam and that he had not Consented or agreed and that he did not consent or agree that the said Complainant should sue or prosecute your Petitioner either as administrator aforesaid or otherwise before the said Mayors Court for Recovery of the Monies in the said alledged Instrument or Obligation mentioned or of any part thereof But that on the Contrary your Petitioner by his said

said Plea objected to the said Complainants prosecuting him before the said Mayors Court and your Petitioner pleaded the said several matters to the said Complainants said Bill of Complaint and to the Relief and discovery thereby sought and prayed Judgment if the said Mayors Court would have further Cognizance of the said Suit and your Petitioner not waiving his said Plea but wholly relying and insisting thereon for answer unto the said Complainants Bill your Petitioner said that his said Intestate might for any thing your Petitioner knew to the Contrary thereof have in his life time become indebted to the Complainant in manner in the said Bill particularly setforth and mentioned and might also have Executed the Bond in the said Bill also mentioned and your Petitioner further said that he appropriated the assets which Came to his hands from the Estate of his said Intestate towards the payments of Mortgage debts by the said Intestate in his life time owing and which were not fully Discharged and that your Petitioner had not assets of the Estate of his said Intestate wherewith to satisfy the said Complainants Demand or any part thereof and your Petitioner prayed to be Dismissed the said Mayors Court with his reasonable Costs and Charges in that behalf

behalf sustained as by the said Plea and answer Remaining as of Record in the said Mayors Court to which your Petitioner humbly Craves leave to refer Relation being thereunto had will morefully appear your Petitioner further sheweth unto this Honourable Court that on the Twenty ninth day of March last a Rule did pass in the said Mayors Court whereby the said Complainant was given tille the Twelfth Day of April last to Reply and that the said Complainant not having Replied afurther Rule did pass in the said Mayors Court for that purpose on the said Twelfth Day of April and that afterwards on the Nineteenth day of the said Month of April a third Rule passed whereby the Time for the said Complainant to Reply was extended to the Twenty sixth Day of april Aforesaid as by the said Rules duly Attested and ready to be produced to this Honourable Court and as by true Copies thereof hereunto annexed to which your Petitioner humbly refers relation being thereunto had it doth and will Appear and your Petitioner sheweth that the said Complainant on the said Twenty sixth Day of April instead of Replying as by the said several Rules he was bound to do did pray leave to file Exceptions to your Petitioners said answer and to

to which your Petitioner by his attorney at Law Objected for that your Petitioner had filed his Plea to the Jurisdiction of the said Mayors Court which Plea was and still is Depending and as the Complainant had declined Replying thereto your Petitioner by his said attorney at Law prayed the said Mayors Court that his said Plea might stand affirmed and that the said Exceptions should not be received But your Petitioner sheweth that the said Mayors Court did Over Rule the said Objections and ordered that the said Exceptions should be received and the same were Accordingly Recorded as by an Extract from the Minutes of a Court held at the Town Hall on Tuesday the Twenty sixth day of april one thousand seven hundred and ninety six duly Attested and hereunto annexed to which your Petitioner humbly Refers and prays the same may be taken and received as part of this his Petition and appeal relation being thereunto had it doth and will appear By which said Order of the said Mayors Court of the said Twenty sixth day of April one thousand seven hundred and ninety six your Petitioner doth Conceive himself much aggrieved and doth therefore Appeal therefrom to this Honourable Court of appeal for the following amongst other reasons —

Because

Because That the Aforesaid Proceedings of the said Mayors Court as against your Petitioner are Coram non judice the said Mayors Court not having had any authority to Summon your Petitioner to Appear before the said Court to answer to the Bill of the said Complainant and your Petitioner having formally Pleaded to the Jurisdiction of the said Mayors Court it was incumbent upon the said Court to have decided upon the said Plea previously to the receiving of the said Exceptions instead of which the said Mayors Court has inverted the Course of Judicial Proceedings so far as relates to your Petitioner for that the said Mayors Court would first Determine the validity of the said Exceptions and though the said Court should allow the said Exceptions and Consequently Determine your Petitioners answer to be insufficient yet the said Court might afterwards Confirm your Petitioners said Plea which would be injurious to the said Complainant as by allowing the said Plea the said Bill of Complaint and all proceedings thereupon had would be null and void.

Your Petitioner therefore humbly prays that this Honourable Court will be pleased to reverse the said Order of the said Mayors Court made in this Cause on the said Twenty sixth Day of April One thousand seven hundred and ninety six with Costs to be paid by the said Complainant and to grant your Petitioner such relief in the premises as to this Honourable Court shall seem meet—

And your Petitioner shall Ever Pray—

(Signed) John White Solicitor
for the Appellant—

Parbagery

Paulagery Condaliah Braminy
Chellah Kistnayah Braminy Administrator of the Estate and Effects
of Chellah Vencatachelliah Deceased

Day is given the Complainant till the 12th April next to
Reply indefault of which this Cause will be heard on Bill and Answer

Town Hall
29th March 1796

A True Copy
/Signed/ C. E. Athin Dy Regr
/Signed/ White Solicitor for the Appellant

Paulagerry Condalia Braminy
Chellah Kistnyah Braminy Administrator of Chella Vencatachelliah
deceased

Further Day is given the Complainant till the 19th Instant to
Reply indefault of which this Cause will be heard on Bill and Answer

Town Hall
12 April 1796

A True Copy
(Sigd) J. E. Athin Dy Regr
(Sigd) J White Solicitor for the Appellant

Palagary Condaliah Braminy
Chella Kistniah Braminy admor of Chella Vencatachelliah Deceased

Further Day is given the Complainant till the
26th Instant to Reply indefault of which this Cause will be
heard on Bill and Answer -

Town Hall
19th April 1796

A True Copy
George Taylor Regr
(Sigd) J White Solicitor the Appellant

Extract

Extract from the Minutes of a Court Held at the
Town Hall on Tuesday the 26th day of April Anno Domini 1796

Present

James Daly Esquire Mayor
William Webb and Andrew Ross
Aldermen

Palagerry Condaliah Braminy
Challa Kistniah Braminy Administrator of Chella Vencatachelliah Deceased

The Attorney for the Complainant prays leave to
file Exceptions to the Defendants answer to which the Attorney for the
Defendant objects for that the Defendant has filed his plea to the
Jurisdiction of this Honourable Court which Plea is still depending
and as the Complainant has declined Replying to the said
plea the Attorney for the Defendant prays that the said plea may
stand Affirmed and that the said Exception be not Received The
Court having taken the same into Consideration It is ordered
that the Exceptions be received Exceptions to the Defendants
Answer filed this day

A True Extract

/Sigd/ G. E. Athin Dy Regr

To

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

In the Honourable the
Court of Appeals

Between Paulagery Condaliah
Brameny of Madras Inhabitant Complainant
and Chalah Vistnayah Brameny of the
same place Inhabetant administrator of the
Estate and Effects of Challah Venkatachellah
deceased Defendant

The Answer of the said Complainant to the
Petition and Appeal of the said Defendant

Filed in my Office
the 6th June 1796
J Webbe Clk

This Respondent doth admit that on
or about the Eleventh day of January now last past he
might have Exhibited his Bill of Complaint in the Hon'ble
the Mayors Court at Madraspatnam against the above
named Defendant as Administrator of the Estate and Effects
of the said Chalah Venkatachellah deceased and for the
Recovery of the sum of Seven thousand nine hundred
and seventy three Pagodas and fourteen fanams as stated

in

in the Petition and Appeal of the said Defendant and
this Respondent doth also admit that he might have
Charged setforth and Alleged in the said Bill of Complaint
the other matters and things as stated also in the said
Petition and appeal and this Respondent doth further
admit that the said Defendant having been Summoned
to Appear in the said Mayors Court to this
Respondents said Bill of Complaint the said
Defendant might have Appeared thereto and
might as stated in the said Petition and appeal on
the Twenty Second Day of March now last past
have filed and Exhibited his Plea and Answer
thereunto and this Respondent doth further admit
that in his said Plea and answer the said Defendant
might have impleaded setforth and averred the
Several matters and things as also stated in the said
Petition and Appeal and this Respondent doth
further admit that on the Twenty Ninth day of April
now last past a Rule might have passed in the
said Mayors Court whereby this Respondent was
allowed untill the Twelfth Day of April Next
Ensuing to Reply unto the Defendants said Plea and

Answer

Answer and that a second Rule in a Like behalf on the said Twelfth Day of April might also have passed to Allow this Respondent until the Nineteenth Day of the said Month of April to reply to the said Plea and answer and that afterwards on the said nineteenth day of April a third Rule might have passed for a like purpose Extending the time for Replication unto the said Plea and answer unto the Twenty Sixth Day of the said Month of April as stated by the said Petition and Appeal and this Respondent doth further admit that at the last mentioned Date for this Respondent did as further stated by the said Petition and Appeal Pray Leave to file Exceptions to the said Defendants said answer which by the Course of the practice of the said Mayors Court this Respondent doth humbly Pretend he was entitled to do and this Respondent doth further admit that to the said Prayer of this Respondent for leave to File the said Exceptions the said Defendant by his Attorney in Court might have Objected and on the Grounds Suggested by the said Defendant in his said Petition and Appeal and this Respondent doth further admit that the said Mayors Court might have overruled the said Objections

Objections and ordered that the said Exceptions should be received and that the same were Accordingly recorded But this Respondent doth deny that by the said Order of the said Mayors Court of the said Twenty Sixth Day of April that any Injury did arise or accrue to the said Defendant as Suggested by his said Petition and Appeal but that the said Order was and is Conformable to Equity and agreeable to the Practice of the said Mayors Court —

And this Respondent in answer to the reasons Assigned by the said Defendant in his said Petition for Appealing unto this Honourable Court Saith that notwithstanding the Suggestions of the said Defendant to the Contrary the Proceedings in the said Mayors Court had in the Cause between this Respondent and the said Defendant and as recited and Set forth in the said Petition and Appeal were and are Coram Judice as being before a Court of Competent Jurisdiction over the Subject matter of the Suit under the particular Circumstances thereof For the said Bill of Complaint preferred by this Respondent against the said Defendant was so preferred against him

him in Capacity and relation of administrator to an Intestate person and is so admitted and Confessed by the said Petition and appeal and this Respondent humbly Sheweth unto this Honourable Court that the said Capacity and relation of Administrator was Derived to the said Defendant under the Law of England through the medium and Intervention of the said Mayors Court and Consequently the said Defendant in such his relation and Capacity so Conferred on him by the British Law was and is liable to all and Several the Duties and obligations which it imposes and of necessity and of Course accountable to the said Mayors Court from whom he immediately Received his office and his Functions and this Respondent humbly Sheweth that at the time of taking on himself the Burthen of administration of the Estate of this Intestate as in other like Cases the said Defendant was amongst other things Necessarily Obliged to make Oath that he would pay the Just Debts of the Deceased so far as the Effects would extend and the Law oblige him inferring by a Necessary implication the Law of England by the authority of which the said

Office

was bestowed and the Oath Enjoined This Respondent doth Therefore humbly Contend that touching his said Relation of Administrator the said Defendant by reason of the Premisses was amenable to the Jurisdiction of the said Mayors Court and Being so amenable Subject to the said Summons of the said Court ordering him to Appear and answer to the Bill of this Respondent—

And this Respondent in answer to the other reasons assigned by the said Defendant saith that although the said Defendant might have formally pleased to the Jurisdiction of the said Mayor Court as alleged by him and as appears by the said Plea recited in the said Petition yet this Respondent humbly Contends that the Circumstances of the said Defendant having so pleaded to the Jurisdiction of the said Court did in no sort precluded the said Court from intertaining the Exceptions of this Respondent For this Respondent saith that when a Plea and Answer are filed in the said Mayors Court that it is the uniform practice of the said Court to decide on the same together and not on the Seperate

and

and Distinctt merits of each respectively and therefore the Argument Deduced by the said Petitioner as to a Repugnancy and Contrariety of Judgement on the Supposed Allowance of the Validity of the said Exceptions by the said Court and the posterior Confirmation of the Plea of the said Petitioner being founded on an imaginary and Ideal mode of Proceeding Cannot and ought not to avail any thing against the said Order of the said Court in Respect to the said Exceptions and Besides the Petitioners said Plea as Described and admitted by the said Petitioner in his said Petition and Appeal being in abatement of the whole suit and the Entire Subject matter of the Bill the answer of the said Petitioner as stated in the said Petition did utterly Destroy the said Plea and render the same in every legal consideration a mere Nullity and of Consequence made it in Estimation of Law as a matter not in Esse —

For all which Reasons and such others as may be offered at the hearing this Respondent Most humbly Prays that this Honourable Court will be pleased to Affirm the Order of the Worthe the Mayors Court and to Dismiss the Appellants Petition with Costs

/ Signed / Emanuel Samuel

Solicitor for Respondent

Court

Court of Appeals
at
Madraspatnam

For Thursday the 8th day of December
Anno Domini 1796

Between Challiakestniah Braminy of Madras
Inhabitant Administrator to the Estate and Effects
of Challa Vencatachelliah Deceased Appellant
And Paulagerry Condaliah Braminy also 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 Order of the said Court given in this Cause on Tuesday the 26th day of April Anno Domini 1796 upon due Consideration had of the matters therein severall 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 26th day of April Anno Domini 1796 be Reversed and that the Costs be paid by the Respondent in this Court —

By Court

(Signed) J Webbe Clk

To

To the Right Honorable Lord Hobart
President in Council
Fort St George

In the Honourable
Court of Appeals

Between Anthony Lambart
David Ross and James McTaggart
of Calcutta Merchants and
Copartners by their Attornies
Benjamin Roebuck and William
Abbott of Fort St George Merchants
Complainants and Lakshmedut
Nilacant and Vysoodut Balakistna
Dutt of Madras Merchants Defendants

The Humble Petition and Appeal of the
abovenamed Complainants

Shew

That your Petitioners did Sometime on or about the Twelfth Day of March and year of our Lord one thousand Seven hundred and ninety five Exhibit and file their Bill of Complaint against the Defendants abovenamed and therein

Filed in my office
the 9th May 1796
J Webbe
Clk

and

and thereby amongst other things Setting forth that
some time on or about the Month of September which
was in the year of our Lord one thousand seven hundred
and ninety three your Petitioners did Cause to be
laden on their Joint Account on board the Ship the
Hannah whereof James Robinson was Commander
and then lying in the River Hughley a Quantity of
Rice the Joint property of your Petitioners Consigned
to your Petitioner Attornies at Madras to which place
the said ship the Hannah was bound and was shortly
intended to proceed and that your Petitioners being
Desirous of Covering the risk on the said Rice so
Shipped on board the said ship the Hannah the Property
of your Petitioners as aforesaid by Effecting an Insurance
thereon at some of the Offices of Insurance at Madras
aforesaid your Petitioners did instruct their said
Attornies to make the necessary applications and
pursue the necessary measures for that purpose that
their said Attornies in Consequence thereof on the
thirtieth Day of September in the said year of our
Lord one thousand seven hundred and Ninety three
did effect an Insurance on a part of the said Rice

that

that was to say in the Amount of the Sum of Two
thousand Pagodas at the office of the Defendants above
named at a Premium of three and one half per Cent
thereon amounting in the whole to the Sum of Seventy Pags
and which said Sum of Seventy Pagodas being the said
Premium on the said Sum of Two thousand Pagodas at
and after the rate of three and half per Cent as aforesaid
your Petitioners said Attornies did on the said thirtieth Day
of September pay unto the hands of the said Defendants
who did thereupon and in consideration thereof enter into
and Execute to your Petitioners said Attornies for Account
of your Petitioners a Certain Policy of Insurance bearing
Date the said thirtieth Day of September whereby they
the said Defendants did insure and take upon themselves
the risk of the said Sum of Two thousand Pagodas
upon the said Rice at and from Calcutta to Madras
aforesaid the said Risk to Commence from the Sixth
Day of the said Month of September and to Continue
and endure until fourteen Days after the Arrival
of the said Ship the Hannah at Madras aforesaid
as your Petitioners did say would more fully and at

Large

Large appear by the said Policy of Insurance so Executed by the said Defendants in the Possession of your Petitioners said Attorneys and ready to be produced whenever required That the said ship the Hannah some time on or about the Twenty first Day of September and year abovementioned did sail from Culpee for the Port of Madras with the said rice so Shipped by your Petitioners as above setforth on board of her and that at the time the said Ship the Hannah did sail from Culpee aforesaid to wit on the said Twenty first Day of September one Thousand Seven hundred and ninety three she was a light Vessell well manned and found in all respects with every Necessary Store requisite for such a vessell and such a Voyage that the said Ship the Hannah did proceed on her Voyage down the River Hughly under the Charge of the Pilot without any material Accident occurring until the Twenty Seventh Day of the said Month of September when being at anchor in the South Channel a Gale of Wind set in from the South East Accompanied by a heavy sea which occasioned the said Ship the Hannah

Hannah to labour pitch and Strain and in Consequence thereof the said Ship the Hannah became Suddenly very leaky and that the said Leak was shortly Afterwards stopped and the said ship the Hannah arrived in the Roads of Madras on the fourteenth Day of the Month of October following when fifty men were sent off from the shore to Assist the Crew then on Board but that the Scarsity of Boats and the high Surf impeded the Landing of her Cargo that on the seventeenth Day of the said Month of October the Moonsoon Set in with Considerable violence the Wind blowing a very strong Gale from the Northward and Eastward and during the night of the said Seventeenth Day of October the said Gale increased and on the Morning of the Seventeenth Day of the said Month of October the weather became so very violent and Dreadful that many of the Ships then in the roads of Madras aforesaid put to Sea and a great Number of the small Craft ran on Shore and that in the Afternoon of the same Day the said Ship Hannah also put to Sea and Apparently in such good Condition that she had not above one foot Water in her hold and that the

said

said Ship the Hannah did Continue in such good Condition for a Considerable time notwithstanding the Violence of the weather as aforesaid But the said Gale increasing and veering to Different Points Directions the said Ship the Hannah on the night of the said Seventeenth Day of the said Month of October did founder at Sea and was totally lost together with the greatest part of her Crew and your Petitioners did shew that such loss of the said ship the Hannah was intirely Occasioned by the said Gale of Wind which she fell in with and encountered as aforesaid and your Petitioners did Charge that by reason of the Premisses they the said Defendants did became and were Justly and truely Indebted unto your Petitioners in the said Sum of Two thousand Pagodas and your Petitioners did shew that the said Defendants being so Indebted unto your Petrs as Aforesaid your Petitioner did by their said Attornies frequently and in a friendly manner Apply unto them and request them to pay and Satisfy unto your Petitioners the said sum of Two thousand Pagodas But that the said Defendants having Obstinately and wilfully Refused to pay the same or to give your Petitioners any manner of Satisfaction Regarding the Premisses your Petitioners did in and by their said Bill Pray that they may be Decreed to pay unto your Petitioners the aforesaid Sum of Two thousand Pagodas together with all such Interest as then was or should thereafter became Due thereon also all Costs of the said suit

And your Petitioners shew unto this Honourable Court that to your Petitioners said Bill of Complaint the Defendants abovenamed did on or about the Sixteenth Day of June 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 state that the scope and End of your Petitioners Bill was to Compel the Defendants to pay unto them the Sum of Two thousand Pagodas with an Interest due thereon which said Sum of Two thousand Pagodas being the Amount of a Certain risk insured by the Defendants on a Certain Quantity of Rice said to be Ladin on the ship Hannah under Certain Policy of Insurance bearing Date

Date the thirtieth Day of December which was in
the year of Christ one thousand seven hundred and
Ninety three by the Defendants duly Executed and
whereby the Defendants took upon themselves the Risk
of the said Sum of Two thousand Pagodas upon the Rice
so laden on the said Ship Hannah at and from Calcutta
to Madras the Risk to Continue and endure until fourteen
Days after her arrival at her Destined Port and for as much
that on the Seventeenth Day of October which was in
the year of our Lord one thousand seven hundred and
Ninety three a Gale of Wind having set in from the North
East the said ship was Obliged to quit the Road of Madras
and Afterwards foundered and a total Loss being Occasioned
thereby your Petitioners had a right to Recover the said
Sum of Two thousand Pagodas together with an Interest
which had arisen and grown due thereon that the
Defendants by Protestation not Confessing or Acknow-
ledging allow any of the matters or things in the said
Bill Contained to be true in such sort manner and
form as the same are therein and thereby Charged
alleged and setforth for Plea thereunto did say that

previous

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previous to the Defendants Executing the Policy upon which
the present action was founded that Benjamin Roebuck
and William Abbott by the Direction of your Petitioners
and as Attornies of Joseph Harding of Bombay did
Effect an Insurance in the Office of the Madras Insurance
Company on Grain laden on the said ship Hannah
to the amount of Two thousand Pagodas that after the
loss of the said ship Payment was Demanded of
the sum Insured which was refused on the part
of the said Company by reason of the said ship not
being Sea Worthy at the time the Insurance was made
and because there was not under all the Circumstances
of the Case a fair statement and Disclosure But a
Concealment materially varying the Risk understood
to be run and the Defendants did say that for the
purpose of Setling the said Claim It was agreed
upon by and between the said Benjamin Roebuck
and William Abbott and the said Madras Insurance
Company to submit it to arbitration and thereupon
Messrs William Fairlie R & Persean of Calcutta
and Captains James Ede and I. B. Hudson of the

same

same place being Chosen as arbitrators Penalty Bonds were Entered into by the said Parties to submit to their award and which Submission was on the first Day of July last made a Rule of the said Mayors Court and the Defendants did further say that the said Benjamin Roebuck and William Abbott did send to the Defendants previous to the said arbitration taking place and through the means of Nagapah Chitty their Dubash who acted as Interpreter Demanded Payment of the Sum Insured by the Defendants that thereupon the Defendants proposed that as the Case of the old Madras Insurance Company and their were Exactly Similar that the Defendants would abide by the award that should be given that was to say That if the said Madras Insurance Company should be ordered to pay the amount Insured by them these Defendants would also pay their Loss But if they were not Ordered to pay that then the Defendants should be Exonerated that the said Proposal being Communicated to the said Benjamin Roebuck and William Abbott through the said Nagapah Chitty they immediately Assented to it and said that the said arbitration should decide the

the Claim on the Defendants and that the Defendants then Proposed that a Written Agreement should be Executed but which Proposal the said Nagapah Chitty having Communicated to the said Benjamin Roebuck and William Abbott they Informed the Defendants that it was unnecessary For that the said Benjamin Roebuck and William Abbott having assented to the Terms proposed would adhere strictly to their ward Whereupon the Defendants remained Satisfied and from that time Considered that the award which was to be pronounced by the said Arbitrators would be final with respect to them and the Defendants did say that Pursuant to the Terms of the Submission the said arbitrators did on the Eighteenth Day of august which was in the year of our Lord one thousand Seven hundred and Ninety four duly make and Publish their Award in Writing wherein after Promissing that there was an improper Concealment of Circumstances respecting the state and Condition of the Hannah in the Application made by the Insurance they awarded the Policy to be null and void and that the same should be

Delivered

Delivered up the Premium being Ordered to be returned as by the said award Copy whereof marked A the Defendants did say they did Answer to their said Plea and Answer relation being thereunto had would appear that they the Defendants in Conformity to the said award offered to Pay to the said Benjamin Roebuck and William abbatt the Premium by them Received and thereupon they required to be Exonerated as the Madras Insurance Company had been and the Policy Delivered up but that the said Benjamin Roebuck and William Abbatt refused to Adhere to the Terms of their Agreement and Caused the Present Suit to be instituted and that therefore the Defendants did plead the said Award in Bar to your Petitioners said present Bill and did humbly Pray the Judgement of the said Mayors Court whether they should be Compelled to make any further or other answer thereto and your Petitioners shew that the Defendants for Answer to the Residue of the said Bill or unto so much thereof as they Pretended they were advised to make answer unto did state that on or About the thirtieth Day of September which was in the year of Christ

Christ one thousand Seven hundred and ninety three an Application having been made to the Defendants to Insure the sum of Two thousand Pagodas on Rice said to be laden on the ship Hannah they did Consent thereto and in Consideration of a Premium of Twenty Pags being at the rate of three and half per Cent they Executed the Policy Alluded to your Petitioners Bill and which had since been Delivered into the said Mayors Court But that the Defendants did not know further than they were informed in and by your Petitioners said Bill of Complaint whether the rice on which the said Insurance was made was actually Shipped and Consequently Could not from their own knowledge pretend to say whether your Petitioners had an actual Interest on Board the said ship Hannah or not that the Defendants did admit that the said ship Hannah might Some time on or about the Twenty first Day of September and year aforementioned have sailed from Culpee in the River of Hughley for the Port of Madras and that she might have been well manned and found with every Necessary Store requisite for such a Vessell and such a Voyage But that they did not

did not believe that the said ships Hannah was Either light Maunch or strang on the Contrary that they did believe that she was a Weak Crazy and infirm Vessell that they did admit that soon after the Arrival of the said ships Hannah in Madras Roads the monsoon having Set in with violence she was Obliged with many others Vessell to put at sea and soon afterwards foundered But they Denied that by Reason thereof they were Indebted to your Petitioners the sum of Two thousand Pagodas as was Charged in and by the said Bill of Complaint or in any other sum or sums of money whatever by reason of the said Insurance further than the Return of the Premium Because the Defendants did pretend that there was not under all the Circumstances of the Case at the time the Policy was underwritten a fair Statement and Disclosure but a Concealment Varying and materially increasing the risk understood to be run by the Defendants and because the ship evidently was not Sea Worthy at the time the Insurance was made and in Support of the Principals upon which the Defendants Depended upon being Exonerated from paying the Sum Insured they did say they were advised that in the Books which treat on the subject of Marine Insurance

It

It was laid Down that a full Communication of every Particular Circumstance to the risk was incumbent on the Assured and what the Laws of Insurance Rigedly require the assured was often the Owner of the ship he was in all Cases more Connected with the Owner of the ship than the underwriters he had for better Opportunities therefore of being acquainted with the nature of the adventure the Strength of the Ship the Condition of the Cargo the Perils of the Voyage and with Regard to any Peculiarity in those respects the underwriters must Depend on the information of his Assured It became Absolutely Necessary therefore to guard with the utmost Circumspection against Fraudulent Conduct on the part of the assured for which there was so much temptation and opportunity not only therefore was the smallest degree of Deceits and direct misrepresentation sufficient to Distroy the Policy According to those Principles But every intentional Concealment of Circumstance which might in any way affect the Consent of Parties was a breach of that peculiar Trust and Confidence Reposed by the one party on the other and it vacated the agreement as a Species of fraud and in order to shew that those General Principles Applied to the Case of the Hannah the

Defendants

Defendants did state the facts which they pretended had came to their Knowledge since the time they underwrote the Policy upon which the present Action was brought that Some time in or about the month of August which was in the year of our Lord One thousand Seven hundred and ninety three your Petitr as the Defendants had been informed being desirous of Effecting an Insurance on several Vessels Partly for themselves and partly for Constituents of which the said Ship Hannah was one did for that purpose make Application to the old Calcutta Insurance Company who in Conformity to their usual and Customary mode of Transacting business Referrd the eligibility of the risks to their Surveyor who made a Report as follows—

"The Hannah Captain Robertson
" is one of our Old Indiamen is but in very indifferent
" Condition much Hoggid and was very leaky Coming
" in they are taking off her poop in order to ease her she
was much strained and hurt in endeavouring to
heave her Down about Two years ago if a Risks is

taken

taken on her I think it should not be great and the Premium Some thing more than that on a good Sound teak Ship that in Consequence of this Report the secretary of the said Insurance Company as the Defendants have been informed answered the Application of the said Complainants as follows We would rather Decline taking a risk on the Hannah from the very unfavourable Report that is made to us on that head but if the other Risks are given to us and you cannot get the insurance on her done otherwise we will take to the Amount of 30 or 40,000 Rupees upon her to Madras at a Premium of Ten per cent with Exception to the resque of Average" Copies of which said Original Letters marked C and B the Defendants did annex to their said Plea and answer and the Defendants did say that your Petitioners having received so little incouragement from the old Calcutta Insurance Company made a further Application to the Offices of that place but who all declined Insuring the said Ship as they were informed the risk Being Considered very indegible from the Nature of the Report made by the Surveyor of the Vessell and that the Condition and

Character

Charactor of the Hannah being such as to defer every office in Calcutta from taking a risk upon her Excepting one and the Terms which they agreed upon being very Disproportioned to other ships your Petitioners deemed it Expedient as to resort to Madras in the Expectation of the Insurance being Effected on much more moderate terms But that instead of fairly Communicating the State and Condition of the said Ship Hannah and the Opinion which the Surveyors intertained of her your Petitioners in their Instructions for Insurance mentioned Simply that the Hannah had on board five hundred bags which was all that she could take in at Calcutta That the remainder were Loading on Sloops and so soon as the Strength of the Tides had some what abated which would be in Two or Three Days she would Drop Down or if any other information of a more full and ample nature was sent It did not appear to have been Communicated by the said Benjamin Roebuck and William Abbatt in the Letter of Application to the Secretary of the Madras Insurance Company Copy whereof the Defendants did also annex to their said Plea and answer

for

for the inspection of the said Mayors Court and the Defendants did say that the said Benjamin Roebuck and William Abbatt having in Pursuance for their Instructions procured the Sum of Ten thousand Pagodas to be Insured in the Old Madras Insurance Company and the like Sum by the New Madras Insurance Company and having still Two thousand Pagodas uncovered they caused an Application by means of a Broker to be made to the Defendants who in order to induce the Defendants to take the risk Represented the said Ship Hannah as a very Excellent Vessell and which had induced the said two Offices to Insure a Large Sum upon her that Confiding in those Assurances and verily believing that the information given by the Broker was in every Respect true and that there was no Concealment of Circumstances either on the part of your Petitioners or their agents the Defendants were induced to take the risk at the rate of three and half per Cent and the Defendants did say that your Petitioners ought not only to have

mentioned

mentioned what they knew of the Hannah at the time the Application was made to the Defendants but ought also to have Communicated the Opinion which the Surveyors at Calcutta intertained of the Terms on which one office had agreed to insure her the rejection of the others For in Contracts of the nature where the Insurer relies on the information of the Assured there ought not to be the Smallest Concealment or Suppression of Circumstance as the Insurer might from that fair and Canded Representation which he was intitled to be induced to reject the risk or to require a higher Premium and which Certainly would have been the Case with the Defendants had they been told the Hannah was an old Indiaman that during her last voyage she had been Extremely Leaky that in order to ease her it had been Deemed Expedient to Cut off her Poop and that her Situation being thus Exposed it had Operated so far on the Calcutta Offices as to induce only one Office to take a Risk upon her under Circumstances of Peculiarly Strong inducement namely ten per Cent free of average that the Defendants did therefore humbly Contend that from the Concealment

of those facts the Policy had became Void and the Defendants upon the Principles aforesaid intirely Exonerated and the Defendants did further state that while the Report of the Surveyors at Calcutta evidently Shewed that the Hannah was a very bad ship Subsequent Circumstances Demonstrated her to be altogether unsea worthy For the Protest made by the Commander of the Hannah Stated that being at an Anchor in the South Channell no materiah incident having Previously Occurred a Gale of Wind Set in from the South East in Consequence whereof She became so leaky that in Twenty four hours after Two Pumps were incessantly kept going to free her that the Weather having afterwards moderated he Proceeded on his Voyage and when at sea he Caused the wings to be Cleared in order to Search for the Leaks when he found that a Butt end had started and several of the Seams were greatly Distended and the Sides altogether much strained and the Defendants did State that those facts Shewn by the Protest were in themselves Proof of the said Ship Hannah insufficient State and utter incapacity to Perform the Voyage from

the

the beginning For the Protest did not state the Gale to have
been particularly Severe and it appeared to have been of
such short Duration that it was impossible to Suppose
any ship in a sea Worthy Condition could while at an
Anchor have Suffered as she did the Defendants did therefore
state that her Iron work must have been greatly Decayed
as well as her Planks and Timbers otherwise that a Bulkhead
could not have started nor the seams have been distended
and sides strained as by the Protest they appeared to have
been besides that it was a fact well known that several other
ships were at an anchor in the South Channel at the same
time yet none of them Suffered Damage or any material
inconvenience from the Gale and therefore on the Principles
of Sea Worthiness the Defendants Conceived they were also
Exonerated For according to the Laws of Insurance as the
Defendants did say they were advised every person who
applied for an Insurance by an implied Warranty was
Supposed to Warrant the Sufficiency of the Vessel he
wished to Insure and every Insurer to Contract on that
faith and belief and therefore if a Vessel had Contracted
a weakness in her Hull or had defect which Exposed
her

her to the risk of foundering as must have been
the Case with the Hannah it would Opperate to
Vacate the Policy which Principles the Defendants
did say were fully Established by a Variety of adjudged
Cases and were Carryed so far that the Insurer
was Liberated even where the Insured and Assured
were both Ignorant as to the Condition of the
Vessel and where the Latter said or Concealed
Nothing to Mislead the former for it was laid down
that the obligation of parties must be limitted to
those Risks which it was Supposed they had in
their View when the Bargain was made and
which Doctrine was founded upon the General
Principles of Insurance Law that they shall not be
Responsible for any loss arising from the Defective
quality of the thing Insured and Lastly the
Defendants did say that they had at all times been
ready to return the Premium and which they then
Prayed to Deliver into the said Mayors Court
in full of Principal Interest and Costs—

And your Petitioners shew unto
this Honourable Court that to the Defendants said
Plea

Plea and answer your Petitioners did Exhibit and file their Replication and did therein amongst other things state that the several Plea and answer of the Defendants was very untrue Evasive uncertain and insufficient in the Law to be Replied unto That the Plea set up by the Defendants was misconceived and was irregular and Erroneous in its Principle and insufficient and untrue as to matters of fact that the Disputes that took place Between Joseph Harding in the Defendants place named and the Madras &c. Insurance Company touching an Insurance Effected on the Ship the Hannah as Setforth in the said Plea was Altogether foreign to the matter in Question and Could not be Construed to have any Connexion with or Reference to the Insurance Effected by your Petitioners at the office of the Defendants for Although the said Benjamin Roebuck and William Abbott as the attornies of the said Joseph Harding did Cause an Insurance to be made on the said Ship the Hannah as stated in and by the said Plea yet they did not act as the Attornies of the said Joseph Harding at the time when the Demand was made on the said Insurance Company on Account of the Loss of the said ship the Hannah nor at the time when

when it was Agreed to Submit the same to Arbitration nor where your Petitioners parties thereto nor in any wise Interested therein and your Petitioners say that their said Attornies the said Benjamin Roebuck and William Abbott did send to the Defendants and it might have been previous to the said arbitration taking place and through the means of Nagapah Chitty in the said Plea named and Demand payment of the sum Insured by your Petitioners at the office of the Defendants but that they did not believe that the Defendants did then propose to the said Nagapah Chitty that as the Case of the old Madras Insurance Company and theirs were Exactly Similar that they would abide by the award that should begwin and that if the said Madras Insurance Company should be Ordered to Pay the Amount insured by them they the Defendants would also pay their Loss but if they were not Ordered to pay that then the Defendants should be Exonerated and that your Petitioners did not believe that such proposals were made to their said Attornies and did Deny that their said attornies did were Absent thereto as Asserted by the Defendants in

and

and by their said Plea or that they your Petitioners said
attornies did say that the said arbitration should Decide
the Claim on the Defendants and that if such Assent had
been given that the Defendant would no Doubt have insis-
ted on the same being Reduced to Writing and which they
pretend they Requested through the said Nagapah Chitty
might be done but which your Petitioners did say was
untrue and so your Petitioners did say was the assertion
in the Defendants said Plea Contained that the said
Nagapah Chitty having Communicated to your Petitioners
said Attornies they your Petetioners said attornies did
inform the Defendants through the said Nagapah Chitty
that having assented to the terms proposed they would
adhere Strictly to their Word and your Petitioners did state
that the Defendants had brazen ded the Assertion in their
said Plea Contained regarding the pretended Commu-
nication with your Petitioners said attornies touching
the said pretended proposals and Assent thereto knowing
that the said Nagapah Chitty did some time before the
Defendant put in their said Plea Depart this life
and your Petitioners did say that they never did authorize
their said attornies to assent and that their said attornies
Never

Never did Assent to any such Proposal and that if
such Assent wer had been given which they did deny
the same was not According to the Defendants own
Shewing Reduced to Writing and the said Assent
would have been proved by the Statute in that Case
made and provided and your Petitioners did say
that they were advised that agreements of that Discrip-
tion were pleaded in bar to an Action brought thereon
but never in manner and form and to the End that
the Defendant have pleaded the same and your
Petitioners did submit to the said Mayors Court that
as the said Plea According to the Defendants own
Shewing did rest upon the said pretended Verbal
Agreement or Assent and that therefore even if the fact
by them stated were true they Could not avail
themselves thereof in so much as that the same would
be Contrary to Law That the Arbitrators in the said
Plea named might have Duly made and Published
their said Award in writing at the time in the said
Plea for that purpose setforth and might have
awarded the Policy to be null and void for the

Reasons.

Reasons Stated by the said Plea to have been setforth
in the said Award but your Petitioners did say as they
had before said that the said Award was not binding
upon them as they were not parties bound thereby nor Consenting
thereto nor were the Defendants parties Consenting
thereto nor their or Either of their names mentioned therein
and that the Defendants never did on any pretence
whatever offer to Pay to your Petitioners said attorneys
the Premium by them Received and your Petitioners did
humbly submit to the said Mayors Court that the
Defendants said Plea was misconceived and unfound
and did therefore pray that the same might be over
ruled with Costs—

And your Petitioners Shew that in
Reply to the answer of the Defendants they did state
that the Rice by them your Petitioners insured at the
Office of the Defendants was actually shipped on boa
the said Ship the Hannah and that therefore they had
Notwithstanding the insinuation of the Defendants an
Interest on board the said Ship the Hannah and
the Defendants did well know the truth to be notwi
standing they Pretended to be Ignorant thereof and
althey

Although the Defendants did affect to Disbelieve
that the said Ship the Hannah was Either a Light
Staunch or Strong Vessell yet your Petitioners did aver
and so the Defendants in their Conscience did well
know the truth to be that the said Ship the Hannah
was a Light Staunch and Strong Vessell and that the
said Ship the Hannah although she had met with
very Severe weather in proceeding down the River Hughly
in her passage from Bengal did arrive safe in the
Roads of Madras her destined Port and had begun
to unload her Cargo but that from the uncommon
violence of the Monsoon which set in shortly after
her said arrival in the said Roads of Madras she
was obliged to put to Sea and owing to the increased
violence of the said Monsoon as particularly
setforth in your Petitioners said Bill of Complaint
she foundered and was totally lost together with the
whole of her Cargo and that by reason thereof the
Defendants were not with standing their Assertions
to the Contrary became liable for the amount by
them insured as Charged and particularly setforth in

your

your Petitioners said Bill of Complaint and your Petitioners did say that notwithstanding the Assertion to the Contrary that at the time the said Insurance was Affected there was a fair statement of the Case made by your Petitioners said Attornies to the Defendants and a full Disclosure of every matter relative thereto so far as the same was known to your Petitioners or their said attornies regarding the said ship the Hannah and did deny that there was any manner of Concealment touching the same or any Concealment that did vary and materially or otherwise vary or increase the risk under: took by the Defendants and your Petitioners did say that the assertion in the Defendants said answer Contained that the said ship the Hannah was not sea worthy at the time the said Insurance was made was unfounded in truth and that it was incumbent on the Defendants to prove their said assertion if it should be in their power so to do and that they were advised that the legal Doctrines and Discriptions regarding Disclosure of Circumstances by the party Assured as setforth in the Defendants said Answer were very irregular and improper matters for an Answer to

to a Bill of Complaint although at the hearing of a Cause they might be brought forward in Support of the matters at issue and that they were advised that an answer should either admit or Traverse or Deny the Charges Contained in the Bill and that it should not be argumentative nor Stuffed with General Principles and legal Disquisitions and thereupon your Petitioners did humbly submit to the said Mayors Court that the answer of the Defendant was very irregular and that those parts that appeared to be impertinent ought to be Expunged from the record and your Petitioners did further state that the Opinion of the Surveyor of the old Calcutta insu: rance office and the reasoning thereon as the same Appeared in and by the Defendants said answer was impertinent and irrelevant and that the same ought to be Expunged from the Record and your Petitioners did Deny that they were Actuated by the Consideration Setforth in the Defendants answer in making an Insurance at Madras but that they thought the Terms of Insurance at Calcutta too high

and

and as the said ships the Hannah had then Lately arrived at Madras where she was well known and where the offices had only a few Months Before offered to insure her upon much more Reasonable terms they Judged it most advisable to Effect an Insurance there That your Petitioners did admit that they did not send the Opinion of the Surveyor of the old Calcutta Insurance office because the same did not state any facts that were necessary to be disclosed and that were not well known at Madras and further that Report did not state that the said ships the Hannah was not Seaworthy nor that she was an safe ship and all that it Contained was merely a matter of Opinion given by an Interested person and your Petitioners did say that when their said attornies were about to Effect an Insurance at the office of the Defendants they Represented only that the said ship the Hannah was a good ship and not that she was a very Excellent Vessell and which had induced the two offices at Madras to insure a large sum upon her and that there was in manner of necessity for their attornies to expaciate so much upon the Condition of the said Ships the Hannah although they

they could have done so with strict truth but they well knew that the Defendants were well Acquainted with the Condition of the said ships the Hannah from her having been so recently in the Roads of Madras and they also knew that the native Insurers Always made enquires touching the situation of a Vessell offered for Insurance before they venture to insure thereon and your Petitioners did say that their said attornies did at the time she Effected the said Insurance on Account of your Petitioners Disclose to the Defendants all they knew of the said ship the Hannah but they Denied it was necessary for your Petitioners said attornies to have Communicated to the Defendants the report of the surveyor of the old Calcutta Insurance Company and the Terms on which the said office had agreed to insure the said Ships the Hannah and your Petitioners did say at the time the said Report was made and the said terms offered by the said old Calcutta insurance office the season of the year was unfavorable to a voyage from Bengall to Madras on account of the then Approaching monsoon and that the Repairs and alterations made on the said

Ships

ship the Hanna as stated by the Defendants in their said answer were for her advantage and rendered her Less Liable to Danger and that because a ship had been leaky during a voyage it was not to be inferred from thence as the Defendants would infer that she was Either not sea worthy or that she was an unsafe ship and particularly with Regard to the said ship the Hannah as it Appeared by the Defendants own shewing that after the Voyage alluded to she underwent Repairs and your Petitioners did deny that the Policy in Question was void nor had the Defendants shewn any matter or thing that could Justify the Suggestion in the said answer Contained that the said Policy was void or that they were Exonerated from Paying the amount Insured and your Petitioners denied the assertion of the Defendants that the Report of the Surveyor of that said Old Calcutta Insurance office Shewed that the said Ship the Hannah was a very bad ship nor did subsequent Circumstances shew that she was not altogether sea Worthy and that the Defendants in Order to shew that she was not sea Worthy had made partial and unfair Statement from a

Protest

Protest of the late Commander of the said Ship the Hannah John Robertson and further that as the Defendants had thought proper to bring forward the said Protest in support of their said answer they were bound by the whole thereof and thereupon your Petitioners did say that in and by the said Protest upon the Oath of the said John Robertson it was Declared that the said ship the Hannah was at the time she left Culpee on the Twenty fifth Day of September one thousand Seven hundred and Ninety three a Staunch Light Vessell a fact which the Defendants in and by their said Plea and answer did pretend that they did not believe and that the said Protest did well Account for the said ship the Hannah proving so leaky after Leaving Culpee as to render it necessary to keep the Pumps incessantly going but your Petitioners did Deny that the said Protest did shew that she was not sea Worthy as asserted by the Defendants in and by their said answer but on the Contrary that she was a staunch light ship and that notwithstanding the suggestion of the Defendants to the Contrary the facts in the said Protest

did

did not prove that the said Ship the Hannah was in an insufficient state and utter incapacity to perform the Voyage from the beginning and the best proof in support of your Petitioners said assertion and in opposition to the said Suggestion of the Defendants your Petitioners did say that the said ship Hannah did actually perform her said voyage and arrive safe in the Roads of Madras and had it not been for the uncommon violence of the monsoon which broke in shortly after her said arrival her Cargo would have been landed also and your Petitioners did further state that at the time the Gale of Wind Came on there were a great number of ships in the said Roads of Madras and that all or the Major part of them put to Sea on Account of the violence of the Weather before the said Ship the Hannah and that During the time She lay in the said Gale and for some time after she left the Roads she did not make any water and all the time she Sailed out of the said Roads she had not two feet Water in her hold that your Petitioners did not admit a assertion in the Defendants said answer Contained that the Iron Work of the said

Ships

ship the Hannah must have been greatly Decayed as well as her Planks and Timbers in Order to have Sprung a Butt and distend her Seams and strain her Sides for your Petitioners had been informed that such was frequently the Consequence of a Gale of Wind and your Petitioner did say that the latter part of the Defendants said answer like many other parts of it was Stuffed with what was therein Called General Principles and Legal disquisitions and therefore as not proper for an Answer to a Bill of Complaint your Petitioners did humbly Submit to the said Mayors Court that the same ought to be Expunged from the Record of the said Court and your Petitioners shew unto this Honourable Court that —

On the Sixth Day of August and said year of our Lord one thousand seven hundred and ninety five Exhibit and file a Cross Bill of Complaint in the above suit against your Petitioners and did therein and thereby state that some time about the latter end of the month of September which was in the year of Christ one thousand seven hundred and Ninety three one Lalchemedut Issur an Insurance Broker

Applied

Applied to the Defendants at the Desire and instance
of your Petitioners said Attornies Benjamin Roebuck
and William Abbott and requested to know whether the
Defendants would insure the sum of Two thousand Pagodas
on Rice said to be laden on the ship Hannah from Calcutta
to this Port that upon making inquiries Relative to the
Condition of said ship Hannah the said Broker informed
the Defendants that she was a very good vessell or words
to that Effect and on that account the Principal Insu-
rance offices of Madras that was to say the old and
New Madras Insurance Companies had taken the sum
of Ten thousand Pagodas each upon her and that the
Defendants Confiding in those assurances and verily
believing that a fair disclosure of every Circumstances
was made Respecting the state of the said ship Hannah
they did agree to insure the said Sum of Two thousand
Pagodas on Rice said to be Laden on the said Ship
Hannah from Calcutta to this Port of Madras at a
Premium of three and one half Per Cent did accordingly
Execute a Policy in the name of your Petitioners
said attornies the said Benjamin Roebuck and
William

William Abbott for and on account of your Petitioners
that the said Ship Hannah arrived in the Roads
of Madras on the fourteenth Day of the following month
of October in a very leaky and Distressed state and on
the Sixteenth Day of the same month the monsoon
having then Set in with Considerable violence she was
forced to sea with Several other Vessells and on the
Seventeenth Day totally lost off Madras that some time
in or about the month of July which was in the year
One thousand Seven hundred and ninety four your
Petitioners said attornies the said Benjamin Roebuck
and William Abbott suit for the Defendants and thro'
the means of their Dubash Nagapah Chitty who was
then Present and acted as Interpreter Demanded
Payment of the sum insured that thereupon the Defendants
observed that as they your Petitioners said attornies
had agreed to arbitrate their Claim on the Old
Madras Insurance Company and had submitted
the same to the Decision of William Fairlie
R. L Perreau and Captains James Ede and
I. B. Hudson of Calcutta and as the Circumstance

of

of the one Case were Exactly similar to the other the Defendants proposed that the decision of the said arbitrators should Determine whether the Defendants should Pay the sum Insured by them or be altogether Exonerated which Proposal being made known to your Petitioners said attornies through the medium of the said Nagapah Chitty they agreed to it but upon the Defendants proposing to Commit the agreement to Writing the Defendants were informed by the said Nagapah Chitty who previously Communicated with your Petitioners said attornies that it was altogether unnecessary for that his masters meaning your Petrs said attornies would adhere strictly to their word whereupon the Defendants remained satisfyed Determining to abide by the decision of the said arbitrators and to Pay the Loss if the said Madras Insurance Company should be awarded to do so and the Defendants did shew that the said arbitrators did on the Eighteenth Day of August in the said year make and duly Publish their award in Writing and did thereby Declare the Policy null and void and that the Premiums

Premium should be returned and that the Defendants Conceiving the said award to be final in respect to them they offered also to return the Premium which your Petitioners said attornies refused to take and Insisted upon Payment of the Sum Insured notwithstanding their Previous agreement to abide by the decision of the said arbitrators and for the Recovery of the sum so insured by the Defendants your Petitioners by their said attornies the said Benjamin Roebuck and William Abbott did on the Twelfth Day of March last past file and Exhibit a Bill of Compilaint in the said Mayors Court against the Defendants and that your Petitioners did in and by their said Bill state and setforth the Several matters and things which your Petitioners shew they have hereinbefore from the said Bill recited and setforth and the Defendants did in and by their said Cross Bill further state that having appeared to your Petitioners said Bill they did Exhibit and file their Plea and answer thereto and that in their said Plea and answer they did state the several matters and things which your Petrs have hereinbefore recited and setforth and that to their

said

said Plea and answer your Petitioners did Exhibit and file their Replication wherein the Defendants did pretend that your Petitioners had not fairly meet and Replied their said Plea and answer but that your Petitioners and his said attornies Combining and Confederating with each other how to wrong and injure the Defendants in the premisses didein their said Replication state that the Defendants said Plea was misconceived and untrue as to matters of fact in so much as the said Disputes which took place between Joseph Harding in the Complainants Bill named and the said Madras Insurance Company touching and concerning the Insurance on the said ship the Hannah was altogether foreign to the matter in Question and Could not be Construed to have any Connexion with or Reference to the Insurance made by the Defendants and further more that if the fact were so as Represented by the Defendants that they had made a verbal agreement to abide by the award of the said William Fairlie R. S. Perreau Jame Ede and J. B. Hudson that it could not avail the Defendants as the same would be Contrary to Law being Carried by an Express act of Parliament Whereas the Defendants did charge that the matter indifference Between the said madras

Insurance

Insurance Company and your Petitioners were not foreign to the matter in Question but on the Contrary that the Cases were Strictly Applicable to each other in so much as the Defendant had in their answer alleged as they then Charged the fact to be that they did insure the said Sum of Two thousand Pagodas inconsiquence of the assurances of your Petitioners Broker that the said ship Hannah was a good Vessell and that the said Madras Insurance offices from that Consideration had insured so Duply on her and the Defendants did pretend that your Petitioners with the view of Concealing the real state and Condition of the said Ship Hannah from the said Mayors Court had alleged in their said Replication that the Opinion of the Surveyor of the old Calcutta Insurance Office was impertinent and irrelevent and that the same ought to be Expunged and from the same motives the Defendants did pretend your Petitioners had forborne mentioning the Severals applications which were made to the Calcutta offices previous to their resorting to Madras and the refusals that were given thereto and the Cause of such refusals well knowing as the Defendants pretended

that

that the Crosy and infirm state of the said ships Hannah would be Discovered thereby and the opinion of the said Insurers Respecting her all which actings and doings of your Petitioners the Defendants did pretend were Contrary to equity and good Conscience and tended to the Defendants manifest wrong and Injury the Defendants being intitled to a full Disclosure of every Circumstance which Could therein a light on what was the real state and Condition of the said ships Hannah at the time she was insured or of any Circumstance which Could tend to shew that there was such Concealment on the part of your Petitioners or of their Attornies the said Benjamin Roebuck and William Abbatt as led the Defendants to Estimate the risk Different from what it really was and your Petitioners shew that the Defendants did thereupon in and by their said Cross Bill Pray that your Petitioners and their said Attornies the said Benjamin Roebuck and William Abbatt might respectively upon their Corporal Oaths full true Direct and perfect answer make to all and Singular the matters and things therein before setforth and alleged

and

and that in as full ample and particular a manner as if the same were therein again repeated and particularly Interrogated to and more particularly that your Petitioners might setforth and say whether they or one of them and which did not in the month of September which was in the year of Christ one thousand Seven hundred and ninety three or at any other time and when make an application to all or which of the Insurance office at Calcutta for an Insurance on the said ships Hannah and whether they did not all refuse to take a risk upon her Excepting the Old Calcutta Insurance Company or if all the said offices did not refuse besides the said old Calcutta Insurance office that they might then setforth and Discover what offices or underwriters did refuse to insure her and for what particular Cause and reason as they know have heard or did believe and that they might further setforth and say whether they did not know or believe that the Exhibits marked B and C annexed to the answer of the Defendants were not true Copies of an original Report made respecting the Conditions of the said ships Hannah and of

the

the original answer sent by the said old Calcutta &
Insurance Company to the Application of your Petitioners
Anthony Lambert for Insurance and that your Petitrs
might further Setforth and Discover what information
they gave to their attornies the said Benjamin Roebuck
and William Abbatt Respecting the Condition of
the said ship Hannah and whether they Communi-
cated to their said attornies the answer of the sworn
offices at Calcutta on their Application for Insurance
or either of them and that your Petitioners said
attornies the said Benjamin Roebuck and William
Abbatt might setforth and Discover whether any
other and what information was given by their said
Constituents on the subject of the said ship besides
that which was Contained in the Extract of the Letter
to the Defendants answer Annexed and that your
Petitioners said attornies the said Benjamin Roebuck
and William Abbatt might further setforth and
Discover whether they gave or Caused to be given
to the Defendants any and what information respecting
the said ship Hannah at the time the Application

for

for Insurance was made and that they might further
setforth and say whether they did not after the loss of the
said ship Hannah send for the Defendants and
Demanded Payment of the sum insured and wiather
the Defendants did not propose through the medium
of their Dubash Nagapah Chitty who then Acted as
Interpreter to Allow the award of the Persons Chosen to
arbitrate the Claim which they had made on the Old
Madras Insurance Company to Decide the Claim on
the Defendants and whether they your Petitioners said
attornies the said Benjamin Roebuck and
William Abbatt did not Consent thereto or if the aforegoing proposal
was not made in these Exact terms that your Petitioners
said attornies the said Benjamin Roebuck and
William Abbatt might setforth and Discover what did
pass During the said interview and whether any
thing was said done or Communicated which led
them or Either of them to suppose that the event
of the said arbitration was to Decide the Claim
on the Defendants and Lastly the Defendants did
Pray that the Policy Executed by the Defendants to your

Petitioners

Petitioners might be Delivered up to be Cancelled and that their original Bill might be Dismissed with Costs and that the said Defendants might have such other and further Relief in the Premisses as to the said Mayors Court should seem meet—

And your Petitioners shew unto this Honourable Court that to the Defendants said Cross Bill your Petitioners said attornies the said Benjamin Roebuck and William Abbott did Exhibit and file their Cross answer and did therein amongst other things state That your Petitioners said attorney William Abbott was the managing person in the Transactions touching the Insurance in Question and that by reason thereof he did for and on the behalf of your Petitioners apply to insure the sum of Two thousand Pagodas Stated to be laden and which your Petitioners said attornies did firmly believe was laden on Board the Ship the Hannah from Calcutta to this Place and that such Application was made to the said Defendants on or about the time in their said Bill alleged that your Petitioners said attornies did admit that the said application might have been made through the means of a Brober but that they had no recollection of the fact and knew no further thereof than as they had been informed of the same by the Defendants said Cross. Bill that they did not know further than they were informed thereof by the Defendants said Bill whether they the Defendants did or did not make any Enquiries relative to the Condition of the said Ship the Hannah at the time the application was made to them to insure thereon or at any other time or whether in Consequence of such Enquiries if actually made that the said Brober did inform the Defendants. that the said Ship the Hannah was a very good Ship. or words to that Effect But that they were Credibly informed and did verily believe that the only inquiry Ever made by the Defendants at the time the said application was made to them to Cover the said Risk was whether the Insurance offices in the Port had insured on the said Ship the Hannah and that on being informed that the Old and new Madras Insurance Companies had insured thereon to the Amount of Ten thousand Pags they the Defendants did agree to Cover the said risk without hesitation or any further or other inquiry whatever and

and did Accordingly Execute a Policy in manner and form as in the Defendants said Bill the same was stated and which Policy was then of Record in the said Mayors Court and your Petitioners said Attornies did further say they did not know what particular motive might have induced the Defendants to make the said Insurance other than as the same was thereinbefore Setforth or as the same was Expressed in and upon the said Policy of Insurance that was to say a Premium of three and one half per Cent that they admitted that the said Ship the Hannah did arrive in the Roads of Madras on the fourteenth Day of the Month of October one thousand Seven hundred and Ninety three and that the said ship the Hannah did so arrive in the said Roads of Madras in a Leaky and Distressed state as they had heard and believed the fact to be but that they did not admit that such the Condition of the said Ship the Hannah on her Arrival in the Roads of Madras as aforesaid was Occasioned as the Defendants would insinuate on Account of her not having been Sea Worthy all the time

time she Sailed from Calcutta as aforesaid but on the Contrary did say that they had heard and did verily believe that the same was Occasioned by and Owing to Stress of weather and further that they had heard and did verily believe that at the time the said Ship Hannah did sail from Culpee to wit on the Twenty first Day of September and year of our Lord One thousand Seven hundred and ninety three She was a light Vessell well manned and provided in all respects with very Necessary Stores requisite for such a Vessell and such a Voyage on which she did proceed without any material Accident occurring until the Twenty Seventh Day of the said Month of September when being at anchor in the South Channel a Gale of Wind set in from the South East accompanied by a heavy Sea which Occasioned the said Ship the Hannah to pitch and strain very much and that in Consequence thereof the said ship the Hannah became Suddenly very leaky and which Gale of Wind and heavy Sea they had heard and did believe was the Sole Cause of the leaky and Distressed Condition of the said ship the Hannah at the time of her arrival in the Roads

Roads of Madras as aforesaid and as a further proof thereof your Petitioners said Attorneys did say that they had heard and did verily believe that at the time the said Ship the Hannah did quit the Roads of Madras and put to sea to wit on or about the Seventeenth day of the said month of September she was in such good Condition that she had not above one foot water in her hold although she had for about eight and forty hours previously thereto laboured in a very heavy Gale of Wind owing to the Monsoon having then set in with uncommon Violence and which besides driving all the Small Craft on shore Obliged every Ship then in the Roads to a Considerable Number to put to sea and that they had heard and did verily believe the fact to be so that after the said ship the Hannah had put to Sea as aforesaid she did continue for some time without making any water but that the violence of the said Gale increasing she did at length spring a Leak and in Consequence thereof did founder and thereupon they did Submit to the said Court that the said Situation of the said ship the Hannah at

at the time of her Anchoring in the Roads of Madras as aforesaid although Seemingly Relied on by the Defendants in and by their said Bill of Complaint was not a Criterion by which to Judge of the Sea worthiness of the said Ship the Hannah at the period when She Sailed from Calcutta as aforesaid nor that the same was at all aided by the manner in which she was lost that your Petitioners Attorney the said William Abbott did admitted they did send for the Defendants and that it might have been, on or about the time in their said Bill setforth and Demand of them Payment of the Sum by them insured as aforesaid and that Nagapah Chitty the late Dubash of your Petitioners said Attorneys might have acted as Interpreter upon the Occasion that the Defendants did then Request that as your Petitioners said Attorneys had agreed to Arbitrate Certain Disputes between them and the Madras Insurance Company touching an insurance on the said Ship the Hannah they the Defendants might be Concluded thereby but your Petitioners said Attorneys did not admit that such request was made in manner form and substance as the same was Setforth by your Petitioners in and by their said Bill of

Complaint

Complaint or in any other manner form or Substance than as the same was therein above stated by your Petitioners said Attornies and your Petitioners said attornies each of Speaking for himself did positively deny that they or either of them did Consent or Agree to the said Request of the Defendants but on the Contrary your Petitioners Attornies William Abbott did say that he did inform the Defendants that your Petitioners said Attornies were not at Liberty to Consent or agree thereto but that he the said William Abbott would Address his said Constituents on the Subject that your Petitioners Attorney William Abbott did accordingly write to your Petitioners and requested their instructions touching the Premises and that to the best of their recollection and belief that on or about the Time the Letter of your Petitioners said attornies on the Subject aforesaid did reach Calcutta the matter submitted to arbitration as aforesaid had been Determined and that your Petitioners in answer to the said Letter of your Petitioners said attornies did Refuse to enter into any terms of Accommodation with the Defendants otherwise than by arbitration to take place in Bengal and with proviso which they your Petitioners positively insisted on that the arbitrators therein before named should

Should not be the Arbitrators therein and that which your Petitioners said attornies did through their attorney at Law Communicate to the Defendants who did in their part frequently offer to the attorney at Law of Your Petitioners said attornies to submit the matter in dispute to Arbitration on Condition that the Arbitrators should be Chosen from Amongst the Merchants of Madras and your Petitioners said attornies did say that as your Petitioners had Directed that if any arbitration were to take place that the same should take place at Calcutta aforesaid they your Petitioners said Attornies had not the Power to accede to the offer by the Defendants made and which Circumstance was Communicated to the Defendants by the said attorney at Law of your Petitioners said attornies and your Petitioners said attornies did state that as they had positively Declared that they did not Consent or agree to the said request or proposal of the Defendants that the Determination of the arbitrators at Calcutta aforesaid should be binding upon them the Defendants as to the Claims in Question they the Defendants could not have proposed to Consent such agreement in Writing nor Could the said Nagapah Chetty have Declared to the Defendant

that

that it was Altogether unnecessary so to do for that his
master would adhere strictly to their words and thereupon
your Petitioners said attornies did submit to the said
Mayors Court that the said matters by the Defendants
introduced in their said Bill of Complaint and thereon
and thereby insisted on was without any foundation in
truth and that the same were artfully brought forward
to give an unjust and unfair aid and Support to their
said Bill of Complaint well knowing as they the
Defendants well know that the said Hagapah Chitty
did Depart this Life previous to the filing of their
said Plea and Original Answer and Consiquently
previous to the Commencement of the present Crofs
Suit and that therefore he Could not appear in evidence
against them that your Petitioners said attornies did
admit as they had already admitted that an arbitration
was Entered into touching Certain Disputes regarding
a risk on the said Ship the Hannah between Joseph
Harding of Bombay Merchant by them as his attornies
and the Old Madras Insurance Company of which
Company your Petitioners said attornies then were
Members and of which Company your Petitioners attorney
William

William Abbatt Stilt was a member and that they were
of Opinion that the said old Madras Insurance Company
ought to have paid to the said Joseph Harding the Amount
of the risks by the said old Madras Insurance Company
Covered on his Account on the said ship the Hannah that
your Petitioners attorneys did further Admit that the persons
in the Defendants Bill named were Appointed the
Arbitrators for finally Settling the said Disputes and
that they did at the time and in manner and form as the
same was by the Complainants in and by their said Bill
of Complaint Alleged make and Publish their Award
in Writing and that the Defendants have pleaded the said
Award in Bar to the Original Bill Exhibited against
them in the said Mayors Court by your Petitioners said
Attornies as aforesaid and your Petitioners said attornies
did Submit to the said Mayors Court that it was
Contrary to the Practice thereof and to the Practice of every
other Court to bring a Crofs Bill in aid of a Plea and that
therefore the Defendants had thereby either reduced their said
Plea to an Answer or intirely over ruled and Dismissed
the same in which Case your Petitioners said attornies did
Submit that the Complainants said Plea and the matters

and

and things therein Contained ought to be Expunged from the Record and that they did deny that the Defendants did offer to them or to Either of them previous to the Commencement of the said original suit a return of Premiums and that the first tender thereof that did come to the Knowledge of your Petitioners said Attornies was at the time when the Defendants filed their said original Plea and Answer in the said Mayors Court That your Petitioners said Attornies had already admitted the Original suit Commenced in the said Mayors Court by your Petitioners as aforesaid against the Defendants and that the Statement of the pleadings had thereon were as by the Defendants the same was setforth in their said Bill of Complaint but that they did not admit that the Replication of your Petitioners and forming a part of the said Pleadings did Contain any matter or thing Contrary to Justice or equity as Suggested by the Defendants or that it did not fairly meet the Defendants said Plea and answer and that in resisting the said Plea of the Defendants they did no more than what was incumbent on them to do and which they were Consequently Justified in doing &c. particularly as the foundation of the said Plea was Contrary to

to the truth and did deny that the Defendants did ever Suggest to your Petitioners said Attornies or to Either of them that there was not a fair Disclosure at the time the Policy in Question was Executed or that there was a Concealment materially varying the risk undertook to be run and that the Ship was not Sea worthy at the time the insurance was made as pretended by the Defendants or that they the Defendants did ever Express themselves to your Petitioners said Attornies to that purport or Effect nor did they believe that such matters were in the Defendants Contemplation at the time that they were Called upon to Pay the amount by them insured as aforesaid and your Petitioners said Attornies did deny that they did Conceal from the Defendants at the time they Applied to Effect the insurance in Question any matter or thing that had Come to their knowledge touching the rent State and Condition of the said Ship the Hannah which in their Opinion Judgment and belief was necessary to be made known to the Defendant as to the risk they were about to Cover and did Deny that they did with hold any fact regarding the said ship the Hannah from a Conviction knowledge or belief that if the same was shewn the Craggy and

inform state of the said Ships the Hannah would have been Discovered thereby as was untruly Alleged by the Defendants on the Contrary that they did verily believe that the said ships the Hannah was at the time they Effected the Insurance in Question every way sea Worthy and a good ships and in proof thereof your Petitioners said attornies as Members of the old Madras Insurance office did Cover a risk thereon as thereinabove Setforth That the Report of the Surveyor of one of the Insurance Companies at Calcutta and the Opinion of the said Insurance Company thereon were impertinent and irrelevent and ought not to have been introduced by the Defendants and that the said Report and the said Opinion thereon did not shew that the said ships the Hannah was not Sea worthy and did Deny that the objections made to the report of the said Surveyor and to the Opinion of the said Insurance Company thereon as Contained in the Replication of your Petitioners were so made or that they could have been so made with the view as Alleged in and by the said Cross Bill of Concealing the true state and Condition of the said Ship the annah as that the said report and the said Opinion were then of record in the said Mayors Court the same being annexed to the Defendants said original answer and your Petitioners said attornies did Deny that they had any matters for withholding the Particulars of any Application that might have been made at Calcutta for Insuring on the said ships the Hannah previous to the applications being made to the Insurance offices at this place other than that they were advised and did and do believe that the same were altogether impertinent and irrelevant to the matter in Question and that they had been informed that Applications were made to the insurance offices at Calcutta to insure on the said ships the Hannah and that such Applications were refused Excepting the old Calcutta Insurance office that they Could not take upon themselves to say what were the reasons that Operated in the minds of the underwriters to induce them to such refusal nor did know whether the Exhibits B and C annexed to the Defendants said Original answer be or be not true Copies of an original Report made Respecting the Condition of the said ships the Hannah and of the Original answer Sent by the Old Calcutta Insurance to the Application of your Petitioners for Insurance and did say that it would seem by the Interrogatories in the Defendants said

said Bill of Complaint contained that they the Defendants would Suggest that your Petitioners did furnish your Petitioners said Attornies with Copies of their Correspondence with the said Calcutta Insurance offices under an Idea Conceived by them that thereupon might be ascertained the State and Condition of the said Ship the Hannah and that the same was necessary for the guidance of the Insurance offices at this Place and that they were not furnished with the said Correspondence previous to the effecting of the Insurance in question nor for a Considerable time afterwards and that were had they been furnished therewith they should not have Considered the opinion of the said Offices as Documents to be Submitted to the offices at this Place from whence the said Ship the Hannah had sailed only a few months antecedent to the Date of such Opinions and as it did not appear although reputed to have Come in leaky to Calcutta that she had sustained any Damage during that period but on the Contrary that she had been relieved by the taking off her Coals and that therefore the underwriters at this place were as Capable of Judging of her Condition as the underwriters of Calcutta a fact which appeared in evidence and that with regard to the Extract to the Defendants said Original answer annexed it appeared from other Documents Exhibited on the part of the Defendants with the said Original answer that the same was given to the said old Madras Insurance Company to Shew the probable time of the sailing of the said ship the Hannah and that they did not receive any information from your Petitioners which in their your Petitioners said attornies Opinion Judgement or belief was material or necessary to be laid before the Defendants or any of the underwriters of Madras aforesaid or that could in any manner have guided their Judgment regarding the Risks they were about to Cover on the said ship the Hannah and that to the best of their knowledge recollection and belief your Petitioners did not disclose to them the State and Condition of the said ship the Hannah or that she was or was not a good Ship and Lastly your Petitioners said Attorneys did Deny the Confederacy and Combination as Charged by the Defendants in and by their said Bill of Complaint and did state that they had been made improperly

parties

parties to the Defendants Cross Bill of Complaint and that they were advised that such the proceeding of the Defendants was altogether irregular and Contrary to the practice of his Majestys Courts of Judicature in so much as that no man Could be made a party to a Bill against whom no Decree Could be had merely to Obtain his Testimony as such Testimony might be had by an Examination of him as a Witness and in so much as that a Cross Bill must pursue the Original Answer of which it formes a part and Consequently persons who were not made parties by the original Bill Could not be made parties to a Cross Bill that they were not parties to the Original suit as the same was brought in the name of your Petitioner by them as their Constituted Attorneys and that the said Cross Bill ought to be Dismissed so far as the same went to make your Petitioners said Attorneys parties thereto—

And your Petitioners shew unto this Honourable Court that a Commission having been prayed at the Instance of your Petitioners for the taking of your Petitioners Cross Answer at Calcutta to the Defendants said Cross Bill of Complaint the same did accordingly issue but before the same could have been Executed or regularly Returned the said Defendants did on the Twenty first Day of April last Pray that your Petitioners said Original Bill might stand Dismissed with Costs from the want thereof and your Petitioners shew unto this Honourable Court that your Petitioner by their said Attorneys did Object thereto and did Pray a further time of fourteen days for the return of the Commission so issued as aforesaid but your Petitioners shew the said Mayors Court was pleased notwithstanding the Premisses to Order that your Petitioners said Original Bill should stand Dismissed with Costs as by the said Order and Decree of the said Mayors Court hereunto Annexed may Appear—

By which said Order of the said Mayors Court your Petitioners do Conceive themselves much aggrieved and do therefore Appeal therefrom for the following Amongst other reasons—

First. Because the said Mayors Court in making the said order that said Original Bill of your Petitioners should stand Dismissed with Costs were not warranted by any Rule established by the said Mayors Court for its own Guidance or Practice or by any Rule

Rule or Practice of the High Court of Chancery from which the forms of the said Mayors Court are Chiefly and Principally Assumed and your Petitioners humbly state that the said Mayors Court is armed with a Concurrent Power and Process with the said High Court of Chancery to Compell an Answer to any and every Bill of which it entertains Jurisdiction and which have been Deemed for time immemorial and long usage and are Sufficient to Attain and further all the Ends of Justice and until the same Shall have been formally annulled rescinded or Altered should and ought as your Petitrs are advised to have their force and Influence on the said Mayors Court—

Secondly That only because your Petitioners had Replied to the answer of the said Cross Complainants to the said Original Bill but that the said Cross Bill of the said Cross Complainants had been fully answered by two of the Defendants to the same namely Benjamin Roebuck and William Abbott parties Defendant thereto and which your Petitioners humbly Presume to have been Sufficiently and satisfactorily answered as no Exceptions had

Thirdly Because the said Cross Complainant could not have received any Injury by the said Majors Court having granted a further time for the Return of the Commission issued in the said Cross suit at the Instance of your Petitioners In as much as the said Cross Complainants Sought not to Recover any matter or thing by the said Cross Bill the same being merely in the nature of a Defence, But your Petitioners humbly Shew that they your Petitioners would have been the only Sufferers by any Procrastination of such had occurred in the Prosecution of the said suit in the said Mayors Court as their Original Bill was brought to Compell the Performance of a Promise undertaken on the part of the said Cross Complainant on a Policy of Insurance by them Subscribed and not denied of them in their said Original Answer and therefore any Delay in bringing the said Suit to an Issue could and would have been to your Petitioners sole disadvantage—

Lastly Because one of your Petitioners said Attorneys and one of the Defendants to the said Cross Bill namely Benjamin

Benjamin Roebuck had made Oath before the said Mayors Court that the said Commission had actually issued from the said Mayors Court and had been forwarded to Calcutta from which it was presumable and so the fact is that your Petitioners did mean to Present the said Original Bill to as Speedy a Determination as the matter would admit—

For all which reasons and such others as may be offered at the hearing your Petitioners most humbly Pray that the said Decree of the said Mayors Court may be Reversed and that your Petitioners may have such further and other Relief in the Premises as to this Honourable Court shall seem me

(Signed) Emanuel Samuel
Solicitor for Appellant

Extract

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 26th day of April Anno Domini 1796

Present

James Daly Esquire Mayor
William Webb and Andrew Ross
Aldermen

Anthony Lambert D Ross & James Mactaggart by their Attorney Benjamin Roebuck and Wm Abbott

Letchmadut nellacant & Vasoodut Latchmadut
Et. Et. Contra

Mr George Chalmer Attorney for the original Defendant and Cross Complainants Acquaints the Court that the Court were pleased on the 15th ultimo to grant the original Complainants and Cross Defendants a further time of six Weeks to put in their Cross answer which further time Expires this day and as the Cross Defendants Anthony Lambert D Ross and Jas M'Taggart have neglected to file their Cross Answer tho' the first rule to file the Cross Answer issued on the 10th October 1795 he therefore prays that the original Bill

Bill may be dismissed with Costs to which Mr E. Samuel Attorney for the Original Complainants and Cross Defendants objects it being not a Customary Course to Dismiss an original Bill for want of a Cross answer but to restrain Proceedings in the Original suit untill a Cross Answer be filed and the Cross Defendants Attorney do therefore pray a further time of 14 Days for the return of the Commission which has issued to take the Cross Defendants answer The Court having taken the same into Consideration It is Ordered that the Original Bill do stand Dismissed Accordingly with Costs—

Mr Emanuel Samuel Attorney for the Cross Defendants begs leave to file the affidavit of B. Roebuck one of the Attornies of the Cross Defendants Sworn to in Court read and filed this day upon which he prays that the time for the return of the Commission be enlarged to 14 days. Mr George Chalmer Attorney for the Cross Complainant submits to the Court that there is Nothing stated in the Affidavit to induce the Court

Court to extend the time The Court having taken the same into Consideration it is Ordered that the former Resolution of the Court do stand Confirmed—

A True Extract

(Signed) G. E. Afshin
Dy Regr

To the Right Honorable Lord Hobart
President in Council
Fort St George

In the Honourable
Court of Appeals

Between Anthony Lambert David
Ross and James McTaggart of Calcutta &c
Merchants and Copartners by their Attorneis
Benjamin Roebuck and William Abbott
of Fort Saint George Merchants Complainants
and Lutchemedut Nellacant and &c
Vasvoodut Balakistna Dutt of Madras
Merchants Defendants —

Filed in my office
the 17th June 1796.
J. Webbe clk

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

These Respondents for answer to the
said Appellants Petition and appeal or unto so
much thereof as these Respondents are Advised is
material or necessary for them to make Answer
unto answer and admit that the Appellants
did sometime on or about the Twelfth day of March

and

and year of Christ one thousand Seven hundred
and ninety five Exhibit and file their Bill of Complaint
against these Respondents Setting forth that some time
on or about the Month of September which was in the year
of Christ one thousand Seven hundred and ninety three
the Appellants caused to be laden on their Joint Account
on board the Ship the Hannah then lying at Calcutta
a quantity of rice the said Ship being then bound for
Madras That being desirous of Covering the risk on the
said rice so Shipped by Effecting an Insurance thereon
at some of the offices of Insurance at Madras the Appellant
did Instruct their said Attorneis to pursue the necessary
measures in order to Effect the same That their said
Attorneis in Consequence thereof did Apply for and effect
an Insurance on a part of the said rice at the office
of these Respondents at a Premium of three and a half
per Cent in Consideration whereof these Respondents
did enter into and Execute a certain Policy of Insurance
bearing Date the said Thirtieth day of September
whereby they did Insure and take upon themselves
the risk of Two thousand Pagodas upon the said
Rice at and from Calcutta to Madras aforesaid the said

risk

with to Commence from the Sixth day of the said Month of September and to Continue and endure until fourteen Days after the arrival of the said Ships Hannah at Madras aforesaid And these Respondents further admit that the said Appellants after stating that the said ship Hannah was lost and shewing the manner in which that accident happened did allege in their said Bill that these Respondents by reason thereof stood indebted to them in the sum of Five thousand Pagodas for which they prayed a Decree as by the said Bill setforth and recited in and by the said Petition and Appeal relation being thereunto had will morefully Appear —

And these Respondents admit that to the said Bill of Complaint they did on or about the Sixteenth day of June in the year aforesaid Exhibit their Plea and Answer which Plea and answer being also recited and setforth in and by the said appeal These Respondents crave leave to Refer thereunto and pray they may have the full benefit and advantage thereof —

And

And these Respondents admit that the appellant by their said Attornies did reply to the said Plea and answer which being altogether evasive and unsatisfactory These Respondents were Compelled to file a Cross Bill in order to Draw from the appellants a Disclosure of certain Circumstances Respecting the State and Condition of the said ship Hannah which had they been Communicated to these Respondents in the first Instance would have Enduced them to have rejected the suit altogether And these Respondents further say that to the said Cross Bill filed and Exhibited on the sixth Day of August last past and which is Setforth and recited in and by the said Appeal the said Benjamin Roebuck and William Abbott did appear by their Attorney James Stuart Hall But no Appearance was Entered for the said Anthony Lambart David Ross and James M.Taggart until the Twentieth Day of the following Month of October when a Special prayer was entered on the Records of the Court on their behalf that they might have

Un Bill

Untill the Twentieth January following to put in their Answer to the Cross Bill and these Respondents further say that although this was a much longer period than what is usually Granted yet the Court Nevertheless Consented to allow the time Asked for on this Express Condition however that in default of an Answer Judgment would be given for these Respondents as Cross Complainants and these Respondents further shew that the said Appellants did not file their Answer on the said Twentieth day of January But on the Second Day of February obtained a further rule of a Fortnight at the Expiration of which time the answer was not forthcoming Still the Court did not proceed to Judgment against them But allowed a further time as by the several Entracts of the said Mayors Court Copies whereof are hereunto annexed relation being thereunto had will morefully Appear—

And these Respondents further say that on the Twenty first day of April last the said Appellants having till that period Neglected to put in

in their Answer these Respondents did State to the said Mayors Court the Several Rules which had been granted and the injury which they had sustained by the delay whereupon the said Mayors Court were pleased to direct and did Accordingly order and Direct the Original Bill to Stand dismissed with Costs as by the said Order or Decree Copy whereof is to the said Petition and Appeal annexed relation being thereunto had will manifully Appear—

And these Respondents deny that the said Appellants have any Just Cause or reason to Complain of the said Decree which was passed against them in Consequence of their utter disregard to the Rules of the said Mayors Court—

And for Answer to the first reason or Cause of Appeal from the Decree of the said Mayors Court and wherein the said appellants have alledged that in the Dismission of the said Original Bill the said Court were not warranted by any rule Established for its own guidance and practice or by any rule or Practice of the High Court of Chancery These Respondents for Answer thereunto say that

that the said Mayors Court have not any fixed or Settled practice as to the time for answering a Cross Bill where the practices are not within their Jurisdiction the same depending as it always must on the particular Circumstances of the Case and these Respondents further say that in the present Instance the said Anthony Lambert David Ross and James M. Taggart entered a voluntary Appearance by their Attorney James Stuart Hall and prayed to have a rule of three Months to Answer the Cross Bill which the Court Granted upon this Condition however that if the answer was not filed at the Expiration of the time prescribed that Judgment would be given for these Respondents and to that Condition the said appellants as it would appear from the Record did Acquiesce and these Respondents further say that although the answer was not put in at the Expiration of the rule aforesaid yet the said Mayors Court did not proceed to give Judgment in terms thereof but allowed a further time for the said Anthony Lambert David Ross and James M. Taggart to put in their answer to the Cross

Bill

Bill and it was not until the said appellants had winced a total disregard of and Contempt to the rules of the said Court that Judgment was given as aforesaid And these Respondents say that these being the facts which led to the Dismission of the said original Bill They feel totally at a loss to Comprehend what the Appellant Can possibly mean or intend to aim at In stating that the said Mayors Court are armed with a Concurrent power and process with the high Court of Chancery to Compel an answer to any and every Bill of which it entertains Jurisdiction For these Respondents Submit that the process of the said Mayors Court Could not reach the Appellants who being Inhabitants of Calcutta were altogether without their Jurisdiction and therefore the said Court had no other mode left to enforce obedience to its Orders than by holding out to the Respondents the terms upon which they should be Allowed to Maintain and Carry on their action Namely by Answering to the Cross Bill and disclosing fairly the Several Circumstances attending the Insurance in question —

And

And to the second Reason adduced by the appellant as Cause of Appeal These Respondents say that although the said Benjamin Roebuck and William Abbatt might have Answered to such Interrogatories in the Cross Bill Contained as were Exhibited to them yet these Defendants say that it was material to these Respondents that the appellants Anthony Lambert David Ross and James M. Taggart should also answer Directly and unequivocally those questions which were Exhibited to them For on a discovery of Certain facts which lay within their Knowledge and which these Respondents may probably find Difficult to Establish in evidence as they rest their Case and the prospect of being Exonerated from the Claim in question and which had accordingly induced them to file their Cross Bill of Complaint and in Order to shew to this Honourable Court that the answer of the said Benjamin Roebuck and William Abbatt were not sufficient for the purposes Required by these Respondents they pray leave to state that it appears from the proceedings in this Cause and in the said Petition and

and Appeal recited and setforth that the ship Hannah the Subject of Insurance was an old Crazy and unseaworthy Vessel whom all the offices in Calcutta had Refused to Insure Except one and that under Circumstances of peculiarly Strong inducement That in Consequence thereof the appellants had sent Round to this Port when the real Character of the Vessel being totally unknown Insurances to a Considerable amount were Effected on her and these Respondents further say that as it is incumbent on an assured party to Communicate to the Insurers all that he knows Respecting the nature of the risk without which the Contract is void and as the appellant did Sidiously Conceal from these Respondents the Knowledge which they had of the real state of the Hannah These Respondents did therefore annex to and Exhibit with their answer to the Original Bill of Complaint a Copy of which they had obtained of the report made on her state and Condition and also of the Letter sent from the Secretary of one of the Insurance offices assigning their Reasons for

Refusing

Refusing to Insure the said Vessell but on particular Conditions And these Respondents did thereupon in their said Cross Bill require the Appellants upon their Oaths to Set forth and say whether they did not Know or believe that the said Exhibit B and C were true Copies of an Original report made Respecting the Condition of the Hannah and of the Original Answer sent by the old Calcutta Insurance Company to the Appellants for Insurance To which Interrogatory or question the said Benjamin Roebuck and William Abbott instead of answering in the affirmative say that they do not Know whether the said Exhibit B and C annexed to these Respondents Original answer be or be not true Copies of an Original Report made Respecting the Condition of the said Ship the Hannah and of the Original answer sent by the old Calcutta Insurance offices to the Application aforesaid Hence these Respondents do humbly submit to this Honourable Court that the answer of the said Benjamin Roebuck and William Abbott to the Cross Bill of

of these Respondents was not Sufficient as is untruly Alledged and therefore that the matter in the Second Reason Contained as Cause of Appeal are altogether groundless and improper—

And for Answer to the third Reason these Respondents say that as the Object of filing their Cross Bill was to obtain from the Appellants a Discovery of those facts which being once established must exonerate these Respondents from the Claim Set up by the Appellants That all Delay and procrastination in that respect is highly injurious to the Interest of these Respondents as it prevents your Joining in the Cause when if the answer of the said Anthony Lambart David Ross and James Mc Taggart should not prove Sufficient to Establish the Concealment and other Circumstances upon which these Respondents Depend that than these Respondents will have an Opportunity of Examining Witnesses in support of their Case But if the time for this Examination of Witnesses is unnecessarily protracted These Respondents cannot with reason

Expect

Expect at a Remote period that evidence which they otherwise might have Depended on Hence it is evident that the delay must Opriate to the Disadvantage of these Respondents and not the Appellants as is wrongfully asserted by them—

And to the Last reason of Cause of Appeal these Respondents deny that the affidavit of the said Benjamin Roebuck doth shew that it is the intention of the said Appellants to prosecute the original Bill to a Speedy Determination for the said Affidavit only states that a Commission was sent to Calcutta But no Attempt is made to account for the Extraordinary delay manifest on the face of the proceedings from the period of filing the Original Bill or to lead the said Court to Suppose that it was at all the intention of the said Anthony Lambert David Ross and James M. Taggart to put in their answer thereto—

And these Respondents further say that as the Charter of his late Majesty under which the said Mayors Court is Constituted

Constituted doth authorize and empower them to form rules of practice and as the said Appellants Anthony Lambert David Ross and James Mc Taggart have manifested a total disregard to those rules Notwithstanding the indulgence that was Shewn them that the said Mayors Court were warranted from the power which they possess under the said Charter as well as from the principles of Law and Equity to dismiss the said original Bill

For which Reasons and such others as may be offered at the hearing these Respondents pray that the said Decree of the said Mayors Court of the Twenty Sixth day of April last past may be Affirmed and that the Petitioners said 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 20th day of October Anno Domini 1795

Present

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

Anthony Lambert and Others by their Attorneys Benjamin Roebuck & Wm Abbott
vers
Latchemedutt Nellacunt and Vausoedutt Latchemedutt

Answer of Benjamin Roebuck and Wm Abbott
Sworn to before Mr Alderman Call and filed the 13th
Instant Mr James Stuart Wall. Appears for the Defen-
dants Anthony Lambert David Ross & Js Mc Taggart
and prays three Months to put in their Answer
to which the Opposite Attorney Consents Ordered so
Accordingly

Day is given for Anthony Lambert David Ross and Jas
Mc Tagart till the 20th January next to answer the
Complainants Bill indefault of which Judgment will be
given for the Complainant—

A True Extract
/ Signed / George Taylor Regr

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 Esqr Mayor
James Call Andrew Ross &
Richard Chase Aldermen

Anthony Lambert David Ross and James Mc Taggart
by their Attorneys Benjamin Roebuck and William Abbott
vers
Dagut Latchemedutt Nellacant & Vasoedutt Latchemedutt
& Co Contra

Further Day is given the Cross Defendants
till the 16th Instant to Answer the Cross Complai-
nants Bill indefault of which Judgment will be
given for the Cross Complainant—

A true Extract
(Sig) J. E. Atkins Dy Regr

Court

Court of Appeals
at
Madraspatnam } for Thursday the 8th day of December
Anno Domini 1796. —

Between Anthony Lambert David Ross
and James Mc Taggart of Calcutta Merchts
and Copartners by their attornies Benjamin
Roebuck and William Abbott of Fort St Geo
Merchants Appellants and Latchemedut
Nellacant and Vasoodut Balakistnadutt of
Madras Merchants Respondents. —

This Cause coming on this day to be heard and debated
before this Court by the attornies on both sides upon hearing
the Petition of appeal and Answer and the Several Exhibits
of the Honble the Mayors Court together with the Order of the
said Court given in this Cause on Tuesday the 26th day of
April Anno Domini 1796. upon due consideration
had of the matters therein Severally Contained and of the Pleading
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 26th day of April Anno Domini 1796 be Reversed
and that the further time of One Week from this 8th day of December
Anno Domini 1796 be given the Appellants to put in his Reply
Answer to the Respondents Ross Bill of Complaint in the Honble
the Mayors Court and that the Appellants Petition be hence dismissed
with Costs in this Court. —

Wm. — / Signed / J Webbe clk

To

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

Between Anthony Lambert David
Ross and James Mc Taggart of Calcutta
Merchants by their Attornies Benjamin
Roebuck and William Abbott of Fort St
George Merchants Complainants and
Dagut Latchemedut Nellacunt and
Vasoo Dut Latchemedut of Madras
Merchants Defendants &c &c &c

The humble Petition an Appeals of the above
named Complainants —

Shew That some time on or about the Twelfth
Day of March and year of Our Lord one thousand
Seven hundred and ninety five your Petitioners by
their said attornies the said Benjamin Roebuck
and William Abbott did Exhibit and file their Bill
of Complaint in the Mayors Court at Madraspatnam
against the Defendants above named for the recovery
of the Sum of Two thousand Star Pagodas and your
Petitioners shew that to the said Bill of Complaint the
Defendant

Filed in my office
the 6th June 1796
J. Webbe
Clk

Defendants having Appeared and having filed their several Plea and Answer and your Petitioners their Replication the Defendants instead of Exhibiting and filing their Rejoinder did Exhibit and file a Cross Bill of Complaint against your Petitioners and your Petitioners said Attornies the said Benjamin Roebuck and William Abbott and your Petitioner shew that your Petitioners said attornies the said Benjamin Roebuck and William Abbott having Appeared to the Defendants said Cross Bill of Complaint they did file their several Cross answer

And your Petitioners further shew that after the receipt of the necessary intimation of the said Cross Bill having been so filed against them did also by their attorney in Court appear to the said Cross Bill and pray that a Commission might issue to Certain Commissioners in the said Prayer named at Calcutta for the purpose of taking your Petitioners Cross Answer to the said Cross Bill and your Petitioners shew that the said Court having thereupon Ordered a Commission to issue the same

was

was Transmitted by your Petitioners said attornies to Bengal for the purpose Aforesaid but your Petitioners shew that before the same was or could have been Executed or regularly Returned to the said Mayors Court the said Defendant did on the Twenty Sixth day of April last past pray that your Petitioners said original Bill might for want of your Petitioners said Cross Answer stand Dismissed with Costs and your Petitioners shew unto this Honourable Court that your Peti-
said attornies did Object to such the premature prayer made by the said Defendants as aforesaid and did Exhibit in support of such objection the Affidavit of Benjamin Roebuck One of your Petitioners said Attornies to Verify the fact of the Commission having been Duly Transmitted to Calcutta as aforesaid and did pray a further time of fourteen Days for the return of the said Commission But your Petitioners shew that the said Mayors Court notwithstanding the premises did over Rule your

Petitioners

Petitioners said Objections and Order that your Petitioners said Original Bill should stand Dismissed with Costs —

And your Petitioners shew that Conceiving themselves very materially aggrieved by the said order of the said Mayors Court they did on or about the Ninth Day of May last past appeal therefrom to this Honourable Court as by Reference had to the record of this Honourable Court the same doth and may Appear —

And your Petitioners further shew unto this Honourable Court that on the seventeenth day of the said Month of may the Commission so issued for the purpose of taking your Petitioners said Crofs answer having been returned regularly Executed your Petitioners did on the said seventeenth Day of May pray leave to Deliver the said Commission so issued to Bengall duly Executed as aforesaid together with the Crofs answer of your Petitioners and which he further prayed might be Received upon Condition of his Withdrawing the Appeal so lodged by your Petitioners in this Honourable Court on the said Ninth day of May last past and your Petitioners shew that the Defendants Attorney in Court did thereupon pray that one Week might be Allowed him to Consult his Clients upon the Subject thereof which was Accordingly granted and your Petitioners shew that at the Expiration of the said Week that is to say on the Twenty fourth day of the said Month of May the said Attorney for the Defendants did acquaint the Court that he was instructed by his Clients to Answer the Appeal of your Petitioners so filed and Exhibited as aforesaid in this Honourable Court by which your Petitioners were precluded from filing their said Crofs answer as by Copys of the said Orders of the said Mayors Court hereunto Annexed may Appear —

By which said last mentioned Order your Petitioners Conceive themselves

Much

Much Aggrieved and do therefore Appeal therefrom to this Honourable Court for the following amongst other Reasons —

Because the said Mayors Court having duly authorized the said Commission to issue to Calcutta to take your Petitioners Answer the said Court under the Circumstances of the short time Allowed for the Return of the said Commission of the said Affidavit of your Petitioners said Attorney that the said Commission had been regularly transmitted and the return of the same within the space of Seven Days after the Expiration of the time allowed for the said Return ought as your Petitioners humbly Contend in Equity to have received the same Even had the former order of the said Court to Dismiss the Original Bill of your Petitioners been founded upon Just Grounds but which your Petitioners trust from the Reasons Assigned by your Petitioners in their said Petition of the Ninth Day of May was not the Case For it is apparent from the recited Proceedings in the said Petition

Petition and the Reasons thereon Assigned that the said Order of the said Mayors Court originated under a supposition that your Petitioners had abandoned their Cause a Circumstance which is Clearly Contradicted by the Return of the said Commission with the answer duly Sworn —

And the said Court were further Called as your Petitioners humbly Contend in Equity and Conscience to have Received the said Commission and answer as your Petitioners said Attorney in Court did Impose on himself as a Condition precedent to the filing of the said answer so Returned with the said Commission that he would with Draw the said Petition and appeal lodged in this Honourable Court on the said ninth Day of May whereby your Petitioners would be Chargeable with any and Every Expense which might have been incurred by reason of the said Petition —

For all which Reasons and such Others as may be Offered at the hearing your Petitioners most humbly pray that

that the said Order of the said Mayors Court may be Reversed that the said Cross answer of your Petitioners so taken and Returned with the said Commission may be ordered to be received by the said Mayors Court and that your Petitioners may have such Other Relief in the Premisses as in the Wisdom of this Honourable Court may seem Meet—

/ Signed / E. Samuel

Solicitor for Appellant

Extract

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 17th day of May Anno Domini 1796.

Present

James Daly Esquire Mayor

James Call Andrew Ross and

John Mitford Aldermen

Anthony Lambert David Ross and James Mc Tagart by their Attornies Benjamin Roebuck and Wm Abbott very Dagut Latcheremedutt Velacant and Nasoodutt Latcheremedutt

Vs E. Cantra

Mr Emanuel Samuel Attorney for the Cross Defendant prays leave to deliver into Court the Commission issued to Bengal directed to Js Duncan Benjamin Turner John Stapleton William Fairlie and A Gilmore Esqs or any two of them to take Cross Defendants Answer Duly Executed by William Fairlie and Allen Gilmore two of the Commissioners with the Answer of the Cross Defendant Anthony Lambert David Ross and James Mc Tagart with he Prays may be received upon

upon Condition of his withdrawing the Appeal
Mr George Chalmer Attorney for the Cross Com-
plainants prays he may be allowed till next
Court day to Consult his Client upon the Subject
Ordered that one Week be allowed –

A true Extract
[Sig] G. E. Aitkin
Dy Regr

(Signed) Emanuel Samuel
Solicitor for Appellant

Extract

Extract from the Minutes of a Court Held at
the Town Hall on Tuesday the 24th day of May
Anno Domini 1796

Present

James Daly Esquire Mayor.
William Webb Andrew Ross &
Richard Chase Aldermen
Anthony Lambert David Ross and James M Tagart

by his Attorney Benjamin Roebuck and Wm Abbott
Dagut Latchemedutt Velacant and Vasoodut Latchemedutt
vers
G. E. Contreo

Mr George Chalmer Attorney for the Cross
Complainant acquaints the Court that he has
Consulted his Clients Respecting the prayer
made last Court day by the Attorney for the Cross
Defendants Anthony Lambert David Ross and
James M. Tagart and that they have instructed him
to Answer the Appeal Notice of which has been
given to this Court Mr Samuel Attorney for the Cross
Defendant prays that the Answer and Commission
may be returned whom Ordered Accordingly –

A true Extract
[Signed] G. E. Aitkin Dy Regr

To

To the Right Honourable Lord Hobart
Governor &c in Council
Fort St George

In the Honourable
the Court of Appeals

Between Anthony Lambert David
Ross and James M. Taggart of Calcutta
Merchants by their Attorneys Benjamin
Roebuck and William Abbott of
Fort Saint George Merchants Complai-
nants and Daguit Satchemedut
Nellazant and Vasoodut Satchemedut
of Madras Merchants Defendants
&c &c Contra —

The Answer of the above named Defen-
dants to the Petition and Appeal of the Above
named Complainants —

Filed in my Office
the 27th June 1796
J. Webbe Clk

These Respondents for answer to the said
Appellants Petition and Appeal or unto so much
thereof as is material or Necessary for them to make
answer unto answer and admit That some time on or
About
about the Twelfth Day of March and year of
Christ one thousand Seven hundred and ninety five
the said Appellants did by their said Attornies the
said Benjamin Roebuck and William Abbott
Exhibit and file their Bill of Complaint in the
Mayors Court at Madraspatnam against these
Respondents for the Recovery of the sum of Two
thousand Star Pagodas and that to the said Bill of
Complaint these Respondents having appeared and
having filed their Several Plea and answer and
the Appellants their Replication these Respondents
did file and exhibit their Cross Bill of Complaint
against the said Appellants Anthany Lambert
David Ross and James M. Taggart and their said
Attornies the said Benjamin Roebuck and William
Abbott and these Respondents admit that the
said Attornies the said Benjamin Roebuck and
William Abbott having appeared to these Respon-
dents said Cross Bill of Complaint they did file
their Several Cross answer and these Respondents
further say that the said Appellants Anthany
Lambert David Ross and James M. Taggart did
Appear

Appear by their Attorny and did first procure a
rule of three Months to answer the said Crafs
Bill and did some time Afterwards pray that a
Commission might issue Directed to Certain Com-
missioners in the said prayer named and which
Commission did Accordingly issue But these Res-
pondents deny that before the said Commission was or
Could have been Executed or Regularly Returned
to the said Mayors Court they did pray that the
said appellants Original Bill might for want
of the said Crafs answer stand Dismissed with
Costs for these Respondents beg leave to state to
this Honourable Court that the time Allowed
for the Return of the said Commission was
fully Sufficient and so the Appellant Conside-
red it For they asked no more time when the
said Commission issued for its Execution and
return and the said Mayors Court gave them
what they required And these Respondents
do here humbly Submit to this Honourable
Court That when it is Considered that the

Crafs

Crafs Bill was filed in the Month of August
That the first rule for Answering issued on the
Tenth day of October when a period of three
Months was given and that no Answer was
filed on the Twenty Sixth day of April following
that the said Mayors Court Cannot with
any Degree of Justice be Accused with
acting prematurely or Unjustly in Dismissing
the said Original Bill as it was no More
than a Compliance with those Rules in which
the Appellants had Acquiesced namely that
in Default of the Answer being put in
Judgment should begiven for these Respondents
and in proof thereof these Respondents have
hereunto annexed three Several Extracts from
the Records of the said Mayors Court which
they pray may be taken as part and parcel
of this their Answer to the said Appellants
Petition and Appeal—

And these Respondents
admit that the Appellants did appeal from
the Decree of the said Mayors Court to

this

this Honourable Court whereby the said Suit and Cross suit and every proceedings relative thereto was Removed from the Jurisdiction of the said Court and these Respondents further answering Say that one Week after Notice had been sent from this Honourable Court to the said Mayors Court of the said appeal being lodged the Attorney of the said Appellants delivered in two paper which he did alledge were the Commission and answer to these Respondents Cross Bill and prayed the same might be received and these Respondents admit that their Attorney having no previous Notice of this irregular and every Extraordinary proceeding did pray that he might have one Week to Consult with his Clients during which time these Respondents having Reflected on the Injury which they had Sustained by the Appellants Delay and being advised that the Suit was entirely removed from the Jurisdiction of the said Mayors Court gave instructions to their said Attorney to answer the appeal notice whereof had been given as

as aforesaid to the said Mayors Court which Instructions were Accordingly intimated on the Records whereupon the Attorney for the said Appellants prayed that the said Answer might be Returned to him which the said Mayors Court were pleased to Order Accordingly

And these Respondents further say that the said Appellants so far from being aggrieved by any order of the said Mayors Court passed on the said Twenty fourth day of May have no Cause or foundation for an Appeal and in making the Attempt have acted highly irregular and Contrary to Law—

Because the Suit upon which the Appellants have made their Appeal was dismissed from the said Mayors Court three weeks previous to the day on which the said Appellant delivered in the papers which they alledge to be the Commission and Cross Answer and upon which their pretended Cause of grievance is founded and For as much as all Decisions of the said Mayors Court are by the Charter of his late

late Majesty Considered as final after fourteen Days unless appealed from. These Respondents Conceive that the said Mayors Court had not the power of Reviewing any paper in a Cause which by appeal had been Removed from thence to a superior Jurisdiction and therefore as the said Mayors Court Could not Regularly pass any Order under the Circumstances aforestated so no appeal can Lye therefrom to this Honourable Court And Because if the Clause in the said Charter Containing limitting the period when the order and Decree of the said Mayors Court shall be Appealed from or become final did not militate against the present attempt yet these Respondents do Submit that from the Circumstances of the said Appellants having prayed the said Answer and Commission to be Delivered up to them instead of urging the said Court to Receive them it doth appear from their own Shewing that they have no Cause of Grievance And these

Respondents

25

Respondents further say that the present Appeal is no more than an Attempt to introduce new matter in aid and Support of the Appeal made to this Honourable Court upon the Dismission of the said Cause and which is highly irregular and Contrary to Law Inasmuch as these Respondents are advised that an appeal is in the nature of a Commission to Judges of a Superior Court by which they are authorized to Examine the Record upon which a Judgment was given in any inferior Court and on Such Examination to Affirm or Reverse the same According to Law Hence no new matter can be introduced and this Honourable Court have always Discouraged attempts of this nature by Expunging the same with Costs

For all which Reasons and such others as may be offered at the hearing These Respondents humbly pray 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 20th day of October Anno Dominni 1795

Present

Benjamin Roebuck Esqr Mayor

William Webb Andrew Ross and Richard Chase

Aldermen

Anthony Lambert and others by their Attornies B. Roebuck and William Abbatt

vers.

Latchemedut Nellacant & Vasoodut Latchemedut

Answer of Benjamin Roebuck and William Abbatt Sworn to before Mr Aldermn Call and filed the 13th Instant Mr James Stuart Hall appears for the Defendants Anthony Lambert David Ross and Jr. Mc Tagart and prays three Months to put in their answer to which the opposite Attorney Consents Ordered Accordingly—

Day is given for Anthy Lambert David Ross and James Mc Tagart till the 20th January Next to answer the Complainants Bill indefault of which Judgment will be given for the Complainant

A True Extract

(Signed) George Taylor Regr

True Copy

(Signed) George Chalmer

Solicitor for Respondent

Extract

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

Present

Benjamin Roebuck Esqr Mayor

William Webb Andrew Ross and Richard Chase

Aldermen

Anthony Lambert and others by their Attornies B. Roebuck and William Abbatt

vers.

Latchemedut Nellacant & Vasoodut Latchemedut

Answer of Benjamin Roebuck and William Abbatt Sworn to before Mr Aldermn Call and filed the 13th Instant Mr James Stuart Hall appears for the Defendants Anthony Lambert David Ross and Jr Mac Tagart and prays three months to put in their answer to which the Opposite Attorney Consents Ordered Accordingly—

Day is given for Anthy Lambert David Ross and James Mr Tagart till the 20th January next to answer the Complainants Bill indefault of which Judgment will be given for the Complaint

A True Extract

(Signed) G. Taylor Regr

True Copy

(Signed) George Chalmer

Solicitor for Respondent

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 Esqr Mayor

James Cath Andrew Ross & Richard Chase Aldermen

Anthony Lambert David Ross & James Mc Taggart by their Attornies Benjamin Roebuck and Wm Abbatt

Vers

Dagut Latchemedut Nellacant & Vasoodutt Latchemedut

Et E Contra

Further Day is given the Cross Defendants till the 16th Inst to Answer the Cross Complainants Bill indefault of which Judgment will be given for the Cross Complainant—

A True Extract

(Signed) G E Ayhen Dy Regr

True Copy

(Signed) George Chalmer

Solicitor for Respondent

Extract

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 26th day of April Anno Domini 1796

Present

James Daly Esqr Mayor

William Webb and Andrew Ross Aldermen

Anthony Lambert D Ross and James Mc Taggart by their Attorney Benjamin Roebuck and Wm Abbatt—

Vers

Latchmadut Nellacant and Vasoodut Latchmadut

Et E Contra

Mr George Chalmer attorney for the Original Defendants and Cross Complainants acquaints the Court that the Court were pleased on the 15th Ultmo to grant the Original Complainants and Cross Defendants a further time of Six Weeks to put in their Cross answer which further times Expires this day and as the Cross Defendants Anthony & Lambert David Ross and Jas Mc Taggart has neglected to file their Cross answer tho the first Rule to file the Cross answer issued on the 10th October 1795. he therefore prays

prays that the Original Bill may be Dismissed with Costs to which Mr Emanuel Samuel attorney for the original Complainants and Cross Defendants Objects it being not a Customary Course to Dismiss an original Bill for want of a Cross answer but to restrain Proceedings in the original Suit until a Cross answer be filed and the Cross Defendants Attorney do therefore pray a further time of 14 Days for the Return of the Commission which has issued to take the Cross Defendants answer The Court having taken the same into Consideration It is Ordered that the original Bill do stand Dismissed Accordingly with Costs—

Mr Emanuel Samuel attorney for the Cross Defendants beg leave to file the Affidavit of Benjamin Raebuck one of the attorneys of the Cross Defendants Sworn to in Court read and filed this Day upon which he prays that the time for the Return of the Commission be Enlarged to 14 Days Mr George Chalmer attorney for the Cross Complainants Submits to the Court that there is nothing Stated in the Affidavit to induce the

the Court to Extend the time The Court having taken the same into Consideration it is Ordered that the former Resolution of the Court do stand Confirmed—

A True Extract
(Signed) J E. Ayhem
Dy Regr

A True Copy
(Signed) George Chalmer
Solicitor for Respondent

Court

Court of Appeals
at
Madrasipatnam

Thursday the 6th day of December
Anno Domini 1796

Between Anthony Lambert David Ross and James Mc. Taggart of Calcutta Merchants and Copartners by their attornies Benjamin Roebuck and William Abbott of Fort St George Merchants Appellants and Daguttu Latchemee-dutt Neelacant and Vasoodeut Latchemedutt Respondents.

This Cause coming on this day to be heard and debated before this Court by the attornies on both sides upon hearing the Petition of Appeal and answer together with the Order of the Honble the Mayors Court on Tuesday the 21st day of May 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 by Order and Decree that the Appellants Petition be hence dismissed with Costs.

Hew

(Signed) J. Webbe Clk

To

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To the Right Honourable Lord Hobart
President in Council Fort St George

Between Francis Lautour of Madras Merchant Complainant and T Coopiah Brahmeny and Apparow of the same place Inhabitants Defendants

In the Honourable the Court of Appeals....

The humble Petition and Appeal of T Coopiah Brahmeny one of the Defendants Abovenamed

Sheweth

That the Complainant Abovenamed did on or About the tenth Day of October and year of Christ One thousand Seven hundred and ninety five Exhibit and file his Bill of Complaint in the Mayors Court at Madraspatnam against your Petitioner and the other Defendant Abovenamed for the Recovery of the Sum of Four thousand one hundred and Twenty Two Pagodas one fanam and nineteen Cash Current money of Madras pretending

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

pretending the same was due and Owing unto him upon a certain Promissary note said to be Granted by your Petitioner to Ramasawmy Bramany and by him Endorsed to the Complainant—

And your Petitioner Sheweth unto this Honourable Court that to the Complainants said Bill of Complaint your Petitioner did Exhibit and file his answer and did therein and thereby state that some time on the Twentieth of the month of August and year of Christ one thousand Seven hundred and Ninety five Ramasawmy Bramany in the Complainants Bill named did come to your Petitioner and Opposite the other Defendant in the Complainants Bill Named and stating that his reputation and Credit which from Several Disappointments had been greatly hurt would be intirely ruined if he had not the ability of producing to some of his friends same kind of Voucher or Security for money held by him from some men of respectability did Request and urge your Petitioner and the said other Defendant to assist him in his Distrefs and grant to him a Promissary

Promissary note for the Sum of Four thousand and Fifty seven Pagodas forty one fanams and Fifty one Cash Payable in thirty Days Assuring your Petitioner and the said other Defendant at the same time that he meant to make no other use of such a note than solely to produce it to some of his friends and quiet the fears and Apprehensions they intertained with Regard to his Credit and that your Petitioner and the said other Defendant should never be Called upon for the payment thereof and by way of Securing as he said your Petitioner and the said other Defendant in the premisses did offer to give to him a Promissary note to the like purport and Effect as the one he had Solicited to begranted to him by your Petitioner and the said other Defendant and your Petitioner did further state that the said Ramasawmy did propose that he would grant his note of hand for the same payable in Twenty Days and further that he did Deliver to your Petitioner a Bond Executed to him by one Chinna moatoo Chitty for the principal Sum of Six thousand Pagodas to hold the same as a

Security

Security until such time as the Promissary note of hand of your Petitioner and the said other Defendant should be returned to them to be Annulled and your Petitioner sheweth that Commiserating the Apparent Distressed Situation of the said Ramasaw. my and believing his Declarations to be true your Petitioner did agree to grant and did Accordingly grant the said Promissary note in question to the said Ramasawmy Payable in Thirty Days and the said Ramasawmy did in return gwein his own Promissary note to your Petitioner for the same sum payable in Twenty Days and at the same time Delivered to them a Bond which he the said Ramasawmy pretended was Executed and was then due and owing to him by the aforesaid Chinna Mooka Chitty of Madras Inhabitant for the sum of Six thousand Pagodas Dated third June one thousand Seven hundred and ninety four under a Cover and Seal requesting your Petitioner to hold them as Security for his Returning the said note in question in fifteen Days—

And your Petitioner did further state that not at all suspecting any Evil designs on the part of the

the said Ramasawmy your Petitioner and the said other Defendant did rest fully Confident and perfectly Satisfied that they your Petitioner and the said other Defendant would never be called upon for the Payment of the said note but that the same would be returned to them in fifteen Days until some time on or about the Twenty first Day of the said Month of September when your Petitioner Received a letter from John Hunter Cashier of the British Bank stating the said Note had been made over to the proprietors thereof and requesting your Petitioner would order immediate Payment of the same that your Petitioner in reply said he had no Connection with the British Bank but with Ramasawmy and did thereupon send for the said Ramasawmy and remonstrate with him on the impropriety of his Conduct and the Breach of faith and Confidence he had Committed and Declaring that he your Petitioner would never pay the amount of the said note of hand not having Received any Consideration on Account thereof did request the said Ramasawmy would in Conformity to his promise and Engagement without

Delay

Delay go to the said John Hunter and take up and Returns to them your Petitioner his said Note of hand and your Petitioner did state that the said Ramasawmy did then Declare to your Petitioner that he was entirely ignorant of the Proceedings of the said John Hunter and that he never did Authorize the same But that to End all Disputes he would pay the money himself and as he had the Amount of the said Bill except a few Pagodas to Complete it the amount would be paid by him the next day and your Petitioner did say that again trust-ting and confiding in the assurances of the said Ramasawmy your Petitioner did believe he would pay the amount of the said Bill the next day as promised but which as your Petitioner after learnt the said Ramasawmy had failed in doing and your Petitioner did further say that he and the said other Defendant were afterwards applied to through Mr George Chalmer attorney at Law on behalf of the Complainant for the payment of the said Promissary note that the said Ramasawmy having at or about the time

time aforesaid been arrested and Committed to Goal at the suit of some other person he your Petitioner was Deprived of the means of getting him to Come to any reasonable accomodation that neither your Petitioner nor the said other Defendant had received either Directly or indirectly from the said Ramasawmy or from any other person for and on his account any manner of Consideration whatever for the said Promissary note otherwise than the said Promissary note of the said Ramasawmy and the said Bond of Chinna Mootoo Chitty Deposited with your Petitioner as aforesaid and that on the said Chinna Mootoo Chitty being spoken to with respect to the said Bond herein above mentioned the said Chinna Mootoo Chitty did Declare that the whole and every part of the said Bond had been fully paid off and Discharged by the said Chinna Mootoo Chitty and that the same had remained in the possession of the said Ramasawmy under the pretence of its being mislaid among some papers of the said Ramasawmy and therefore when

when the amount was paid by the said Ethinna moolee Chitty the said Ramasawmy did grant him a receipt for the same and your Petitioner did state that upon particular Enquiry how the said Ramasawmy had made over the said note of hand to the Complainant he had been Credibly informed and verily believed the fact so to be that the same was so made Over without any manner of Consideration and that it was merely Endorsed by the said Ramasawmy to give a Colour to the Transaction with a view of recovering the amount thereof from your Petitioner for his the said Ramasawmy's own particular purpose and advantage and that the Complainant had not any Interest therein and your Petitioner did thereupon in and by his said answer state that he humbly hoped the said Mayors Court would Protect him against the fraud and Collusion of the said Ramasawmy and against the Colorable proceedings of the Complainant and his Confederacy with the said Ramasawmy in the Premises

And your Petitioner sheweth unto this Honourable Court that to your Petitioners said answer the said Complainant did Exhibit and file

file his Replication and did therein and thereby amongst other things state that Ramasawmy Brahmeny in your Petitioner said answer named and who was the Endorser of the Promissary note upon which the present action was brought might for what he the Complainant knew to the Contrary have gone to your Petitioner and stated that his Reputation and Credit would be intirely ruined If he could not produce some Voucher or Security for money held by him from some person of Respectability and that he might thereupon have Requested your Petitioner to Assist him in his Distress and to grant him a Promissary Note for the sum of Two thousand and fifty Seven Pagodas forty one fanams and fifty Cash o.. payable in thirty Days that it might be true for what he know to the Contrary that from a Commiseration of the apparent Distressed situation of the said Ramasawmy your Petitioner and the said other Defendant have been induced to grant the Promissary Note in Question and that by way of Securing themselves they might have taken from the said Ramasawmy a Promissary note of the

the same Amount and also a Bond of Chinna Moolloo Chitty in the said answer named all which Transactions if ever they did Exist the Complainant did pretend were very immaterial to him who as Endorsee of a Promissary note had brought his action against your Pet^r and the other Defendant as the makers thereof and whom the Complainant did say he verily believed were not so Ignorant of the Law of Merchants as not to know in the fullest extent the Consequences that would result from Granting a note payable to Order and with Respect to the insinuations in your Petitioners said answer Contained namely that the said Promissary note had been made over to the Complainant without any manner of Consideration But merely indorsed by the said Ramasawmy to give a Colour to the Transaction and with the view of Recovering the amount thereof for his the said Ramasawmys use the Complainant did say that the said Ramasawmy being Indebted on Bond to the Complainant in a Considerable Sum of money which he evaded paying was threatned by the Complainant with an action at Law that Thereupon the said Ramasawmy Came to the Complainant and alleging that he had no Money Offered the Note in Question in part payment of the said Bond and the Complainant did say that on the Credit of your Petitioner whom the Complainant Understood to be a man in good Circumstances and of fair Reputation and without any knowledge of their pretended Transaction the Complainant received the said note as Cash and Credited the said Ramasawmy for the Amount and the Complainant did state that he afterwards Discounted the said note at the British Bank but when the same became due payment was Refused by your Petitioner in Consequence whereof it was Returned back to your Petitioner and the Complainant did further state that although he was advised that according to the Rules of Law and the Customs of Merchants the Consideration of a Promissary note was not enquirable into between the Endorsee and the maker yet the Complainant had Deemed it necessary to state

state the aforegoing facts as a Refutation of your Petitioners unfounded Calumny and of which he was ready if necessary to give due proof and the Complainant did further say that it did appear from the Records of the said Mayors Court that your Petitioner did on the Tenth Day of December last past file and Exhibit a Bill of Complaint against the said Ramasawmy for the Recovery of the Sum of Two thousand Pagodas due on a mortgage Bond and that on the fourteenth of the same Month he filed another Bill for the Recovery of the further sum of Two thousand One hundred and fourteen Pagodas Twenty one fanams and fifty one Cash which said Bonds and mortgage the Complainant did say he had been informed were by your Petitioner taken as security on Account of the said Promissary note so granted by them your Petitioner and the said other Defendant infavour of the said Ramasawmy which Circumstance the Complainant did pretend was a further proof of your Petitioners unjust and litigious Disposition —

And

And your Petitioner sheweth unto this Honourable Court that to the Complainants said Replication your Petitioner did Exhibit and file his Rejoinder and did therein and thereby amongst other things state that the Complainant having admitted the principal fact necessary for the Defence of your Petitioner to the Complainants said action namely that no real and Bonafide Consideration was Ever paid or given to your Petitioner for the Promissary note granted by your Petitioner to the said Ramasawmy Bramany in the Complainants said Replication named but on the Contrary that the said note was as averred by your Petitr in and by his answer upon oath granted to the said Ramasawmy under the particular Circumstances of the Case therein stated and Set forth and under the Stipulation and Condition to wit that the said note should be Returned to your Petr within the period of thirty Days your Petitioner did submit to the said Mayors Court how far the great Dependence the Complainant had placed on the Law and usage of Merchants as stated by

him

him which Regard to Promissary Notes Granted
and Obtained in a fair and Justifiable manner could
Operate against your Petitioner in the present Suit
That notwithstanding the Pretence of the Complainant
your Petitioner did so soon as he was informed that the
said Complainant was Determined by the persua-
sion and Instigation of the said Ramasawmy
to proceed against your Petitioner in a Course
of Law for the Recovery of the amount of the said
Promissary Notes Duly acquainted the said Com-
plainant with all and every the fraudulent means
by which the said Promissary note had been ob-
tained from your Petitioner by the said Ramasaw-
my Bramany and of the Determination of your
Petitioner in Consequence and by reason thereof
not to pay the said Sum of money Assumed
and Promised on the same and for which he
your Petitioner had never Received a good and lawful
Consideration that the said Complainant being by
reason of the premises fully advised of the fraud
Committed by the said Ramasawmy in Obtaining
the said Promissary note from your Petitioner as
particularly

particularly stated and setforth in his said answer
and of the unjust views of the said Ramasawmy in
Endeavouring to Negotiate the said note so Obtained
your Petitioner did say he hoped and had every
reason to believe that the said Complainant would
have Returned the said note to him as he ought
in Justice and equity to have done in Consideration
of the Circumstance under which the same was
Obtained and that the said Complainant in opposition
to his own Conviction of the very fraudulent
manner in which the said Promissary note had
been obtained from your Petitioner would not
have put the same in suit as against your Petitioner
but would have proceeded against the said
Ramasawmy if he had any Just Claim against
him for the Consideration given to the said Rama-
sawmy if any were given to him on the Endorse-
ment or Assignment of the said note unto the
said Complainant as by him setforth but that the
said Complainant in filing his Bill against your
Petitioner and the said other Defendants as he had
done Notwithstanding the said Complainants ob-
Acquaintance

Acquaintance and knowledge of the facts aforesaid and under the mere and simple assertion that the said Promissary note had been Endorsed to him did as your Petitioner humbly Submitted to the said Mayors Court indicate a Strong inclination to aid and assist the Designs as above setforth of the said Ramasawmy to injure and oppress your Petitioner and your Petitioner in further Rejoinder said that if the said Complainant were intitled to Recover of your Petitioner under the Deceit of the said Ramasawmy in respect to the said Promissary note as above Setforth that the same would be Contrary to every Principle of Law and Equity Insomuch as it would impower a fraudulent Debtor to pay a Dispserate Debt to a third person a party perhaps to the Deceit at the Expence and Cost of an innocent and Deluded Person which could scarcely be tolerated under any equitable Consideration and that if as in the present Case a native should be permitted to Assign a Chose in action to an European and such European should be authorized in the said Mayors Court to prosecute and sue for the same it would be opening a Door to defeat the salutary Provisions of the Charter

Charter granted by his Late Majesty which excluded natives from holding and maintaining suits against each other unless with and by mutual Consent by Allowing them to enter into Litigation in an indirect mode and that the Indorsee of a Promissary note in respect to the same stood precisely on the same Grounds with the original Payee and under one and the same Equity which was an additional Reason your Petitioner did submit why the said Complainant should not maintain suit on Account of the said note as against your Petitianer and the other Defendant in the said Bill mentioned they and the said Payee being native Indians and Liable therefore to the restriction of the said Charter and your Petitioner for further Rejoinder did state that with regard to the Securities pretended by the said Complainant to have been procured by your Petr from the said Ramasawmy at the time that the said Promissary note was Executed your Petitioner did say that the same did Consist of a Bond from Chinna moodoo Chitty to the said Ramasawmy for the sum of Six thousand Pagodas but which

upon

upon inquiry your Petitioner was informed as he had before stated in his said answer had long since been Discharged by the Obligor to the same saw and Accept a Balance of a very trifling amount on Account of Interest as also of a Promissary note of the said Ramasawmy for the like amount for which he had Obtained the said Promissary note in Question and your Petitioner did say that some time Subsequent to the aforegoing transaction he might have Accepted in lieu of the said Promissary note of the said Ramasawmy two Bonds or obligations from the said Ramasawmy and that he might have sued the said Ramasawmy thereon but that the same Did not in the least vary the fact in regard to the said Promissary note that as the Complainant did well know that from the Embarrassed and Distressed Situation in which the said Ramasawmy had from some time been and did still continue to be your Petitioner would never be in a Situation to Recover a fanam on the said pretended Securities your Petitioner did therefore humbly Submit to the said Mayors Court that the said Complainant

Could

could not by reason of the premisses be intitled to any Decree against your Petitioner for and on Account of the sum mentioned in and upon the said Promissary note which he sueked by the said Bill

And your Petitioner sheweth unto this Honourable Court that upon the said Pleadings being had issue did Join in the Cause and Rules did pass for the Examination of Witnesses and the Complainant did Examine Accordingly two Certain Witnesses on his behalf namely John Deurstedt and Vencatarey Moodally and your Petitioner sheweth that the said John Deurstedt to the Second Interrogatory did Depose that he was Employed by the Complainant in the Capacity of a Book keeper and intrusted with the management of his Books and Accounts that he had Looked at the Papers Writing produced and Shewn to him at the time of his Examination purporting to be a Promissary note from your Petitioner and the said other Defendant to Ramasawmy Bramsny and that the said Promissary note was Recived and taken by the Complainant in part payment of a Debt that the said Debt was on Account

Account of a Joint Bond from the said Ramasawmy and Major John Lindsay to the Complainant for Eight thousand one hundred and five Star Pagodas Twenty five fanams and thirty Eight Cash and that the said note was taken and received in part payment of the said Bond at the request of the said Ramasawmy that the said Promissary note was Discounted at the British Banks and the money Returned by the Complainant in Consiquence of Payment being refused by your Petitioner and the said other Defendant—

And your Petitioner sheweth that the said Vencatarayalo Moodally the other Witness Examined on the part and behalf of the Complainant did to the third Interrogatory Depose that he was in the Service of the Complainant and in the Capacity of Dubash that he had Looked at the Paper Writing produced and Shewn to him at the time of his Examination purporting to be a Promissary note from your Petitioner that he the Deponent was sent by the Complainant to your Petitioner and the said other Defendant respecting the said Promissary note and to see them sign in it

that

That your Petitioner and the said other Defendant Signed the said note in the presence of the Deponent and that he asked your Petitioner if he would pay the said Promissary note when it became due to which your Petitioner Answered in the affirmative

And your Petitioner sheweth unto this Honourable Court that upon the Examination of the said Witnesses Publication did pass in the Cause and the same was thereupon Set down to be heard by the said Mayors Court and your Petitioner further sheweth that the same having Accordingly Come on to be heard before the said Mayors Court on the Second Day of the present Instant August and year of our Lord one thousand Seven hundred and ninety Six the said Mayors Court was pleased to Order and Decree and did Accordingly Order and Decree that your Petitioner do pay unto the Complainant the full and Just sum of Four thousand one hundred and Twenty two Pagodas one fanam and Nineteen Cash together with such Interest as there was or should thereafter become due thereon until Payment made together with Double

Costs

costs of Suit as will manefully appear by Copy of the said Decree hereunto annexed for the Inspection of this Honourable Court the original whereof being ready to be produced when required—

By which said Decree or order your Petitioner doth Conceive himself very materially aggrieved and doth therefore appeal therefrom to this Honourable Court for the following amongst other reasons

First.— Because the Promissary note on which the said Complainants action is founded was never made by your Petitioner with a view that the same should be Circulated but for the sole purpose as is Setforth by your Petitioner in his answer exhibited in the Course of the said suit in the said Mayors Court to wit that the said Ramasaumy on your Petitioners said answer named might only produce and shew the same to Certain of his Friends in order to quit some Apprehensions Conceived and entertained by them of the Credit of him the said Ramasaumy and your Petitioner doth admit that if the said Promissary note on the Course of Trade had been Recieved by the said Complainant and for a bonafide and Valuable Consideration that notwithstanding your Petitioner had been imposed and worked on by the Artifices of the said Ramasaumy and such Artifices had been Clearly widenced to the said Mayors Court yet Considering the nature of the Paper and that it was liable to Circulation your Petitioner would have been Chargeable with the sum Assumed on the said Note and might have been by Law Compellable to pay the amount thereof to the said Complainant But your Petitioner humbly Submits to this Honorable Court that from the way in which the note came into the hands of the said Complainant and for the purposes for which it was indorsed namely in part Satisfaction of a Debt Demand that your Petitioner in an equitable Consideration is not Chargeable in the Premises—

Secondly Because the said Complainant took the said note with the same Equity and Right as the said Ramasaumy Recieved the same of your Petitioner and your Petitioner sheweth unto this Honourable Court that the said Ramasaumy could not from personal Disability under the Operation of the Charter of his Late Majesty

Majesty Granted to the united Company of Merchants trading to the East Indies and by which the said Mayors Court is Constituted have maintained action therefor in the said Mayors Court and your Petitioner humbly Contendeth that the said note not charging any of its Properties in the hands of the said Complainant Could not therefore as your Petitioner is advised be put in suit against him more Especially under the particular Circumstances of the Case as Explained by your Petitioner in his first Cause or reason of appeal and your Petitioner therefore humbly Conclude that the said Pleadings had on the said Promissary note on the said Mayors Court were as if "Coram non Judice" and that no Decree Could be Lawfully made thereon—

Lastly Because your Petitioner in the said Decree of the said Mayors Court is Taxed with Double Costs and which were had the action of the said Complainant been well and Strictly founded would be Extremely harsh and oppressive as to your Petitioner In as much as your Petitioner did Consider himself much wronged in the said note having

been put into Circulation and did think as he doth now thinks that he ought not in an equitable light to be Compelled to pay the same and did not do more in resisting the Claim of the said Complainant in a legal way and Course than what he felt himself intitled and authorised to do in regard respect and protection of his rights and Property—

For all which reasons and such others as may be offered at the hearing your Petitioner humbly Prays that the said Decree of the said Mayors Court may be Reversed and that your Petitioner may have such further and other relief in the Premises as to this Honourable Court shall seem meet—

/Signed/ Emanuel Samuel
Solicitor for Appellant

Mayors

Mayors Court at }
Madrasspatnam }

Tuesday the 2d Day of August
Anno Domini 1796

L S

Present
James Daly Esquire Mayor
Andrew Ross William Abbott
and Alexander Cockburn Aldermen

Mayors Court

Between Francis Lautour of
Madras Merchant Complainant and
T Coopiah Brawmy and Opparow
of the same place Inhabitants Defen-
dants —

This Cause Coming on to be heard
and Debated this Day in the presence of the
Attornies in both sides on reading the Complainants
Bill with Copies of a Promissary Note and an Account
Current annexed. The answer of the Defendant T. Coopiah
The Repleication The Rejoinder the Interrogatories and
Depositions on the part of the Complainant with one
Exhibit annexed on Hearing the Pleadings made
use of by the Attornies and on due Consideration had thereon
This Court doth thinks fit to Order and Decree and
doth

doth Accordingly Order and Decree that the Defen-
dant T. Coopiah do pay unto the Complainant the
full and Just Sum of Four thousand one hundred
and Twenty two Pagodas one fanam and Nineteen
Pash Pags 4122. 1. 19 together with all such Interest
as now is or shall hereafter become due thereon untill
full payment is made and It is further Ordered and
Decreed that the Defendant T. Coopiah be Taxed
with Double Costs of Suit —

Pr Cur
Sig George Taylor Regr

a true Copy
[Signed] Emanuel Samuel
Solicitor for Appellant

To

To the Right Honble Lord Hobart

President in Council Fort Saint George

Between Francis Lautour of Madras
Merchant Complainant and T. Coopiah
Brahmny and Appavoo of the same
place Inhabitants Defendants—

In the Honble the
Court of Appeals

The Answer of Francis Lautour the above
named Complainant to the Petition and Appeal
of T. Coopiah Brahmny one of the above named Defendant

This Respondent for Answer to the Appellants
Petition and appeal or unto so much thereof as is necessary
for him to make Answer unto answereth and saith
That he admits to have on or about the tenth day of
October and year of our Lord one thousand Seven
hundred and ninety five Exhibited and filed his Bill
of Complaint in the Honourable the Mayors Court
at Madraspatnam against the said Appellant and
the Other Defendant above named for the Recovery
of the sum of Four thousand one hundred and Twenty
two Pagodas one fanam and nineteen Cash Current
money

Filed in my office
the 21st Sept. 1796.
J. Webbe Clk

Money of Madras due and owing to this Respondent
upon a Certain Promissary note Granted by the appellant
and his Other Defendant Appavoo to Ramasawmy
Brahmny and by him endorsed over to this Respondent—

To which said Bill this Respondent
admits that the appellant did exhibit and file
his answer in the said Mayors Court which said
answer being Recited and Setforth in and by the
said Appeal This Respondent Craves leave to refer
thereunto and prays he may have the full benefit and
advantage thereof And this Respondent further admits
that to the said answer he did file and Exhibit
his Replication and the Appellants having Rejoined
thereto Issue did thereupon Join and Rules passed
for the Examination of Witnesses And this Respondent
further admits that two Witnesses were Examined on the
part and behalf of this Respondent and that the said
Witnesses did Severally Depose as is Setforth and recited
in the appellants Petition and Appeal That Publication
having afterwards passed the said Cause was set
down for hearing and afterwards Came on to be
heard before the said Mayors Court on the Second
day

day of the month of August one thousand Seven hundred and ninety Six whin the said Mayors Court was pleased to Order and Decree and did accordingly Order and Decree that the said appellant Should pay unto this Respondent the full and Just Sume of Four thousand one hundred and Twenty two Pagodas one fanam and nineteen Cash together with such Interest as thin was or should thereafter became due thereon until payment was made together with Double Costs of suit as by the said Decree Copy whereof is to the Appellants Petition and Appeal annexed Relation being thereunto had will morefully appear —

And this Respondent denies that the appellant is aggrieved by the said Decree of the Mayors Court or that he has any Just Cause or reason to Appeal therefrom —

And for Answer to the first Reason or Cause of Appeal from the Decree of the said Mayors Court This Respondent saith that although it is immaterial to this Respondent what were the Circumstances which weighed with or induced the Appellant to grant the note in question

It

It being a settled point in Law that the Holder of a Promissory note or Bill of Exchange has nothing to do with the Transactions between the Original parties yet on the present Occasion this Respondent prays leave to Observe that a Good and bonafide Consideration was given that is to say Before the Appellant granted the note upon which the present Action is founded ample Security was Required from the said Ramasawmy It appearing by the Appellants own shewing in his answer upon Oath That he took a Promissary note from the said Ramasawmy and that as Bond of one Chinna Mootoo Chitty was Deposited with him as Collateral Security for the payment thereof and it doth also appear by his Rejoinder that in lieu of the said Promissary note he Afterwards accepted of Two Bonds or Obligations from the said Ramasawmy and that he has actually instituted Suits in the Mayors Court for the recovery thereof having property of the said Ramasawmy Specifically mortgaged to him and this Respondent saith it doth also Appear from the Pleadings that this Respondent relying on the Credit of the appellant was induced to take the

the note in question in part of a Bond debt due to him from the Payee and the Honourable John Lindsay and it is in evidence that the Appellant promised to Discharge the note when due with what propriety then or on what principle of Justice he is now Carrying on the present litigation It will be the Province of this Honourable Court of appeals to Determine—

And for Answer to the Second Reason this Respondent saith that it has been Clearly settled that the Holder of a Bill of Exchange or Promissary note is not to be Considered in the light of an Assignee of the Payee or Assignee must take the thing assigned Subject to all the equity to which the original party was subject But if this Rule were applied to Bills of Exchange or Promissory notes It would stop their Currency and defeat the very end and purpose of making them negociable and this Respondent saith it is evident that the appellant knew the effect and operation of the said Promissary note at the time of granting it and was fully aware that when Endorsed over to a third person It assumed a Different shape and ceased to be an Instrument between Indian natives only in which case the Mayors Court are only restricted by the Charter from holding Suits and this Respondent further saith that the Circumstance of the Appellant having sued the said Ramasawmy on the Securities which he took for the said Promissary note is in itself Primafacie evidence that he Considered himself amenable to the Jurisdiction of the said Mayors Court as far as Related to the said Promissary note

And to the Last reason or Cause of appeal this Respondent saith that the said Mayors Court were fully warranted in Taxing the appellant with Double Costs on Account of the very unjust and Litigious Disposition he has manifested—

For all which matters and things and such others as may be adduced at the hearing this Respondent humbly prays that the Decree of the said Mayors Court may be affirmed with exemplary Costs—

(Signed) George Chalmer
Solicitor for Respondent

Court

Court of Appeals
Madraspatnam

Thursday the 8th day of December
Anno Domini 1796

Between T. Coopiah Brammy of Madras Inhabitant appellant and Francis Lautour 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 Honourable the Mayors Court together with the Decree of the said Court given in this Cause on Thursday the 2d Day of August 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 hence Dismissed with Costs—

Pleur

[Signed] J Webbe
Attn

To

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To the Kings Most Excellent Majesty in Council

Between Francis Lautour of Madras Merchant Complainant and T. Coopia Brammy and Apparow of the same place Inhabitants Defendants

The humble Petition and appeal of T Coopiah Brammy one of the Defendants abovenamed—

Humbly Sheweth unto your most Excellent Majesty in Council

That the Complainant abovenamed did on or about the Tenth Day of October and year of Christ one thousand seven hundred and ninety five Exhibit and file his Bill of Complaint in the Mayors Court at Madraspatnam against your Petitioner and the other Defendant abovenamed for the recovery of the Sum of Four thousand one hundred and Twenty Two Pagodas one fanam and ninteen Cash Current Money of Madras pretending that the same was Due and owing unto him upon a Certain Promissary note said to be granted by your Petitioner to Ramasawmy Brammy and by him Endorsed

Filed in my Office the 21st Dec. 1796
J. Webbe Attn

Endorsed to the Complainant –

And your Petitioner sheweth unto your most Excellent Majesty in Council that to the Complainants said Bill of Complaint your Petitioner did Exhibit and file his answer and did therein and thereby state that some time on the Twenty sixth of the month of August and year of Christ one thousand Seven hundred and ninety five Ramasawmy Brawmy in the Complainants Bill named did Come to your Petitioner and apparaw the other Defendant in the Complainants Bill named and Stating that his Reputation and Credit which from Several Disappointments had been greatly hurt would be Entirely ruined if he had not the abilitty of producing to some of his friends same kind of Voucher or Security for money held by him from some men of Respectability did request and urge your Petitioner and the said other Defendant to assist him in his Distress and grant to him a Promissary note for the sum of Four thousand and fifty seven Pagodas forty one fanams and fifty one

Cash –

Cash payable in thirty Days Assuring your Petitioner and the said other Defendant at the same time that he meant to make no other use of such a note than Solely to produce it to some of his friends and quell the fears and Apprehensions they Entertained with regard to his Credit and that your Petitioner and the said other Defendant should never be Called upon for the payment thereof and by way of Securing as he said your Petitioner and the said other Defendant in the Premises did offer to give to them a Promissary note to the Like purport and Effect as the one he had Solicited to be granted to him by your Petitioner and the said other Defendant and your Petitioner did further state that the said Ramasawmy did propose that he would grant his note of hand for the same payable in Twenty Days and further that he did Deliver to your Petitioner a Bond Executed to him by one Chinna mootoo Chitty for the Principal sum of Six thousand Pagodas to hold the same as a security untill

Cash

such time as the Promissary note of hand of your Petitioner and the said other Defendant should be Returned to them to be Annulled and your Petitioner sheweth that Commiserating the apparent Distressed Situation of the said Ramasawmy and believing his Declarations to be true your Petitioner did agree to grant and did Accordingly grant the Promissary note in Question to the said Ramasawmy payable in thirty Days and the said Ramasawmy did in Return give his own Promissary note to your Petitioner for the Same Sum payable in Twenty Days and at the same time Delivered to him a Bond which he the said Ramasawmy pretended was Executed and was then due and owing to him by the aforesaid Chinnamootoo Chitty of Madras Inhabitant for the Sum of Six thousand Pagodas Dated third June one thousand Seven hundred and ninety four under a Cover and Seal Requesting your Petitioner to hold them as Security for his Returning the said note in Question in fifteen Days –

And your Petitioner did further state that not at all suspecting any Evil Designs on the part of the said

said Ramasawmy your Petitioner and the said other Defendant did rest fully Confident and perfectly Satisfied that they your Petitioner and the said other Defendant would never be Called upon for the payment of the said note but that the same would be returned to them in fifteen Days untill some time on or about the Twenty first Day of the said month of September when your Petitioner Received a Letter from John Hunter Cashkeeper of the British Bank stating the said note had been made over to the Proprietors thereof and Requesting your Petitioner would order immediate payment of the same that your Petitioner in Reply said he had no Connexion with the British Bank but with Ramasawmy and did thereupon send for the said Ramasawmy and Remonstrate with him on the Improprietty of his Conduct and the breach of Faith and Confidence he had Committed and Declaring that he your Petitioner would never pay the Amount of the said note of hand not having Recieving any Consideration on Account thereof and did request that the said Ramasawmy would in Conformity to his promise and Engagement without

Delay

Delay go to the said John Hunter and take up and Return to him your Petitioner his said note of hand and your Petitioner did state that the said Ramasawmy did then Declare to your Petitioner that he was intirely Ignorant of the proceedings of the said John Hunter and that he never did authorize the same But that to End all Disputes he would pay the money himself and as he had the amount of the said Bill Except a few Pagodas to Complete it the amount would be paid to him the next day and your Petitioner did say that again trusting and Confiding in the Assurances of the said Ramasawmy your Petitioner believe he would pay the amount of the said Bill the next day as promised but which as your Petitioner after learnt the said Ramasawmy had failed in doing and your Petitioner did further state that he and the said other Defendant never afterwards Applied to through Mr George Chalmer attorney at Law on behalf of the Complainant for the Payment of the said Promissary note that the said Ramasawmy having at or about the time aforesaid been Arrested and Committed to Goal at the Suit of some other person he your Petitioner was Deprived of the means of Getting him to Come to any Reasonable Accomodation that neither your Petitioner nor the said other Defendant had received either Directly or indirectly from the said Ramasawmy or from any other person for and on his Account any manner of Consideration whatever for the said Promissary note otherwise than the said Promissary note of the said Ramasawmy and the said Bond of Chinna mootoo Chitty Deposited with your Petitioner as aforesaid and that on the said Chinna mootoo Chitty being spoken to with respect to the said Bond herein above mentioned the said Chinna mootoo Chitty did Declare that the whole and every part of the said Bond had been fully paid off and Discharged by the said Chinna mootoo Chitty and that the same had remained in the Possession of the said Ramasawmy under the pretence of its being mislaid among some papers of the said Ramasawmy and therefore when the

Amount

Amount was paid by the said Chinna Mootoo Chitty the said Ramasawmy did grant him a Receipt for the same and your Petitioner did state that upon particular Enquiry how that the said Ramasawmy had made over the said note of hand to the Complainant he had been Credibly informed and verily believed the fact so to be that the same was so made over without any manner of Consideration and that it was merely Endorsed by the said Ramasawmy to give a Color to the Transaction with a view of Recovering the amount thereof from your Petitioner for his the said Ramasawmy's Own particular purpose and advantage and that the Complainant had not any Interest therein and your Petitioner did thereupon in and by his said answer state that he humbly hoped the said Mayors Court would protect him against the fraud and Collusion of the said Ramasawmy and against the Colorable proceedings of the Complainant and his Confideracy with the said Ramasawmy in the premisses —

And your Petitioner sheweth unto your most

Most Excellent Majesty in Council that to your Petitioners said answer the said Complainant did Exhibit and file his Replication and did therein and thereby amongst other things state that Ramasawmy Brahmy in the Petitioners said Answer named and who was the Endorser of the Promissary note upon which the present action was brought might for what he the Complainant knew to the Contrary have gone to your Petitioner and stated that his reputation and Credit would be entirely ruined If he could not produce some Voucher or Security for money held by him for some person of respectability and that he might thereupon have Requested your Petitioner to Assist him in his Distress and to grant him a Promissary note for the sum of Two thousand and fifty Seven Pagodas forty one fanams and fifty Cash payable in thirty Days that it might be true for what he knew to the Contrary that from a Commiseration of the apparent Distressed Situation of the said Ramasawmy Brahmy your Petitioner and the said other

Defendant

Defendant might have been induced to grant the Promissary note in Question and that by way of Securing themselves they might have taken from the said Ramasawmy Braming a Promissary note of the same Account and also a Bond of Chinna moatoo Chitty in the said answer named all which Transactions if ever they did exist the Complainant did pretend were very immaterial to him who as Endorsee of a Promissary note had brought his action against the Defendants as the makers thereof and whom the Complainant did say he verily believed were not so Ignorant of the Law of Merchants as not to know in the fullest Extent the Consequences that would result from granting a note payable to Order and with respect to the insinuation in your Petitioners said answer Contained namely that the said Promissary notes had been made over to the Complainant without any manner of Consideration But merely Endorsed by the said Ramasawmy to give a Colour to the Transaction and with the view of Recovering the amount thereof for his the said Ramasawmy's use the Complainant did

did say that the said Ramasawmy being Indebted on Bond to the Complainant in a Considerable Sum of money which he Evaded paying was threatned by the Complainant with an action at Law that thereupon the said Ramasawmy came to the Complainant and alledging that he had no money offered the note in Question in part payment of the said Bond and the Complainant did say that on the Credit of your Petitioner whom the Complainant understood to be a man in good Circumstance and of fair reputation and without any knowledge of their pretended Transactions the Complainant Received the said note as Cash and Credited that the said Ramasawmy for the amount and the Complainant did state that he afterwards Discounted the said note at the British Bank but when the same became due payment was Refused by your Petitioner in Consequence whereof it was Returned back to your Petitioner and the Complainant did further state that although he was advised that according to the Rules of Law and the Custom of Merchants the Consideration of a

Promissary

Promissary note was not enquirable into between
the Endorsee and the maker yet the Complainant
had Deemed it necessary to state the aforegoing
facts as a Refutation of your Petitioner unfounded
Calumny and of which he was ready if necessary
to give due proof and the Complainant did
further say that it did appear from the Records
of the said Mayors Court that your Petitioner did
on the Tenth day of December last past file and Exhibit
a Bill of Complainant against the said Ramasawmy
for the Recovery of the sum of Two thousand Pagodas
due on a Mortgage Bond and that on the fourteenth
of the same month he filed another Bill for the recovery
of the further sum of Two thousand one hundred
and fourteen Pagodas Twenty one fanams and fifty one
Cash which said Bonds and mortgage the Com-
Complainant did say he had been informed were
by your Petitioner taken as Security on Account
of the said Promissary note so granted by them
your Petitioner and the said other Defendant in
favor of the said Ramasawmy which Circumstance
the Complainant did pretend was a further proof of

your

your Petitioners unjust and litigious Disposition

And your Petitioner Sheweth unto
your most Excellent Majesty in Council that to the
Complainants said Replication your Petitioner
did Exhibit and file his Rejoinder and did therein
and thereby amongst other things state that the
Complainant having Admitted the Principal
fact necessary for the Defence of your Petitioner
to the Complainants said action namely that no
real and bonafide Consideration was ever paid
or given to your Petitioner for the Promissary note
granted by your Petitioner to the said Ramasawmy
Brahmy in the Complainants said Replication
named but on the Contrary that the said note was
as averred by your Petitioner in and by his Answer
upon Oath granted to the said Ramasawmy
Brahmy under the particular Circumstances of
the Case therein stated and setforth and under
the Stipulation and Condition to wit, the said
note should be Returned to your Petitioner within
the period of thirty Days your Petitioner did
Submit to the said Mayors Court how far the

great

great Dependence the Complainant had placed on the Law and usage of Merchants as stated by him which Regard to Promissary notes granted and Obtained in a fair and Justifiable manner Could Aserate against your Petitioner in the present suit that notwithstanding the pretence of the Complainant your Petitioner did so soon as he was informed that the said Complainant was Determined by the persuation and Instigation of the said Ramasawmy Draminy to proceed against your Petitioner in a Cause of Law for the Recovery of the amount of the said promissary note did duly Acquaint the said Complainant with all and every the fraudulent means by which the said Promissary note had been Extorted from your Petitioner by the said Ramasawmy and of the Determination of your Petitioner in Consequence and by reason thereof not to pay the said sum of Money assumed and promised on the same and for which he your Petitioner had never Received a good and Lawfull Consideration that the said Complainant being by reason of the premises fully advised

advised of the fraud Committed by the said Ramasawmy Draminy in Obtaining the said Promissary note from your Petitioner as particularly stated and Setforth in his said Answer and of the unjust views of the said Ramasawmy in Endeavouring to Negotiate the said note so Obtained your Petitioner did say he hoped and had every reason to believe that the said Complainant would have returned the said note to him as he ought in Justice and Equity to have done in Consideration of the Circumstance under which the same was obtained and that the said Complainant in opposition to his own Conviction of the very fraudulent manner in which the said Promissary note had been Obtained from your Petitioner would not have put the same in Suit as against your Petitioner but would have proceeded against the said Ramasawmy if he had any Just Claim against him for the Consideration given to the said Ramasawmy if any were given to him on the Endorsement or Assignment of the said note unto the said Complainant as by him Setforth but the said Complainant on

filing

filing his Bill against your Petitioner and the said other Defendant as he had done notwithstanding the said Complainants acquaintance and knowledge of the facts aforesaid and under the mere and simple Assertion that the said Promissary note had been Endorsed to him did as your Petitioner humbly Submitted to the said Mayors Court wince a strong inclination to aid and assist the designs as above setforth of the said Ramasawmy to injure and oppress your Petitioner and your Petitioner in further Rejoinder said that if the said Complainant were intitled to Recover of your Petitioner under the Deceit of the said Ramasawmy in respect to the said Promissary note as above setforth and that the same would be Contrary to every Principle of Law and Equity Inasmuch as it would impower a fraudulent Debtor to pay a desperate Debt to a third person a party perhaps to the Deceit at the Expence and Cost of an Innocent and Deluded Person which could scarcely be tolerated under any Equitable Consideration and that if as in the present Case a native should be permitted to Assign a Chose in Action to an European and such European should be authorized in the said Mayors Court to prosecute and sue for the same it would be Opening a Door to defeat the Salutary Provisions of the Charter granted by his late Majesty which excluded natives from holding and maintaining suits against each other unless with and by mutual Consent by Allowing them to enter into Litigation in an indirect mode that the Indorsee of a Promissary note in respect to the same stood precisely on the same Grounds with the original Payee and under one and the same Equity which was an Additional Reason your Petitioner did submit why the said Complainant should not maintain Suit on Account of the said note as against your Petitioner and the other Defendant in the said Bill mentioned they and the said Payee being native Indians and liable therefore to the restriction of the said Charter and your Petitioner for further Rejoinder did state that with regard to the Securities pretended

by

by the said Complainant to have been procured by your Petitioner from the said Ramasawmy at the time that the said Promissary Note was Executed your Petitioner did say that the same did Consist of a Bond from Chinna Mootoo Chitty to the said Ramasawmy Brominy for the sum of Six Thousand Pagodas but which upon Enquiry your Petitioner was informed as he had before stated in his said answer had long since been Discharged by the Obligee to the same save and Except a balance of a very Trifling amount on account of Interest as also of a Promissary note of the said Ramasawmy Brominy for the like amount for which he had obtained the said Promissary note in Question and your Petitioner did say that some time subsequent to the aforegoing Transaction he might have accepted in lieu of the said Promissary note of the said Ramasawmy Brominy two Bonds or obligations from the said Ramasawmy Brominy and that he might have sued the said Ramasawmy Brominy thereon but that the same did not in the least vary the fact in regard to the said Promissary note that as the Complainant did well know that from the Embarrassed and Distressed situation in

in which the said Ramasawmy Brominy had from some time been and did still Continue to be your Petitioner would never be in a situation to recover as fanam on the said pretended Securities your Petitioner did therefore humble submit to the said Mayors Court that the said Complainant could not by reason of the premisses be entitled to any Decree against your Petitioner for and on Account of the said mentioned in and upon the said Promissary note which he Berked by the said Bill -

And your Petitioner Sheweth unto your most Excellent Majesty in Council that upon the said pleadings being had Issue did Join in the Cause and Rules did pass for the Examination of Witnesses and the Complainant did Examine Accordingly two Certain Witnesses on his behalf namely John Deerstedt and Venkataroy moodelly and your Petitioner Sheweth that the said John Deurstedt to the Second Interrogatory did Depose that he

was

was Employed by the Complainant in the
Capacity of a Book keeper and Entrusted with
the management of his Books and Accounts
that he had Looked at the Paper Writing
produced and shewn to him at the time of his
Examination purporting to be a Promissary
note from your Petitioner and the said other
Defendant to Ramasawmy Bramany and that
the said Promissary note was received and
by the Complainant in part Payment of an account of a Joint
Bond from the said Ramasawmy and one
John Lindsay to the Complainant for Eight
Thousand one hundred and five star Pagodas
Twenty five fanams and thirty Eight Cash
and that the said note was Fifteen and
received in part Payment of the said Bond
at the request of the said Ramasawmy that
the said Promissary note was Discounted at the
British Bank and the money Returned by
the Complainant in Consequence of Payment

being

being Refused by your Petitioner and the said
other Defendant -

And your Petitioner sheweth
that the said Vencatasay Moodelly the other Witness
Examined on the part and behalf of the Complainant
did to the third Interrogatory Depose that he was
in the Service of the Complainant and in the
Capacity of Dubash that he had looked at the
Paper Writing produced and shewn to him at the
time of his Examination purporting to be a Promissary
note from your Petitioner that the the Defendant was
sent by the Complainant to your Petitioner and
the said other Defendant respecting the said
Promissary note and to see them sign it
that your Petitioner and the said other Defendant
Signed the said note in the Presence of the Defendant
and that he asked your Petitioner if he would
pay the said Promissary note when it became
due to which your Petitioner answered in the
Affirmation

And your Petitioner sheweth unto
your

your most Excellent Majesty in Council that upon the Examination of the said Witnesses Publication did pass in the Cause and the same was thereupon set down to be heard by the said Mayors Court and your Petitioner Sheweth that the same having accordingly Came on to be heard before the said Mayors Court on the second Day of the present Instant august and year of our Lord one thousand Seven hundred and ninety Six the said Mayors Court was pleased to Order and Decree and did accordingly Order and Decree that your Petitioner do pay unto the Complainant the full and Just Sum of Four thousand one hundred and Twenty Two Pagodas one fanam and nineteen Cash together with such Interest as there was or should thereafter become due thereon until Payment made together with Double Costs of suit as will manifully appear by Copy of the said Decree hereunto Annexed for the Inspection of your most Excellent Majesty in Council the Original whereof being ready to be produced when required—

By

By which said Decree of the said Mayors Court or Order your Petitioner did Conceive himself very materially aggrieved and did therefore appeals therefrom to the Honourable the Court of Appeals at Madraspatnam and did Assign the following amongst other Reasons—

First Because the Promissary note on which the said Complainants action was founded was never made by your Petitioner with a view that the same should be Circulated but for the Sole purpose as was setforth by your Petitioner in his answer Exhibited in the Course of the said suit in the said Mayors Court to wit that the said Ramasawmy in your Petitioners said answer named might merely produce and shew the same to Certain of his Friends in order to quit some Apprehensions Conceived and entertained by them of the Credit of him the said Ramasawmy and your Petitioner did admit that if the said Promissary note in the Course of Trade had been received by the said Complainant and for abonafide and

Valuable

Valuable Consideration that notwithstanding your Petitioner had been imposed and worked on by the artifices of the said Ramasawmy and such artifices had been Clearly Evidenced to the said Mayors Court yet Considering the nature of the Paper and that it was liable to Circulation your Petitioner would have been Chargeable with the Sum Assumed on the said note and might have been by Law Compellable to pay the Amount thereof to the said Complainant But your Petitioner humbly did submit to this Honourable Court that from the way in which the note came into the hands of the said Complainants and from the purposes for which it was Indorsed namely in part satisfaction of a State Demand that your Petitioner in an Equitable Consideration is not Chargeable in the Premises —

Secondly Because the said Complainant took the said note with the same Equity and Right as the said Ramasawmy received the same of your Petitioner and your Petitioner did shew unto the said Court of Appeals that the said Ramasawmy could not from Personal Disability under the Operation of the Charter of his late majesty Granted to the united Company of Merchants Trading to the East Indies and by which the said Mayors Court was Constituted have maintained action therefore in the said Mayors Court and your Petitioner did humbly Contended that the said note not Charging any of its Properties in the hands of the said Complainant could not therefore as your Petitioner was Advised he put in suit against him more Especially under the particular Circumstances of the Case as Explained by your Petitioner in his said first Cause or reason of Appeal and your Petitioner did therefore humbly Conclude that the said Pleadings had on the said Promissary note in the said mayors Court were as if Coram non Judice and that no Decree could have been lawfully made thereon —

Lastly Because your Petitioner in the said Decree of the said Mayors Court was Taxed with Double Cost and which Even had the action of the said

Complainant

Complainant been well and strictly founded would have been Extremly harsh and Oppressive as to your Petitioner In as much as your Petitioner did Consider himself much wronged in the said note having been put into Circulation and did think as he did then think that he ought not in an Equitable light to have been Compelled to Pay the same and did not do more in resisting the Claim of the said Complainant in a legal way and Course then what he felt himself Entitled and Authorized to do in regard Respect and Protection of his Rights and Property —

And your Petitioner for the reasons Assigned did in and by his said Petition and appeal pray that the said Court of Appeals would be pleased to reverse the Decree of the said Mayors Court in the premisses and grant unto your Petitioner such other Relief as to them should seem meet —

And your Petitioner humbly Sheweth unto your most Excellent Majesty in Council that to your Petitioners said Petition and appeal the said Complainant did Exhibet and file his answer to the same and did there and thereby amongst other things

things state that he did admit to have on or About the Tenth day of October and year of our Lord one thousand Seven hundred and ninety five Exhibited and filed his Bill of Complaint in the Honourable the Mayors Court at Madraspatnam against the said your Petitioner and the other Defendant above named for the Recovery of the Sum of Four thousand one hundred and Twenty two Pagodas one fanam and nineteen Cash Current money of Madras alledged to be due and owing to the Complainant upon a Certain Promissary note granted by your Petitioner and the other Defendant Apparow to Ramasawmy Braming and by him indorsed over to the Complainant —

To which said Bill the Complainant did admit that your Petitioner did Exhibet and file his answer in the said Mayors Court which said Answer being read and debated in and by the said appeal the Complainant did Crave leave to Refer thereunto and did pray he may have the full benefit and advantage thereof and the Complainant did further admit that to the said Answer he did file and Exhibit his Replication and

your —

your Petitioner having Rejoined thereto Issue did thereupon Join and Rules passed for the Examination of Witnesses and the Complainant did further admit that two Witnesses were Examined on the part and behalf of the Complainant and that the said Witnesses did Severally Depose as was setforth and recited in your Petitioners Petition and appeal that Publication having afterwards passed the said Cause was set down for hearing and did afterwards Come on to be heard before the said Mayors Court on the Second Day of the month of august one thousand Seven hundred and ninety Six when the said Mayors Court was pleased to order and Decree and did accordingly order and Decree that your Petitioner should pay unto the Complainant the full and Just sum of Four thousand one hundred and Twenty two Pagodas one fanam and nineteen Cash together with such Interest as there was or should thereafter become due thereon until payment was made together with Double Costs of suit as by the said Decree Copy whereof was to your Petitioners Petition and appeal annexed relation being thereunto had

had would morefully Appear—

And the Complainant did

Denie that your Petitioner was aggrieved by the said Decree of the Mayors Court or that he had any Just Cause or Reason to Appeal therefrom—

And for Answer to the first Reason or Cause of appeal from the Decree of the said Mayors Court the Complainant did say that although it was immaterial to the Complainant what were the Circumstances which weighed with or induced your Petitioner to grant the note in question It being a settled point in law that the holder of a Promissary note or Bill of Exchange had nothing to do with the Transaction between the Originals parties yet on the present Occasion the Complainant did pray leave to Observe that a Good and bonafide Consideration was given that was to say before your Petitioner granted the note upon which the present action was founded ample Security was required from the said Ramasawmy It appearing by your Petitioners own shewing in his Answer upon oath that he took a Promissary note from

the

Shape and Ceased to be an instrument between Indian natives only in which Case the Mayors Court were only Restricted by the Charter from holding suits and the Complainant did further say that the Circumstance of your Petitioner having sued the said Ramasawmy on the Securities which he took for the said Promissary note was in itself Prima facie Evidence that he Considered himself Amenable to the Juris. diction of the said Mayors Court as far as Related to the said Promissary note.

And to the Last reason or Cause of appeal the Complainant did say that the said Mayors Court were fully warranted in Taxing your Petitioner with Double Costs on Account of the very unjust and litigious Disposition the Complainant did pretend your Petitioner had manifested and the said Complainant did in and by his Answer to your Petitioners Petition and appeal pray that the said Decree

of

of the said Mayors Court might be Affirmed with Excemplary Costs—

First.... Because the said Mayors Court and Court of Appeals in Decreeing on the Promissary note on which the Complainants action is founded have not paid that due Regard which your Petitioner humbly submits he is advised they ought in Justice to have done to the special matters attending your Petitioners Cause insemuch as your Petitioner hath shewn in and by his answer upon Oath and the Subsequent Pleadings in the Cause that the said note was Obtained from your Petitioner under the most specious pretexts of fraud without any manner of Consideration and that the Indorsment thereof to the Complainant as admitted by himself have been for no greater or other Equivalent than the Discharge of some stated Demand as pretended to be due to him and which Circumstances your Petitioner humbly submits he is advised if the said Mayors Court and Court of Appeals had Weighed when forming

their

their Judgement and Decision in the Cause they could not on any reasonable or Equitable principle have Decreed in the manner and form they have done -

Secondly Because that under the Operation of the Charter of his Late Majesty Granted to the united Company of Merchants Trading to the East Indies as stated in your Petitioners second Cause of Reason for Appeal to the said Court of Appeals the said note could not be put in suit against your Petitioner and your Petitioner doth therefore humbly Contend that the said pleadings had in the said Cause originated on the said Promissary note were as if Coram non Judice and that no Decree could legally have been made thereon -

For all which Reasons and such Others as may be offered at the hearing your Petitioner most humbly prays your most Excellent Majesty in Council will be pleased to reverse the said Decree

Decree of the said Mayors Court and the said Order of the said Court of Appeals with Costs and further Grant unto your Petitioner such other Relief in the premises as to your Wisdom shall seem Meet -

/ Signed / George Pasley
for Emanuel Samuel
Solicitor for Appellant -

Mayors

Mayors Court at Madraspatnam

Tuesday the 2 day of August Anno Domini 1796

Present

James Daly Esqr Mayor
Andrew Ross William Abbott
& Alexander Cockburn Aldermen

Mayors Court

Between Francis Lauber of Madras Merchant Complainant and T. Coopiah Brammy and Opparow of the same place Inhabitants Defendants

This Cause coming on to be Heard and Debated this day in the Presence of the Attorneys of on both sides on Reading the Complainants Bill with Copies of a Promissary note and an Account Current annexed The Answer of the Defendant T Coopiah the Replication the Rejoinder the Interrogatories and Depositions on the part of the Complainant with one Exhibit annexed on Hearing the Pleadings made use of by the Attorneys and on due Consideration had thereon This Court doth think fit to order and Decree and doth Accordingly Order and Decree that the Defendant T Coopiah do pay unto the Complainant the full and Just Sum of Four thousand one hundred and Twenty two Pagodas one fanam and Nineteen Cash / Pags 4122..1..19 / together with all such Interest as now is or shall hereafter became due thereon until full payment is made and It is further Ordered and Decreed that the Defendant T Coopiah be taxed with double Costs of Suit—

Court

/Signed/ George Taylor Regr.

Court of Appeals
at Madraspatnam

Thursday the 8th day of December
Anno Domini 1796

Between T. Coopiah Braming of
Madras Inhabitant appellant and Francis
Laitour 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 Honourable the Mayors Court
together with the Decree of the said Court given in this
Cause on Thursday the 2d day of August 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 hence Dismissed with Costs

Fleur

/ Signed / J Webbe
Clk

To

To the Kings Most Excellent Majesty in Council

Between Francis Laitour of
Madras Merchant Complainant
and T Coopiah Braming and
Apparow of the same place
Inhabitants Defendants

The Answer of Francis Laitour the above
named Complainant to the Petition and
Appeals of T Coopiah Braming one of the
above named Defendants —

This Respondent for answer to the said
Petition and appeal or unto so much thereof as
Filed in my Office this Respondent is advised is material or necessary
the 31st at December 1796 to make answer unto Answereth and saith
J. Webbe Clerk He admits that he did on or about the Tenth day
of October and year of Christ one thousand seven
hundred and ninety five Exhibit and file his
Bill of Complaint in the Mayors Court at Madras-
patnam against the Appellant and the other Defen-
dant above named for the Recovery of the sum of Four
thousand one hundred and Twenty two Pagodas

One

one fanam and nineteen Cash Current Money of Madras Due and Owing unto this Respondent upon a Certain Promissary note granted by the appellant to Ramasawmy Braminy and by him Endorsed to this Respondent as by the said Bill of Complaint Relation being thereunto had doth and will more fully and at Large Appear— And this Respondent further Admits what is Setforth and Stated in the appeal to your most Excellent Majesty in Council To wit that to this Respondents said Bill of Complaint He this Appellant did Exhibit and file his Answer and did therein and thereby state that Ramasawmy Braminy in this Respondents Bill named did Come to him the appellant and to Appease the other Defendant in this Respondents Bill also named and stating that his Reputation and Credit would be ruined if he could not produce some kind of Voucher or Security for money held by him from some man of Respectability did thereupon Request and urge the Appellant and the said other Defendant to Assist him in his Destress and Grant to him a Promissary Note for the sum of Four thousand and fifty seven Pagodas forty one fanams and fifty one Cash payable in thirty Days Assuring them however that he meant to make no other use of such a note than Solely to produce it to some of his friends and quit the fears and apprehensions they Entertained with Regard to his Credit and as an inducement to grant the said Promissary note the said Ramasawmy Braminy Proposed to give his note and further to Deposit a Bond of one thousand Pagodas And this Respondent admits that the said appellant did in his said answer state that Commiserating the Apparent Distressed Situation of the said Ramasawmy and believing his Declarations to be true He granted the Promissory note upon which the present Action is founded but that not at all Suspecting any Evil Design on the part of the said Ramasawmy He the Appellant did Rest fully Confident and perfectly satisfied that he and the said Other Defendant would never be called upon for the payment of the said note but that the same would be returned

To

to them The said appellant inferring that under the Circumstances of the case The Bill ought not to have been negociated but should have been Returned in fifteen Days The said appellant did therefore in his said answer pray that the said Mayors Court would protect him against the fraud and Collusion of the said Ramasawmy and against what he termed the Colorable proceedings of this Respondent and his Confidency with the said Ramasawmy in the premises And this Respondent doth admit that to the appellants said answer this Respondent did Exhibit and file his Replication and did therein alledge that Ramasawmy Brammy in the Petitioners said answer named and who was the Endorser of the Promissary note upon which the present action is founded might for what this Respondent knew to the Contrary have gone to the Appellant and stated those Circumstances which are setforth and alledged in the answer and that it might be true for what this Respondent knew to the Contrary that the Appellant and the said other Defendant might have been induced from a Commiseration

of

of his Case to grant the Promissary note in Question and that by way of Securing themselves they might have taken from the said Ramasawmy Brammy a Promissary note of the same amount and also a Bond of China mootoo Chetty in the said answer named all which Transactions if ever they did Exist this Respondent did Contend were very immaterial to him who as Endorsee of a Promissary note had brought his action against the Defendants as the makers thereof And this Respondent admits that in Replying to the Modifications in the Appellants said answer Contained namely that the said Promissary note had been made over to this Respondent without any manner of Consideration and was merely Endorsed by the said Ramasawmy to give a Colour to the Transaction and with the view of Recovering the amount thereof for the said Ramasawmys use This Respondent did state and setforth the manner as well as the particular Consideration for which the said Promissary note was granted not that it was essential

to

to the support of his suit Inasmuch as this Respon-
dent was and is now advised that According to
the Rules of Law and the Custom of Merchants
the Consideration of a Promissary note is not
enquirable into between the Endorsee and the
maker yet this Respondent deemed it necessary
to state the facts as a Refutation of the appellants
unfounded Calumny and of which he was
ready if necessary to give due proof And this
Respondent further admits that he did
Appear from the Records of the Mayors Court
that the appellant did on the Tenth day of
December in the year One thousand Seven hundred
and Ninety five file and Exhibit a Bill of Com-
plaint against the said Ramasawmy for the
Recovery of the Recovery of the sum of Two
thousand Pagodas due on a mortgage Bond
and that on the fourteenth of the same month
he filed another Bill for the Recovery of the
further sum of Two thousand one hundred
and fourteen Pagodas Twenty one fanams and
fifty one Cash which said Bonds and mortgage

this Respondent did say he had been informed
were by the Appellant taken as Security for the
note in question And which Circumstance this
Respondent did Alledge was a further proof of the
Petitioners unjust and litigious Disposition And
this Respondent further admits what is stated to
your most Excellent Majesty in Council To wit
that to this Respondents said Replication the
Appellant did Exhibit and file his Rejoinder and
did therein and thereby Set forth that this Respon-
dent having admitted the Principal fact necessary
for the Defence of him the appellant to this
Respondents said action namely that no real
and bonafide Consideration was ever paid or given
To the Appellant for the note in question that it
was Sufficient to Exonerate him And this
Respondent further Sheweth unto your Most
Excellent Majesty in Council that the Appellant
Departing from that system of Defence which
he had set out with and was Consequently
bound to adhere to did in his said Rejoinder

Alledge

Alledge That if a native Indian should be
permitted to Assign & Choose in action to an
European and such European should be authorised
in the said Mayors Court to prosecute and
sue for the same it would be opening a Door
to Defeat the Salutary Provisions of the Charter
granted by his Late Majesty which Excluded
natives from holding and maintaining suits
against Each other unless with and by mutual
Consent by allowing them to enter into a
Litigation in an indirect mode that the
Indorsee of a Promissary note in respect to
the same stood precisely on the same Grounds
with the Original Payee and under one and
the same Equity which was an additional Reason
as the Appellant did submit why this Res-
pondent should not maintain suit on Account
of the said note The appellant and the Payee
being native Indians and Liable therefore
to the Restriction of the said Charter And
this Respondent admits that the Appellant did
in his Rejoinder set forth that he had Recived

two

two Bonds from Ramasawmy and that he
had sued the said Ramasawmy Brahmy
thereon but that the same did not in the
least vary the fact in Regard to the Promis-
sary note in question in as much as this Res-
pondent well knew that from the Embarrassed
and Distressed Situation in which the
said Ramasawmy Brahmy had from some
time been and still Continued to be the
Appellant would never be in a Situation to
Recover a fanam on the said pretended securi-
ties The Appellant did therefore submit to the
said Mayors Court that this Respondent
could not by Reason of the Premises be
intitled to any Decree against him the
Appellant And this Respondent for further
answer saith that a Rejoinder being the
last pleading that is Allowed by the practice
of the Mayors Court that Issue did Join
in the Cause and Rules passed for the
Examination of Witnesses and this Respondent
admits that in Support of his Case he did

Examine

Examine John Dunstedt and Vincatarray Moodelly as Witnesses and that the said John Dunsteds Proved that the Promissary note in question was Recieved and taken by this Respondent in part Payment of a Debt that the said Debt was on Account of a Joint Bond from the said Rainasaw-my and Major John Lindsay to this Respondent for Eight thousand one hundred and five star Pags Twenty five fanams and thirty eight Cash and that the said note was taken and recieved in part Payment of that Bond And this Respondent admits that Vincatarray moodelly the other witness Examined on the part and behalf of this Respondent Deposed that he was in the Service of this Respondent and in the Capacity of Dubash and that the appel-lant had actually promised to Discharge the note when it became due And this Respondent further admits that upon the Examination of the said witnesses Publication did pass in the Cause and the same was thereupon set down to be heard by the said Mayors Court and the same having Accordingly Came on to be

to be heard before the said Mayors Court on the Second Day of the present Instant August and year of our Lord one thousand Seven hundred and ninety six the said Mayors Court were pleased to Order and Decree and did Accordingly Order and Decree that the appellant should pay unto this Respondent the full and Just Sum of Four thousand one hundred and Twenty two Pagodas one fanam and nineteen Cash together with such Interest as there was or should thereafter become due thereon untill payment made together with Double Costs of suit And this Respondent doth admit that the Appellant did Appeal therefrom to the Honourable the Court of Appeals at Madras and as Cause why the said Decree of the Mayors Court should be Reversed The said Appellant did alledge and say That the Promissary note on which this Respondents action was founded was never made with a View that the same should be Circulated but merely to produce and shew the same to Certain of his Friends

in

in Order to quit some Apprehensions Conceived and entertained by them of his Credit But the Appellant in his said First Reason did admit that of the Promissary note in the Course of Trade had been Rec[illegible] by this Respondent and for abonafide and Valuable Consideration that notwithstanding He the Appellant had been imposed and worked on by the artifices of the said Ramasawmy yet Considering the nature of the Paper and that it was liable to Circu-lation the Appellant would have been Chargeable with the sum Assumed on the said note and might have been by Law Compellable to pay the amount thereof to this Respondent But as no bonafide Consideration was paid the appellant Contended that he was not liable And this Respondent doth admit that further Reasons were adduced by the Appellant as Cause why the Decree of the Mayors Court should be Reversed To wit That the note in question being between Indian natives Could not be put in Suit against the Appellant which this Respondent submits is a

Contradiction

Contradiction of the matter Contained in the Appellants first reason wherein he admits himself to be liable in Consequence of the Paper being negociable in its nature And this Respondent further admits that to the said Petition and Appeal This Respondent put in his answer which said answer being recited and setforth in the appellants Petition and Appeal This Respondent Craves leave to Refer thereunto and prays it may be taken as part and parcel of this Respondents answer to your most Excellent Majesty in Council And this Respondent further answering saith That on Thursday the Eighth Day of December The said Cause Came on to be heard by and before the said Court of Appeals when they were pleased to order that the Decree of the Honourable Mayors Court given on Tuesday the Second day of August one thousand Seven hundred and ninety Six Should stand Affirmed and that the Appellants Petition be Dismissed with Costs as by the said Decree Copy whereof is to the said Petition and Appeal annexed relation being thereunto had

doth

doth and will morefully and at large Appeas -

And for further Answer to the Appeal made to your most Excellent Majesty in Council this Respondent Saith that the Appellant is not aggrieved by the Decree of the Mayors Court or Court of Appeals which in their nature were Strictly Consonant with Justice on the Contrary this Respondent humbly submits to your most Excellent Majesty in Council that the Object of the Appellant in a gain Appealing this suit is merely to protract and Delay the payment of a just Demand -

And to the first Reason or Cause of Appeal wherein it is alledged that the Mayors Court and Court of Appeals in Decreeing on the promissary note on which the action is founded have not paid due regard to the special matter shewn in and by the answer upon Oath as well as in the subsequent pleading in the Cause which tend to shew that the note was Obtained by fraud and without any manner of Consideration For answer to these extraordinary asser-tions this Respondents prays leave to Observe that in the Defendants answer to the Bill of Compliant and which is on oath It is therein stated that when the note on

in question was granted by the Appellant to Ramasawmy he took from him a note for the same Amount payable in Twenty Days with a Bond of one Chinna Mootoo Chitty for Six Thousand Pagodas as Collateral Security for the payment thereof and in the Rejoinder It is also admitted that in lieu of the said note he took two Bonds upon which he has brought two Seperate Actions against the said Ramasawmy having property as appears by his own shewing specifically mortgaged to him - And it is further shewn that this Respondent Received the Promissory note from Ramasawmy the Payee as Cash being in part payment of a Bond debt due by him and the Honorable Major Lindsay to this Respondent with what propriety or with what Regard to truth the Appellant has alledged that the note was obtained by fraud and without any manner of Consideration It will be for your most Excellent Majesty in Council to Determine on And this Respondent further Saith that although it was not necessary for him to have Entered into the Consi-deration of the Promissary note which is not inquirable into by the maker when in the hands of an Endorsee

yet

yet this Respondent was induced To do so in Order To do away the Effect of the Calumny which the Appellant intided should Spirate upon this Respondent as well as to Expose his Litigious Conduct And this Respondent further saith that it appears from the pleadings in this suit that the Bonds taken by the Appellant on Aiccount of the note in question were put in suit on the Tenth and Fourteenth Days of December in the year one thousand Seven hundred and ninety five and as so much time has elapsed It is fair to presume that they are both Satisfied which Circumstance is a further agravation of the Appellants Litigious Conduct by Shewing that there is not a Shadow of Cause for the present Appeal and that his Object is merely to protract the payment of ajust Demand —

And to the Second Reason or Cause of Appeal to your most Excellent Majesty in Council wherein it is alledged that under the operation of the Charter of his Late Majesty granted to the united Company of Merchants of England trading to the East Indies the said note could not be put in suit for the Reasons Stated in the appeal to Governor in Council of Fort Saint George This Respondent for Answer thereunto prays Leave to Observe that in the Reasons offered as Cause of Appeal from the Decree of the Mayors Court it is alledged that the Clause in the said Charter which restricts the said Court from holding Cognizance of Suits between Indian natives ought to have prevented them from Entertaining the present action But forgetting this Doctrine the Appellant proceeds to say That Considering the nature of the paper and that it was liable to Circulation he would have Considered himself Chargeable with the sum assumed on the said Promissary note and Compellable by Law to pay the amount to this Respondents If the said note had been Recived in the Cause of trade and for a bonafide and valuable Consideration Here then every Objection in Respect to the Charter is done away and the only reason shewn and insisted on as Cause why the suit should not be maintained is that no bonafide Consideration was paid But the fact has been Clearly Shewn to be Otherwise from the pleadings in the suit and the evidence adduced by this Respondent in support thereof not that it was Necessary for this Respondent nor did the Law require him to enter into that proof as He hath already shewn And this Respondent further saith that the Clause in the Charter of his Late majesty is in the nature of a Privilege

Conformes

Conferred whereby Indian natives of Madras patnam are protected from the Coercion of the Mayors Court when their Transactions are confined to themselves but it is evident that an Indian native cannot Claim that previledge in a case where he Voluntarily grants a Paper payable to Order and which by the Custom of Merchants enables the Endorsee a person not Subject to the restriction of the Charter to Sue in his own name the words of the Charter being Between Indian natives only and this Respondent further saith that the appellant having Alledged that he granted the note in question to enable Ramasawmy the Payee to hold out the Shew of false Credit to the world that for such his conduct he Deserved as this Respondent submits to be Taxed with Exemplary costs as a punishment for the imposition He attempted to practice —

For all which Reasons and such others as may be offered at the hearing this Respondent most humbly prays that the said Petition and appeal of the said Petitioner to your most Excellent Majesty in Council may Stand Dismissed and that your most Excellent majesty in Council will be pleased to Affirm the said Decree of the said Mayors Court and the said order of the said Court of Appeals with costs to be paid by the said Petitioner —

Signed J. George Chalmer
Solicitor for Respondent

Thursday the 15th Day of December 1796

Present

The Right Honble Lord Hobart

Edward Saunders and Ernst William Fallofield

To the Right Honorable Lord Hobart

President in Council

Fort Saint George

In the Honble the Court of Appeals

Between Josias Dupre Porcher by his Attorney and Assignee Nincapah moodelly of Madras Inhabitant Complainant and Chintadry Moodelly and Chowrcapah moodelly two of the Defendants named in the said Complainants Bill of Complaint also of Madras Inhabitants Defendts

Filed in my Office the 6th June 1796
J. Webb Clk

The Humble Petition and appeal of the above named Defendants —

Shweth

That Josias Dupre Porcher by his Attorney and

and Afsignee Nineapah Moodilly of Madras Inhabitant on the fourteenth day of April in the present year of Our Lord One thousand Seven Hundred and Ninety Sixe, filed his Bill of Complaint against your Petitioners in the Honble the Mayors Court at Madras patnam thereby setting forth that your Petitioners together with the other Defendants named in the said Complainants said Bill of complaint did stand justly and truly indebted to the said Complainant in the full and just Sum of Three thousand one hundred and Sixty Sixe Pagodas One fanam and Ten Cash Current money of Madras And your Petitioners further Shew that the said Complainant did further setforth that he had annexed true copies of a certain Bond or written Obligation together with an Account Current and an Afsignment of the same to his said Bill of Complaint to which said annexed Bond Account Current and afsignment the said Complainant prayed leave to refer and prayed the same might be taken as part and parcel of the said Complainants said Bill of complaint And your Petitioners further Shew that the said Complainant did further setforth that he had by his said Attorney frequently demanded the aforesaid Sum of Three thousand One hundred and Sixty Sixe Pagodas One fanam and Ten Cash from your Petitioners but that so it was your Petitioners and the said other Defendants named in the said Complainants said Bill of Complaint obstenately and wilfully Refused to pay the same or to give the said Complainant any manner of satisfaction touching the premises the said Complainant by his said Bill of Complaint therefore prayed that your Petitioners the said Chintadry Moodilly as Bhoosapah Moodely named in the said Complainants together with the said other Defendants said Bill of Complaint might be Decreed to pay unto the said Complainant the said Sum of Three thousand One hundred and Sixty Sixe Pagodas One fanam and Ten Cash together with all such Interest as then was or which should thereafter become due thereon together with all Costs of the said Suit, which with prayer of Sumonons and general relief is the scope and end of the said Complainants said Bill of Complaint as by the said Bill of Complaint remaining of record in the said Mayors Court to which your Petitioners humbly crave permission to refer Relation being thereunto had will more fully and at large appear your Petitioners further shew unto this Honble Court that they

they having been summoned and required to appear to and answer the said Complainants said Bill of Complaint they appeared thereto and on the Nineteenth day of April in the present year of Christ One thousand Seven Hundred and Ninety Six filed their Plea to the Complainants said Bill of Complaint and to the Jurisdiction of the said Mayors Court of Madraspatnam And for Plea thereunto your Petitioners said that by the operation of a certain Charter granted to the United Company of Merchants in England Trading to the East Indies by his late Majesty King George the Second bearing date the sixth day of January in the year of Our Lord One thousand Seven hundred and fifty two and by a certain Clause in the said Charter contained one Native was prevented from suing another nor could they hold or maintain Suit or action in the said Mayors Court against each other unless by mutual Consent they chose to submit such cause of Suit or Action unto the determination of the said Mayors Court which your Petitioners declared they did not at any time do and your Petitioners further in support and in aid of their said Plea set forth that the said Complainant the said Ninea pah moodilly was also an Indian Native of Madraspatnam and was thereby

thereby debarred as your Petitioners had been informed and advised to maintain or support Suit or action in the Said honorable Court as the Attorney and Assignee of the Said Josias Dupre Porcher for your Petitioners were advised and belived the same to be true that when and at the time the said Josias Dupre Porcher assigned transferred and set over his bona fide right in the Premises in question to him the said Complainant the said Ninea pah Moodilly the said Josias Dupre Porcher as the Assignor and the said Ninea pah Moodilly as the assignee, must have well Known that unless your Petitioners had voluntarily submitted the said Complainants Cause of Action if he had any to the determination of the said Mayors Court no benefit or advantage whatever could at any time devolve to him the said Complainant as Assignee as aforesaid And your Petitioners further in their said Plea set forth that they never had submitted the said Complainants Cause of Action if as aforesaid he at any time ever had any to the determination of the said Mayors Court neither on reference to the Said Complainants said Bill of Complaint will it be discovered Such

Such Allegation has been charged the said Complainant the said Nineapah Moodelly well persuaded he did not posess any document whatever whereby the Consent of your Petitioners had been at any time for that purpose obtained And your Petitioners were also informed and Advised that in the said Charter of his said Majesty it was among various other matters and "things Ordained, directed and appointed "That the Mayor "and Aldermen for the time being in Madras patnam &c "shall forever hereafter be and they are hereby constituted a "Court of Record by the Name of the Mayors Court at Madras "patnam and that they or any three or more of them whereof "the Mayor or Senior Alderman for the time being then residing "there to be one may and they are hereby authorized to try hear "and determine all civil Suits Actions and Pleas between party "and party that shall or may arise and happen or that have "already arisen or happened wither the said Town of Madras "patnam or within any of the Factories subject or subordinate "unto Fort Saint George aforesaid Except such Suits or "actions shall be between the Indian Natives of Madras patnam "only in which case we will that the same be determined among

"Among themselves unless both Parties shall by Consent "submit the same to the determination of the said Mayors Court and your Petitioners further shew that they did Plead the said several matters herein before in this your Petitioners Said Petition of Appeal set forth in Abatement of the Said Complainants said Bill of Complaint and your Petitioners prayed Judgement of the said Bill of Complaint and of the Relief and discovery thereby sought and that they might be dismissed the said Mayors Court with their reasonable Costs and charges in that behalf most wrongfully sustained as by the said Plea Remaining of record in the said Mayors Court to which your Petitioners humbly crave leave to refer relation being thereunto had will more fully appear Your Petitioners further shew unto this honble Court that your said Petitioners by their Attorney at Law on the Tenth day of May in the present year of our Lord One thousand Seven hundred and Ninety six, prayed the said Mayors Court that your Petitioners said Plea might be set down to be Argued which the said Mayors Court was pleased to order as by an Extract from the Minutes

Minutes of the said Mayors Court duly attested by the proper Officer and hereunto annexed to which your Petitioners humbly crave leave to refer and which they pray may be received as part of this their Petition and Appeal relation being thereunto had will more fully appear And your Petitioners shew unto this honble Court that in pursuance of such Order the said Plea came on to be Argued accordingly before the said Mayors Court of Madraspatnam on Tuesday the Twenty fourth day of May aforesaid when the said Mayors Court was pleased to over rule your Petitioners said Plea with Costs and to order that your Petitioners should be put upon their Answer as by the said order of the said Mayors Court and the dissent of Messrs Alderman Andrew Ross and Alderman Richard Chase thereto which are hereunto annexed and to which your Petitioners humbly crave leave to refer and which they pray may be admitted and received as part of this their Petition and appeal relation being thereunto had it doth and will more fully and at large appear From which said Order made by the said Mayors Court in the said Cause on the Twenty fourth day of May in the present year of our Lord One thousand Seven hundred and Ninety Six aforesaid your Petitioners do appeal to this Honorable Court of appeals as your Petitioners are advised and believe that the said Order of the said Mayors Court for the Causes and reasons in your Petitioners said Plea set forth and Assigned is erroneous and contrary to the charter by which the said Mayors Court is directed and in further support of your Petitioners said Plea they crave leave to state the following among other Reasons

First Because the said Mayors Court have Decreed as aforesaid contrary and in direct opposition to his Majestys said Charter so granted as aforesaid in as much as your said Petitioners to the Complainants said Bill of Complaint filed their Plea therein alledging that the said Complainant had no right whatever to maintain Suit or action in the said Mayors Court against your Petitioners for as the said Josias Dupre Porcher had chosen to assign over to the said Nineapah Moodilly all his the said Josias Dupre Porchers right title

Little and Interest what soever in any way relative to and regarding the said Mortgage Bond in Question / if he the said Josias Dupre Porcher when and at the time of such Asignment had any which your Petitioners by no means allow / and he the said Ninea pah Moodilly having also chosen to accept of and take such Asignment your Petitioners contended that such said Asignment could not in any way compel your Petitioners to attend to such new created Interest in the premises for supposing there might have been a Ballance due and owing on the foot of the Account Current to the said Complainants Bill annexed, by the Complainants own act "to wit" accepting by Vertue of the said asignment all right title and Interest accruing thereon he the said Complainant as by his said Bill of Complaint it appears. being an Indian Native and your Petitioners being also Indian Natives of Madraspatnam as by their said Plea appears he never could as Asignee as aforesaid have compelled your Petitioners to have accounted for the same unless your Petitioners had so chosen to have done. And your Petitioners further shew that they have been advised and believe

believe the same to be true that the only way in which the said Complainant could by the said Asignment have been benefited must have been for the said Complainant to have shewn either that he as Asignee as aforesaid had no manner of right whatever in the premises but was acting for the Interest and behalf of the said Josias Dupre Porcher and as his Agent or attorney and not on his the said Ninea pah Moodillys own behalf as Asignee as by the said asignment it appears or that at the time of such said Asignment taking place or at any subsequent period previous to the intention of the present Suit he the said Complainant could have made it appear that your Petitioners had voluntarily consented to have been interrogated relative to and concerning the said Bond and Account Current Copies of which are to the said Complainants Bill annexed together with the said Asignment or had in any way consented that the differences arising thereon should be submited to the determination of the said Mayors Court neither of which said Circumstances by the said Complainants own shewing appear to have taken place consequently your Petitioners are

are as Indian Natives of Madraspatnam as aforesaid pro-
tected by his Majesty's said Charter.

Secondly Because it is provided by the said Bond so
alledged to have been granted by your Petitioners and the
other Defendants in the said Complainants said Bill of Com-
plaint named to the said Josias Dupre Porcher as follows
"to Wit" "And in default of payment at the expiration of the
"time above limited We do hereby give and grant unto the said
"Josias Dupre Porcher Esquire full Power and authority to
"Sue in the Honorable the Mayors Court to sell or dispose
"of the said premises if they should sell for a less Sum
"than the Amount of the Principal and Interest of our Bond
"we will pay to him the differences and in case if the said
"premises sold for more he is to pay us the difference" Now
your Petitioners are of Opinion it will appear to this Honble
Court at the time of their entering into the said Bond what
was absolutely the intention of the parties it surely cannot
be construed two ways but must carry with it this conclusion
that no person except the said Josias Dupre Porcher
could call your Petitioners to an Account or why does
Such

Such Special Clause appear to have been Introduced in the
Body of the said Bond and which said clause would have
been altogether absurd and ridiculous could it be presumed
it was intended to convey any other or different meaning
them the foregoing and on the following ground the absur-
dity must present itself Josias Dupre Porcher had it at
his Option at the expiration of the stipulated period
allowed for the Payment of the said Monies arising due
on the said Bond to call your Petitioners together with
the other Defendants in the said Bill of Complaint
named to account for the same by instituting a Suit
against your Petitioners in the said Mayors Court
why then should such special Clause have been inserted
in the Body of the said Bond had it not been to direct the
intention of the Parties when and at the time the same
was executed and it is highly Probable and justly to be
presumed your Petitioners would not have entered into
the contract upon any other terms than those in the said
Bond prescribed at least it would so appear for the borrow-
ers of Money are generally from the urgency of their situation
Compelled

compelled in a great measure to accede to the terms advanced by the Money lender however disadvantageous they may be or if they do not it is the lenders own fault having it at his election either to retain his Money till he has made his own terms or to posess himself of whatever may have been the consideration between the parties in lieu of the same now your Petitioners do contend the intention of the Parties in this instance is very clearly shewn and surely it is the intention of the Parties in all Contracts and Agreements of whatsoever nature the same may present themselves that is to be the fair guidance and as such to be attended to by those whose lot it may fall to pass a Judgment thereon

Thirdly ..... Because it is laid down under the head of "Abatement in "Modern Reports Vol. 2. as follows "to wit" "a Plea "though in the form of a Plea in abatement, yet if, by the matter "it necessarily discloses it appears that the Plaintiff hath no cause "of action it shall be taken in bar" Stubbins V. Bird. Now the "Plea filed in the said Mayors Court by your Petitioners was a Plea in Abatement but from the circumstances of your Petitioners case their said Plea necessarily disclosed matter In bar inasmuch as it went to shew and set forth a change of Interest in the Bond in question by Vertue of an assignment made between the said Josias Dupre Borcher and the said "Nincapah "Moodilly which change of Interest your Petitioners contend Admitting there had been due and owing the Sum alledged by the said Account Current annexed to the Said Complainants Bill as aforesaid exonerated and discharged your Petitioners in the Premises unless the Sanction of your Petitioners had as aforesaid by the said "Nincapah "Moodilly been obtained to contest the same in the said "Mayors Court and further your Petitioners Said Plea "tended to shew that such "Assignment of the Said "Mortgage Bond as aforesaid was done and performed without the Knowledge consent or Approbation of your said Petitioners and your said Petitioners conceive it to be a very unprecedented thing to assign over Mortgaged property without the assent of the Mortgagor or Mortgagors as the case may happen to be and on that ground your Petitioners cannot hold the Said Assignment a legal one for whatever might have been the intention of the "Assignor and the Assignee the Mortgage-

Mortgage Bond in question is not legally Vested in the Complainant for Mortgaged Premises are not to be Assigned over to a third Person at the will and caprice of the Mortgagee but as your Petitioners have understood the law to be at the Special Instance and consent of the Mortgagor, and upon the face of the Proceedings before this Honorable Court no such consent appears to have been Obtained but to the very great astonishment and Surprize of your Petitioners they find a Suit Instituted in the said Mayors Court against your Petitioners by an Indian Native without your Petitioners ever having given their consent thereto and the said Nineapah Moodilly does not come forward as the representative of the Mortgagee that is as Prosecuting your Petitioners for the Interest and benefit of the said Josias Dupre Porcher but the said Nineapah Moodilly institutes the present Action against your Petitioners in his own right and as appears from the Assignment for his the said Nineapah Moodillys own Sole and separate use by Vertue of the said Assignment now if this honble Court should be of Opinion that the said Complainant has no Cause of Action although your Petitioners Plea has been brought forward in the shape of a Plea in Abatement it carries with it the weight of a Plea in bar as clearly laid down in the Case before Cited your Petitioners said Plea having disclosed that the said Complainant hath no Cause of Action against your Petitioners and therefore and for other Reasons deducible from the Pleadings your Petitioners submit that the said Mayors Court ought not to have decreed as aforesaid.

Your Petitioners therefore humbly pray that this Honorable Court will be pleased to reverse the said Order of the said Mayors Court made in the said Cause on the said Twenty fourth day of May aforesaid with Costs to be paid by the said Complainant and to grant your Petitioners such relief in the premises as to this Honorable Court shall seem Meet

And your Petitioners will ever Pray

/Signed/ Gilbt Ricketts
Solicitors for Appellants

Extract

Extract from the Minutes of a Court Held at the Town Hall
on Tuesday the 10th day of May Anno Domini 1796

Present

James Daly Esquire Mayor
Andrew Ross Wm Abbott and
Alex. Cockburn Aldermen

Josias Dupre Porcher by his Attorney Vincapah Moodilly
Chindalry alias Moodilly and Others

The Attorney for the Defendents prays that the Plea
may be set down to be Argued and that the same may come on to
be Argued on Tuesday next — Ordered Accordingly —

A True Extract
/Signed/ George Taylor Regt

Extract

Extract from the Minutes of a Court held at the Town
Hall on Tuesday the 24th day of May Anno Domini 1796

Present

James Daly Esquire Mayor
William Webb Andrew Ross &
Richard Chase Aldermen

Josias Dupre Porcher by his Attorney Vincapah Moodilly
Chintadry alias Moodilly Annauty Moodilly Chavereapa Moodilly
and Anthony Moodilly & Annauty Moodilly Executors
of David Moodilly Deceased

Bill with Copies of a Mortgage Bond Account Current
and Assignment annexed Read —

Plea Chintadry Moodilly & Chavereapah Moodilly read
Bond and Assignment Read —

The Plea of Chintadry Moodilly & Chavereapah Moodilly to the Complainants Bill Coming on to be Argued and Determined this Day in the Presence of the Attornies on both sides on Hearing the Arguments made use of by the Attornies and on due Consideration had thereon The Court are of Opinion that the Plea made use of by the Defendants

Defendants is insufficient It is therefore Ordered that the same be Over ruled with Costs and that the Defendants do put in their Answer Day is given the Defendants Chintadry Moodilly & Chavereapah Moodilly till the 7th June Next to Answer the Complainants Bill indefault of which Judgment will be given for the Complainants

Messrs Aldermen Ross & Chase disent to the Resolution of the Court being of Opinion that the Plea is Sufficcont—

A True Extract.

/ Signed / George Taylor

To the Right Honble Lord Hobart

President in Council

Fort Saint George

In the Honble the Court of Appeals

Between Josias Dupre Porcher by his attorney and Assignee Ninicapah Moodily of Madras Inhabitant Complainant and Chintadry Moodilly and Choureapah Moodilly two of the Defendants named in the said Complainants Bill of Complaint also of Madras Inhabitants Defendants—

The Answer of the above Named Complainant to the Petition and Appeal of the above named defendants These Respondents for answer to the appellants Petition and appeal or unto so much as is necessary for him to Make answer unto answereth and Saith That he did by his attorney and Assignee Ninicapah Moodilly of Madras Inhabitant on the fourteenth day of april in the present year of our Lord one thousand Seven Hundred and Ninety six file and Exhibit his Bill of Complaint against the said appellants in the

Filed in my Office the 27th June 1796
J. Webbe Clk

To

the Honorable the Mayors Court at Madraspatnam Setting forth that the said Appellants together with the other Defendants in the said Bill Named Stood justly and truly indebted to this Respondent by his said attorney in the full and just Sum of Three thousand one hundred and Sixty Six Pagodas one fanam and Ten Cash Current money of Madras Which said Bill being Set forth and recited in and by the Appellants Petition and appeal This Respondent by his said attorney craves leave to refer thereunto and prays he may have the full benefit and advantage thereof—

And this Respondent further admits that the Said Appellants having been Summoned did appear to the said Bill and did Plead to the Jurisdiction of the said Mayors Court which Plea is also Set forth and recited in and by the said Petition and Appeal—

And this Respondent by his said attorney further admits that the said Appellants by their attorney at Law did on the tenth day of May in the present year of our Lord One thousand Seven hundred and Ninety six, pray the said Mayors Court that the said Plea Might be Set down to be argued which the said Mayors Court were pleased to order and that in pursuance of the said Order the said Plea came on to be argued accordingly before the said Mayors Court of Madraspatnam on Tuesday the tweenty fourth day of May aforesaid When the said Mayors Court were pleased to over Rule the appellants said Plea with Costs and to order that they should be put upon their answer as by the said Order of the said Mayors Court to the said appeal amnexed Relation being thereunto had it doth and will more fully and at large appear—

And this Respondent denies that the said appellants have any Real Cause of grevance by the decision of the said Mayors Court or that the same is Contrary to the Charter under which the said Court is Constituted—

And for answer to the first Reason adduced as Cause of Appeal from the Decree of the said mayors Court this Respondent by his said Attorney Saith that the appellants have endeavoured to pervert and Misconstrue the Charter under which the said Mayors Court is Constituted and the Restrictive Clause in the said Charter contained which directs the said Mayors Court to try hear and determine all—

all civil Actions between party and party which shall or may arise within their Jurisdiction except Such Suit be between Indian Natives only In which case the same shall be determined among themselves Now this Respondent by his said attorney Submits that the Original Cause of Action is not between Indian Natives Only But between the appellants who Style themselves Indian Natives And this Respondent an European on whom it is clear the Said Clause can have no effect or operation, and this Respondent by his Said attorney further Saith that the Bond executed by the appellants Copy where of is to the Bill of Complaint annexed doth fully Refute and Controvert the assertions in the said First Reason Contained First by the penal part of the said Bond whereby the said appellants have bound themselves their heirs Executors and administrators to this Respondent his Executors administrators or assigns in the penal Sum of Six thousand five hundred and Eighty Pagodas and Secondly by the conditional part thereof both of which Clauses clearly Shew a Right in this Respondent to assign the Bond in question and whether the same is to an European or Native is immaterial the right of either to Maintain an action against the obligors for the Recovery of the Said Bond being equal and no wise Restricted by the said Charter For this Respondent by his said attorney humbly Submits that the said Restrictive Clause is in the Nature of a Previledge Conferred Whereby Indian Natives are only Protected from the Coercion of the said Mayors Court when their transactions are Confined to themselves in which Case the Charter directs that their own laws Shall decide But in the present Case it is evident that the laws of the Indian Cannot operate Consistent either with the letter or Spirit of the Said Charter the transaction Not being between Natives only and besides the right which Nineapah Moodilly holds in the said Bond is not a new created Right as the Said appellants have improperly termed it But the right which this Respondent holds in it and no other transferred to him in and by the said Deed of Assignment

To the Second Reason given by appellants as Cause of appeal this Respondent by his said attorney Saith that if the appellants meant to Controul and render Nugatory and void the penal and Condition parts of the Said

Said Bond in respect to the right of assigning the same that some more expressive Clause Should have been for that purpose used then that upon which the appellants have laid so much Stress For this Respondent by his said Attorney Submits that so far as Construction can be put on the intention of the parties at the time of Executing the said Bonds from what appears on the face of it and that is the only Criterion by which the Court in this Stage of the Suit can Judge is this that by the introduction of the said Clause The said appellants Meant to wave all right which they might posess to the equity of redemption by directing this Respondent to institute a Suit in the honble thee Mayors Court and to sell and dispose of the Mortgaged Premisses in the event of the Money Not being paid and this Respondent by his said attorney Submits that it cannot with any degree of Reason be inferred that he Meant to preclude every person but himself from Calling on or Suing the said appellants for the amount of the said Bond particularly when the penal and conditional parts thereof doth denote So different an intention Nor can it with Reason be Supposed that the said appellant at the time of Executing the said bond

meant

Meant to exclude every person but this Respondent from calling them to account as is alledged in and by the said Petition and appeal For unless the said Appellant mean to infer that the death of this Respondent would have amounted to an annihilation and Letter extinguishment of the debt Such exclusion could have been of no Advantage to them Now could the Circumstances of being Called upon by the assignee be of any Prejudice as he Receives his right in the Bond subject to the same equity which the assignor held in it and therefore this Respondent by his said attorney Saith that if the said appellants had any well found Objections to the debt they ought to have Setforth the Same by way of answer instead of attempting by Vague and futile arguments to Support a Plea which under the Circumstances of the case is altogether inadmissible And this Respondent by his said attorney further Saith that the matter in the said Third Reason Contained are altogether irrelevant the only question before this Honorable Court being whether the said Mayors Court are Restricted by the Charter from holding Cognizance of the Present Suit which

matter

Matter being already fully Observed upon this Respondent by his said Attorney Conceive any other or further answer to the said third Reason Superfluous and Necessary—

For all which Reasons and Such others as may be offered at the hearing this Respondent prays that the decree of the said Mayors Court may be affirmed and that the Appellants Petition and Appeal may be dismissed with Costs—

/Signed/ George Chalmer
Solicitor for Respt.

Court

Court of Appeals at Madraspatnam } for Thursday the 15th day of December Anno Domini 1796—

Between Chintalvy Moodelly and Chouraypah Moodelly of Madras Inhabitants Appellants and Josias DuPre Porcher late of Fort St George Dpt. by his attorney and Assignee Nineapah Moodelliar of Madras Inhabitant Respondent—

This Cause coming on this day to be heard and debated before this Court by the attornies on both sides upon hearing the Petition of appeal and answers and the Several Exhibits of the Hon.ble the the Mayors Court together with the Orders of the said Court given in this Cause on Tuesday the 24th day of May 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 Hon.ble the Mayors Court do stand affirmed and that the Appellants Petition be hence dismissed with Costs—

By Court

/Signed/ J Webbe Cl.k

To

To the Right Honble Lord Hobart
President and Goivernour &c.a Council of
Fort Saint George
Between The United Company of Mer:
chants of England trading to the East Indies
by their Agents or Representatives at their Pro:
sidency of Fort Saint George the Right Honorable
Robert Hobart commonly called Lord Hobart
Governor and Commander in Chief of Fort St. Gorge
aforesaid and President of the council thereof and
Edward Saunders and Ernest William Fallowfield
Esquires Members of the Council of Fort Saint George
aforesaid and composing the Government thereof Complai:
nants And Benjamin Roebuck Raigestry Tyapoo
Moodiliar Coolapah Chitty and Voopalore Vencatamyles
Executors of the last Will and Testament of Nagapah
Chitty deceased Defendants —

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

Sheweth,

The humble Petition and Appeal of the above named defendants
That some time on or about the Twentieth day of October and year of
our Lord One thousand Seven Hundred and Ninety five the
Complainants above named by their Agents or Representatives
aforesaid did Exhibit and file their Bill of Complaint in the
Honorable the Mayors Court of Madraspatnam against your
Petitioners and did therein and thereby amongst other things
state that one Nagapah Chitty late of Madras Merchant and
the deceased was in his life time and at the time of his Decease
indebted unto the Complainants in a Considerable Sum of
Money on account of Arrears of Rent of certain Vellages known
and described by the appellation of the Boundary Villages held
of the Complainants by the said deceased Nagapah Chitty
together with one Bommah Chitty and being so indebted the
Complainants did by their said Agents or Representatives
make frequent applications for the discharge of the said Arrear
of Rent so due unto the Complainants as aforesaid and that
whereas the said Nagapah Chitty did in consideration of
the premises and for and on account of the payment of the
said Arrear of Rent so due unto the Complainants make a
certain Promissary Note in writing bearing date the Twenty
fourth day of May which was in the year of Christ one thou
sand Seven Hundred and Ninety one and Subscribed his
hand

hand writing thereto by which he promised to pay unto the Com-
plainants by the discription of the honorable Company of
Merchants of England meaning thereby the United company
of Merchants of England aforesaid trading to the East Indies
aforesaid the Sum of Five thousand two Hundred and forty four
Pagodas thirteen fanams and Seventy five Cash on the first day
of July then Next following to wit the first day of July which
was in the year One thousand Seven hundred and Ninety One
By reason whereof the said Nagapah Chitty became liable
to pay unto the Complainants the said Sum of Five thousand
two hundred and forty four Pagodas thirteen fanams and
Seventy five Cash at the time in the said Note for that
purpose limitted and appointed And that the said Nagapah
Chitty being so Indebted Did in consideration thereof and
in the said Twenty fourth day of May which was in the
year of our Lord One thousand Seven hundred and ninety
one undertake and faithfully Promise that he would well
and truly pay unto the Complainants the said Sum of Five
thousand two hundred and forty four Pagodas thirteen
fanams and Seventy five Cash Mentioned in the said
Note

Note at the time for that purpose therein limitted and ap-
pointed — And the Complainants by their Agents or Repre-
sentatives did further State that the said Deceased Nagapah
Chitty after having so made his promisary Note in writing
as aforesaid did Represent to the Complainants said Agents
or Representatives that the Collection of certain Sums on
account of Quit Rent appertaining to the said Boundary
Villages was attended with pecular difficulty to him the
Said Deceased and did thereupon earnestly solicit and
Request that the Complainants said Agents or Representa-
tives would accept of an Assignment of the said several Sums
due to him the said deceased from divers persons on account
of Quit Rent as aforesaid and take upon themselves the
Complainants said Agents the trouble and collection thereof
and allow the amount thereof when ascertained to be placed
to the credid of him the said Deceased Nagapah Chitty
with which said Request the Complainants said Agents
or Representatives were for the ease accomodation and conveni-
ence of the said Deceased Nagapah Chitty willing to comply
and did accordingly Signify their Assent to take upon
themselves

themselves the collection of the said Several Sums so due upon account of Quit Rent and to Credit the said Nagapah Chitty with the amount thereof when the same should be ascertained as by Reference to the said Promissary Note in writing a copy whereof Marked Annexed to the Complainants said Bill of Complaint and which the Complainants did pray might be taken as a part thereof the Original being alleged by them to be in the possession of their aforesaid Agents or Representatives and ready to be produced when Required The Complainants did say would appear — And the Complainants by their Agents or Representatives did further state unto the said Mayors Court that they did on the said first day of July One thousand Seven Hundred and Ninety One duly present the said Promissary Note in writing to the said Nagapah Chitty for payment and did also frequently thereafter in the life time of the said Nagapah Chitty Request of him to pay off and discharge the amount of his said Debt unto the Complainants But that the Said Nagapah Chitty instead of Satisfying the Complainants Said Claim did Sometime in the beginning of the Month of August which was in the said year One thousand Seven Hundred and Ninety one present

a certain Petition to the then Board of Revenue at which Said Board of Revenue William Petrie Esquire then one of the Complainants Agents or Representatives Presided and by which Said Petition (Copy whereof the Complainants did say was annexed for the Inspection of the said Mayors Court it would appear that the said Deceased did hold a farm of and from the Complainants of certain Boundary Villages and that having as in his said Petition was Set forth and alleged a certain Claim upon the Complainants an account of several spots or parcels of Ground therefore purchased of and from him the said Deceased by the Complainants He the said Deceased did in Petition the said then President and others the then members of the said Board of Revenue to Submit and Recommend to the Superior Board meaning the then Governour of Fort St George and others the members of the Government of Fort Saint George aforesaid as the Agents or Representatives of the Complainants to allow that the Complainants said Claim upon him the said Deceased for the arrears of Rent on account of the farm of the said Boundary Villages (so held of and from the Complainants by him the said Deceased

And

And for the payment of which he as aforesaid by his said promissory Note in writing) was alleged to have become liable) might be deducted from the Account which he the said Deceased alleged in his aforesaid Petition to be due and owing unto him for and on Account of the purchase of the said Spots or parcel of Ground by the Complainants aforesaid from him the said Deceased And that the Complainants said Agents or Representatives would grant unto him the Said Deceased a certain Bond or writing Obligatory under the Common Seal of the said united Company for any Balance that might appear to be due unto him the said Deceased after the said deduction of the Complainants Claim on account of the Rent for the Said Farm of the said Bondary Villages And the Complainants did State that their said Agents or Representatives being anxious to acquiesce in every reasonable and fair Requisition that he the said Deceased should have to Urge did direct that the Complainants said Claim should lay over until an arrangement should take place relative to the liquidation of the said Claim of the said Deceased upon the Complainants for and on account of the purchase of the said several spots or parcels

parcels of Ground and that certain Bonds bearing an Interest at and after the Rate of Eight per Cent per Annum were on the first day of June which was in the Year of Christ One thousand Seven Hundred and Ninety two given and granted unto the said Nagapah Chitty for the whole of his said Claim upon the Complainants for and on account of the said Spots or parcels of Ground by the Complainants from him the said Nagapah Chitty in his life time as aforesaid by the Agents or Representatives of the Complainants the then President and Council of Fort Saint George and that without any deduction whatever on account of the claim of the Complainants to the amount of the aforementioned promissary Note to the payment whereof according to the Tenor and Effect of the same he the said Deceased was alledged to have become liable as aforesaid the Complainants by their Agents or Representatives did further state that the said Deceased Nagapah Chitty in his mind well knowing and considering that the adjustment of his Claim for and on account of the said Spots or parcels of Ground theretofore purchased from him the said Deceased as above Recited in the Complainants said Bill of Complaint was

was by the Complainants Said Agents or Representatives the
then existing Government of Fort Saint George wholly and
Solely conducted under the direction of their Military
Department and that their Revenue Department had the
Sole Investigation of matters of Rent and so forth and that
the said Board of Revenue and Military Department were
in their Natures and Office totally seperate and distinct
Departments and hoping thereby to escape detection and
elude the vigilence of Government did on or about the Said
first day of June One thousand Seven Hundred and Ninety
One wrongfully concealing from the Agents of the Complainants
or from the person or persons Confidentially employed by
them that the said promissary Note was Still due and
Oweing unto the Complainants from him the said Nagapah
Chitty fraudulently Procure the said Bonds to be so granted
to him as aforesaid for the whole amount of his Claims
for and on account of the purchase made by the Complai-
nants as aforesaid And the Complainants did by their
Agents or Representatives further State That the whole
amount of the Said Bonds had since been paid off And
discharged

Discharged from the Treasury of the said Complainants at Fort
Saint George aforesaid — And the Complainants did pretend that
they were thereby aggrieved and injured in the full and just Sum
of Six thousand Five Hundred and Eighty two Pagodas three
fanams and Twenty Six Cash being the amount due on the said
Promissary Note the aforesaid Quit Rent having been first
deducted with Interest thereon from the first day of July which
was in the year One thousand Seven hundered and Ninety
one being the day on which the said Promissary Note became
Payable to the thirtieth of June One thousand Seven hundred
and Ninety five as by Copy of an account Current to the
Complainants Bill annexed marked B. the Complainants
did say would appear — And the Complainants by their
Agents or Representatives did further set forth that during
the life time of the said Nagapah Chitty they did frequently
and in a friendly manner by their Agents or Representatives
aforesaid apply for payment of the promissary Note aforesaid
to him the said Nagapah Chitty who frequently Promised
to pay off and discharge the same But that the said
Nagapah Chitty did without accounting with or in any

wise

wise Satisfying the Complainants in the promises on the thirtieth day of April in the (then) year One thousand Seven Hundred and Ninety five after having made his last will and Testament and therein appointed your Petitioners his Executors who having duly and in legal form proved the said will before the Kings Ordinary of the Mayors Court Did take upon themselves the Burthen and Execution thereof and by Vertue thereof did posses themselves of all the personal and other Estates of the said Nagapah Chitty to a very considerable amount And the Complainants by their Agents or Representatives did further state That your Petitioners having possessed themselves of the said Testators Estate as aforesaid the Complainants applied themselves in a friendly manner by their Agents or Representatives as aforesaid to be paid the amount of the Promissary Note aforesaid with Interest thereon as aforesaid out of the same And that the Complainants well hoped that your Petitioners would have complied therewith without Suit as in Equity and Justice they ought to have done But that your Petitioners having neglected so to do the Complainants did in and by their said Bill after exhibiting the Necessary Interrogatories pray that your

Your Petitioners might be decreed to pay and Satisfy unto the Complainants their Agents or Representatives the aforesaid Sum of Sixe thousand five hundred and Eight two Pagodas three fanams and thirty Siso Cash together with all such Interest as there was or should thereafter grow due thereon as also all Costs of Suit And your Petitioners Humbly Shew unto this Honorable Court that to the Complainants said Bill of Complaint your Petitioners did exhibit and file their Plea and answer And did therein and thereby amongst other things for Plea State that your Petitioners Testator at the time of his decease did stand Indebted unto several persons upon Bond and other specialties to a very Considerable amount But to what particular amount your Petitioners could not take upon themselves to Say as they had not then been able to examine the whole of the Books and Papers of their said Testator necessary to that purpose And your Petitioners did further state that their said Testator did in his life time carry on very large and extrinsive dealings in different parts of the world and by Reason of such his large and extensive dealings and by Reason of their not having been able to examine into all his their Testators said Books of Accounts and Papers they did not know nor had they been able to ascertain

by any means whether his their Testators Estate was or was not
Insolvent and as specialty debts had a preference over Simple con-
tract debts your Petitioners did therefore plead the same in Bar
to the Complainants said Bill of Complaint and did pray the
Judgement of the said Mayors Court — And your Petitioners
not waiving their said Plea but wholly relying thereon for answer
to the Complainants Said Bill of Complaint did say that they
did not know nor could they set forth whether their Testator did or
did not in his life time execute the Note of hand Copy whereof was
to the Complainants Said Bill of Complaint annexed — and that
even had their Testator executed the said Note of hand which
they did not admit yet the same was conditional and depended
upon an unadjusted account as appeared upon the face thereof —
And your Petitioners did further state that it did appear by
the Complainants own shewing that your Petitioners Testator
had sold to the Complainants certain pieces of Ground and did
Request them to deduct the amount by him due to them the
Complainants and give to him your Petitioners Testator their
Bond for the amount Balance that might Remain in his
favour that the Complainants did agree to such the requisition
of him your Petitioners Testator and did direct that their claim
upon

upon him should lie over until an arriangement should take
place Relative to the liquidation of the said Claim of your
Petitioners Testator on them the Complainants for and on
account of the said Peices of Ground and it did further
appear by the Complainants own shewing that in the Month
of June and year of christ One thousand Seven Hundred
and Ninety two - Bonds were by them Granted unto the
Testator of your Petitioners for and an account of the
purchase of the said peices of Ground by the Complainants
purchased of your Petitioners said Testator as aforesaid and
therefore your Petitioners did Submit to the said Mayors
Court that it was a Natural Conclusion that the said
Note of hand if ever executed by your Petitioners Said
Testator was accounted for by him and that the said Bonds
were by the Complainants granted upon the Balance that
Remained due to your Petitioners Testator and that the said
Bonds extinguish the said Note of hand if it was actually
executed by your Petitioners Said Testator and was unsatis
fied at the time the said Bonds were executed to him by
the Complainants — And your Petitioners did further Say
that they could not take upon themselves to set forth how -
and

And in what manner the different departments by which the Com-
plainants conduct their affairs nor was it material they were
advised to the matter in Question — your Petitioners Testator
offered as the Complainants did Say to liquidate a debt due to
them by setting off against it the amount of a Debt due from the
Complainats to him — that they accepted the said proposal and agreed
to give him Bonds for the Balance that might then remain due to
him and as they afterwards actually did execute Bonds for the
amount due to him it was fair to conclude that it was for the Said
Balance — And your Petitioners further did say that independant
of the matters and things therein before set forth there might be
found in the Books and Papers of their Testator Some Claims on the
Complainants but as they had not been able to examine the said
Books and Papers they were unable to speak thereto —

And your Petitioners further shew unto this Honorable Court that
to the aforesaid Plea of your Petitioners The Complainants by their
Agents or Representatives Did exhibit and file Demurrer and
did therein and thereby amongst other things state that they the
Complainants ought not by any thing alleged by your Petitioners
in their said Plea to be precluded from having their said Suit
thereof against your Petitioners Because they the said Complainants
did

Did say that the Said Plea by your Petitioners in manner and
form therein pleaded and the matters therein contained were
not sufficient in Law to preclude the Said Complainants
from having their said Suit against your Petitioners to which
Plea the Complainants did allege they were under no necessity
nor were they bound by Law in any wise to answer wherefore
and as they pretended for want of a Sufficient Plea in that
behalf the said Complainants did pray the Judgement of the
Said Mayors Court therein —

And your Petitioners further shew unto this Honorable Court
that to the said Demurrer of the said Complainants by their
Agents or Representatives your Petitioners did file a General
Joinder and that the attorney of the said Complainants did
thereafter pray that the said Plea of your Petitioners together
with the said Demurrer and Joinder as aforesaid might come
on to be heard before the said Mayors Court and the same was
accordingly ordered at the Instance of the said attorney of the
said Complainants to be set down for hearing and on the Sixth
day of September in the said year of our Lord One thousand
Seven Hundred and Ninety Six did come on to be argued
and Determined before the said Mayors Court and on hearing
the

the Pleadings made use of by the attornies on both sides the said Mayors Court did think fit to pronounce the said Demurrer of the said Complainants to be good and did order that your Petitioners Plea should be over ruled with Costs - by which Said order of the said Mayors Court your Petitioners do think themselves aggrieved and do therefore appeal there from unto this Honorable Court for the following amongst other Reasons

First. Because your Petitioners Plea did contain special matters and things which in the minds of your Petitioners should and ought to have operated against the said Complainants - Suit so long as such matters and things so specifically set forth did exeist and more especially as the said matters so impleaded by your Petitioners were not in the said Demurrer or by any thing apparent before the said Mayors Court at the time when the said Mayors Court did think fit to pass the said Order in any sort denied or contradicted of the Said Complainants through the Medium of their Agents or Representatives

Secondly - Because your Petitioners together with the Said Plea had filed and exhibited an Answer in the said Mayors Court and agreable to the practise of the Said Mayors Court Your Petitioners were entitled to the Benefit and advantage of all and several the matters and things in the said Answer Contained in aid and Assistance of the Said Plea and Answer being as your Petitioners are advised but one Indevisible and Sole Paper or Pleading and always so considered and estimated — And your Petitioners humbly shew to this Honorable Court that by a Copy of an extract of the Proceedings of the Said Mayors Court hereunto annexed the Original whereof being in the possession of your Petitioners and ready to be produced at the hearing if required it appears that the said Answer of your Petitioners was not considered or Read when the said Order of the said Mayors Court was made in the premises —

Wherefore and For all which Reasons and such others as may be offered at the hearing your Petitioners humbly pray that the said order of the said Mayors Court may be reversed and that this honorable Court will be pleased to grant unto your Petitioners such other relief in the premises as in their Wisdom may seem Meet —

/Signed/ Emanuel Samuel
Solicitor for Appellants

Extract

Extract from the Minutes of a Court held at the Town Hall on
Tuesday the 6th day of September Anno Domini 1796.

Present

James Daly Esquire Mayor
James Call William Webb
Andrew Ross John Mitford
William Abbott Alexr. Cockburn
and Richard Chase Aldermen —

The United Company of Merchants of England trading to the East Indies by their Agents or Representatives at their Presidency of Fort Saint George the Right Honorable Robert Hobart commonly called Lord Hobart and Edward Saunders and Earnest William Fallowfield — Rivers
Benjamin Roebuck Raiyestry Vyapoor Moodilliar Coolapah Chitty Son of Chinna Nauga Cootty Chitty and Voopalore Rencataroyloo Executors of the last Will and Testament of Nagapah Chitty deceased —

Bill with three Exhibits annexed Read —
Plea Read —
Demurrer read —
Joinder thereto read —

The Demurrer of the Complainant to the Plea of the Defendants and the Joinder thereto coming on to be Argued and Determined this day in the presence of the Attornies on both sides On Hearing the Pleadings made use of by the attornies and on due Consideration had thereon The Court are of Opinion that the Demurrer is Good — This Court doth therefore think fit to order and doth accordingly order that the Defendants Plea be over Ruled with Costs —

A true Extract
/Signed/ George Taylor Regr.

A True Copy
/Signed/ Emanuel Samuel
Solicitor for appellants

To

To the Right Honorable Lord Hobart
President and Governor &c a
Council of
Fort Saint George

Between the United Company of Merchants of England trading to the East Indies by their Agents or Representatives at their Presidency of Fort Saint George The Right Honorable Robert Hobart commonly called Lord Hobart Governor and Commander in chief of Fort Saint George aforesaid and President of the Council thereof and Edward Saunders and Ernst William Fallowfield Esquires Members of the Council of Fort St. George aforesaid and composing the Government thereof Complainants and Benyamin Roebuck Raiyo. stry Iyapoo Moodilliar Coolapah Chitty and Voopalore Venecataroyaloo Executors of the last Will and Testament of Nagapah Chitty deceased Defendants —

Filed in my Office
the 1st October 1796
J Webbe clk

The Answer of the said Complainants to the Petition and Appeal of the abovenamed Defendants —

These Respondents for answer to the Petition and Appeal of the said Petitioners or to as much thereof as these Respondents

Respondents are advised is material or necessary for them to reply unto answer and say that they do admit that some time on or about the twentieth day of October and year of Our Lord One thousand Seven Hundred and Ninety five these Respondents did by their Agents or Representatives aforesaid exhibit and file their Bill of Complaint in the Honorable the Mayors Court of Madraspatnam against the said Petitioners and did therein and thereby amongst other things State — that one Nagapah Chitty late of Madras Merchant and there deceased was in his life time and at the time of his decease indebted unto these Respondents in a considerable Sum of Money on account of Arrears — of Rent of certain Villages known and discribed by the appellation of the Boundary Villages held of these Respondents by the said Nagapah Chitty as set forth in the said Petition and Appeal —

And these Respondents do also admit as is further stated and set forth in the said Petition and Appeal that to these Respondents said Bill of Complaint the Petitioners did exhibit and and file their Plea and Answer as the same is recited in the said Petition and Appeal and these Respondents do further admit as is also stated in the said Petition and Appeal that to the said Plea these Respondents did exhibit and file their Demurrer — And these Respondents further admit that to the Answer of the said Petitioners these

These Respondents did file their Replication and that the said Petitioners having these Respondents said Demurrer filed a General Joinder as the same is likewise stated and set forth in the said Petition and Appeal the Plea Demurrer and Joinder were on the prayer of these Respondents Attorney in Court set down for hearing and did come on to be heard as the same is set forth in and by the said Petition and Appeal — And these Respondents admit that thereupon the said Mayors Court were pleased to over rule the said Plea of the said Petitioners as set forth in the said Petition and Appeal — But these Respondents do deny that thereby or by reason thereof the Appellants are in any shape injured or aggrieved as set forth in their said Petition or that they have any valid or Sufficient Cause to Appeal — therefrom —

And in answer to the first pretended Reason or Cause of Appeal stated by the said Appellants these Respondents Say notwithstanding the matters in the said Plea contained and insisted on in the said Petition of Appeal that even did the several matters exist as stated in the said Plea yet as the same do not amount to any thing that can preclude these Respondents from having and prosecuting their said Suit against the said Petitioners the said Order of the said Mayors Court of the Sixth day of the Month of September last past was correct and just and ought to be affirmed for though it may be true that there may be Bond debts of the said Testator and that he may have carried on large and extensive dealings in different parts of the world and though it may be true that the said Petitioners may not be so well acquainted with the affairs and states of their Testator as they ought to be yet as nothing in the said Plea amounts to a denial of or sets the said Order of the said Mayors Court setting aside the Petitioners said Plea ought as these Respondents are advised to be affirmed —

And in Answer to the Second Pretended Cause of Appeal these Respondents say they are advised and believe that the Plea and Answer of the said Appellants did not Constitute one indivisible and Sole paper or pleadings and that their said Answer ought not to have been taken in aid and assistance of their said Plea for these Respondents say that where there is Plea and answer to the Same Bill it is usual and Customary to argue the Plea first And they further say that such is the practice of the said Mayors Court and that the Appellants were so well satisfyed thereof

thereof they made no objection thereto nor prayed that the said Answer or any part thereof should be read or taken into consideration at the Arguing of the said Plea but so far from any objection having been started by the Petitioners to the mode of proceeding observed by these Respondents they did as of course file their Joinder to these Respondents Demurrer thereby putting Subject of Demurrer completely in Issue and ripe for discussion and the decision of the said Mayors Court

Wherefore these Respondents pray that the said Order of the said Mayors Court may be affirmed and that the Petitioners may be taxed with exemplary Costs for their vexatious Conduct —

/Signed/ Robert Williams
Solicitor for Respondents

Court

Court of Appeals
at
Madraspatnam

Thursday the 15th Day of December
Anno Domini 1796

Between Benjamin Roebuck of Fort St George Esqr Rayastry Iyapo Moodelly Coolapah Chitty Son of Channa Naga Cody Chitty and Voopalore Venkata-Royaloo of Madras Inhabitants Executors of the last will and Testament of Nagapah Chitty deceased Appellants and the Honble United Company of Merchants of England trading to the East Indies by their Representatives the Right Honble Lord Hobart their President and Governor of Fort St George and its dependances and Edward Saunders and [illegible] Fallofield Esqrs Members of their Council of Fort St George Respondents —

This Cause coming on this day to be heard and debated before this Court by the Attornies on both sides upon hearing the Petition of appeal and Answer and the Several Exhibits of the Honble the Mayors Court together with the Order of the said Court given in this Cause on Tuesday the 6th day of September 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 —

Hun-

/Signed/ J Webbe
Clk To

To the Kings most Excellent Majesty in Council

Between The united Company of Merchants of England trading to the East Indies by their Agents or Representatives at their Presidency of Fort Saint George the Right Honorable Robert Hobart Commonly called Lord Hobart Governor and Commander in Chief of Fort St George aforesaid and President of the Council thereof and Edward Saunders and Earnest William Fallowfield Esquires Members of the Council of Fort St George aforesaid and Composing the Government thereof Complainants — and Benjamin Roebuck Registry Pyapoo Moodilliar Coolapah Chitty and Coopaloro Vencataroy loo. Executors of the last Will and Testament of Nagapah Chitty Deceased Defendants

The Honorable Petition and Appeal of the abovenamed Defendents

Most Humbly Sheweth

That some time on or about the Twentieth day of October and year of our Lord One thousand Seven hundred and Ninety five the Complainants abovenamed by their Agents or Representatives aforesaid did Exhibit and file their Bill of Complaint

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

Complaint in the Honorable the Mayors Court of Madraspatnam against your Petitioners and did therein and thereby amongst other things State that one Nagapah Chitty late of Madras Merchant and then deceased was in his life time and at the time of his decease Indebted unto the Complainants in a Considerable Sum of Money on Account of Arrears of Rent of certain Villages known and discribed by the Appellation of the Boundary Villages held of the Complainants by the said Deceased Nagapah Chitty together with one Bommah Chitty and being so Indebted the Complainants did by their said Agents or Representatives make frequent applications for the discharge of the said Arrears of Rent so due unto the Complainants as aforesaid And that Whereas the said Nagapah Chitty did in Consideration of the Premisses and for and on Account of the payment of the said Arrear of Rent so due unto the Complainants make a certain promissory Note in Writing bearing date the Twenty fourth day of may which was in the year of Christ one thousand Seven Hundred and Ninety one and Subscribed his hand Writing thereto by which he promised to pay unto the Complainants by the discription of the Honorable Company of Merchants of England

England meaning thereby the United Company of Merchants of England aforesaid trading to the East Indies aforesaid the Sum of Five thousand two hundred and forty four Pagodas thirteen fanams and twenty five Cash on the first day of July then next following to wit the first day of July which was in the year one thousand Seven Hundred and Ninety one By Reason whereof the said Nagapah Chitty became liable to pay unto the Complainants the said Sum of Five thousand two hundred and forty four Pagodas thirteen fanams and Seventy five Cash at the time in the said Note for that purpose limitted and appointed And that the said Nagapah Chitty being so Indebted did in Consideration thereof and in the said Twenty fourth day of May which was in the year of our Lord One thousand Seven Hundred and Ninety one undertake and faithfully Promise that he would well and truely pay unto the Complainants the said Sum of Five thousand two hundred and forty four Pagodas thirteen fanams and Seventy five Cash mentioned in the said Note at the time for that purpose therein limitted and appointed - And the Complainants by their Agents or Representatives did further State that the said Deceased Nagapah Chitty after having so made his Promissory Note in Writing as aforesaid did represent to the

Complainants

Complainants said Agents or representatives that the collection of Certain Sums on Account of Quit Rent appertaineng to the Said Boundary Villages was attended with peculiar difficulty to him the said Deceased and did thereupon earnestly Solicit and request that the Complainants said Agents or Representatives would accept of an assignment of the said Several Sums due to him the Said Deceased from divers persons on account of Quit Rent as aforesaid and take upon themselves the Complainants said Agents the trouble and collection thereof and allow the amount thereof when ascertained to be pleased to the Credit of him the said Deceased Nagapah Chitty with which said request the Complainants said Agents or Representatives were for the ease accommodation and convenience of the said Deceased Nagapah Chitty willing to Comply and did Accordingly Signify their assent to take upon themselves the Collection of the said Several Sums so due upon account of Quit Rent and to Credit the said Nagapah Chitty with the amount thereof when the same should be ascertained as by reference to the said Promissory Note in Writing Copy whereof marked A. annexed to the Complainants said Bill of Complaint and which the Complainants did Pray might be taken

taken as a part thereof the Original being alledged by them to be in the Posession of their aforesaid Agents or Representatives and ready to be produced when required the Complainants did say would appear and the Complainants by their Agents or Representatives did further state unto the said Mayors Court that they did on the said first day of July one thousand Seven Hundred and Ninety one duly present the said Promissory Note in Writing to the Said Nagapah Chitty for payment and did also frequently thereafter in the life time of the said Nagapah Chitty request of him to pay off and Discharge the amount of his said Debt unto the Complainants But that the said Nagapah Chitty instead of Satisfying the Complainants said Claim did Some time beginning of the Month of aiigust which was in the said year One thousand Seven Hundred and Ninety one present a certain Petition to the then Board of Revenue William Petrie Esquire then one of the Complainants Agents or Representatives presided and by which said Petition / Copy whereof the Complainants did say was annexed for the Inspection of the said Mayors Court / it would appear that the said Deceased did hold a farm of and from the Complainants of certain Boundary Villages and that

that having as in his said Petition was set forth and alleged a certain claim upon the Complainants on account of Several Spots or parcels of Ground theretofore Purchased of and from him the said Deceased by the Complainants he the said Deceased did Petition the said then President and others the then Members of the said Board of Revenue to Submit and recommend to the Superior Board meaning the then Governor of Fort Saint George and others the Members of the Government of Fort Saint George aforesaid as the Agents or Representatives of the Complainants to allow that the Complainants said Claim upon him the said Deceased for the arrears of Rent on Account on Account of the Farm of the said Boundary Villages / so held of and from the Complainants by him the said Deciased and for the Payment of which he as aforesaid by his said Promissory Note in writing was alleged to have become liable / might be Deducted from the account which he the said Deceased Alleged in his aforesaid Petition to be due and owing unto him for and on Account of the Purchase of the said Spots or Parcel of Ground by the Complainants of and from him the said Deceased And that the Complainants said Agents or Repiresentatives would grant unto him the said Deceased a certain Bond or writing obligatory under the Common

Common Seal of the said United Company for any balance that might appear to be due unto him the said Deceased after the said Deduction of the Complainants Claim on account of the Rent for the said Farm of the said Boundary Villages and the Complainants did State that their said Agents or Representatives being anxious to Acquisce in every Reasonable and fair requisition that he the said Deceased should have to urge did Direct that the complainants said Claim should lay over until an arrangement should take place relative to the liquidation of the said claim of the said Deceased upon the Complainants for and on Account of the Purchase of the said Spots or of Ground. and that certain Bonds bearing an Interest at and after the rate of Eight per Cent per Annum were on the first day of June which was in the year of Christ One thousand Seven Hundred and Ninety two. given and granted unto the said Nagapah Chitty for the whole of his said Claim upon the Complainants for and on Account of the Purchase of the said Spots or Parcels of Ground by the Complainants from him the said Nagapah Chitty in his life time as aforesaid by the Agents or Representatives of the Complainants the then president and Council of Fort Saint George and that without any Deduction whatever on Account of the Claim of the Complainants to the amount of the

the aforementioned Promissory Note to the payment whereof according to the Tenor and Effect of the same he the said Deceased was alleged to have become liable as aforesaid and the Complainants by their Agents or Representatives did further State that the said Deceased Nagapah Chitty in his mind well knowing and Considering that the Adjustment of his Claim for and on account of the said Spots or Parcels of Ground theretofore Purchased from him the said Deceased as above recited in the Complainants said Bill of Complaint was by the Complainants said Agents or Representatives the then existing Government of Fort Saint George wholly and Solely Conducted under the Direction of their Military Department and that their Revenue Department had the Sole Investigation of matters of Rent and so forth and that the said Board of Revenue and Military Department were in their Nature and office totally Seperate and distinct Departments and hoping thereby to Escape detection and Elude the Vigilence of Government did on or about the said first day of June One thousand Seven hundred and Ninety one wrongfully Concealing from the Agents of the Complainants or from the person or persons confidentially Employed by them that the said Promissory Note was Still due and owing unto the Complainants from him the said Nagapah Chitty

Chitty fraudulently Procure the said Bonds to be so granted to him as aforesaid for the whole amount of his Claims for and an account of the Purchase made by the Complainants as aforesaid and the Complainants did by their Agents or Representatives further state that the whole amount of the said Bonds had since been paid off and Discharged from the Treasury of the said Complainants at Fort St. George aforesaid And the Complainants did pretend that they were thereby agrieved and injured in the full and Just Sum of Six thousand Five hundred and Eighty two Pagodas three fanams and Twenty Six Cash being the amount due on the said Promissory Note the aforesaid Quit Rent having been first Deducted with Interest thereon from the first day of July which was in the year one thousand Seven hundred and Ninety one being the Day on which the said Promissory Note became Payable to the thirtieth Day of June One thousand Seven hundred and Ninety five as by Copy of an account Current to the Complainants Bill Annexed Marked B. the complainants Did Say would appear — And the Complainants by their Agents or Representatives did further set forth that during the life time of the said Nagapah Chitty they did frequently and in a friendly manner by their Agents or Representatives aforesaid apply for payment of the

the Promissory Note aforesaid to him the said Nagapah Chitty who frequently Promised to pay off and Discharge the same But that the said Nagapah Chitty did without accounting with or in any wise Satisfying the Complainants in the premisses — on the thirtieth day of April in the year one thousand Seven hundred and Ninety five after having made his last Will and Testament and therein appointed your Petitioners his Executors who having duly and in Legal form proved the said Will before Hingo Ordinary of the Mayors Court did take upon themselves the Burthen Execution thereof and by Virtue thereof did Possess themselves of all the personal and other Estates of the said Nagapah Chitty to a very Considerable amount and the Complainants by their Agents or Representatives did further state that your Petitioners having possessed themselves of the said Testators Estate as aforesaid the Complainants applied themselves in a friendly manner by their Agents or Representatives as aforesaid to be paid the amount of the Promissory note aforesaid with Interest thereon as aforesaid out of the same and that the Complainants will hoped that your Petitioners would have Complied therewith without Suit as in Equity and Justice they

they ought to have done But that your Petitioners having neglected so to do the Complainants did in and by their said Bill after Exhibiting the Necessary Interrogatories pray that your Petitioners might be Decreed to pay and Satisfy unto the Complainants their Agents or Representatives the aforesaid Sum of Sixe thousand five hundred and Eighty Two Pagodas three fanams and thirty Six Cash together with all such Interest as then was or should thereafter grow due thereon as also all Costs of Suit—

and your Petitioners most humbly Shew unto your Excellent Majesty in Council that to the Complainants said Bill of Complaint your Petitioners did Exchibit and file their Plea and Answer and did therein and thereby Amongst other things For Plea State that your Petitioners Testator at the time of his Decease did stand Indebted unto Several persons upon Bond and other Specialties to a very Considerable Amount But to what Particular Amount your Petitioners Could not take upon themselves to Say as they had not then been able to examine the whole of the Books and papers of their said Testator Necessary to that purpose and your

your Petitioners did further state that their said Testator did in his life time Carry on very large and extensive Dealings in different parts of the world and by reason of such his large and extensive Dealings and by reason of their not having been able to examine into all his their Testators said Books of accounts and papers they did not know nor had they been able to ascertain by any means whether his their Testators Estate was or was not Insolvent and as Specially Debts had a preferrence over Simple Contract Debts your Petitioners did therefore Plead the same in Bar to the Complainants said Bill of Complaint and did pray the Judgement of the said Mayors Court and your Petitioners not waiving their said Plea but wholly relying thereon for answer to the Complainants said Bill of Complaint did Say that they did not know nor could they set forth whether their Testator did or did not in his life time Execute the note of hand Copy whereof was to the Complainants said Bill of Complaint annexed - and that even had their Testator Executed the said note of hand which they did not admit yet the same was conditional and Depended upon an unadjusted account as appeared upon the face thereof And

your

Your Petitioners did further state that it did appear by the Com
plainants own Shewing thatt your Petitioners Testator had sold
to the Complainants certain peices of Ground and did request
them to Deduct the amount by him due to them the Complai
nants and give to him your Petitioners Testator their Bond
for the Amount Balance that might remain in his favor that
the Complainants did Agree to such the Requisition of him
your Petitioners Testator and did direct that their Claim upon
him should be over until an Arrangement should take place
relative to the Liquidation of the said Claim of your Petitioners
Testator on them the Complainants for and on account of the
said Peices of Ground and it did further appear by the Complai
nants own Shewing that in the Month of June and year of
Christ one thousand Seven Hundred and Ninety two Bonds
were by them granted unto the Testator of your Petitioners for
and on Account of the Purchase of the said Peices of Ground
by the Complainants Purchased of your Petitioners Said
Testator as aforesaid and therefore your Petitioners did Sub
mit to the said Mayors Court that it was a Naturab Conclu
sion that the said Note of hand if ever Excauted by your
Petitioners

Petitioners said Testator was accounted for by him and that the
said Bonds were by the Complainanants granted upon the
Balance that remained due to your Petitioners Testator and
that the said Bonds esctinguish the said Note of hand if it
was Actually Executed by your Petitioners said Testator and
was unsatisfied at the time the said Bonds were Executed
to him by the Complainants and your Petitioners did further
Say that they could not take upon themselves to set forth
how and in what manner the Different Departments by
which the Complainants Conduct their affairs Nor was it
Material they were Advised to the matter in Quistion your
Petitioners Testator offered as the Complainants did Say to
liquidate a Debt due to them by Setting off against it the
Amount of a Debt due from the Complainants to him - that
they accepted the said Proposal and agreed to give him
Bonds for the Balance that might then remain due to him
and as they afterwards actually did Execute Bonds for
the Amount due to him it was fair to conclude that it was
for the said Balance And your Petitioners further did say
that independant of the matters and things therein before
setforth

Set forth there might be found in the Books and Papers of their Testator some Claims on the Complainants but as they had not been able to Examine the said Books and Papers they were unable to speak thereto —

And your Petitioners further Shew unto your most Excellent Majesty in Council that to the aforesaid Plea of your Petitioners the Complainants by their Agents or Representatives did exhibit and file their Demurrer and did therein and thereby Amongst other things State that they the Complainants ought not by any thing alleged by your Petitioners in their said Plea to be precluded from having their said Suit thereof against your Petitioners — Because they the said Complainants did Say that the said Plea by your Petitioners in manner and form — therein pleaded and the matters therein Contained were not Sufficient in the Law to preclude the Said Complainants from having their said Suit against your Petitioners to which Plea the Complainants did allege they were — under no necessity nor were they bound by Law in any wise to answer it wherefore and as they pretended for want of a Sufficient Plea in that behalf the said Complainants did Pray the Judgement of the said Mayors Court therein —

And your Petitioners further shew unto your most Excellent Majesty in Council that to the said Demurrer of the said Complainants by their Agents or Representatives your Petitioners did file a General Joinder and that the attorney of the said Complainants did thereafter Pray that the said Plea of your Petitioners together with the said Demurrer and Joinder as aforesaid might come on to be heard before the said Mayors Court and the same was Accordingly Ordered at the Instance of the said Complainants to be Set down for hearing and on the Sixth day of September in the said year of our Lord One thousand Seven hundred and Ninety Six did come on to be argued and Determined before the said Mayors Court and on hearing the Pleadings made use of by the attornies on both Sides the said Mayors Court did think fit to Pronounce the said Demurrer of the Said Complainants to be good and did Order that your Petitioners Plea should be — overruled with Costs as by Copy of the said Order hereunto Annexed for the Inspection of your most — Excellent Majesty in Council to which your Petitioners most

most humbly beg leave to refer and Pray the same may be taken and Admitted as part of this their Petition and Appeal May more fully and at large appear

And your Petitioners most humbly Shew unto your most Excellent Majesty in Council that Conceiving themselves very Materially injured and aggrieved by the said Order of the said Mayors Court made in the said Cause as aforesaid your Petitioners did appeal therefrom to the Court of Appeals at Madraspatnam and did Assign as Causes or Reasons for Appeal - First that your Petitioners Plea did Contain certain special matters and things which in the minds of your Petitioners should and ought to have operated against the said Complainants suit so long as such matters and things so Specifically set forth did exist and more Especially as the said matters so impleaded by your Petitioners were not in the said Demurrer or by any thing apparent before the said Mayors Court at the time when the said Mayors Court did think fit to pass the Said Order in any sort denied or Contradicted of the said Complainants through Medium of their Agents or Representatives

Secondly

Secondly that your Petitioners together with the said Plea had filed and Exhibited an Answer in the said Mayors Court and Agreeable to the practice of the said Mayors Court your Petitioners were entitled to the benefit and Advantage of all and Several the matters and things in the said Answer contained in aid and assistance of the said Plea the said Plea and Answer being as your Petitioners are advised but one indivisible and Sole paper or Pleading and alwise so Considered and Estimated and your Petitioners humbly Shew unto your most Excellent Majesty in Council that by a Copy of an Extract of the Proceedings of the said Mayors Court hereunto annexed the original whereof being in the possession of your Petitioners and ready to be produced at the hearing if required it appears that the said Answer of your Petitioners to the said Plea annexed was not Considered or read when the said order of the said Mayors Court was made in the Premisses

And your Petitioners most humbly Shew unto your most Excellent Majesty in Council that thereupon your Petitioners did in and by their said Petition of Appeal humbly Pray that the said Court of Appeals would

Would Reverse the said Order of the said Mayors Court and grant unto your Petitioners such other relief in the Premisses as in the Wisdom of the said Court should Seem Meet

And your Petitioners most humbly Shew unto your most Excellent Majesty in Council that to your Petitioners said Petition of appeal the Complainants Did Exhibit and file their Answer in the said Court of Appeals and did therein and thereby amongst other things admit that some time on or about the Twentieth day of October and year of our Lord One thousand Seven Hundred and Ninety five the said Complainants Did by their Agents or Representatives aforesaid Exhibit and file their Bill of Complaint in the Said Mayors Court at Madraspatnam against the Said Petitioners and did therein and thereby State that one Nagapah Chitty late of Madras Merchant and then deceased was in his life time and at the time of his decease Indebeted unto the said Complainants in a Considerable Sum of Money on Account of Arrears of Rent of certain Villages known and Discribed by the appellation of the Boundary Villages held of the said Complainants by the Said Nagapah Chitty as Setforth in the said Petition and Appeal

And the said Complainants did also Admit as was further Stated and setforth in the said Petition and appeal that to the said Complainants said Bill of Complaint the Petitioners did exhibit and file their Plea and Answer as the same was recited in the said Petition and appeal and the said Complainants did further admit as was also stated in the said Petition and appeal that to the said Plea the said Complainants did Exhibit and file their Demurrer And the said Complainants further admit that to the Answer of the said Petitioners the said Complainants did file their Replication and that the said Petitioners having to the said Complainants said Demurrer filed a General Joinder as the same was likewise Stated and setforth in your Petitioners said Petition and Appeal the Plea Demurrer and Joinder were on the prayer of the said Complainants attorney in Court set down for hearing and did come on to be heard as the same was setforth in and by your Petitioners said Petition and appeals and the said Complainants did Admit that thereupon the said Mayors Court were pleased to over rule the said Plea of your Petitioners as setforth and stated

Stated in your Petitioners said Petition and appeal But the said Complainants did deny that thereby or by reason thereof your Petitioners were in any Shape injured or aggrieved as setforth in their said Petition of Appeal or that they had any Valid or Sufficient Cause to Appeal therefrom - And - in Answer to the First reason or Cause of Appeal Stated by the said Appellant the Complainants did Say that notwithstanding the matters in the said Plea Contained and insisted on in the Said Petition of Appeal that even did the Several matters exist as Stated in the said Plea yet as the same did not Amount to any thing that could preclude the said Complainants from having and Prosecuting their said Suit against your Petitioners the said Order of the said Mayors Court of the Sixth day of the Month of September last past was correct and just and ought to have been Affirmed for though it might be true that there was Bond Debts of the said Testator and that he might have carried on large and extensive dealings in different parts of the world and though it might also have been true that the said Petitioners might not be so well acquainted with the affairs and Estate of their Testator as they

thay ought to had been yet as nothing in the said Plea Amounted to a denial of a[illegible] the said Order of the said Mayors Court Setting aside the Petitioners said Plea ought as the said Complainants did say they were advised to be Affirmed - and in answer to the Second Cause of Appeal the said Complainants did Say they were advised and believed that the Plea and Answer of the said Appellants did not Constitute one indivisible and Sole Paper or Pleading and that their said answer ought not to have been taken in aid and assistance of their Said Plea for the said Complainants did Say that where there was Plea and Answer to the same Bill it was usual and Customary to Argue the Plea first - and they did further Say that such was the Practice of the Honorable the Mayors Court and that the Appellants were so well Satisfied thereof they made no objection thereto nor Prayed that the said Answer or any part thereof should have been Read or taken into Consideration at the arguing of the said Plea - but so far from any objection having been Started by the Petitioners to the mode of Proceeding Observed by the said Complainants they did as of Cours file their Joinder to the Complainants

Demurrer

thereby Justifying the Judgment Demurred
Demurrer Completely in Issue and Ripe for discussion and
Decision of the said Mayors Court

And your Petitioners most humbly
Shew unto your Most Excellent Majesty in Council that the
Complainants did thereupon in and by their Said Answer
Pray that the said Order of the said Mayors Court might
Stand Confirmed and that your Petitioners might be Taxed
with Exemplary Costs

And your Petitioners most humbly Shew
unto your most Excellent Majesty in Council that your
Petitioners said Petition and Appeal and the Complainants
answer thereto Coming on to be heard and Determined before
the said Court of Appeals on the fifteenth Day of the present
Month of December and year of our Lord One thousand Seven
Hundred and Ninety Six the said Court of Appeals was pleased
to Confirm the Order of the said Mayors Court and dismiss your
Petitioners said Petition and Appeal with Costs as by the Copy
of the said order hereunto annexed for the Inspection of your
most Excellent Majesty in Council to which your Petitioner
humbly Crave Leave to refer and Pray the same may be taken
in

in aid and assistance of this your Petitioners Petition and Appeal
may more fully and at large appear

By which said Order of the said Mayors
Court and Order of the said Court of Appeals your Petitioners
humbly Conceive themselves much injured and Aggrieved and do
therefore appeal therefrom to your most Excellent Majesty in Council
for the following amongst other Reasons

First. Because the said matters and things in your Petitioners
Said Plea contained ought in an equitable Consideration if not
in law to have operated fully against the Suit of the said Complai-
nants by their Said Representatives and the said Mayors Court
and the said Court of Appeals having an equitable Jurisdiction
should and ought to have attended to the said and Several
matters averred and impleaded by your Petitioners in their said
Plea and your Petitioners Shew to your most excellent Majesty
in Council that in their said Plea they did set forth and allege
and which was in no Sort Contradicted of the said Complainants
by their Representatives as aforesaid - that their Testator at
the time of his Decease did stand Indebted unto several and
Sundry Persons on Bond and other Specialties to a very Consi-
derable Amount - but as to the precise Amount they could not

Say

Say by reason that they had not at the time of Filing their said Plea been able to Examine the whole of the Books of their said Testator and your Petitioners did further state that their Testator in his life time had carried on large and extensive Dealings in different parts of the world and by reason whereof and in Consideration as aforesaid / that they had not Examined their Testators Books / they could not pronounce whether the Esstate of their said Testator was or was not Insolvent and therefore your Petitioners being advised that Debts of Specially being of a higher and more Solemn Nature than Simple Contract Debts / of which last discription the Debt of the said Complainants was alleged to be / were entitled to a priority of payment they did Consider that such Simple Contract Debt of the said Complainants could not have been Safely Discharged by your Petitioners (in case the same should have been established) until the said Debts of Specially should have been primarily liquidated and under that impression they did plead the Said and several matters to the said Bill of the said Complainants exchibited against them as aforesaid and of

Such

Such said and Several matters they are Advised that they ought to have been Allowed an equitable Advantage - Inasmuch as your Petitioners being Executors were liable to all and every the actions which might have been Instituted against them by any Specially Creditor or Creditors for and on account of their Respecture Creditors to the Estate of your Petitioners said Testators the said Nagapah Chitty if your Petitioners had discharged the Simple Contract Debt of the said Complainants to and it had Eventually happened that there had not been Asets forth coming to Satisfy their respective Claims as went not only Possible but probable and your Petitioners That they that they had averred on their Several Oaths that their Testator at the time of his Decease was Indebted unto Several persons on Bond to a very Considerable Amount and such Bonded Debts / being unpaid / they might have been chargeable to the with in failure of Asets and therefore they humbly presume that from a necessary caution due to their Situation they were authorised to implead the said and Several matters by them impleaded and that the said Mayors Court and Court of Appeals in the Special case of your Petitioners were bounden to allow thereof as against the Plaint of the said Complainants as answering were

arising on the said Simple Contract Debt as aforesaid and should and ought to have received the Plea of your Petitioners

Secondly Because the matters and things Setforth by your Petitioners in their said Plea do Amount by Necessary Implication to a Denial of afsets although a denial is not alleged in express Terms For your Petitioners humbly shew that they had averred in their said Plea as they have Recited in the preceding Reason of appeal to your most Excellent Majesty in Council that their Testator did stand Indebted at the time of his Decease in Debts of Specially to a considerable Amount and that such Debts of Specially were Superior in their Nature to Simple Contract Debts / of which kind the Complainants Charged their Debts to be / and further that from their want of acquaintance with the state of their Testators affairs they did not know whether their Testators Estate was Solvent or otherwise and your Petitioners humbly presume the premises considered that it must almost Necessarily be inferred that your Petitioners were without afsets in their hands or at least without afsets for the Satisfaction of any other than Debts of Specially known to them at the time of filing their said Plea and which said last mentioned Debts were stated to be and

and are of Considerable Amount For your Petitioners said Plea was evidently founded on their apprehensions if they had farried the Demand of the said Complainants that they might have been liable to the claims of Bonded Creditors which might appear and they could not have entertained nor can they be Supposed to have entertained apprehensions of Debts which they did not know to Exist and therefore as they pleaded the said Debts of Specially of a Considerable Amount and their apprehensions that if they Discharged the Amount of the said Complainants Claim they might become liable to Some of Such Specially Creditors it must consequently result that they has not afsets to Satisfy all the Bonded Claims then known together with the Simple contract Debts of the said Complainants for had your Petitioners had afsets or could have been Supposed to have afsets to those Ends they could not had set up the matters impleaded by them to the Complainants Bill And your Petitioners further Shew to your most Excellent Majesty in council that in the Pleadings had in the Cause between your Petitioners and the said Complainants there was nothing alleged or Shewn to do away such Inference or any thing Asserted or proven that your Petitioners had afsets further than to Satisfy such Bonded Claims as were

were known to them And therefore your Petitioners humbly contend that the said Mayors Court Should have Sustained the Plea of your Petitioners

Lastly Because your Petitioners besides their said Plea had exhibited several matters and things by way of Answer and which said matters and things were Submitted at one and the same time and on the same Paper with their said Plea and Should and ought therefore as your Petitioners are advised to have been considered with the said Plea and for the Reasons Assigned by your Petitioners in their said Second Reasons in their Petition to the said Court of Appeals

Forall which Reasons and such others as may be offered at the hearing your Petitioners most humbly Pray your most Excellent Majesty in Council will be pleased to reverse the said Order of the said Mayors Court and Order of the Court of Appeals and that your most Excellent Majesty in Council will be pleased to grant your Petitioners such further relief in the Premises as to your Royal Wisdom shall Seem Meet

/Signed/ Emanuel Samuel
Solicitor for Appellants

Extract

Extract from the Minutes of a Court held at the Town Hall on Tuesday the 6th Day of September Anno Domini 1796

Present

James Daly Esquire Mayor
James Call William Webb
Andrew Ross John Mitford
William Abbott Alexander Cockburn
and Richard Chase Aldermen

The united Company of Merchants of England trading to the East Indies by their Agents or Representatives at their Presidency of Fort Saint George the Right Honorable Robert Hobart Commonly Called Lord Hobart And Edward Saunders and Ernest William Fallowfield

vers
Benjamin Roebuck Raujestry Iyapoo Moodiliar Coolapah Chitty Son of Chinna Nagga Cooty Chitty and Voopalore Vencatanny los Executors of the last Will and Testament of Nagapah Chitty Deceased

Bill with three Exhibits annexed Read

Plea Read
Demurrer Read
Joinder thereto Read

The Demurrer of the Complainant to the Plea of the Defendants and the Joinder thereto Coming on to be Argued

Arguid and Determined this day in the Presence of the attornies on both Sides on Hearing the Pleadings made use of by the attornies and on due Consideration had thereon the Court are of Opinion that the Demurrer is good this Court doth therefore think fit to Order and doth accordingly Order that the Defendants Plea be over ruled with Costs —

A True Extract

/Signed/ George Taylor Regr.

A true Copy

/Signed/ Emanuel Samuel

Solicitor for appellants

Court —

Court of Appials
Madraspatnam

Thursday the 15th day of December
Anno Domini 1796 —

Between Benjamin Roebuck of Fort Saint George Esquire Raycotty Iyapoo Moodelly Coolapah Chitty Son of Chinna Nauga Cooty Chitty and Voopalore Vencataroy alias of Madras Inhabitants Executors of the last will and Testament of Nagapah Chitty Deceased Appellants and the Honorable United Company of Merchants of England trading to the East Indies by their Representatives the Right Honorable Lord Hobart their President and Governor of Fort Saint George and its Dependancies and Edward Saunders and Ernest William Fallowfield Esquires Members of their Council of Fort St George Respondents —

This Cause Coming on this day to be heard and Debated before this Court by the Attornies on both Sides upon hearing the Petition of Appeal and Answer and the Several Exhibits of the Honorable the Mayors Court together with the Order of the said

Court

Court given in this Cause on Tuesday the 6th day of September 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 Honorable the Mayors Court do Stand Affirmed and that the Appellants Petition be hence Dismissed with Costs

Thus

/Signed/ J. Webbe Clk

A true Copy

/Signed/ Emanuel Samuel

Solicitor for Appellants

To

To the Kings most Excellent Majesty in Council

Between the United Company of Merchants of England trading to the East Indies by their Agents or Representatives at their Presidency of Fort Saint George The Right Honorable Robert Hobart Commonly called Lord Hobart Governor and Commander in Chief of Fort St George aforesaid and President of the Council thereof and Edward Saunders and Ernst William Fellowfield Esquires Members of the Council of Fort Saint George aforesaid and Composing the Goverment thereof Complainants and Benjamin Roebuck Rayistry Iyapoo Moodilliar Collapah Chitty and Voopalore Venatarayaboo Executors of the last Will and Testament of Nagapah Chitty Deciased - Defendants

Filed in my Office the 19th January 1797 J. Webbe Clk

The Answer of the above named Compilainants to the Petition and appeal of the above named Appellants

The Said Respondents for answer to the said Petition and Appeal or unto as much thereof as these Respondents Are advised

to be material for them to make answer unto Say That they admit as stated by the Appellants in their said Petition and Appeal — that Some time on or about the Twentieth day of October and year of Our Lord one thousand Seven Hundred and Ninety five they these Respondents by their Agents or Representatives aforesaid did Exhibit and file their Bill of Complaint in the Honorable the Mayors Court at Madraspatnam against the said Appellants and did therein State that one Nagapah Chitty late of Madras Merchants them deceased was in his life time and at the time of his decease indebted unto these Respondents in a Considerable Sum of Money on account of arrears of Rent of certain Villages known and discribed by the appellation of the Boundary — Villages held of these Respondents by the said deceased — Nagapah Chitty together with one Bommah Chitty and that being so indebted these Respondents did by their said agents or Representatives make frequent applications for the discharge of the said arrears of Rent so due as aforesaid and did setforth that the said Nagapah Chitty did for and on account of the — Payment of the said Arrear of Rent so due to these Respondents make a Certain promissory Note in writing bearing date the Twenty fourth

Twenty fourth day of May in the year One thousand Seven hundred and Ninety one and did Subscribe his name thereto by which he Promised to pay unto these Respondents by the discription of the Honorable Company of Merchants of England trading to the East Indies the Sum of Five thousand Two hundred and forty four Pagodas thirteen fanams and Seventy five Cash on the first day of July then next following and these Respondents do admit that they did in their said Bill further — state the Several matters and things as Recited in the Appellants said Petition of Appeal to your Most Excellent Majesty in Council and these Respondents do further admit that in their said Bill of Complaint to the said Mayors Court they did setforth that they had frequently applied for Payment of the same as alleged in the said Petition and that the said Nagapah Chitty had departed this life without accounting with these Respondents or in any wise satisfying these — Respondents in the premises after having first duly made and publishes his Last Will and Testament and therein appointed the said Appellants the Executors thereof —

And these Respondents also admit that it was further stated in their said Bill that the Appellants — having

having duly proved the same did take upon themselves the Burden and Execution thereof and possessed themselves of all the personal and other Estates of the said deceased to a very Considerable Amount and that the appellants having so possessed themselves thereof these Respondents did Apply themselves to be paid the Amount of the said Promissory note and these Respondents further admit they did in their said Bill pray that the said Mayors Court would be pleased to decree that the said Appellants might pay and Satisfy these Respondents their Agents or Representatives the aforesaid Sum of Sixe thousand Five hundred and Eighty two Pagodas three fanams and thirty Sixe Cash with all such Interest as then was or should thereafter grow due thereon as also all Costs of Suit—

And these Respondents do also admit as is further stated and Setforth in the said Petition and appeal that to these Respondent said Bill of Complaint the Petitioners did Exhibit and file their Plea and answer as the same is Recited in the said Petition and Appeal But these Respondents humbly Submit to your most Excellent Majesty in Council that the Recital by the said appellants of their said

Said answer in their Petition and Appeal to your most Excellent Majesty in Council is altogether irregular and unusual in as much as the point on which their said Petition is grounded and against which their measures ought alone to be directed is the Order of the said Mayors Court of the Sixth day of September now last past Overruling the pretended Plea in Bar of the said Petitioners to these Respondents said Bill of Complaint and the Subsequent Order of the Court of appeals thereon confirming the same in which the answer was not at issue nor could the said answer have been was it read before the said Mayors Court or the said Court of appeals These Respondents therefore humbly Submit to your most Excellent Majesty in Council that the recital of the said answer in the said Petition and Appeal is improper and vexatious as tending uselessly to swell and increase the Papers and expences in this cause and that the same ought be expunged with Costs to be paid by the said appellants for these Respondents humbly Crave Leave to Observe to your most Excellent Majesty in Council that the said answer of the said appellants is mostly Composed of Extracts from the Bill of Complaint of these Respondents introduced as it should seem merely for the purpose of deducing therefrom argumentative conclusions unfounded

unfounded in Law or Equity and which these Respondents submit being superfluous and irrelevant ought not to have made a part of the same And these Respondents further Answering do admit as is also Stated in the said Petition and Appeal that to the said Plea these Respondents did Exhibit and file their Demurrer and did therein and thereby amongst other things state as the same is setforth Stated and alledged by the appellants in their Petition and Appeal and these Respondents do also admit as Stated in the said Petition and Appeal that to the said Demurrer of these Respondents the Appellants did file their Joinder and that the attorney of these Respondents did thereafter pray and the said Mayors Court did Order as Stated in the said Petition and these Respondents admit as Stated in the said Petition and Appeal that the said Plea together with the Demurrer and Joinder as before said did come on to be argued and determined before the said Mayors Court on the Sixth day of September in the year of our Lord One thousand Seven hundred and Ninety Six And that on hearing the Pleadings made use of by the attornies on both sides the said Mayors Court did think fit to pronounce the said

Demurrer

Demurrer of these Respondents to be good and did Accordingly Order that the Plea of the said Appellants Should be Over Ruled with Costs

And these Respondents further answering admit that from the said Order of the said Mayors Court the Appellants did Appeal to the Court of Appeals at Madraspatnam and did use and assign the pretended Causes or Reasons for such appeal as are Stated in their Petition of appeal to your most Excellent Majesty in Council and did pray as recited in and by the said Petition and Appeal -

And these Respondents do Admit that to such the Petition and appeal of the said Appellants these Respondent did Exhibit and file their Answer in the said Court of Appeals in manner and form as the appellants have recited the same in their said Petition and Appeal and did pray as the same is Stated and setforth by the said appellants And these Respondents do likewise admit that the said Petition and appeal together with the answer of these Respondents came on to be heard and determined before the said Court of Appeals as Stated in and by the said Petition and Appeal - and that the

the said Court was pleased to confirm the Order of the said Mayors Court and to dismiss the Petition of the said appellants with costs as setforth and alledged by the said appellants in their said Petition and appeal to your most Excellent Majesty in Council but these Respondents do deny that by the said Order of the said Mayors Court or by the Order of the said Court of appeals the said appellants are in any wise injured or aggrieved or that they have any good or Sufficient Cause or reason for Appealing therefrom to your Most Excellent Majesty in Council

And for answer to the first and Several Reasons or Causes of Appeals setforth by the said appellants these Respondents say that they are advised and belive the Respective Orders of the Mayors Court and Court of Appeals to over Rule the said Plea were Just and proper in so much as the existence of bond debts neither put in Suit nor specified nor ascertained in their Amount was not a Sufficient Reason to bar these Respondents Action for the recovery of arrears of Rent acknowledged to be due by Note of hand neither was it a Sufficient reason to bar their said Action that the said Appellants Could not say whether the Estate of their Testator was or was not insolvent in as much as from their uncertainly whether there were afsets to answer all demands upon the Estate it was Persumable there were at the least afsets Sufficient to pay the Bond Creditors and the demand of these Respondents which being for arrears of Rent as aforesaid had as they are advised and belive an equal Claim to payment and in answer to the last reason for Appealing to your most Excellent Majesty in Council these Respondents Say that Plea and Answer though written on the same paper and filed at the Same time are as they are advised and believe in their nature Seperate and distinct pleadings and are so considered in the practice of the said Mayors Court and these Respondents humbly Submit to your most Excellent Majesty in Council that at the hearing of the said Plea the Appellants did in no wise object to the pratice of the Court in this respect or insist on or require their answer to be heard at the same time

Wherefore and for such other reasons as may be offered at the hearing these Respondents humbly Pray that your most

Most Excellent Majesty in Council
will be pleased to affirm the said Order
of the said Mayors Court and the said decree
of the Court of Appeals and that the said
Appellants may be Taxed with exemplary
Costs for their very litigious Conduct

/ Signed / Robert Williams
Solicitors for Respondent