135

Supreme Court Series VI

Appeals & Writs of Error Transcripts

Vol 33.

Vol 32

25,000—4-5-32.

Block 7

Rack No.

Shelf No.

Serial No. 33

General No. 1209

504

To the Right Honble Robert Lord Hobart

Governor and the Council of

Fort Saint George

In the Honble the Court of Appeals at Madraspatnam

Between Achy Lably of madras Inhabitant by his attorney and Assignee Jacob Isaacs of the same place Inhabitant Complainant and Sahoo Mayahamad also of madras Inhabitant Defendant

The humble Petition and appeal of the above named Defendant

Sheweth

That the above named Complainant did on or about the on Nineteenth Day of November One Thousand Seven hundred and Ninety four Exhibit his Bill of Complaint against this appellant in the Honble the Mayors Court charging this Appellant to stand indebted to him on Bond and account Current the Copy of the Letter annexed to his said Bill of Complaint in the Sum of One hundred and Seventy Six Star Pagodas Thirteen fanams and

Filed in my office the 20th June 1796
J Webbe Clk

and Ten Cash the Bond said to bear date the Seventeenth Day of Sept^r One Thousand Seven hundred and Seventy four as would more fully appear by the said Bond said to be duly Executed to the Complainant Achy Labby by this Appellant and a Translation of the same into the English language and an assignment of the said Bond the said Several documents being in the hands of the Complainants attorney ready to be produced when required and this Appellant sheweth That the said attorney or Transferree Jacob Suaes having sworn to the Debt this Appellant was arrested This appellant sheweth That being admitted under the usual proof of Poverty to defend against such Suit in forma Pauperis he did duly answer the said Bill and on his Oath say Oyer being first granted him of the said Bond that he did never Execute the same nor did in any manner stand indebted to the said Complainant against whom this Appellant had indeed claims which by reason of his poverty he was unable to prosecute and this Appellant sheweth that the said Complainant did file his Replication to such answer and did thereby insist that this Appellant had Executed the Bond and that he the Complainant would in due time fully prove the consideration for this appellant having so Executed the same and did further insist that as this Appellant did not by the answer deny to have made the payments on account of the Bond as credited in account current that therefore a presumption arose in favor of the Bond in which state Issue having Joined and witnesses on both sides having been Examined the Cause came on to be heard on or about the Seventh June Instant when the said Mayors Court were pleased to Decree against this Appellant in favor of the said Complainant to the full amount of his Claim as by a Copy of the said Decree hereunto annexed may appear By which Decree this Appellant is aggrieved in as much as the said Complainant hath Established no part of his case and Sathe therefore appeal therefrom to this Honble Court For this Appellant Sheweth that it is evident on construing the Depositions in the Cause with the Complainants Declaration that there is neither proof of Debt nor Bond, nor payment on account as pretended to be credited in account Current to the Bill annexed and all these proofs the Complainant by his Readings undertook And this Appellant here adverts to the Bond as it is called with the English Translate and thereon prays the Judgment of this Honble Court For this Appellant Submits that

that a badjan leaf without any of the Solemnities of a Bond such as a Seal a proof of Execution or of delivery can have no operation and it is to be noted that this Bond is supposed to have been given by this appellant to the Complainant Ichy Lably on the Seventeenth September one Thousand Seven hundred and Twenty four and that the principal was to be paid him with an Interest of Nine perlcent per annum in two instalments within about one year after the date and the Bond is marked Sahoo mogaha =mad and there appear to it the names of two witnesses viz namely Moodoohistnan and Mootoo Chitty wcho in the act of Witnessing respectively say they do so by the report of certain Chauttry Talliars Hence it is certain that the witnesses dis= =cribed could not give Evidence of the Execution or delivery and the next best Evidence to wit the Talliars from whas report they signed have not been produced therefore there is no proof of the Execution or delivery whatever But it is said Three Witnesses depose that they have looked at the badjan or Exhibit and that the Name Sahoo Mahomed to the same set and subscribed is of the Defendants hand writing yet this appellant doth humbly submit these men deserve little or no credit for they

do

do not shew any reasonable foundation for their positive deposition they do not even say that they have seen this Appellant write and even if they had so far deposed will it be credited that a Period of Twenty Two years has operated no change in this appellants manner of hand writing But it may be urged that another Witness Sangaree Mustry has deposed that this Appellant declared to him that he this appellant had put he is Signature to the Exhibit but hereon This Appellant remarks That to give this Witness credit it would have been consistent That he had shewn when and upon what occasion and at whose desire he had enterfered to draw forth this Appellants declaration such as that he the Witness had been commissioned by the Plaintiff or his Assignee Jacob Lewes to demand payment or to enquire if the Signature was of this appellants hand writing or when he would pay the Balance or again if Jacob Lewis the protended Assignee did realy buy this badjan as from his Assignment is protended would he not have taken care to have proof that this appellant not only owed and admitted the debt but that he would also pay it Nay would not the payment on account have been Established and means contrived to prevent the Operation of the Statute of Limetations for if it could even be credited that this Appellant had made a payment on

account

account as appears endorsed on the Tenth July One Thousand Seven hundred and Eighty three of Sixty Pagodas yet the Statute actually void all recovery of the Balance unless it could be established that this Appellant had since promised payment or had been the, the seas or out of the Jurisdiction of the Court For this appellant Submits that beyond admission of a Signature even if the Witness had sworn truly and the last mentioned Witness goes no further does not include an admission to still owe which is essential to keep out the statute - Infine it may be concluded of this Witness as of all the rest that he has sworn without credit and Mootoo Chitty one of the pretended Witnesses to the badjan has confirmed what is written opposite his signature thereto Namely That a Palliar and the Plaintiff bid him sign and he accordingly did so but he knows nothing of the Debt or Transaction nor do any of the Plaintiffs Witnesses pretend knowledge of the Transaction or consideration forgiving the Bond nor hath the Plaintiff given any account or proof thereof tho this Appellant sheweth that he had by his Replication bound himself to give such proof which or indeed became material as he had not been in any manner able to establish the authenticity of the Bond as it is called and thus hath he failed in all respects both as to Bond and consideration

And

And this Appellant lastly prays to call to the observance of this Honble Court that independent of all probability or shadow in the Plaintiffs case to shew and establish an honesty of demand against this appellant that moreover he hath attempted by means of a pretended feigned Transferree Jacob Suares to defeat the Operation of his Majestys most gracious Charter prohibitting Suit in the Mayors Court between the Indian Natives of Madraspatnam unless under due Submission and previous consent had for vide the pretended Bond which states both himself and this Appellant as Inhabitants of Madras and therefore as well as for the Several reasons herein before assigned and for such other causes as shall be offerd at the hearing this Appellant humbly prays a Reversal of the said Decree of the said Mayors Court and that the said Plaintiff and his said Pretended Transferree Jacob Suares who as this Appellant doth humbly submit hath in this behalf and for so much as appears sworn without any Cause or ground of belief and thereby caused this Appellant to be thrown into a Jail may be punished with Exemplary Costs And this Appellant may have such relief in the Premises as to this Honble Court shall seem Meet

/Signed/ John Wilkinson
Solicitor for Appellant

Mayors

Mayors Court at Madraspatnam

Tuesday the 7th day of June Anno Domine 1796

Present

L.S.

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

Between Achy Lably of Madras Inhabitant by his Attorney and Assignee Jacob Luaes of the same place Inhabitant Complainant and Shahoo Mayahamad also of Madras Inhabitant Defendant

Mayors Court

This Cause coming on to be heard and debated this Day in the presence of the Attornies on both sides on reading the Complainants Bill with Copy of an account Current annexed the Defendants Answer the Amended Replication the Interrogatories and Depositions on the part of the Complainant with an Exhibit annexed the Interrogatories and Depositions on the part of the Defendant And

Hearing the Pleadings made use of by the attornies and on due Consideration had thereon This Court doth think fit to order and Decree and doth accordingly Order and Decree that the Defendant do pay unto the Complainant the full and Just Sum of One hundred and seventy six Star Pagodas thirteen fanams and Ten Cash / Star Pagodas 176.13.10 / together with all such Interest as now is or shall hereafter become due thereon untill full payment is made

A True Copy

Signed / George Taylor
Regr

Signed / John Wilkinson
Solicitor for appellant

To

To the Right Honble Robert Lord Hobart

Governor in Council

Fort Saint George

In the Honble the Court of Appeals at Madraspatnam

Between Schy Lally of Madras Inhabitant by his attorney and assignee Jacob Suars of the same place Inhabitant Complainant and Sahoo Magahamad also of Madras Inhabitant Defendant

Filed in my office the 2d Sept. 1796. J Webbe clk

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

This Respondent admits that he did on or about the Nineteenth day of November One thousand Seven hundred and Ninety four Exhibit his Bill of Complaint against the said Appellant in the Honble the Mayors Court and did therein charge that he the said Appellant stood indebted unto him on a certain or Bond and on account Current Copies of which were annexed to his said Bill of Complaint in the Sum of One hundred and Seventy Six Star Pagodas thirteen fanams and Ten cash and that the said Bond did bear date the Seventeenth day of September one thousand Seven hundred and seventy four to which he this Respondent did pray reference might be had and did charge the same to have been duly executed by the said Appellant and this Respondent does admit that he did further state that the Translation of the said Bond into the English Language and an assignment of the same with the said several Documents were in the hands of the Complainants attorney and were ready to be produced when or required and this respondent admits further that the said attorney or Transferee Jacob Suars did swear to the Debt and that thereon the said Appellant was arrested and this Respondent further admits that the said Appellant under the usual proof of Poverty was admitted to defend such suit in forma Pauperis and that he did duly answer the said Bill and on his Oath did say & yer being first granted heir of the said Bond that he did never Execute the same nor did in any manner stand indebted to this Respondent and this Respondent also admits that he did file his replication to such Answer and did thereby insist that this Appellant had Executed the Bond and that he this Respondent would in due time fully prove the Consideration for

for this Appellants having so Executed the same and did further insist that as the said Appellant did not by the answers deny to have made the payments on account of the Bond as credited in account Current that therefore a presumption arose in favor of the Bond and that on such proceedings Issue having joined and Witnesses on both sides were Examined and that the cause came on to be heard on or about the seventh day of June last when the said Mayors Court were pleased to Decree in favor of this Respondent to the full amount of his claim as by the said Decree annexed to the Petitioners said Petition of Appeal appears but this Respondent denies that the Appellant is agrieved by the said Decree or that he this Respondent hath failed to establish his case and that he this respondent hath not failed to do or so the Decree of the said Mayors Court in favor of this Respondent will fully prove in as much as that the Mayors Court would not have passed a Decree in favor of this Respondent had he not fully proved to the satisfaction of the said Mayors Court the justness of his claim against the said Appellant and this Respondent farther saith that there was no necessity for him this Respondent to go into an Examination of evidence to prove the payment of the sum of money so credited by this Respondent to the said Appellant in the account current annexed to the said Bill of Complaint for the Appellant hath not denied in his said o^r answer to have paid the said several Sums of Money therein claimed and this Respondent maintains that such parts of the said Bill of Complaint as charged the said Appellant to have paid the said Several Sums of money on account not having been traversed by the said Appellant and denied in his said answer must be considered as true and this Respondent saith that the said o^r Appellant not having denied the said charge so therein contained which he ought to have done had the fact been that he the said Appellant never had paid the said several sums of money a very strong presumption arises that the other circumstances set forth by the said Appellant in his said answer were untrue, and which will not require argument to prove as it is clear that if the appellant never did execute the bond on which this Respondent brought his action against the said Appellant he never would have paid monies on account of the Consideration therein mentioned - And this Respondent saith that it will be unnecessary for him to follow the said Appellant through the

the several matters setforth by him the said Appellant in his Petition of Appeal relative to the evidence produced in the Cause in support of his this Respondents action as the same would but serve to swell the proceedings in this Honble Court and because by the Decree of the said Mayors Court it is evident that such Testimoney was considered as Sufficient to establish his this Respondents case and had the said Appellant had any objection to offer to the Witnesses produced in the Cause either as to their Charactor and responsibility or to their Testimoney he should have done so before the said Cause was heard in the regulow way by filing Exceptions thereto but which he the said Appellant did not do therefore the credibility on such Witnesses as this Respondent humbly presumes cannot be now questioned or their Testimoney under Valued - And this Respondent saith that it would appear by the argument used by the said Appellant in his said Petition and Appeal relative to the statute of Limitations that he hath introduced the same for argument sake alone for admitting that the said several sums of money itimed in the Account Cur current annexed to the Bill of Complaint to have been paid on account by the said Appellant and which the said Appellant hath not denied in his said answer the last payment so made by the said Appellant To Wit on the tenth day of April One thousand seven hundred and Eighty Eight is sufficient to bar the Operation of the said statute - And this Respondent saith that the said Cadjan bond on which this Suit is commenced bears every solemnity required in such written instruments and the same have ever by the said Mayors Court been considered as bonds tho no Seal is attached thereto such being the case and the bonds being assignable in equity for a Valuable consideration this Respondent maintains that he hath attempted no undue means to defeat the Operation of the Charter as the said Appellant hath charged in his said Petition of Appeal this Respondent to have done and the Validity of the assignment of the said Cadjan bond not having been questioned by the said Appellant the same must now be considered as good and legal -

For all which matters and such others as may be offered at the hearing this Respondent humbly prays that the

the Decree of the said Honble Mayors Court
may stand affirmed and that the Appellants
Petition of appeal may be Dismissed with
Examplary Costs to be paid by the Appellant

/Signed/ G. Pasley
Solicitor for Respondt

Court of Appeals
at
Madraspatnam

Thursday the 5th day of January
Anno Domini 1797

Between Sahoo Magahamad of Madras
Inhabitant appellant and Achy Labby of
Madras Inhabitant by his attorney and
assignee Jacob Suaes of the same place
Inhabitant Respondent

This Cause coming on this day to be heard and
debated before this Court & upon due Consideration of the
Petition of appeal together with the Decree of the Honble the
Mayors Court given in this Cause on Tuesday the 9th day of
June Anno Domini 1796 it Appearing to the Court that
the matter indispute is between two natives and that the
Plaintiff in the said Mayors Court has made use of the name
of Jacob suaes as his assignee only for the Purpose of evading
the Charter This Court doth think fit to order and Decree and
doth accordingly order and Decree that the said
Decree of the Honourable the Mayors Court

Court

Given

given in his Cause on Tuesday the 17th day of June A.D. Anno Domini 1794 be reversed and that each party do pay his own Costs in both Courts

Hur

To

To the Right Honourable Lord Hobart

Governor in Council &c. &c. &c.

Fort Saint George

In the Honorable the Court of Appeals at Madraspatnam

Between Ramchendra Butt of Madras Inhabitant Complainant and Myla Vencatasham Moodely of the same place Inhabitant Defendant

The Humble Petition and Appeal of the abovenamed Defendant

Sheweth

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

That on the Twelveth day of May in the present year of Christ One thousand Seven hundred and Ninety Six the above named Complainant did file a Bill of Complaint in the Honourable the Mayors Court of Madraspatnam against your Petitioner for the recovery of the Sum of One thousand One hundred and Ninety Eight Pagodas thirty Seven fanams and

Twenty

Twenty five Cash charged to be due and owing unto him the said Complainant on a Bond or Specialty alledged to be Executed by your Petitioner and on an account Copies of which were &c annexed to the Complainants said Bill of Complaint and your Petitioner further Sheweth that the said Complainant having Sworn to the Justness of his demand a Summons returnable immediately and a Warrant of arrest Issued thereon directing the Sheriff of Fort Saint George and Town of Madraspatnam aforesaid to &c apprehend and secure your Petitioner in order that he might Answer the said Complainants demand And your Petitioner Sheweth that he did accordingly on the following Court day appear by his attorney at Law and did thereon conformable to the Practise of the said Mayors Court file Special Bail in the said Cause and the usual Rules having passed for your Petitioner to answer and your Petitioner not being prepared with his answer in due time the said Mayors Court on the Twenty first day of June last past at the instance of the attorney for the Complainant did pass a Decree that your Petitioner should pay unto the Complainant the full and Just sum of One thousand One hundred and Ninety eight Pagodas & Thirty

thirty Seven fanams and Sixty five Cash together with such Interest as then was or might thereafter become due thereon together with the Costs of Suit as well more fully appear by a Copy or Extract of the said Decree from the Minutes of the said Mayors Court annexed together with a Copy or Extract also from the Minutes of the said Mayors Court of a Special minute entered by your Petitioners Attorney at Law assigning as your Petitioner has been led to be of opinion good and sufficient cause why the said Mayors Court in Common Justice to your Petitioner ought to have allowed a further time from the special circumstances of the Case in Order that he might have been benefited by his answer which it was the earnest intention of your Petitioner previous to the expiration of the time specified by the said Minute so entered of Record as aforesaid in the said Mayors Court by your Petitioners said attorney at Law to have filed- And your Petitioner prays the said Copies or Extracts hereunto annexed of the Decree so passed together with the &c Minute entered by your Petitioners attorney at Law &c opposing such Decree may by this Honble Court be taken and received as part of this his Petition and Appeal-

From which said Extract Order and Decree of

the

the said Mayors Court your Petitioner doth appeal to this Honble Court as he conceives himself materially injured and aggrieved thereby for the following among other reasons-

First ---- Because it is not unusual with the said Mayors Court to enlarge the Rules for answering on a Prayer from the Defendants attorney to that End on his assigning good and sufficient reasons for the same And altho your Petitioner did prefer a Prayer by his attorney praying of the said Mayors Court to allow him a further time to answer to the Complainants said Bill of Complaint, as he was from the complicated matter attendant on your Petitioners case, at the time of the Expiration of the said Rules unprepared to answer fully to the Particulars contained in the said Bill of Complaint, yet your Petitioner did not obtain any Enlargement of the said Rules altho uniformly granted on Similar applications to other Suitors of the said Court for altho it may and in fact does appear by the said Complainants said Bill of Complaint that the Cast of Action arises on a Bond alledged to have been given and executed by your Petitioner unto the said Complainant but altho such circumstance now only appears your Petitioner as by the said Minute entered in Opposition to the said Decree by your Petitioners attorney as aforesaid thereby has alledged that heretofore at different periods the said Complainant and your Petitioner had very considerable dealings and many Transactions together from which circumstance it surely is a fair and equitable presumption to suppose your Petitioner had good grounds for a Defence to the said Bill of Complaint and it may also be put fair to suppose that your Petitioner since the Execution of the said Bond from the many and different dealings and transactions had together as aforesaid may have liquidated part of same and your Petitioner doth aver the fact so to be and that he had paid off and discharged a part of the said Bond now in suit against your Petitioner and your Petitioner thereby and by virtue thereof does not as is untruly alledged in the Complainants said Bill of Complaint Stand indebted to the said Complainant in the sum Sued for And your Petitioner does humbly contend that had the said Mayors Court complied with your Petitioners supplication it could not be deemed as a prejudicial circumstance as a similar indulgence is in most cases that came before the said Mayors Court frequently allowed and

and granted but admitting no precedent of the Kind could have been adduced still the equity of your Petitioners Case apparent on the circumstances hereby stated ought to have entitled him to an extension of time more particularly as when a continuation of Interest at the rate of twelve per Cent per annum would have been allowed on such said Principal sum charged by the said Bill of Complaint to be due and owing by your Petitioner as aforesaid

Secondly — Because it appears by a Copy of the said Bond as annexed to the Complainants said Bill of Complaint that the same is written in the English Language and it does not appear that the same has been translated into your Petitioners Language or that it was previous to the Execution thereof explained to your Petitioner and your Petitioner being an Indian Native of Madraspatnam such form having been observed might in some degree have sanctioned the Decree of the said Mayors Court against your Petitioner if the said Mayors Court had not chosen to have indulged your Petitioner with any other or further time but your Petitioner Sheweth that the said Mayors

Mayors Court when and at the time of Passing the said Decree as aforesaid had only an Ex Parte Evidence whereon such Decree was founded for by having as aforesaid deprived your Petitioner of filing his answer to the Complainants said Bill of Complaint there was no positive proof before the said Court of the Justness of the said Complainants demand against your Petitioner for neither was the due Execution of the said Bond proved by either of the subscribing Witnesses whose Names appear affixed or thereto as Witnesses to the same consequently there was not sufficient Evidence before the said Mayors Court whereon to ground a Decree

Your Petitioner therefore prays that this Honble Court will be pleased to set aside the Decree of the said Mayors Court and order that the said Mayors Court do or allow a further time of three Weeks for your Petitioner to file his Answer to the said Bill of Complaint and grant such other relief as in their Wisdom may seem meet

/signed/ Gilbt Ricketts
Solicitor for Appellant

Extract

Extract from the Minutes of a Court held at the Town Hall on Tuesday the 25th day of June Anno Dominiſſo

Present.

James Daly Esqr Mayor
William Webb Andrew Roſs &
Richard Chase Aldermen
Ramachendra Butt
Myla Vencatasham Moodelly

The Attorney for the Complainant produces to the Court a Certificate from the Register Setting forth that the usual 4 Rules have Issued for the Defendant to Answer the Complainants Bill which he has neglected doing He therefore prays that a Decree may now pass - to which the Opposite Attorney objects as the usual Rules for Answering only expire this Day He therefore prays that he may be allowed a further time of three Weeks to Answer the Complainants Bill and the Cause of such prayer arises as the Attorney for the Defendant has been by his Clients advised from the special Circumstances attending the matters in difference between the Complainant and Defendant they having at different periods heretofore had very Considerable dealings and Money Transactions together The Court having taken the same into Consideration It is ordered that a Decree do pass Bill Read -

It appearing by the Records of this Court that the usual Rules have issued for the Defendant to Answer the Complainants Bill which he has neglected doing This Court doth therefore think fit to order and Decree and doth Accordingly 4th Order and Decree that the Defendant do pay unto the Complainant the full and Just Sum of One thousand one hundred & Seventy eight Pagodas thirty seven fanams & twenty five Cash / Pags 1178 . 37 . 25 / together with all such Interest as now is or shall hereafter become due thereon until full payment is made als all Costs of this suit

A True Extract
/ Signed / J. Taylor Regr

To

To the Right Honourable Lord Hobart

Governor in Council &c. &c. &c.

Fort Saint George

In the Honble the Court of Appeals at Madraspatnam } Between Ramachendra Butt of Madras Inhabitant Complainant and Myla Vencatasham Moodelly of the same place Inhabitant Defendant

The Answer of Ramachendra Butt the abovenamed Respondent to the Petition and appeal of Myla Venca-tasham moodelly the above named appellant

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

This Respondent admits that he did on the Twelfth day of May in the present year of Christ one Thousand Seven hundred and Ninety six file a Bill of Complaint in the Honble the mayors Court of madraspatnam against the Petitioner for the recovery of the sum of one Thousand one hundred and Ninety Eight Pagodas Thirty seven fanams and Twenty five Cash due and owing unto this Respondent on a Bond or specialty Executed to this Respondent by the Petitioner and as

as stated in an account current of which account and also of the said Bond true Copies were annexed to this Respondents said Bill of Complaint and this Respondent further answering admits that he having made oath to the Justness of his said Demand a Summons returnable immediately and warrant of arrest did Issue directing the Sherriff of Fort Saint George and Town of madraspatnam aforesaid to apprehend the Petitioner in order that he might answer this Respondents complaint And this Respondent admits that the Petitioner did on the following Court Day appear by his attorney at Law and did file Specials in the said Cause and that the usual Rules having passed for the Petitioner to answer and he the Petitioner having failed to do so the said Mayors Court on the Twenty first day of June last past at the prayer of this Respondents attorney did pass a Decree that the Petitioner should pay unto this Respondent the full and Just Sum of one Thousand one hundred and Ninety Eight Pagodas Thirty Seven fanams and Sixty five Cash together with such Interest as then was or might thereafter become due thereon together with the Costs of Suit But this Respondent doth not admit that the Petitioner

hath

hath sustained any injury or grievance by such Decree or by the rejection of his attorney's arguments in opposition thereto the said arguments as set forth in the Extract annexed to the Petitioners appeal containing no matter whatever on which a prayer for enlarging the Customary Rules for an answer could reasonably be grounded upon the Petitioners appeal there arises two points for consideration To wit First upon what grounds the Mayors Court usually grant enlargement of Rules Secondly Whether the Petitioner had by the conformity to the practice of the Court in this respect entitled himself to such an indulgence both these Considerations matters are embraced in the Petitioners first Reason and his second is utterly superfluous and inadmissible the matter thereof in no wise relating to the question in appeal but to the merits of the original Suit which are not cognizable by this Honble Court For to say that the Honble Court had founded their Decree upon Exparte Evidence is only to assert that which must be true in every instance whereas in the present the Defendant after appearance fails to answer and the assertion that there was no positive proof before the Court of the Justness of the Demand is of equal insignificance

insignificance and will apply to every case where according to the Rules of Law and practice a Bill or declaration is for default of answer taken pro confesso. But what remains of this Second head is yet less in point to wit That the Bond is written in the English Language If any argument against its the or validity could be drawn from this circumstance the Conduct of the Petitioner must appear unaccountable in not availing himself thereof by Pleading in Bar whilst the matter remained before the Court below This simple objection not involved in the pretended intricacy of the General Transactions nor requiring any enlargement of time would if coupled with a denial of the Debt such as is contained in the appeal have been a sufficient pleading and procured the Petitioner competent time to urge the special matter of his defence if any defence he had by an amended answer This Respondent comes now to the gist of the Question as comprized in the Petitioners First Reason It is says the Petitioner not unusual with the mayors Court to enlarge the Rules on good and sufficient reasons being assigned The Petitioner should have said on good and sufficient reason being shewn for in judicial proceedings naked assertion as it

hath

hath no list so hath no value. The Honourable the Mayors Court will upon prayer grant a reasonable enlargement of Rule if the party praying can establish either by creditable testimony upon Oath or by View of the proceedings the existence of any impediment whereby such party may necessarily or probably be prevented from conforming to the Rule within the limitted time. But nothing of this kind was ever attempted by the Petitioner his attorney objected to the posing of the Decree because the usual Rules for answering had only Just expired the legitimate operation of which reason this Respondent humbly conceives militates directly against the Prayer but it was further alledged that the said attorney was by his Client advised of special circumstances attending the matters in difference the parties having had considerable dealings together Every Client averse to pay or inclined to procrastinate would so advise his attorney if it could avail him and if a mere allegation thus unsupported were held to entitle the Petitioner or any suitor to an enlargement of time for answering there is no reason why a similar *ipse dixit* should not in every stage of a Suit entitle to the like indulgence and thus the protraction of Suits and the delay of Justice would

would be without all measure - But if reasons so frivolous as those of the Petitioner could influence a higher Court to reverse Decree duly posed upon the expiration of the regulated time and in default of sufficient cause shewn to the contrary the greivance would be enormous would leave the honest Suitor at the mercy of the fraudulent and in time grow to the total defeat of that most salutary provision of the Law which for certain defaults authorises and enjoins a Judgment.

For all which reasons and such others as may be offered at the hearing of this cause this Respondent most humbly prays that this Honble Court may be pleased to affirm the said Decree of the Honble the Mayors Court and dismiss the Petitioners Petition with such exemplary Costs as his litigious conduct shall appear to deserve.

John Wilkinson
Solicitor for Respondent

Court

Court of Appeals at Madraspatnam

Thursday the 5th day of January Anno Domini 1797

Between Myla Vencatasham moodly of Madras Inhabitant appellant and Ramachendra Butt of the same place Inhabitant Defendant

This cause coming on this day to be heard and debated before this Court by the Attornies on both sides upon the hearing the Petition of Appeal and Answer and the several Exhibits of the Honble the Mayors Court together with the Decree of the said Court given in this cause on Tuesday the 2nd day of June 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 that the said Decree of the Honble the Mayors Court do stand affirmed and that the appellants Petition be hence dismissed with Costs

Hur

To

33

To the Kings Most Excellent Majesty in Council

Between Ramachendra Butt of Madras Inhabitant Complainant

and Mily Vencatasham Moodeliar of the same place Inhabitant Defendant

The Humble Petition and appeal of the above-named Defendant

Most Humbly Sheweth

That on the twelfth day of May in the year of our Christ One thousand Seven hundred and Ninety Six the above-named Complainant did file a Bill of Complaint in the Honble the Mayors Court of Madraspatnam against your Petitioner for the recovery of the sum of one thousand one hundred and Ninety Eight Star Pagodas Thirty seven fanams and twenty five Cash charged to be due and owing unto him the said Complainant on a Bond or Specialty alledged to be executed by your Petitioner and on an account Current Copies of which were annexed to the Complainants said Bill of Complaint and your Petitioner further Sheweth that the said Complainant having sworn to the Justness of his demand a Summons returnable immediately and

Filed in my Office the 18th January 1797
J Webbe Clk

and a warrant of arrest issued thereon directing the Sheriff of Fort Saint George and Town of Madraspatnam aforesaid to apprehend and Secure your Petitioner in order that he might answer the said Complainants demand and your Petitioner Sheweth that he did accordingly on the following Court day appear by his attorney at Law and did thereon conformable to the practise of the said Mayors Court file Special Bail in the said Cause and the usual Rules having passed for your Petitioner to answer and to your Petitioner not being prepared with his answer in due time the said Mayors Court on the Twenty first day of June last past at the Instance of the attorney for the Complainant did pass a Decree that your Petitioner should pay unto the Complainant the full and just Sum of One thousand One hundred and Ninety Eight Pagodas or thirty Seven fanams and Sixty five Cash together with such Interest as then was or might thereafter become due thereon together with the Costs of Suit as will more fully appear by a Copy or Extract of the said Decree from the Minutes of the said Mayors Court annexed together with a Copy or Extract also from the Minutes of the said

said Mayors Court of a Special minute ent
=ners attorney at Law assigning as your Pet
to be of openion good and sufficient cause
Mayors Court in Common Justice to your
have allowed a further time from the specia
the Case in order that he might have been b
which it was the earnest intention of your
to the expiration of the time specified by
so entered of Record as aforesaid in the said
Petitioners said attorney at Law to have filed
prays the said Copies or Extracts hereto annex
so passed together with the minute entered
attorney at Law opposing such Decree may
received as part of this his Petition and ap

From which said order

the said Mayors Court your Petitioner ap
Court of appeals and did thereby among
setforth that by the said Order and Decr
Mayors Court your Petitioner did conceive
ag grieved and did therefore appeal there

[illegible] by your Petit
Petitioner had been led
why the said
Petitioner ought to
circumstances of
mplicated by his answer
Petitioner provided
the said minute
your Court by your
and your Petitioner
d of the Decree
by your Petitioners
be taken and
read
and Decree of
healed to the
that things
e of the said
himself made
from as your
Petitioner

Petitioner was advised and believed that the said order Decree of the said Mayors Court for the Causes and reasons in your Petitioners said Petition and appeal set forth and assigned was erroneous Wherefore your Petitioner conceived that the said Decree was contrary to the Principals of Substantial Justice for the following among other Reasons

First ----- Because it is not unusual with the said Mayors Court to enlarge the Rules for Answering on a prayer from the Defendants attorney to that End on his assigning good and sufficient reasons for the same and altho your Petitioner did prefer a prayer by his attorney praying of the said Mayors Court to allow him a further time to answer to the Complainants said Bill of Complaint as he was from the complicated matter attendant on your Petitioners Case at the time of the expiration of the said Rules unprepared to answer fully to the particulars contained in the said Bill of Complaint your Petitioner did not obtain an Enlargement of the said Rules altho so uniformly granted on Similar applications to other suitors of the said Court for altho it may and in fact does appear by the said Complainants said Bill of Complaint that the Gift

Gift of action arises on a Bond alledged to have been given and so executed by your Petitioner unto the said Complainant but altho such circumstance now only appears your Petitioner as by the said 6th minute entered in opposition to the said Decree by your Petitioners attorney as aforesaid thereby has alledged that heretofore at different periods the said Complainant and your Petitioner had very considerable dealings and money transactions together from which circumstance it surely was a fair and equitable presumption to suppose your Petitioner had good grounds for a defence to the said Bill of Complaint and it may also be but fair to suppose that your Petitioner since the Execution of the said Bond from the many and differend dealings and transactions had together as aforesaid may have liquidated part of same and your Petitioner doth aver the fact so to be and that he has paid off and discharged a part of the said Bond now in suit against your Petitioner and your Petitioner thereby and by Virtue thereof does not as is untruly alledged in the Complainants said Bill of Complaint stand indebted to the said Complainant in the sum Sued for and your Petitioner does humbly Contend that had the said Mayors Court complied with your Petitioners

Supplication

supplication it could not be deemed as a prejudicial circumstance as a Similar indulgence is in most Cases that come before the said Mayors Court allowed and granted but admitting no president of the kind could have been adduced still the equity of your Petitioners case apparent on the circumstances hereby stated ought to have & entitled him to an extension of time more particularly when a continuation of Interest at the rate of Twelve per cent per annum would have been allowed on such said Principal sum charged by the said Bill of Complaint to be due and owing by your Petitioner as aforesaid

Secondly --- Because it appears by a Copy of the said Bond annexed to the Complainants said Bill of Complaint that the same is written in the English Language and it does not appear that the same has been translated into your Petitioners Language or that it was previous to the Execution thereof explained to your Petitr and your Petr =oner being an Indian Native of Madraspatnam such & form having been observed might in some Degree have & sanctioned the Decree of the said Mayors Court against your Petitioner if the said Mayors Court had not chosen to have indulged your Petitioner with any other or further time but your Petitioner Sheweth that the said Mayors Court when and at the time of passing the said Decree as aforesaid had only an Exparte Evidence whereon such Decree was founded for by having as aforesaid deprived your Petitioner of filing his answer to the Complainants said Bill of Complaint there was no positive proof before the said Court of the Justness of the said Complainants Demand against your Petitioner for neither was the due Execution of the said Bond proved by either of the Subscribing Witnesses whose names appear affixed thereto as witnesses to the same consequently there was not sufficient Evidence before the said Mayors & Court whereon to ground a Decree —

To which said Petition and appeal the Complainant did put in his answer setting forth many evasive matters and things which your Petitioner cannot by any means admit and your Petitioner sheweth that this Petition and Appeal and the answer of the said Complainant thereto came on to be heard and & determined on the fifth day of January now present Instant by the said Court of Appeals at Madras who were pleased to confirm the Order and Decree of the said Mayors Court with Costs of Suit in the said Court of Appeals to be paid by your Petitioner & all

all which will morefully and at Large appear by reference to the or Several proceedings had in the above Cause in the said Mayors Court and Court of Appeals to which said several Proceedings and to or each of them respectively your Petitioner prays leave to refer and to have such full and ample benefit of them and of each of them as if they and each of them were herein before fully stated and setforth and made part of this appeal—

From which said order and Decree of the said mayors Court and Court of appeals your Petitioner most humbly appeals to your Most Excellent Majesty in Council for the reasons assigned in your Petitioners said appeal to the Court of Appeals at Madras as above stated

For all which reasons and such others as may be offered at the hearing of this Cause your Petitioner most humbly prays that the said Orders and Decrees of the said Mayors Court and Court of Appeals at Madraspatnam be reversed and set aside and that the Complai =nant be ordered to pay all Costs of suit and your Petitioner allowed such other and further time to answer the said Complainants said Bill of Complaint as in the wisdom of your Most Excellent Majesty in Council may seem meet—

/Signed/ Gilbt. Ricketts
Solicitor for appellant

Extract

Extract from the Minute of a Court Held at the Town Hall on Tuesday the 25th. day of June Anno Domini 1796.

Present

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

Ramachendra Butt
vers
Myla Vencatasham Moodelly

The attorney for the Complainant produces to the Court a Certifi =cate from the Register Setting forth that the usual Rules have issued for the Defendant to answer the Complainants Bill which he has neglected doing he therefore prays that a Decree may now pass to which the opposite attorney objects as the usual Rules for answering only expire this day He therefore prays that he may be allowed a further time of three weeks to answer the Complai =nants Bill and the Cause of such prayer arises as the or Attorney for the Defendant has been by his Client advised from the special Circumstances attending the matters in or difference between the Complainant and Defendant they having at different periods heretofore had very Considerable dealings

dealings and money Transactions together the Court having taken the same into Consideration It is ordered that a Decree do pass Bill Read

It appearing by the Records of this Court that the usual Rules have issued for the Defendant to answer the Complainants Bill which he has neglected doing This Court doth therefore think fit to order and Decree and doth accordingly order and Dr. Decree that the Defendant do pay unto the Complainant the full and Just Sum of one thousand One hundred and ninety Dr. Eight Pagodas thirty seven fanams and Twenty five Cash Dr. /Pagodas 1198.37.25/ together with all such Interest as now is or shall hereafter become due thereon until full payment is made also Dr. all Costs of this Suit

A True Extract
/Signed/ George Taylor Regr.

/A True Copy/
/Signed/ Gilbt. Ricketts
Solicitor for Appellant

Court

Court of Appeals
at
Madraspatnam

Thursday the 5th day of January
Anno Domini 1797

Between Myla Vencatasham
Moodelly of Madras Inhabitant
appellant and Ramachendra Butt
of the same place Inhabitant Respondent

This Cause coming on this day to be heard and debated before this Court by the attornies on both sides upon hearing the Petition of appeal and answer and the Several Exhibits of the Honble the Mayors Court together with the Decree of the said Court given in this Cause on Tuesday the 2d day of June 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 behence dismissed with Costs

Wm /Signed/ Josiah Webbe Clk

The

The Kings Most Excellent Majesty in Council

Between Ramachendra Butt of Madras Inhabitant Complainant and Nily Venca=tasham Moodeliar of the same place Inhabi=tant Defendant

The Answer of the above named Complainant To the Petition and Appeal of the above named Defendant

This Respondent answering admits That on the Twelfth day of May in the year of Christ one thousand seven hundred and ninety six he did file a Bill of Complaint in the &c Honble the Mayors Court of Madraspatnam against the Petitioner for the recovery of the sum of One thousand One hundred and &c Ninety eight Star Pagodas thirty seven fanams and twenty five cash charged to be due and owing unto him the said Complai=nant on a Bond or Speciality executed by the Petitioner and on an account current copies of which were annexed to this Respon=dents said Bill of Complaint And this Respondent further &c answering admits that having sworn to the Justness of his &c demand a summons returnable immediately and a warrant of arrest issued thereon directing the Sheriff of Fort Saint George &c and

Filed in my Office the 17th July 1797
J Webbe Clk

and Town of Madraspatnam aforesaid to apprehend and secure the Petitioner in order that he might answer this Respondents demand and this Respondent admits that the Petitioner did accordingly on the following Court day appear by His attorney at Law and did thereon conformable to the practice of the said Mayors Court file special Bail in the said Cause and the usual Rules of having passed for the Petitioner to answer and he the Petitioner having failed to do so the said Mayors Court on the Twenty first day of June and year aforesaid at the prayer of this Respondents &c attorney did pass a Decree that the Petitioner should pay unto this Respondent the full and just sum of one Thousand one &c hundred and ninety eight Pagodas thirty seven fanams and sixty five Cash together with such interest as there was or might thereafter become due thereon together with the Costs of suit as may more fully appear by a copy or Extract of the said Decree from the Minutes of the said Mayors Court to the said Petition and Appeal annexed But this Respondent doth not admit that the also annexed Copy or Extract from the Minutes of the said Mayors Court of a Special Minute entered by the &c Petitioners attorney at Law assigns any good or sufficient

Cause

cause or condescends upon any special circumstance that could have or reasonably graunded an enlargement of the customary Rules for answer in the said Mayors Court This Respondent admits that from the said order of the said Mayors Court the Petitioner appealed to the Court of appeals at Madraspatnam alledging that the said order and Decree was erroneous and contrary to substantial justice adducing in support of such allegation the several reasons now by him set forth in his said Petition to your most Excellent Majesty in Council To which Petition and reasons this Respondent did file his answer in the said Court of appeals shewing that as by the said answer reference being thereunto had will appear He this Respondent admitted that he had on the Twelfth day of May in the then present year of Christ one thousand seven hundred and ninety six filed a Bill of Complaint in the Honble the Mayors Court of Madraspatnam against the Petitioner for the recovery of the sums of one thousand one hundred and Ninety eight Pagodas Thirty seven fanams and Twenty five cash due and owing unto this Respondent on a Bond or specialty executed to this Respondent by the Petitioner and as stated in an account Current of which account and also of the said

Bond

Bond true copies were annexed to this Respondents said Bill of Complaint That he having made oath to the Justness of his said Demand a summons returnable immediately and a warrant of arrest had issued directing the Sheriff of Fort Saint George and Town of Madraspatnam aforesaid to apprehend the Petitioner in order that he might answer this Respondents Complaints that that the Petitioner had on the following Court day appeared by his attorney at Law and filed special Bail in the said Cause and that the usual Rules having passed for the Petitioner to answer and he the Petitioner having failed to do so the said Mayors Court on the Twenty first day of June then last past at the prayer of this Respondents attorney had passed a Decree that the Petitioner should pay unto this Respondent the full and just sum of one thousand one hundred and ninety eight Pagodas Thirty seven fanams and sixty five cash together with such Interest as then was or might thereafter become due thereon together with the Costs of suit But this Respondent did not by his said answer admit that the Petitioner had sustained any injury or grievance by such Decree or by the rejection of his attorneys arguments in

opposition

opposition thereto The said arguments as setforth in the Extract annexed to the Petitioners said appeal containing no matter whatever on which a prayer for enlarging the customary Rules for answer could reasonably be grounded And May it please your Most Excellent Majesty in Council This Respondent did by his said Answer further shew that upon the Petitioners appeal there arose two points for consideration to wit First upon what grounds the Mayors Court usually grant enlargement of Rules - Secondly Whether the Petitioner had by due conformity to the practice of the Court in this respect entitled himself to such an indulgence Both these considerations were embraced in the Petitioners first reason and his second was utterly superfluous and inadmissible the matter thereof in nowise relating to the question in appeal but to the merits of the original suit which were not cognizable by the said Honourable the Court of Appeals Appeals For to say that the Honble the Mayors Court had founded their Decree upon Exparte evidence was only to assert that which must be true in every instance whereas in the present the Petitioner after appearance failed to answer - and the assertion that there

was no positive proof before the Court of the Justness of the demand was of equal significance and would apply to every case where according to the Rules of Law and practice a Bill or Declaration is for default of answer taken pro confesso - But what remained of this second head was yet less in point to wit that the Bond was written in the English language If any argument against its validity could be drawn from this circumstance the conduct of the Petitioner must appear unaccountable in not availing himself thereof by pleading in bar whilst the matter remained before the Court below This simple objection not involved in the pretended intricacy of the general transactions nor requiring any enlargment of time would if coupled with a denial of the debt such as was contained in the appeal have been a sufficient pleading and procured the Petitioner competent time to urge the special matter of his defence if any defence he had by an amended answer - This Respondent now came to the Gist of the question as comprised in the Petitioners first reason - It is said the Petitioner not unusual with the Mayors Court to enlarge the Rules on good and sufficient reasons being assigned The Petitioner should

have

have said on good and sufficient reason being shewn for in Judicial proceedings naked assertion as it hath no test so hath no value The Honourable the Mayors Court would upon prayer grant a reasonable enlargement of rule if the party praying could or establish either by creditable testimony upon oath or by view of the proceedings the existence of any impediment whereby such party may necessarily or probably be prevented from conforming to the Rule within the limitted time But nothing of this kind was even attempted by the Petitioner His attorney had objected to the passing of the Decree because the usual Rules for answering had only just expired the legitimate operation of which reason this Respondent humbly conceived militated directly against the prayer but it was further alledged that the said attorney had been by his Client advised of special circumstances attending the matters in difference the parties having had considerable dealings together every client averse to pay or inclined to procrastinate would so advise his or attorney if it could avail him and if a mere allegation thus unsupported were held to intitle the Petitioner or any suitor to an enlargement of time for answering there was no reason

reason why a similar ipse dixit should not in every stage of a suit entitle to the like indulgence and thus the protraction of suits and the delay of Justice would be without all measure But if reasons so frivolous as those of the Petitioner could influence a higher Court to reverse Decrees duly passed upon the expiration of the regulated time and in default of sufficient cause shewn to the contrary the grievance would be enormous leave the honest suitor at the mercy of the fraudulent and in time grow to the total defeat of that most salutary provision of the Law which for certain defaults authorises and injoins a judgment- And May it please your Majesty this Respondent admits that the said Petition and appeal and this Respondents said answer thereto came on to be heard and determined before the said Court of appeals at Madraspatnam on the fifth day January last who were pleased to confirm the order and Decree of the said Mayors Court with Costs of suit in the said Court of appeals to be paid by the Petitioner From which said order and Decree of the said Mayors Court and Court of appeals the Petitioner hath now made his further appeal to your most

most Excellent Majesty in Council grounded on a naked repetition of the same frivolous reasons alledged for his appeal to the said Court of Appeals which pretended reasons this Respondent having in his answer thereto before the said Court of Appeals at Madras as the Judgment of that Honourable Court upon the said Petition and answer supports and warrants him in saying sufficiently subverted he waives all further argument thereon here and for the reasons so as aforesaid offered in his said former answer and herein before setforth and for such others as may be offered at the hearing of this Cause—

Most humbly prays your Most Excellent Majesty in Council that the said orders and Decrees of the said Mayors Court and Court of appeals at Madraspatnam may be affirmed and established and that the Petitioners Petition and appeal may be dismissed with full Costs and that this Respondent may be allowed such other relief in the premises as to the wisdom of your most Excellent Majesty in Council may seem meet—

/Signed/ Wilkenson & Sutherland
Solicitors for Respondent

To the Right Honourable Lord Hobart—

President and Governor &c in Council—
Fort Saint George

In the Hon^ble the^ Court of appeals

Between Madapaukam Merdanjah Moodeliar of Madras Inhabitant Complainant and the Hon^ble John Lindsay late a Captain but now a Major in his Majestys Service and Comboompatty Ramasawmy Braminy Dubash of madras &c Inhabitant Defendants—

The Humble Petition and appeal of Comboompatty Ramasawmy Braminy one of the Defendant above named—

Sheweth

That Madapaukam Merdanjah Moodeliar of Madras Inhabitant the Complainant above named did on or about the Twenty third day of September which was in the year of Christ one thousand seven hundred and ninety five file his Bill of Complaint against your Petitioner and the said Honourable John

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

John Lindsay in the Mayors Court at Madraspatnam and did &c
thereon and thereby pretend and allege that your Petitioner and
the said Honble John Lindsay did grant a certain Bond &c
written Obligation unto the said Complainant bearing date the &c
ninth day of March which was in the year of Christ one thousand
seven hundred and ninety five whereby your Petitioner and the
said Honble John Lindsay did acknowledge themselves to be
jointly and severally bound unto the said Complainant in the
sum of Twenty five Thousand Star Pagodas to be paid to the said
Complainant in three months from the date thereof together
with Interest at the rate of Twelve perbent per annum and
further setting forth that a balance then remained due unto the
said Complainant upon the foot of the said Bond amounting
to the sum of Nineteen Thousand one hundred and thirty
three Star Pagodas forty one fanams and seventy Cash Current
money of madras which as the said Complainant by his said
Bill of Complaint alledged would appear by a Copy of an &c
account Current annexed to the said Complainants said
Bill of Complaint and the said Complainant by his said
Bill of Complaint prayed that your Petitioner and the
said

said John Lindsay might be decreed by the said Mayors Court to pay
the said sum of nineteen thousand one hundred and thirty three
Star Pagodas forty one fanams and seventy Cash together with
all such Interest as should from thence forth become due thereon
as also all Costs of the said suit your Petitioner further Sheweth
unto this Honble Court that he having been summoned and &c
required to appear to and answer the said Complainants
said Bill of Complaint he alone appeared thereto, and on
the Twenty Ninth day of September in the said year
One thousand seven hundred and Ninety five filed his Plea
to the Complainants said Bill of Complaint and for Plea
thereunto your Petitioner said that the said Complainant
is an Indian native of Madraspatnam and your
Petitioner said and did also aver that he your Petitioner
is an Indian Native of Madraspatnam and that he
did not consent or agree that the said Complainant or
should sue your Petitioner in the said mayors Court of &c
Madraspatnam and therefore your Petitioner did Plead
the said several matters to the said Complainants said
Bill of Complaint and to the relief and discovery thereby
sought

sought and your Petitioner prayed Judgement of the said Bill of Cr
Complaint and of the relief and discovery thereby sought and if the
said Mayors Court of madraspatnam would have further Cogni-
-zance of the said suit and your Petitioner prayed to be dismissed
the said Mayors Court with his reasonable Costs and Charges in
that behalf sustained - and your Petitioner further Sheweth that
to the said Plea the said Complainant on the Twentieth day of Or
October in the said year filed his Replication and therein and
thereby admitted That by the Charter in your Petitioners said
Plea setforth the Indian Native of Madras are not permitted
to sue each other in the Honble Mayors Court and that the
said Charter doth direct that all suits or actions that should be
between such Natives should be determined amongst themselves
unless both parties should by consent submit the same to the
determination of the said Honble Mayors Court and the said
Complainant pretended and said that your Petitioner had
actually given such consent and that therefore your Petitioner
said Plea is unfounded for the Complainant said that your
Petitioner did in and by a certain Bond or Obligation
in writing duly executed to the Complainant become Or

Jointly

jointly bound with the said Honble John Lindsay for the payment
of the sum of Twenty five thousand Star Pagodas and for the
recovery of the balance thereupon owing brought his Bill Or
against your Petitioner jointly with the other Defendant
the said Honble John Lindsay in manner and form as in
and by the Complainants said Bill setforth and the Complainant
further said that your Petitioner by joining with the other Defendant
the Honble John Lindsay in Executing to the Complainant the
said Bond or written Obligation did consent and become amenable
to the Jurisdiction of the Honble Mayors Court and which
was as the Complainant alleged consistent with the Letter and
Spirit of the said Charter as expressed in the words following
that is to say unless such suits or actions should be between
the Indian Native of Madraspatnam only which is
not the Case in the present Instance as the Complainant
has herein above shewn and the said Complainant further said
that the said Clause in the said Charter contained is in the
Nature of a previlege conferred and by which Previledge a
Native is exempted from being sued by a Native under the
Circumstance in the said Charter setforth and may Plead the

same

same and the Complainant said that if a previleged person or=
joins in the Execution of a Bond or in any other Contract
with a person who is not previleged, he thereby waives his privi
lege and cannot plead the same and the Complainant further
said that your Petitioner had given Bail to the Complainants said
action as by reference to the record of the said Mayors Court and
to the alleged Copy of a Letter thereunto annexed might appear
and the Complainant further said he was advised that the
act of giving Bail is of itself a Submission to the Jurisdiction
of the Mayors Court and the Complainant for further Repli
=cation said that your Petitioner and the said John Lindsay
were jointly concerned in certain money Transactions and
for ought the Complainant knew to the Contrary were still
concerned therein and that in order to enable them to or=
carry on the same your Petitioner did apply to the Complai
=nant to lend and advance to your Petitioner for and on
the joint account of your Petitioner and the other Defen=
dant John Lindsay a certain sum of money and the
Complainant said that he did agree to lend and advance
and did accordingly lend and advance at different periods the

sum

Sum for which the hereinbefore in part recited Bond was afterwards
Executed and the Complainant said that at the said different or=
periods he did take the acknowledgement of your Petitioner for
the respective Sums he did at such periods pay unto your Petitio
=ners hands an account and for the use of the said Joint Concern
and in which acknowledgements it was conditioned that in
failure of payment of the sums thereon advanced he the or=
Complainant was at liberty to sue your Petitioner in the Honble
Mayors Court and the Complainant said that having advanced
partly upon such the acknowledgement and Conditions of your
Petitioner as aforesaid the sum of Twenty five thousand Star Pagodas
and being unable to make any further advances he did require of
your Petitioner and the other Defendant John Lindsay a or=
more Solemn Instrument for Securing the payment thereof and that thereupon
the Bond in question was executed and the Complainant said some of the
said acknowledgments were in his profession and ready to be delivered
up to your Petitioner to be cancelled and that in all the Transactions
which led to the Execution of the said Bond your Petitioner always submitted
to the Jurisdiction of the said mayors Court and Consented to be sued in=
therein and therefore the Complainant did not think it neces=

to

to require a Consent in the said Bond on the part of your Petitioner to be sued in the Mayors Court where in fact that consent was virtually given by your Petitioner joining in a Bond with another person as by the said Bill of Complaint Plea and Replication remaining of record in the said Mayors Court to which your Petitioner humbly craves leave to refer relation being thereunto had will more fully appear Your Petitioner further Sheweth unto this Honble Court that your Petitioner by his attorney at Law prayed the said Mayors Court that your Petitioners said Plea might be set down to be argued and the same accordingly came on to be argued before the said Mayors Court on the sixth day of this present month of September when the said Mayors Court was pleased to over rule your Petitioners said Plea, with Costs and to order that your Petitioner should be put upon his answer as by a Copy of the said order hereunto annexed for the inspection of this Honble Court and duly attested to which your Petitioner humbly refers and prays the same may be taken as part of this his Petition and as shall may appear By which said order of the said Mayors Court your Petitioner doth conceive himself much aggrieved and doth therefore appeal therefrom to this Honble Court of appeals

a

as your Petitioner is advised and believes that the said order of the said mayors Court for the Causes and reasons in your Petitioners said Plea set forth and assigned is erroneous and Contrary to the Charter by which the said Mayors Court is Constituted

your Petitioner therefore humbly prays that this Honble Court will be pleased to reverse the said Order of the said mayors Court made in the said Cause on the said Sixth day of September 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 Honble Court shall seem meet

And your Petitioner shall ever prays

Signed John White
Solicitor for appellant

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 Esqr Mayor

James Ball William Webb

Andrew Ross John Mitford

William Abbott Alexr Cockburn

& Richard Chase, Aldermen

Madapaukum Verdarajah Moodeliar

The Honble John Lindsay and Combompatty Rama Sawmy Bramy

Bill read.

Plea of Combompatty Ramasawmy Braminy Read.

Replication Read.

one Exhibit Read.

The Plea of the Defendant Combompatty Rama Sawmy and the Replication 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 This Court doth think fit to order and doth accordingly Order that the Plea be over ruled with Costs and that the Defendant be put upon his Answer.

A True Extract Signed George Taylor Regr

To the Right Honourable Lord Hobart

President and Governor &c in Council

Fort Saint George

In the Honble the Court of Appeals

Between Madapaukum Verdarajah Moodeliar of Madras Inhabitant Complainant and the Honble John Lindsay late a Captain but now a Major in his Majestys Service and Combompatty Ramasawmy Brammy Dubash of Madras Inhabitant Defendants

Filed in my Office the 5th October 1796

J. Webbe Clk

The Answer of Madapaukum Verdarajah moodeliar To the Petition and Appeal of Combompatty Ramasawmy Brammy one of the above named Defendants.

This Respondent for answer to the Petition and appeal of the above named Appellant or unto so much thereof as is necessary for him to make answer unto answereth and Saith That he admits that he did on or about the Twenty third day of September which was in the year of Christ one thousand Seven hundred and ninety five file and Exhibit his Bill of Complaint in the Honble the

the Mayors Court at Madraspatnam against the said Appellant and the Honble John Lindsay and did therein and thereby Charge the said appellant and the said Honble John Lindsay to be indebted to this Respondent in the full and just sum of nineteen thousand one hundred and thirty three Star Pagodas forty one fanams and seventy Cash as and for the balance due on a certain Bond or written obligation Jointly executed by them to this Respondent And this Respondent admits that the Appellant being served with a Summon to appear to and answer this Respondents Bill of Complaint he alone did appear and on the Twenty ninth day of September in the said Year one thousand Seven hundred and ninety five put in a Plea to the Jurisdiction of the Court the substance of which said Plea being fully recited in and by the appellants Petition and appeal this Respondent craves leave to refer thereunto - and this Respondent further admits that to the said Plea he did on the Twentieth day of October in the said year file and Exhibit his Replication which being also fully recited in and by the said appellants Petition and Appeal this Respondent craves leave to refer thereunto and prays the same may be taken as part of this his Answer - And this Respondent further admits that he did by his attorney at Law pray the said Mayors Court that the appellants said Plea might be set down to be argued and the same accordingly came on to be argued before the said Mayors Court on the sixth day of September last past when the said Mayors Court were pleased to over rule the appellants said Plea with Costs and to order that the appellant should be put upon his answer as by a Copy of the said Decretal order to the said Petition and appeal annexed relation being thereunto had will more fully appear - And this Respondent denies that the order of the said mayors Court is erroneous or inconsistent with the Charter by which the said mayors Court is Constituted or that the same doth appear by all or any of the reasons in the said Plea set forth on the Contrary this Respondent doth Contend that the matters in the said Plea Contained are fully and clearly refuted in and by the Replication of this Respondent and to which he craves leave to refer and now prays the same may be taken as part and parcel of this his answer -

For

Craves

For all which matters and such others as may be offered at the hearing this Respondent humbly prays that the order of the said mayors Court may be affirmed and that the Appellants Petition of appeal may be dismissed with Costs.

/Signed/ George Chalmers
Solicitor for Respt.

Court

Court of Appeals at Madraspatnam } Thursday the 5th day of January Anno Domini 1797.

Between Comborn patty Ramas-sawmy Brauminy Debash of Madras Inhabitant appellant and Madapaw kum Verdarajah mordeliar 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 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

By Court

To

Mosthum

Filed in my office
this 12th January 1837
Wm Wade Cler

To the Ho

of the said suit your Petitioner further Sheweth that he having been Summoned and required to appear to and answer the said Complai=nants said Bill of Complaint he alone appeared thereto and on the Twenty ninth day of September in the said year of Christ one thousand Seven hundred and Ninety five filed his Plea to the Complainants said Bill of Complaint And for Plea thereunto your Petitioner said that the said Complainant was an Indian Native of Madraspatnam and your Petitioner said and did also aver that he your Petitioner was an Indian Native of Madraspatnam and that he did not Consent or agree that the said Complainant should sue your Petitioner in the said Mayors Court of Madraspatnam and therefore your Petitioner did Plead the said several matters to the said Complainants said Bill of Complanant and to the relief and discovery thereby sought and your Petitioner prayed Judgment of the said Bill of Complaint and of the relief and discovery thereby sought and if the said Mayors Court of Madraspatnam sh would have further Cognizance of the said suit and your Petitio=ner prayed to be dismissed the said Mayors Court with his reasonable costs and Charges in that behalf sustained And your

your Petitioner further Sheweth that to the said Plea the said Complai=nant on the Twentieth day of October in the said year filed his Replication and therein and thereby admitted That by the or= Charter in your Petitioners said Plea Set forth the Indian Natives of Madras are not permitted to sue each other in the Mayors Court and that the said Charter doth direct that all suits or Actions that should be between such Natives should be deter=mined amongst themselves unless both parties should by Consent submit the same to the determination of the said Mayors Court and the said Complainant pretended and said that your Petitio=ner had actually given such Consent and that therefore your Petitioners said Plea was unfounded for the Complainant said that your Petitioner did in and by a certain Bond or Obligation in writing duly executed to the Complainant become jointly bound with the said Honble John Lindsay for the payment of the sum of Twenty five thousand Star Pagodas and for the recovery of the Balance thereupon ow owing brought his Bill against your Petitioner jointly with the other Defendant the said Honble John Lindsay in manner and form as in and by the Complainants said

said Bill Setforth And the Complainant further said that your Petitioner by joining with the other Defendant the Honble John Lindsay in executing to the Complainant the said Bond or written Obligation did Consent and become amenable to the Jurisdiction of the Mayors Court and which was as the Complainant alleged Consistent with the Letter and Spirit of the said Charter as expressed in the words following that is to say "unless such Suits or Actions should be between the Indian Natives of Madraspatnam only which is not the Case in the present Instance as the Complainant has hereinabove shewn and the said Complainant further said that the said Clause in the said Charter Contained is in the nature of a previledge Conferred and by which Previledge a Native is exempted from being sued by a Native under the Circumstance in the said Charter Setforth and may plead the same and the Complainant said that if a previledged person joins in the execution of a Bond or in any other Contract with a person who is not Previledged he thereby waives his previledge and Cannot plead the same and the Complainant further said that your Petitioner had given Bail to the Complainants said action as by reference to the record of the said Mayors Court and to the Copy of a Letter thereunto annexed might appear And the Complainant further said he was advised that the act of giving Bail was of itself a Submission to the Jurisdiction of the Mayors Court and the Complainant for further Replication said that your Petitioner and the said Honble John Lindsay were Jointly Concerned in Certain money Transactions and for ought the Complainant knew to the Contrary were still Concerned therein and that in order to enable them to carry on the same your Petitioner did apply to the Complainant to lend and advance to your Petitioner for and on the joint account of your Petitioner and the other Defendant the Honble John Lindsay a certain sum of Money and the Complainant said that he did agree to lend and advance and did accordingly lend and advance at different periods the sum for which the hereinbefore in part recited Bond was afterwards Executed and the Complainant further said that at the said different periods he did take the acknowledgment of your Petitioner for the respective sums he did at

at such periods pay into your Petitioners hands on account and for the use of the said Saint Concern and in which acknowledgments it was conditioned that in failure of payment of the sums thereon advanced he the Complainant was at liberty to sue your Petitioner in the Honble the Mayors Court and the Complainant further said that having advanced partly upon such the acknowledgment and conditions of your Petitioner as aforesaid the sum of Twenty five Thousand Star Pagodas and being unable to make any further advances he did or require of your Petitioner and the other Defendant Honble John Lindsay a more solemn Instrument for securing the payment thereof and that thereupon the Bond in question was executed and the Complainant further said that some of the said acknowledgments were in his possession and ready to be delivered up to your Petitioner to be cancelled and that in all the Transactions which led to the Execution of the said Bond your Petitioner always submitted to the Jurisdiction of the said Mayors Court and Consented to be sued therein and therefore the Complainant did not think it necessary to require a Consent in the said

said Bond on the part of your Petitioner to be sued in the Mayors Court wherein fact that Consent was Virtually given by your Petitioner joining in a Bond with another Person as by the said Bill of Complaint Plea and Replication remaining of record in the said Mayors Court to which your Petitioner humbly craves leave to refer relation being thereunto had will more fully appear your Petitioner further Sheweth that your Petitioner by his attorney at Law prayed the said Mayors Court that your Petitioners said Plea might be set down to be argued and the same accordingly came on to be argued before the said Mayors Court on the sixth day of September last past when the said Mayors Court was pleased to over Rule your Petitioners said Plea with Costs and to order that your Petitioner should be put upon his answer From which said order of the said Mayors Court your Petitioner appealed to the Court of Appeals at Madraspatnam and did therein among other things set forth that by the said order of the said Mayors Court your Petitioner did conceive himself much aggrieved and did therefore Appeal therefrom as your Petitioner was advised and believed that the said

Order

order of the said Mayors Court for the causes and reasons in your Petitioners said Plea setforth and assigned was erroneous and Contrary to the Charter by which the said Mayors Court is Constituted.

To which said Petition and appeal the Complainant did put in his answer setting forth many evasive matters and things which your Petitioner Sheweth that his Petition and Appeal and the answer of the said Complainant thereto came on to be heard and determined on the fifth day of January now Present Instant by the said Court of appeals at Madras who were pleased to Confirm the order of the said Mayors Court with costs of Suit in the said Court of Appeals to be paid by your Petitioner all which will more fully and at large appear by reference to the several Proceedings had in the above Cause in the said Mayors Court and Court of Appeals to which said Several Proceedings and to each of them respectively your Petitioner Prays leave to refer and to have such full and ample benefit of them and of each of them as if they and each of them were herein before fully stated and setforth and made part of this appeal.

Cannot by any means admit and your Pet^r

From which said Order of the said Mayors Court and Court of Appeals your Petitioner most humbly appeals to your Most Excellent Majesty in Council for the reasons assigned in your Petitioners said appeal to the Court of Appeals at Madras as above Stated.

For all which reasons and such others as may be offered at the hearing of this Cause your Petitioner most humbly prays that the said Orders of the said Mayors Court and Court of Appeals at Madraspatnam be reversed and set aside and that the Complainant be ordered to pay all Costs of suit.

(Signed) Gilb^t Richetts
Solicitor for Appellant

Court

Court of Appeals at Madraspatnam &c.

Thursday the 5th day of January Anno Domini 1797

Between Comboom patty Rama & Sawmy Debash of Madras Inhabitants appellant and Madapauhum & Verdarajah Moodeliar of the same place Inhabitant Respondent

This cause coming on this day to be heard and debated before this Court by the Attornies on both sides upon hearing the Petition of Appeal and answer and the several Exhibits of the Hon^ble 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 Hon^ble the Mayors Court do stand & affirmed and that the appellants Petition behence dismissed with Costs

P Cur. /signed/ J Webbe Clk

a true Copy /signed/ Gilb^t Ricketts Sol^r for appel^t

To

To the Right Honourable Lord Hobart

Governour President in Council &c &c

Fort Saint George

In the Hon^ble the Court of Appeals Madraspatnam } Between John Tulloh John Groves and James Brodie of Madras Merchants and Partners under the Firm of Tulloh Groves and Brodie Complainants and Kistnasawmy and Tripassore Chinna Mootoo Chitty of Madras Inhabitants Defendants

The Petition and Appeal of Kistnasawmy one of the above named Defendants

Sheweth

Filed in My Office the 26th Sept^r 1796 J Webbe Clk

That the Complainants above named did sometime on or about the Twenty Second day of March and present year of our Lord One thousand Seven hundred and ninety Six &c Exhibit and File their Bill of Complaint in the Hon^ble the Mayors Court of Madraspatnam against your Petitioner and Tripassore Chinna Mootoo Chitty the other Defendant above named and did therein and thereby amongst other things State That your Petitioner and Tripassore Chinna Mootoo

Modoo Chitty the other Defendant above named stood justly and truely indebted unto the Complainants in the full and just Sum of Three thousand four hundred and Eighty Nine Pagodas Thirty nine fanams and thirty Six cash of Current Money of Madras aforesaid as by the Copies of a Bond and an account Current made up thereon and annexed to the said Bill of Complaint for the inspection of the said Mayors Court the Complainants did say & would appear and your Petitioner Sheweth unto this Hon^ble Court That the Complainants did in and by their said Bill of Complaint further State that your Petitioner and the other Defendant above named had refused to pay unto the Complainants the sum so alleged to be due as aforesaid and did thereupon pray a General Relief and that your Petitioner and the other Defendant above named might be decreed to pay unto the Complainants the aforesaid Sum of three thousand Four hundred and Eighty Nine Pagodas Thirty nine fanams and Thirty Six Cash with all such Interest as then was or might thereafter grow due thereon and also all Costs of the said suit And your Petitioner further Sheweth unto this Hon^ble Court that being served with process to appear to the Complainants said Bill of Complaint

Your

your Petitioner did accordingly by his attorney in Court appear thereto and previous to the time prescribed for your Petitioner to exhibit and file his answer by the Rules of the said Mayors Court which expired on the Third day of May last past your Petitioner did duly & procure his answer to be drawn and delivered to the Interpreter of the said Mayors Court for Translation into the English Language that your Petitioner might accordingly swear to the truth thereof previous to the Exhibiting and filing the same in the said Mayors Court and in strict conformity to the Rules and Practice thereof But your Petitioner Sheweth that after the expiration of the last of the said Rules so issued as the Instance of the Complainants for your Petitioner to exhibit his answer and which expired on the third day of May aforesaid as by Copies of the said Rules hereunto annexed for the Inspection of this Hon^ble Court and on which your Petitioner humbly prays may be taken as part of this his Petition and appeal The Complainants did allow the said Cause to remain Dormant and did not pray any further or other Rule &^c during the space of four months for your Petitioner to exhibit and file his answer to the said Bill of Complaint And your Petitioner further Sheweth unto this Hon^ble Court That in Consequence of

the

the Complainants having allowed the said suit to remain Dormant and not having prayed any further Rule as aforesaid your Petitioner did defer or delay the swearing to his said answer which was drawn out Translated and in every respect in a state of readiness preparatory to the swearing to exhibiting and Filing the same And your Petitioner further Sheweth unto this Honble Court that on or about the Thirteenth day of September last past The Complainants availing themselves and taking advantage of such Delay on the part of your Petitioner did without reviewing the said Cause by any fresh or new prayer Pray the said Mayors Court to grant a Decree against your Petitioner for not having exhibited and filed his answer to the said Bill of Complaint and That your Petitioner did by his attorney in Court object thereto and pray that the said Mayors Court would grant a further time of one week for your Petitioner to put in his answer and did state that the said answer was then ready and translated And your Petitioner further Sheweth unto this Honble Court that notwithstanding the said prayer of your Petitioner by his attorney as aforesaid the said Mayors Court did think fit to order and decree and did accordingly order and Decree that your Petitioner and Trepassore Chinna Moolee Chilly the other Defendant in the Title of this your Petitioners Petition and appeal named Do pay unto the Complainants the full and just Sum of Three thousand Four hundred and Eighty nine Pagodas Thirty nine fanams and Thirty Six Cash Together with all such Interest as then was or should thereafter become due thereon until full payment be made also all Costs of the said suit as by a Copy of the said Decree hereunto annexed for the Inspection of this Honble Court to which your Petitioner begs Leave to refer and humbly prays that the same may be taken as part of this his Petition and Appeal May more fully and at large appear

By which said Decree of the said Mayors Court your Petitioner doth Consider himself much injured and aggrieved and doth therefore appeal therefrom unto this Honble Court for the following amongst other Reasons

First ---- Because The Prayer of your Petitioner by his said attorney for the extention of one weeks time was evidently for the purpose of being enabled to file his answer and not with the intention of Delay for had Delay been the mere object

of

of his prayer he would neither have gone to the expence of employing his attorney to prepare his answer nor the Interpreter to or Translate the same—

Secondly ... Because the Granting of one weeks further time to your Petitioner to have enabled him to file his said answer however the same might have been considered as an indulgence to your Petitioner yet could it not have been any way detrimental or injurious to the Complainant had his Claim been ever so just and correct in as much as your Petitioner had given or good and unexceptionable Bail and such as the Complainants themselves had thought proper to approve—

For all which reasons and such others as may be Offered at the Hearing your Petitioner most humbly Prays that this Honble Court will reverse the said Decree of the said Mayors Court and grant unto your Petitioner a Rule of one week to exhibit and file his said Answer to the Complainants said Bill of Complaint—

/Signed/ Emanuel Samuel
Solicitor for appellant

Extract

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 5th day of April Anno Domini 1796

Present
James Daly Esqre Mayor
William Webb Andrew Ross &
Richard Chase Aldermen

John Tulloh John Jervis and James Brodie

vers

Kistnasawmy and Trepassore Chunnamootoochitty

Day is given the Defendant Kistna Sawmy till the 12th Instant to answer the Complainants Bill—

A True Copy
/Signed/ Emanuel Samuel
Solicitor for appellant

A True Extract
/Signed/ George Taylor
Regr

Extract

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 12th Day of April Anno Domini 1796

Present

James Daly Esqr Mayor

Andrew Ross & Alexr Cockburn

Aldermen

John Tulloh John Jervis and James Brodie

vers

Kistnasawmy and Trepassore Chinnamootoo Chitty

Further day is given the Defendant Kistna-
-sawmy till the 19th Instant to answer the Complai-
-nants Bill-

A True Extract
/Signed/ George Taylor Regr

A True Copy
/Signed/ Emanuel Samuel
Solicitor for Appellant

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 19th Day of April Anno Domini 1796

Present

James Daly Esqre Mayor

Andrew Ross and John Mitford

Aldermen

John Tulloh John Jervis and James Brodie

vers

Kistnasawmy and Trepassore Chinnamootoo Chitty

Further day is given the Defendant
Kistnasawmy till the 3d may next to answer the Complai
-nants Bill indefault of which Judgment will be given
for the Complainants-

A True Extract
/Signed/ George Taylor Regr

A True Copy
/Signed/ Emanuel Samuel
Solicitor for appellant

Extract

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 13th day of September Anno Domini 1796

Present

James Daly Esqr Mayor
Wm Webb Andrew Ross and
Richard Chase Aldermen
John Tulloh John Jervis and James Brodie

Kistnasawmy and Trepassore Chinna Mootoo Chitty

The attorney for the Complainants produces to the court a Certificate from the Register setting forth that the usual Rules have issued for the Defendants to answer the Complainants Bill which they have neglected doing He therefore prays that a Decree may now pass to which Mr Robert Williams for Mr Emanuel Samuel attorney for the Defendants Objects and prays that the Court will grant a further time of one Week for the Defendants to put in their answer he being informed that the matters in dispute have been under accommodation and the Cause lain dormant since the third day of may last past The said attorney begs further to inform the Court that the answers are now ready and Translated but have not been sworn to by reason that the matters were as he has been informed under accomodation as aforesaid / Ordered that a Decree do pass

Bill Read

It appearing by the Records of this Court that the usual Rules have issued for the Defendants to answer the Complainants Bill which they have neglected doing This Court doth therefore think fit to order and Decree and doth accordingly order and Decree that the Defendants do pay unto the Complainants the full and Just sum of Three thousand four hundred and Eighty nine Pagodas thirty nine fanams and thirty six cash / Pagodas 3489-39-36 / together with all such Interest as now is or shall hereafter become due thereon until full payment is made also all Costs of this Suit

Clerk / Signed / George Taylor Regr

A True Copy / Signed / Emanuel Samuel
Solicitor for appellant

To

To the Right Honourable Lord Hobart

Governour President in Council &c. &c.

Fort Saint George

In the Honble the Court of Appeals at Madraspatnam } Between John Tulloh John & Jervis and James Brodie of Madras &c Merchants and Patners under the Firm of Tulloh Jervis and Brodie Complainants and Kistnasawmy and Tripassore Chinna mootoo Chitty of madras Inhabitants Defendants

Filed in my Office the 1st November 1796. J Webbe clk

The Answer of the above named Complainants to the Petition and appeal of Kistnasawmy one of the above named Defendants

These Respondents answering do admit that they did some time on or about the Twenty Second day of march and present year of our Lord One thousand Seven hundred and Ninety Six Exhibit and file their Bill of Complaint in the Honble the Mayors Court of Madraspatnam against the Petitioner and Tripassore Chinna mootoo Chitty the other Defendant above named and did therein and thereby amongst

amongst other things state that the Petitioner and Tripassore Chinna mootoo Chitty the other Defendant above named stood Justly and truely indebted unto this Respondents in the full and Just Sum of Three thousand four hundred and Eighty nine Pagodas Thirty Nine fanams and Thirty Six cash of Current money of Madras aforesaid as by the Copies of a Bond and an account Current made up thereon and annexed to the said Bill of Complaint for the Inspection of the said Mayors Court these Respondents did say would appear And these Respondents do admit that they did in and by their said Bill of Complaint further state that the Petitioner and the other Defendant above named had refused to pay unto these Respondents the sum so alleged to be due as aforesaid and did thereupon pray a General Relief and that the Petitioner and the other Defendant above named might be Decreed to pay unto these Respondents the aforesaid sum of Three thousand four hundred and Eighty Nine Pagodas Thirty Nine fanams and Thirty Six Cash with all such Interest as then was or might thereafter grow due thereon and also all Costs of the said suit And these Respondents do admit that the Petitioner did by his attorney in Court appear to the said

Bill

Bill of Complaint But these Respondents do not admit nor believe that previous to the time prescribed for the Petitioner to Exhibit and file his answer by the Rules of the said Mayors Court he the Petitioner had procured his answer to be drawn and delivered to the Interpreter of the said Mayors Court for Translation as set forth in the said Petition of Appeal neither would such preparation if admitted be of any service to the Petitioner nor serve at all to excuse or even to palliate his default And these Respondents humbly shew to this Honble Court that the final and peremptory Rule thereof issued by the said Mayors Court at the instance of these Respondents for the Petitioner to file his answer to the said Bill of Complaint having expired on the Third day of May last these Respondents did at the request of the Petitioner and the said other Defendant and on a promise of payment forbear for several months and until the Lapse and breach of the said promise to pray Judgment in the said suit a forbearance of which they now with reason repent seing that the Petitioner for the want of any Just or reasonable defence turns with no less effrontery than ingratitude their indulgence into an argument against them And these Respondents shew that on or about the Thirtieth day of September last they these Respondents did at length pray for and obtain the Decree mentioned in the said Petition of appeal a Copy whereof is to the said Petition also annexed And these Respondents say that they were by the Rules and practice of the said Mayors Court intitled to the said Decree on the said Third day of may if they had not been restrained by motives of mistaken lenity from urging their right which shews the insinuation of the Petitioner that these Respondents omitting to revive the Cause had taken advantage of the delay to be as ill founded as it is ungenerous for whatever accommodation or convenience the Petitioners might have had in the delay it is impossible in the nature of things that any advantage could have thence accrued to these Respondents the cause being with respect to them precisely in the same state on the thirteenth of September as it had been on the third day of may and to revive a suit not abated especially if all the parties are in Court by their attornies and more particularly still if they have been so from the begining without interruption is absurd

in

in theory and in practice unheard of But to all insinuations of the kind here noticed it would be sufficient for these Respondents to answer that proceeding under the Rules and established practice of a competent Court they cannot have taken any undue advantage nor omitted any necessary formality And these Respondents deny that the Petitioner has or is at all aggrieved or injured by the said Decree or that he hath in reason or Justice any good ground of appeal therefrom

The Petitioners first reason in support of his said Appeal consists of an inference drawn from his proceedings to his intentions a mode of argument always to be suspected but which as it is here used by the Petitioner is peculiarly unhappy for these Respondents humbly conceive that it is of reasons as of proofs the best which the case affords ought to be adduced whereas on the contrary the mode in Question is the weakest and very worst that could be chosen yielding at best but vague appearances and inconclusive probabilities and in the present instance yielding even these in favour of these Respondents The Petitioners best mode and according to the practice of the Mayors Court the only mode of shewing that he had used due deligence was to have exhibited the affidavit of his attorney or some other person as to the stage of preparation in which his answer was and the obstacles that retarded its completion Instead of this he trusted to the argument now under consideration which as these Respondents have said proves but little and that against the Petitioner For tho that may be true which the Petitioner is pleased to assert to wit That he would not have been at the expence of preparing his answer if his object had been delay yet the truth or falsehood of that assertion is referable to the Petitioners own conscience only nor can it by any contrivance be conveyed with conviction into the mind of another since none but the Petitioner himself can certainly know what sacrifice he would make to save appearances But if the filing of his answer was the sole object of his prayer why did he omit to file it within the regulated time and during the almost unexampled forbearance of the four subsequent months or if as he asserts he had got his answer prepared and interpreted why was it suffered to remain so long in that particular

particular stage unless some unsurmountable obstacle prevents the next step of swearing to it This indeed is an inference which would be sufficiently warranted by the Petitioners own data and it is certainly far more legitimate than any that he himself has offered—

The Second Reason in an estimate partial and false indeed as shall be shewn of the actual inconvenience which would have attended a deviation from the practice of the Court These Respondents say a false and partial estimate because the Petitioner hath forgot that the week in controversy might according to the decision save these Respondents just demand from or involve it in all the consequences of their Debtors death or insolvency events very far within the scope of possibility and &c which yet are in no Degree provided against by the undertaking of the Bail - So accommodating is the argument of the Petitioner that it might be used with equal cogency for a week a month or a year and so general in its nature that it tends to explode not only the standing Rules of practice of the &c

Mayors

Mayors Court but all Rules whatever for Rules could have no existence were the expediency of every case to be measured by its particular circumstances - But tho it were admitted that no inconvenience would have resulted from the granting of the Petitioners prayer which however is contrary to the fact yet as to abolish or infringe an established practice or a standing Rule without a better reason would be &c ridiculous so would it and in the same degree to admit the Petitioners argument which by natural consequence &c entrains this absurdity—

For all which Reasons and such other as may be offered at the hearing this Respondent most humbly prays that this Honble Court may be pleased to affirm the said Decree of the Honble the Mayors Court and dismiss the Petitioners Petition with such exemplary Costs as his litigious conduct shall appear to deserve—

/Signed/ John Wilkinson
Solicitor for Respondt.

Court

Court of Appeals
at
Madraspatnam &c

Thursday the 5th day of January
Anno Domini 1797

Between Kistnasawmy Braminy of
Madras Inhabitant Appellant and John
Tulloh John Jervis and James Brodie of
Madras Merchants and Partners under
the Firm of Tulloh Jervis and Brodie
Respondents.

This Cause coming on this day to be heared and debated
before this Court by the attorneys on both sides upon hearing the Petition
of Appeal and answer and the several Exhibits of the Honble the
Mayors Court together with the Decree of the said Court given in
this Cause on Tuesday the 13th 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 attorneys
on both sides This Court doth think fit to order and Decree
and accordingly order and Decree that the said Decree of the
Honble the Mayors Court do stand affirmed and that the appel-
lants Petition be hence dismissed with Costs.

By Cur

To

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

In the Honble the Court of
Appeals Madraspatnam

Between John Tulloh John Jervis and
James Brodie of Madras Merchants and co
partners under the Firm of Tulloh Jervis
and Brodie Complainants and Kistnasawmy
and Tripassore Chinna Mortoo Chitty of Madras
Inhabitants Defendants.

The Petition and Appeal of Tripassore Chinna Mortoo
Chitty one of the above named Defendants.

Sheweth

Filed in my Office
the 26th Sept. 1796.
J Webbe
Clk

That the Complainants above named did sometime on or about
the Twenty Second day of March and present year of our Lord One
Thousand Seven hundred and ninety six Exhibit and File their
Bill of Complaint in the Honble the Mayors Court of Madras-
patnam against your Petitioner and Kistnasawmy the co
other Defendant above named and did therein and thereby
amongst other things state That Kistnasawmy the other
Defendant

Defendant above named and your Petitioner stood justly and truely indebted unto the Complainants in the full and just Sum of Three &c Thousand Four hundred and Eighty nine Pagodas Thirty nine fanams and Thirty Six cash of Current Money of Madras aforesaid as by the Copies of a Bond and an account Current made up thereon and annexed to the said Bill of Complaint for the Inspection of the said Mayors Court The Complainants did say would appear - And your Petitioner Sheweth unto this Honble Court that the &c Complainants did further state that Kistnasawmy the other Defendant and your Petitioner had refused to pay unto the Complainants the sum so alleged to be due as aforesaid and did thereupon pray a General Relief and that Kistnasawmy the other Defendant aforesaid and your Petitioner might be &c decreed to pay unto the Complainants the aforesaid sum of &c Three thousand Four hundred and Eighty nine Pagodas Thirty nine fanams and Thirty Six Cash with all such Interest as there was or might thereafter grow due thereon and also all Costs of the said suit And your Petitioner &c further Sheweth unto this Honble Court that being served with process to appear to the Complainants said Bill of

Complaint

Complaint your Petitioner did accordingly by his attorney in Court appear thereto and previous to the time prescribed for your Petitioner to exhibit and file his answer by the Rules of the said Mayors Court which expired on the Third day of May last past your Petitioner did duly procure his answer to be drawn and delivered to the Interpreter of the said Mayors Court for Translation into the English Language that your Petitioner might accordingly swear to the truth thereof previous to the exhibiting and filing the same in the said Mayors Court and in strict conformity to the Rules and practice thereof - But your Petitioner Sheweth that after the expiration of the last of the said Rules so ignited at the instance of the said Complainant for your Petitioner to &c exhibit his said answer and which expired on the Third day of May &c aforesaid (as by Copies of the said Rules hereunto annexed for the Inspection of this Honble Court and which your Petitioner humbly prays may be taken as part of this his Petition and appeal) The Complainant did allow the said cause to remain Dormant and did not pray any further or other rule during the period of four months for your Petitioner to exhibit and file his &c answer to the said Bill of Complaint - and your Petitioner

further

further sheweth unto this Honble Court That in Consequence of the Complainants having allowed the said suit to remain Dormant and not having prayed any further Rule as aforesaid your Petitioner did delay or defer the swearing to his said answer which was drawn out and Translated and in every respect in a state of readiness preparatory to the Swearing to exhibiting and filing the same and your Petitioner further Sheweth unto this Honble Court That on or about the Thirteenth ~~Thirteenth~~ day of September last past the Complainants availing themselves and taking advantage of such delay on the part of your Petitioner did without reviving the said or cause by any fresh or new prayer Pray the said Mayors Court to grant a Decree against your Petitioner for not having exhibited and filed his answer to the said Bill of Complaint - and that your Petitioner did by his attorney in Court object thereto and pray that the said Mayors Court would grant a further time of one week for your Petitioner to put in his answer alledging that the said Answer was then ready and translated and your Petitioner further Sheweth unto This Honourable Court That notwithstanding the said prayer of your Petitioner by his attorney as aforesaid The said Mayors Court did

did think fit to order and Decree and did accordingly order and Decree That your Petitioner and Ristnasawmy the other Defendant above named Do pay unto the Complainants the full and just sum of Three thousand Four Hundred and Eighty nine Pagodas or Thirty nine fanams and Thirty Six Cash Together with all such Interest as then was or should thereafter become due thereon or untill full payment also all Costs of the said suit as by a Copy of the said Decree hereunto annexed for the Inspection of this Honble Court to which your Petitioner begs leave to refer and prays that the same may be taken in part of this his Petition and appeal may more fully and at large appear -

By which said Decree of the said Mayors Court your Petitioner doth Consider himself much injured and aggrieved and Doth therefore appeal therefrom unto this Honble Court for the following amongst other Reasons -

First - - - Because The Prayer of your Petitioner by his said Attorney for the extention of one weeks time was evidently for the purpose of being enabled to file his answer and not with the intention of Delay for had Delay been the mere object of his prayer he would neither have gone to the Expence of employing his attorney

to

to prepare his answer nor the Interpreter to Translate the same-

Secondly - Because the granting of one weeks further time to your Petitioner to have enabled him to file his said answer however the same might have been considered as an Indulgence to your Petitioner yet could it not have been any way detrimental or injurious to the Complainant had his Claim been ever so just and correct in as much as your Petitioner had given good and unexceptionable Bail and such as the Complainants themselves had thought proper to approve -

For all which Reasons and such others as may be offered at the Hearing your Petitioner most Humbly prays that this Honble Court will reverse the said Decree of the said Mayors Court and grant unto your Petitioner a Rule of one week to exhibit and file his said Answer to the Complainants said Bill of Complaint -

/Signed/ Emanuel Samuel
Solicitor for appellant

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 5th day of April Anno Dominis 1796

Present

James Daly Esqr. Mayor
Wm. Hibbert Andrew Ross and
Richard Chase - Aldermen

John Tullock John Jervis and James Brodie

vers

Kistnasawmy and Irrahsore Chunnamootoo Chitty

Day is given the Defendant Irrahsore Chunna Mootoo Chitty till the 12th Instant to answer the Complainants Bill -

A True Extract
/Signed/ George Taylor
Regr.

A True Copy
/Signed/ Emanuel Samuel
Solicitor for appellant

Extract

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 12th day of April Anno Domini 1796

Present

James Daly Esqre Mayor
Andrew Ross & Alexr Cockburn

Aldermen

John Tulloh John Jervis and James Brodie

Avers

Kistnasawmy and Trepassore Chinnamootoo Chitty

Further day is given the Defendant Trepassore Chinnamootoo Chitty till the 19th Instant to answer the Coplainants Bill.

A True Extract
/Signed/ George Taylor
Regr.

A True Copy
/Signed/ Emanuel Samuel
Solicitor for Appellant

Extract

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 19th Day of April Anno Domini 1796

Present

James Daly Esqre Mayor
Andrew Ross and John Mitford

Aldermen

John Tulloh John Jervis and James Brodie

Avers

Kistnasawmy and Trepassore Chinnamootoo Chitty

Further day is given the Defendant Trepassore Chinnamootoo Chitty till the 3d may next to answer the Complainants Bill indefault of which Judgement will be given for the Complainants.

A True Extract
/Signed/ G Taylor
Regr

A True Copy
/Signed/ E. Samuel
Sol. for Appellant

Extract

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 13th day of September Anno Domini 1796

Present

James Daly Esqr Mayor
Wm Webb Andrew Ross and
Richard Chase Aldermen
John Tulloh John Jervis and James Brodie

vers

Kistnasawmy and Trepassore Chinna mootoo Chitty

The Attorney for the Complainants produces to the Court a Certificate from the Register setting forth that the usual Rules have issued for the Defendants to answer the Complainants Bill which they have neglected doing he therefore prays that a Decree may now pass to which Mr. Robert Williams for Mr. Emanuel Samuel attorney for the Defendants objects and Prays that the Court will grant a further time of one week for the Defendants to put in their answer he being informed that the matters in dispute have been under accommodation and the Cause lain Dormant since the 3d day of May last past The said attorney begs further to inform the Court that the answers are now ready and Translated but have not been Sworn to by reason that the matters were / as he has been informed under accommodation as aforesaid / Ordered that a Decree do pass -

Bill read -

It appearing by the Records of this Court that the usual Rules have issued for the Defendants to answer the Complainants Bill which they have neglected doing This Court doth therefore think fit to order and Decree and doth accordingly order and Decree that the Defendants do pay unto the Complainants the full and just sum of Three thousand four hundred and Eighty nine Pagodas Thirty nine fanams and thirty Six Cash / Pags. 3489. 39. 36. / together with all such Interest as now is or shall hereafter become due thereon untill full payment is made also all Costs of this Suit -

A True Extract
/ Signed / George Taylor Regr.

A True Copy / Signed / Emanuel Samuel
Solicitor for Appellant

To

To the Right Honourable Lord Hobart

Governor President in Council &c. &c.

Fort Saint George.

In the Hon^ble the Court of Appeals Madraspatnam.

Between John Tulloh John Jervis and James Brodie of Madras Merchants and Partners under the Firm of Tulloh Jervis and Brodie Complainants and Kistna Sawmy and Trepassore Chinna Mootoo Chitty of Madras Inhabitants Defendants

The Answer of the above named Complainants to the Petition and Appeal of Trepassore Chinna Mootoo Chitty one of the above named Defendants

Filed in my Office the 1st November 1796. J Webbe Clk

These Respondents answering do admit that they did some time on or about the twenty Second day of march and present year of our Lord one Thousand Seven Hundred and ninety six Exhibited and file their Bill of Complaint in the Hon^ble the Mayors Court of Madraspatnam &c against the petitioner and Kistnasawmy the other Defendant above named and did therein and thereby amongst other things state that Kistnasawmy the other Defendant above named and the Petitioner stood Justly and truly Indebted unto them these Respondents in the full and Just sum of three thousand four hundred and Eighty Nine Pagodas thirty Nine fanams and thirty six Cash of Current money of Madras aforesaid as by the Copies of a Bond and an account Current made up thereon and annexed to the said Bill of Complaint for the Inspection of the said Mayors Court these Respondents did say would appear and these Respondents do admit that they did further state that Kistnasawmy the other Defendant and the Petitioner had &c refused to pay unto these Respondents the sum so alledged to be due as aforesaid and did thereupon pray a General &c relief and that Kistnasawmy the other Defendant aforesaid and the Petitioner might be Decreed to pay unto these &c Respondents the aforesaid sum of three thousand four hundred and Eighty Nine Pagodas thirty Nine fanams and thirty Six Cash with all such Interest as then was or might thereafter grow due thereon and also all Costs of the said Suit And these Respondents do admit that the &c

Petitioner

Petitioner did by his attorney appear to the said Bill of Complaint
But these Respondents do not admit nor believe that previous
to the time prescribed for the Petitioner to exhibit and file his
answer by the Rules of the said Mayors Court He the Petitioner
had procured his answer to be drawn and delivered to the Inter-
=preter of the said Mayors Court for Translation as set forth
in the Petitioners said Petition of appeal neither would
such preparation if admitted be of any service to the Petiti-
=oner nor serve at all to excuse or even to palliate his Default
And these Respondents humbly shew to this Honble Court that
the final and peremptory Rule issued by the said Mayors
Court at the Instance of these Respondents for the Petitioner
to file his answer to the said Bill of Complaint having ex-
expired on the third day of May last these Respondents
did at the request of the Petitioner and the said other ex
Defendant and on a promise of payment for bear for ex
Several Months and until the lapse and breach of the said
promise to pray Judgement in the said suit a forbearance of
which they now with reason repent seeing that the Petitioner
for the want of any Just or reasonable Defence turns with
noless

noless effrontery than ingratitude their Indulgence into an argument
against
Them And these Respondents shew that on or about the thirteenth
day of September last they these Respondents did at length pray
for and obtain the Decree mentioned in the said Petition of appeal
a Copy whereof is to the said Petition also annexed and these ex
Respondents say that they were by the Rules and Practice of the
said Mayors Court entitled to the said Decree on the said
third day of May if they had not been restrained by motives
of Mistaken lenity from urging their right which shews the
Petitioners insinuation "that these Respondents omitting to receive
the cause had "taken advantage of the delay" to be as ill founded
as it is ungenerous for whatever accommodation or Convenience
the Defendants might have had in the delay it is impossible
in the Nature of things that any advantage could have ex-
thence accrued to these Respondents the Cause being with
respect to them precisely in the same state on the thirteenth
of September as it had been on the third of May and
to revive a Suit not abated especially if all the Parties are
in Court by their attornies and more particularly if they
have been so from the beginning without interruption is

absurd

absurd in theory and in practice unheard of But to all insinuations of the kind here Noticed it would be sufficient for these Respondents to answer that proceeding under the Rules and Established practice of a Competent Court they cannot have taken any undue advantage nor omitted any necessary formality - And these Respondents deny that the Petitioner was or is at all aggrieved or injured by the said &c decree or that he hath in reason or Justice any Good Ground of &c appeal therefrom - The Petitioners first Reason in support of his said appeal Consists of an inference drawn from his proceedings to his intentions a mode of argument always to be suspected but which as it is here used by the Petitioner is peculiarly unhappy for this Respondent humbly conceives that it is of reasons as of proofs the best which the Case affords ought to be adduced whereas on the Contrary the mode in question is the weakest and very worst that could be Chosen yielding at best but vague appearances and inconclusive probabilities and in the present instance yielding even those in favour of these Respondents The Petitioners best mode and according to the practice of the Mayors Court the only mode of shewing that he had used due delligence was to have exhibited the affidavit of his attorney or some other person as to the stage

of

of preparation in which his answer was and the Obstacles that retarded its Completion Instead of this he trusted to the &c argument now under Consideration which as these Respondents have said proves but little and that against the petitioner For tho that may be true which the petitioner is pleased to assert to wit that he would not have been at the &c Expence of preparing his answer if his object had been delay yet the truth or falsehood of that assertion is &c referable to the petitioners own Conscience only nor can it by any Contrivance be Conveyed with Conviction into the mind of another since none but the petitioner himself can certainly know what sacrifice he would make to save appearances But if the filing of his answer was the sole object of his prayer why did he omit to file it within the regulated time and during the almost unexampled forbearance of the four Subsequent Months or if as he asserts he had got his answer prepared and interpreted why was it suffered to remain so long in that particular Stage unless some unsurmountable Obstacle prevented the next Steps of Swearing to it this indeed is an inference which would be Sufficiently &c warranted by the Petitioners own Data and it is certainly

for

for more ligitimate than any that he himself has offered - The Second Reason is an Estimate partial and false indeed as Shall be Shewn of the actual inconvenience which would have attended a deviation from the practice of the Court These Respondents say a false and partial Estimate because the Petitioner hath for got that the Week in Contravency might according to the decision save these Respondents Just demand from or involve it in all the Consequences of their Debtors Death or insolvency or events very far within the scope of possibility and which yet are in no degree provided against by the undertaking of the Bail So accommodating is the argument of the Petitioner that it Might be used with equal Cogency for a week a Month or a year and so general in its nature that it tends to explode not only the standing Rules of practice of the Mayors Court but all Rules whatever for Rules could have no existence were the expediency of every Case to be measured by its particular Circumstances But tho it were admitted that no inconvenience would have resulted from the Granting of the Petitioners prayer which however is Contrary to the fact yet as to abolish or infringe an Established practice or a Standing Rule without a better reason would be ridiculous so would it and in the same degree to admit the Petitioners argument which by natural Consequence entrains this absurdity -

For all which Reasons and such others as may be offered at the hearing this Respondent most humbly prays that this Honble Court may be pleased to affirm the said Decree of the Honble the Mayors Court and dismiss the Petitioners Petition with such exemplary Cost as his litigious conduct shall appear to deserve -

/ Signed / John Wilkinson
Solicitor for Respondent

Court

Court of Appeals at Madraspatnam

Thursday the 5th day of January Anno Domini 1797

Between Trepasore Chinna mootoo Chitty of Madras Inhabitant appellant and John Tulloh John Jervis and James Brodie of Madras Merchants and Partners under the Firm of Tulloh Jervis and Brodie Respondents

This Cause coming on this day to be heard and debated before this Court by the attornies on both sides upon hearing the Petition of appeal and answer and the several Exhibits of the Honble the Mayors Court together with the Decree of the said Court given in this Cause on Tuesday the 13th 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 Decree of the Honble the Mayors Court do stand affirmed and that the appellants Petition be hence dismissed with Costs

To

To the Kings Most Excellent Mayesty in Council

Between John Tulloh. John Jervis and James Brodie of Madras Merchants and on Partners under the Firm of Tulloh Jervis and Brodie Complainants and Kistnasawmy and Trepasore Chinna mootoo Chitty of Madras Inhabitants Defendants

The Petition and Appeal of Trepasore Chinna mootoo Chitty one of the above named Defendants

Most Humbly Sheweth unto your Most Excellent Mayesty in Council That the Complainants abovenamed did sometime on or about the 22d Twenty Second day of March and year of Christ One thousand Seven hundred and ninety six Exhibit and file their Bill of Complaint in the Honble the Mayors Court of Madraspatnam against your Petitioner and Kistna Sawmy the other Defendant above named and did therein and thereby amongst other things state That Kistnasawmy the other Defendant above named and your Petitioner stood justly and truely indebted unto the said Complainants in the full and just sum of Three Thousand Four hundred and Eighty nine Pagodas Thirty nine fanams and

Filed in my Office the 18th January 1797
J Webbe Clk

Thirty

Thirty Six Cash of the Current Money of Madras aforesaid as by the &c
Copies of a Bond and an account Current made up thereon and annexed
to the said Bill of Complaint for the Inspection of the Hon^ble the
Mayors Court The Complainants did say would appear And your
Petitioner humbly Sheweth that the Complainants did further &c
state That Kistnasawmy the other Defendant and your Petitioner
had refused to pay unto the Complainants the sum so alleged to be
due as aforesaid and did thereupon pray a General Relief and that
Kistnasawmy the said other Defendant and your Petitioner might
be Decreed to pay unto the Complainants the aforesaid sum of
Three thousand four hundred and Eighty nine Pagodas Thirty nine
fanams and Thirty Six Cash Together with all such Interest as
thon was or should thereafter become due thereon and also all &c
Costs of the Suit - and your Petitioner further Sheweth unto your
Most Excellent Majesty in Council That being served with &c
Process to appear to the Complainants said Bill of Complaint
your Petitioner did accordingly by his attorney at Law in Court
appear thereto - and previous to the time prescribed for your &c
Petitioner to exhibit and file his answer by the Rules of the said
Mayors Court which expired on the third day May in the
year

year aforesaid your Petitioner did duly procure his answer to be
drawn and delivered to the Interpreter of the said Mayors Court
for Translation into the English Language that your Petitioner
might accordingly have sworn to the truth thereof previous to the
exhibiting and filing the same in the said Hon^ble the Mayors Court
and in strict Conformity to the Rules and practice thereof But
your Petitioner Sheweth that after the expiration of the last of the
Rules so Issued at the Instance of the said Complainant for your
Petitioner to Exhibit his said answer and which expired on the &c
Third day of May aforesaid (as by Copies of the said Rules hereunto
annexed for the Inspection of your Most Excellent Majesty in &c
Council and which your Petitioner Humbly prays may be taken
as part of this his Petition and appeal may appear reference
being thereunto had) The Complainants did allow the said Cause
to remain Dormant and did not pray any further or other Rule
during the period of Four Months for your Petitioner to exhibit
and file his answer to the said Bill of Complaint and your
Petitioner further Sheweth unto your Most Excellent Majesty
in Council That in Consequence of the said Complainants
having allowed the said suit to remain Dormant as aforesaid

and

and not having prayed any further or other Rule your Petitioner did delay or defer the swearing of his said answer which was drawn out and translated and in every respect in a State of Readiness preparatory to the swearing to exhibiting and filing the same And your Petitioner further Sheweth unto your most Excellent Majesty in Council That on or about the Thirteenth day of September last past the Complainants or availing themselves and taking advantage of such delay on the part of your Petitioner Did without reviving the said Cause by any fresh or new prayer Pray the said Mayors Court to grant a Decree &c against your Petitioner for not having exhibited and filed his answer to the said Bill of Complaint and that your Petitioner did by his attorney in Court object thereto and pray that the said Mayors Court would grant a further time of one week for your Petitioner to put in his answer alleging that the said Answer was then ready and translated - And your Petitioner &c further Sheweth unto your Most Excellent Majesty in Council that notwithstanding the said Prayer of your Petitioner by his attorney as aforesaid The said Mayors Court did think fit to order and Decree and did accordingly order and Decree That your Petitioner and Kistnaiswamy the other Defendant above named should pay unto the Complainants the full and just Sum of Three thousand four hundred and Eighty Nine Pagodas Thirty nine fanams and Thirty six bash &c together with all such Interest as then was or should thereafter become due thereon until full payment should be made and also all Costs of the said suit as by a Copy of the said Order and Decree of the Honble the Mayors Court hereunto annexed for the Inspection of your most Excellent Majesty in Council, and to which your Petitioner begs leave to refer and prays that the same may be taken in aid and assistance of this your Petitioners Petition and appeal doth and may more fully and at large appear -

And your Petitioner humbly Sheweth unto your Most Excellent Majesty in Council that considering himself materially injured and aggrieved by the said order and Decree of the Honble the Mayors Court in the Premises He your Petitioner did sometime on or about the Twenty Sixth day of September and year of Christ One thousand Seven hundred and &c Ninety Six exhibit and file his Petition and appeal in the Honble The Court of appeals at Madraspatnam and did therein and thereby after reciting the several matters and things herein before stated and set forth allege as his first Reason or Cause of appeal from the said Decree of the Mayors Court Because that his your &c

Petitioner

Petitioners prayer by his said attorney for the extension of one weeks time was evidently for the purpose of being enabled to file his answer and not with the Intention of Delay for that had delay been the mere object of his prayer he would neither have gone to the expence of employing his attorney to prepare his answer nor the Interpreter to translate the same - and Lastly your Petitioner did in and by his Petition and appeal say that Because the granting of one weeks further time to your Petitioner to have enabled him to file his said answer however the same might have been considered as an Indulgence to your Petitioner yet it could not have been any way detrimental or injurious to the Complainants had their claim been ever so just and correct in as much as your Petitioner had given good and unexceptionable Bail and such as the Complainants themselves had thought proper to approve wherefore your Petitioner did most humbly pray that the said Court of appeals would be pleased to reverse the said Order and Decree of the said Mayors Court and grant unto your Petitioner a Rule of one week to exhibit and file his said answer to the Complainants Bill of Complaint.

And your Petitioner humbly Sheweth unto your Most Excellent Majesty in Council That sometime on or about the first day of November which was in the year of Christ One thousand Seven hundred and Ninety Six The Complainants did exhibit and file their answer to the Petition and appeal of your Petitioner in the Honble Court of appeals aforesaid and did therein and thereby admit their having filed the Bill of Complaint for the recovery of the aforesaid Sum of Three Thousand Four hundred and Eighty nine Pagodas Thirty nine fanams and Thirty Six Cash alleged to have been due and owing from your Petitioner and Kistna Sawmy the said other Defendant unto the said Complainants - and the Complainants did further admit the several matters and things in the said Bill of Complaint set forth and charged as well as the prayer of the same and in form and substance as the same was in and by your Petitioners said Petition and appeal recited - and the said Complainants did further admit That your Petitioner did by his attorney in Court appear to the said Bill of Complaint But that the Complainants did not admit nor believe That previous to the time prescribed for the Petitioner to exhibit and file his answer by the Rules of the said Mayors Court having expired he your Petitioner had procured his answer to be drawn and delivered to the Interpreter of the said Mayors Court for Translation as set forth by your Petitioner in his said

said Petition and appeal neither would such preparations if admitted (The Complainants did say) have been of any Service to your Petitioner nor serve at all to excuse nor even to palliate his default - and the Complainants did state to the said Honourable the Court of appeals That the final and Peremptory Rule Issued by the Honble the Mayors Court at the Instance of them the Complainants for your Petitioner to file his said answer to the said Bill of Complaint having expired on the Third day of May last, the Complainants did (as they alleged) at the request of your Petitioner and the said Kistnasawmy the other Defendant, and on a promise (as they also alleged) of payment forbear for several months and until the lapse and breach of the said promise to pray Judgement in the said suit a forbearance of which the Complainants did say they then did repent having observed (as they alleged) That your Petitioner for the want of any just or reasonable defence learned (as the Complainants unjustly observed) with no less effrontery than ingratitude the (alleged) indulgence of the Complainants into an argument against them - And the Complainants did in and by their said answer say That on or about the Thirteenth day of September last they the Complainants did at length pray

for

for and obtain the Decree mentioned in your Petitioners Petition and appeal and a Copy whereof was annexed to the same - And the Complainants further said That they were by the Rules of the said Mayors Court as well as the practice of the same entitled to the said Decree on the said Third day of May if they had not (as they pretended) been restrained by motives of mistaken lenity from urging their (alleged) Right - which the Complainants did say shewed your Petitioners insinuation "That the Complainants omitting to revive the cause had taken advantage of the delay" to be (as they also pretended) as ill founded as it was ungenerous - For the Complainants said That whatever accomodation or Convenience your Petitioner and the said other Defendant might have had in the Delay it was impossible (they said) in the nature of things that any advantage could have thence accured unto the said Complainants the Cause being with respect to them precisely in the same state on the said Thirteenth day of September as it had been on the Third day of May - and the Complainants said That to have revived a suit which had not been abated especially if all the Parties were in Court by their attornies - and still

more

more particularly if they had been so from the beginning without interruption was absurd the Complainants did say in Theory and in Practice unheard of But to all Insinuations of the Kind in their said &c Answer mentioned and noticed the Complainants said it would have been sufficient for them to have answered That proceeding under the Rules and established practice of a competent Court they could not have taken any undue advantage nor omitted any necessary formality - and the said Complainants did in and by their said answer to the Petition and &c Appeal of your Petitioner deny That your Petitioner was at all aggrieved or injured by the said Decree of the said Mayors Court or that he had in Reason or justice any good ground of Appeal therefrom and the Complainants did say That your Petitioners first Reason in support of his said Appeal consisted of an inference drawn from his &c Proceedings to his intentions a mode of argument (they said) always to be suspected but which as it had been used by the Petitioner (the Com=plainants said) was particularly unhappy - For the Complainants said that they humbly conceived That it was of Reasons as of Proofs the best which the case afforded ought to have been adduced whereas on the contrary (they alleged) the mode in Question was the weakest and very worst that could have been chosen yielding (they pretended) at best but a vague &c appearance

appearance and inconclusive probability and in the present instance yielding even those (they alleged) in favor of them the said Complainants and the Complainants in further answer said That the best mode for your Petitioner (and according to the practice of the said Mayors Court the only mode) of shewing that he your Petitioner had used due deligence would have been to have exhibited the affidavit of his attorney or some other Person as to the Stage of preparation in which his your Petitioners answer was and the obstacles which had retarded its completion instead of which (the Complainants did say) your Petitioner had trusted to the arguments then under consideration which (as the Complainants did allege) could prove but little and that against your Petitioner - For that although it might (the Complainants said) have been true as your Petitioner had asserted - That he would not have been at the expence of &c preparing his answer if his your Petitioners object had been delay yet (the Complainants said) that the truth or falsehood of that assertion was referable to your Petitioners own conscience only - nor could it (they pretended) by any Contrivance have been conveyed with conviction into the minds of another since none but your Petitioner himself could certainly know (the Complain=ants

-nants alleged) what sacrifice he would or might have made to save appea-rances But (the Complainants said) if the filing of his answer was the sole object of his Prayer, Why (the Complainants asked) did he omit to file it within the regulated time, ~~and during~~ and during the alleged or unexampled forbearances of the four subsequent Months or if your Petitioner had so got his answer prepared and Interpreted (the Complainants further said) why it had been suffered to remain so long in that particular Stage unless some unsurmountable Obstacle had prevented the next step of swearing to it. This (the Complainants said) was an inference which would have been sufficiently warranted by your Petitioners own ~~and~~ (the Complainants said) it was for more ligitimate than any that he himself had offered and the Complainants further said That your Petitioners second Reason of ap-peal was an Estimate partial and (as they unjustly alleged) false as should they said be shewn of the actual inconvenience which would have attended a deviation from the practice of the Court. The Complai-nants again repeated That it was a false and partial Estimate of Because your Petitioner had forgot that the week in controversy or might according to the decision have saved the Complainants or alleged demand from or have insolved it in all the Consequences of their Debtors Death or Insolvency Events (the Complainants said) very far within the scope of probability and which (they said) were in no degree provided against by the undertaking of the Bail The Complainants further observed That the argument of your Petitioner was so accomodating that it might have been used (they said) with equal cogency for a week a Month or a year and so general in its nature that it tended, the Complainants alleged) to explode not only the standing Rules of practice of the said Mayors bench but all rules whatever. For rules (the Complainants said) could have no existence were the expediency of every case to be measured by its particular circumstances. But though it were admitted that no immediate inconvenience would have resulted from the granting of your Petitioners prayer which (the Complainants said) was contrary to the fact yet (they said) to abolish or infringe an established practice or a standing Rule without a better reason would have been (the Complainants said) rediculous and that it would have been so in the same degree to have admitted your Petitioners argument which (the Complai-nants pretended) did entrain that absurdity wherefore the Complainants did in and by their said answer to the

Petition

Petition and appeal of your Petitioner humbly pray - That the said Court of Appeals would be pleased to affirm the said Decree of the said Mayors Court and dismiss your Petitioners said Petition and appeal with such exemplary costs as your Petitioners (pretended) litigious Conduct should have appeared to deserve -

And your Petitioner Most humbly Sheweth unto your Most Excellent Majesty in Council That upon the Pleadings aforesaid being had in the Honble the Court of Appeals The said Petition and appeal of your Petitioner and the said answer of the said Complainants were set down to be heard - and That the said Cause came on to be heard and debated before the said Court of appeals on Thursday the fifth day of January and present year of Christ when the said Court of appeals were pleased to order and Decree and did accordingly order and Decree that the said Decree of the Honble The Mayors Court should stand affirmed and that the Petition and appeal of your Petitioner should be thence dismissed with Costs -

By which said order and Decree of the said Mayors Court and the affirmation of the same by the said Court of appeals &c your Petitioner doth Consider himself very materially injured and aggrieved and doth therefore appeal therefrom - unto &c

your

your Most Excellent Majesty in Council for the following amongst other Reasons -

First - - - Because the several matters and things mentioned in your &c Petitioners Reasons assigned for appeal unto the said Court of appeals at Madras were good and satisfactory in themselves and sufficient in every legal consideration, to have induced and authorised the said Mayors Court in the first Instance (who had the said matters and things previously submitted to them) and the said Court &c of appeals subsequently to have allowed unto your Petitioner the further time of one week to file and exhibit his answer to the Complainants Bill -

And Secondly Because the said Mayors Court has decreed against your Petitioner and the said other Defendant for the &c amount sued for without having any proof before them of any existing Debt being due from your Petitioner and the said other Defendant unto them the said Complainants and consequently without any just Ground, on which they could Decree in the Premises -

For which Reasons and such others as May be Offered at the hearing hereof

Your

your Petitioner Most Humbly prays Your
Most Excellent Majesty in Council will
be pleased to Reverse the said Decree of the said
Mayors Court and order of the said Court of
Appeals and further grant unto your or
Petitioner such other Relief in the Premises
as to the Wisdom of your most Excellent
Majesty in Council shall seem meet.

/Signed/ Emanuel Samuel
Solicitor for appellant

Extract

Extract from the Minutes of a Court Held at the Town Hall
on Tuesday the 13th day of September Anno Domini 1796.

Present

James Daly Esqr Mayor
William Webb Andrew Ross &
Richard Chase Aldermen.
John Tulloh John Jervis and James Brodie -

Kisnasaurmey and Tripassore Chinna Mootoo Chitty -
vers

The attorney for the Complainants produces
to the Court a Certificate from the Register setting forth that the usual
Rules have Issued for the Defendants to answer the Complainants
Bill which they have neglected doing He therefore prays that a Decree
may now pass - to which Mr Robert Williams for Mr Emanuel
Samuel attorney for the Defendants objects and prays that the Court will
grant a further time of one week for the Defendants to put in their
answer he being informed that the matters in dispute have been
under accomodation and the Cause lain Dormant since the 1st
3d day of may last past The said attorney begs further to inform
the Court that the answers are now ready and translated
but have not been sworn to by reason that the matters were

old

as he has been informed under accomodation as aforesaid ordered that a Decree do pass

It appearing by the Records of this Court That the usual Rules have Issued for the Defendants to answer the Complainants Bill which they have neglected doing this Court doth therefore think fit to Order and Decree and doth accordingly Order and Decree That the Defendants do pay unto the Complainants the full and just Sum of Three thousand four hundred and Eighty nine Pagodas thirty nine fanams and thirty six Cash/ Pags 3489. 39. 36. together with all such Interest as now is or shall hereafter become due thereon until full payment is made also all Costs of this Suit

A True Extract
/Signed/ George Taylor
Sect

A True Copy
/Signed/ Emanuel Samuel
Solicitor for appellant

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 5th day of April Anno Domini 1796

Present

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

John Tulloh John Jervis and James Brodie
Avers

Kistnasawmy and Tripassore Chinnamootoo Chitty

Day is given the Defendant Tripassore Chinna Mootoo Chitty till the 12th Instant to answer the Complainants Bill

A True Extract
/Signed/ George Taylor
Sect

A True Copy
/Signed/ Emanuel Samuel
Solicitor for appellant

Extract

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 12th day of April Anno Domini 1796.

Present

James Daly Esqre Mayor
Andrew Ross & Alexr Cockburn
Aldermen

John Tulloh John Jervis and James Brodie.

Avers
Kistnasawmy and Tripasore Chinna mootoo Chitty

Further day is given the Defendant Tripasore Chinna Mootoo Chitty till the 19th Instant to answer the Complainants Bill-

A True Extract
/Signed/ George Taylor Regr.

A True Copy-
/Signed/ Emanuel Samuel
Solicitor for Appellant

Extract

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 19th Day of April Anno Domini 1796.

Present

James Daly Esqre Mayor
Andrew Ross & John Mitford
Aldermen

John Tulloh John Jervis and James Brodie

Avers
Kistnasawmy and Tripasore Chinna Mootoo Chitty

Further day is given the Defendant Tripasore Chinna mootoo Chitty till the 3d may next to answer the Complainants Bill indefault of which Judgment will be given for the Complainants-

A True Extract
/Signed/ George Taylor Regr.

A True Copy /Signed/ Emanuel Samuel
Solicitor for Appellant

Court

Court of Appeals
at
Madraspatnam &c

Thursday the 5th day of January
Anno Domini 1797

Between Trepassore Chinna Mootoo Chitty
of Madras Inhabitant appellant and &c
John Tulloh John Jervis and James Brodie
of Madras Merchants and Partners under
the Firm of Tulloh Jervis and Brodie Respondents

This Cause coming on this day to be heard and &c
debated before this Court by the attornies on both sides upon hearing the
Petition of appeal and answer and the several Exhibits of the
Honble the Mayors Court together with the Decree of the said
Court given in this Cause on Tuesday the 13th 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 Decree of the Honble the mayors
Court do stand affirmed and that the appellant's Petition
be hence dismissed with Costs

Errors &c
Signed Emanuel Samuel
Solicitor for appellant

Signed J. Webbe clk
True

The King's Most Excellent Majesty in Council

Between John Tulloh John Jervis
and James Brodie of Madras Merchants
and Partners under the firm of Tulloh &c
Jervis and Brodie Complainants
and
Kistnasawmy and Trepassore Chinna
Mootoo Chitty of Madras Inhabi-
tants Defendants

The Answer of the above named Complainants To the Petition and &c
Appeal of Trepassore Chinna Mootoo Chitty one of the above named Defendants

These Respondents admit that on or about the
time as in the said Petition and appeal of the said appellant
set forth they did exhibit and file their Bill of Complaint in
the Honble the Mayors Court of Madraspatnam against the
said appellant and the above named Kistnasawmy and did
therein and thereby state that the appellant and the above
named Kistnasawmy were indebted to these Respondents in
the sum of Three thousand four hundred and Eighty nine
Pagodas Thirty nine fanams and Thirty thirty Six Cash
and the several other matters and things in the said
appeal

Filed in my Office
the 9th June 1797
J. Webbe clk

appeal as set forth praying such relief as is therein also mentioned And these Respondents further admit that to their said Bill of Complaint the s.d appellant after being served with process to appear did by his attorney at Law appear but know not and think it quite unnecessary to enquire whether or not the appellant as he asserts had before the time prescribed for him by the Rule of the said Mayors Court to exhibit and file his answer to the Bill of Complaint of these Respondents had expired procured his answer to be drawn and delivered to the Interpreter of the said Mayors Court for translation These Respondents admit that the final and peremptory Rule Issued at their Instance by the Honble the Mayors Court for the appellant to file his answer to the said Bill of Complaint having expired on the third day of May One thousand Seven hundred and ninety six they did at the earnest and humble request of the appellant and of the said Kistnasawmy and on a promise of payment forbear for several months and until the lapse and breach of the said promise to pray Judgment in the said suit a forbearance and indulgence of which the Respondents repent having observed that the appellant for want of any just or reasonable defence has endeavoured with no less effrontery than ingratitude to

to turn their indulgence into an argument against them - These Respondents admit that on or about the Thirteenth day of s.d September one thousand seven hundred and ninety six they did at length pray for and obtain the Decree mentioned in the appellants Petition and appeal But they Deny that in so doing they took or could have taken any undue advantage or that it was at all incumbent on them by the Rules and practice of the said Mayors Court to sue out any process of s.d revivor against the said Petitioner or to use or observe any s.d further or other formality than praying the Court to grant Judgment for default of answer according to the peremptory rule of the said Mayors Court to that effect - To which prayer these Respondents do admit that the appellant did by his attorney in Court object - and these Respondents further s.d admit that notwithstanding such opposition they obtained s.d Judgment as in the said Petition and appeal is mentioned And the Exhibit annexed to the said Petition and Appeal is a true Copy of the said Decree and these Respondents do s.d admit that the appellant alledging himself injured and s.d aggrieved by the said Decree did, on or about the Twenty sixth

day

day of September One thousand Seven hundred and ninety six exhibit and file his Petition and appeal in the Honble the Court of appeals at Madraspatnam and did therein and thereby state and recite as in his Petition and appeal to your most Excellent Majesty in Council he sets forth and that these Respondents on or about the first day of November then following did exhibit and file their answer to the appellants said Petition and appeal to the Honble the Court of &c appeals at Madraspatnam and did therein and thereby admit, state, answer and pray as also recited by the appellant in his Petition and appeal to your Most Excellent Majesty in Council - That the said Petition and answer came on to be heard and debated before the Honble Court of appeals on Thursday the fifth day of January one thousand seven hundred and ninety seven when the Decree of the said Mayors Court was affirmed and the Petition and appeal of the appellant dismissed with Costs By which last mentioned Decree the appellant still alledging himself injured and aggrieved has appealed to your Most Excellent Majesty in Council for certain pretended reasons adduced at the

conclusion

conclusion of his said Petition and appeal to your most &c excellent Majesty in Council and to which Reasons the &c Respondents beg leave to submit the following answers &c To the first Reason These Respondents answer and say that no matter or thing mentioned by the appellant in his alledged reasons for appeal to the said Court of appeals at Madras, as the Respondents by their Answer to the &c appellants said Petition and appeal shewd to the satisfaction of that Court as appears by their said Judgment and affirmation of the Decree of the Mayors Court was at all good in any degree satisfactory, or in any manner sufficient in Law or in Equity to have induced or authorized the said Mayors Court in the first instance or the said Court of appeals subsequently to have granted the &c appellants prayer - and to the second Reason These Respondents answer and say that the said Mayors Court had before it as a proof of the Justice of these Respondents demand first a Copy of the Bond whereon the same arose secondly a proffer of such Bond whereby the said appellant might have had oyer thereof - and lastly the oath of these

Respondents

Respondents that the said Debt was justly due grounds of decision undeniably solid and not invalidated by any thing offered on the part of the said appellant

For all which Reasons and such others as may be offered at the hearing of this cause The Respondents most humbly pray that your most Excellent Majesty in Council will be pleased to affirm the said Decrees of the said Mayors Court and the said Court of appeals to dismiss the appellants Petition and appeal with Costs and to grant such other Relief to these Respondents in the premises as to your Most Excellent Majesty in Council may seem meet

[Signed] J Wilkinson &
Sutherland
Solicitors for Respondent

To

To the Right Honourable Lord Hobart

President & Governor &c in Council
Fort Saint George

In the Honorable
Court of appeals

Between Frances Lautour of &c
Madras Merchant Complainant
and Tripasore Chinnamootoo Chitty
of the same place Inhabitant Defendants

The humble Petition and appeal of the Defendant above named

Sheweth

That the Complainant above named did some time on or about the Nineteenth Day of March which was in the year of Christ one thousand seven hundred and ninety six Exhibit and file his Bill of Complaint in the Mayors Court of Madras-patnam against your Petitioner for the recovery of the sum of two thousand and forty two Pagodas and twelve fanams Current Money of madras pretending the same was due and owing unto him the said Complainant by your Petitioner and as by Copies of a certain Promissory note and an account Current

Filed in my Office
the 3. October 1796.
J Webbe clk

to

to his the Complainants said Bill of Complaint annexed the Complainant did state on reference would better and at ot large appear.

And your Petitioner further Sheweth unto this Honble Court that being served with the necessary and usual process to appear to and answer the Complainants said ot Bill of Complaint your Petitioner did accordingly by his attorney in Court appear thereto, and soon afterwards ot Exhibit and file his answer.

And your Petitioner further Sheweth unto this Honble Court that your Petitioner did in and by his said answer so filed and Exhibited to the Complainants said Bill as aforesaid amongst other things therein state that he your Petitioner did admit to have made the said Promissory note on which the said Complainant had brought his said Bill but that your Petitioner had not received any valuable Consideration therefor other then the sum of five hundred ot Star Pagodas which said sum being the only sum which he in Equity thought himself bounden to pay he was then and at all times had bun ready to discharge the same-

And

And your Petitioner further Sheweth unto this Honble Court that to your Petitioners said answer the Complainant did Exhibit and file his Replication and therein and thereby did state that Kistna Sawmy Braminy of Madras Inhabitant being indebted to the Complainant in the sum of Eight thousand Pagodas and it being inconvenient for him to discharge the Claim he proposed that the Complainant should in part payment thereof take a promissory note from your Petitioner for the sum of two thousand Pagodas whom he alledged was indebted to him that the Complainant having a good openion of the Character and Circumstances of your Petitioner dod being desirous of accomodating the parties he agreed to take his note for that sum, which your Petitioner accordingly granted in a free and Voluntary manner in the office of the Complainant after which the Complainant did Credit the said Kistnama in account with the like sum of two thousand Pagodas that in such manner the said note was passed and therefore the Complainant did state he could not pretend to say nor was it material for him to known what Consideration your Petitioner might have received from the said Kistna Sawmy for granting the said Promissory note and the Complainant did state

that

that from the many pecuniary concerns in which your Petitioner had been Engaged he must have been fully aware of the Effect and Operation of the said note which was payable to order, and that when he granted the same under the Circumstances aforemen= =tioned he Voluntarily waved all right to Enquire into the &c Considerations and the Complainant did say he was surprised at the nature of the defence set up by your Petitioner &c because a wants of money was the only reason which he &c assigned for not discharging the said debt as by Copy of a &c Letter from your Petitioner to the Complainant addressed and to his said Replication annexed the Complainant did state would more fully and at large appear - and the Complainant did state that in Consequence of your &c Petitioners situation he was induced to Extend the period of payment but finding the indulgence abused he was &c under the necessity of instituting the present suit.

And your Petitioner Sheweth unto this Hon^ble Court that to the Complainants said Replication your Petitioner did Exhibit and file a General Rejoinder & Issue having thereupon Joined in the said Cause Rules did pass for

for the Examination of witnesses and the Complainant did Examine one witness who to the second Interrogatory did depose that he was Employed by the Complainant as a Book keeper and in that Capacity Entrusted with the management of his Books and accounts, that he had looked at the paper writing produced to him at the time of his Examination purporting to be a Promissory Note from your Petitioner that the said Promissory note was received in part payment of a certain Claim which the Complai= =nant had on one Kistnasawmy that Credit was given for the amount of the said note as if it had been Cash actually paid to, and received by the Complainant -

And your Petitioner Sheweth unto this Hon^ble Court that Publication did then pass in the said Cause and the same was set down to be heard and the same having accord= =ingly come on to be heard by and before the said mayors Court on the twentieth day of September and present year of Christ 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 full and just Sum of two thousand and

forty

forty two Pagodas and twelve fanams Current money of Madras together with all such Interest as then was or should thereafter become due thereon until full paymant was made together with double Costs of Suit as by Copy of the said order and Decree hereunto annexed for the inspection of this Honble Court to which your Petitioner begs leave to refer, and prays the same may be taken as part of this his Petition of appeal the Original being ready to be produced at the Hearing may more fully and at or large appear.

By which said order and Decree of the said Mayors Court your Petitionir doth Conceive himself much aggrived and doth therefore appeal therefrom to this Honble Court for the following amongst other Reasons.

First ——— Because the Decree of the said Mayors Court is contrary to Evidence.

Secondly ——— Because your Petitioners answer being upon Oath and your Petitioner having therein and thereby positively sworn to have received no further or other Consideration for the said Promissory note than the sum of five hundred Pagodas and the Compleinant in his pleadings not having denied or in the least attempted to Controvert the fact your Petitioner humbly submits the said Mayors Court ought not in Justice to your Petitioner to have a Decree for a greater sum than that confessed by him to have been received from the Complainant.

Thirdly ——— Because your Petitioners Defence being supported on every Equitable View the said mayors Court ought not to have taxed your Petitioner with Double Costs.

For all which Reasons and such Others as may be offered at the Hearing your Petitioner Most humbly prays that the said Decree of the said mayors Court may be Reversed and that your Petitioner may have such other Relief in the premises as to this Honble Court shall seem meet.

/Signed/ Emanuel Samuel
Solicitor for appellant.

Mayors

Mayors Court at Madraspatnam

Tuesday the 20th day of September Anno Domini 1796

Present

James Daly Esqr Mayor

Andrew Ross & Benjn Roebuck

Aldermen

Between Francis Lautour of Madras Merchant Complainant and Chinna mootoo Chitty of the same place Inhabitant Defendant

This cause coming on to be Heard & Debated this Day in the presence of the Attornies on both sides on reading the Complainants Bill with Copies of a promissory note and an account Current annexed The Defendants Answer The 1st Replication with one Exhibit annexed The General 1st Rejoinder The Interrogatories and Deposition on the part of the Complainant with an Exhibit annexed On Hearing the Pleadings made use of by the Attornies and on due Consideration had thereon This Court doth think fit to Order and Decree and doth Accordingly Order and Decree that the Defendant do pay unto the Complainant the full and Just Sum of

Two thousand and forty two Pagodas and twelve fanams / Pagodas 2042.12. - / together with all such Interest as now is or shall hereafter become due thereon untill full Payment is made and it is further Order and Decreed that the Defendant be taxed with double Costs of Suit

Wm Hunr

/ Signed / G. Taylor Regr

A True Copy

/ Signed / Emanuel Samuel

Solicitor for Appellant

To

To the Right Honourable Lord Hobart

President and Governor &c.a in Council

Fort Saint George

In the Hon.ble Court of appeals

Between Francis Lautour of madras Merchant Complainant and T. Chinna Mootoo Chitty of the same place Inhabitant Defendant

The Answer of Francis Lautour the above named Complainant To the Petition and appeal of T. Chinna Mootoo Chitty the above named Defendant

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

This Respondent for answer to the Petition and Appeal of the above named Appellant or unto so much thereof as is necessary for him to make answer unto answereth and Saith That he admits that he did some time on or about the nineteenth day of march which was in the year of Christ one thousand Seven hundred and ninety Six exhibit and file his Bill of Complaint in the Hon.ble the Mayors Court of Madraspatnam against the said appellant and did therein and thereby charge the said Appellant to Stand indebted to this Respondent in the full and just Sum of Two thousand and forty two Pagodas and twelve fanams Current Money of Madras or as and for the balance due and owing to him this Respondent on a certain Promissory note granted by the Appellant to this Respondent Copy whereof as also of an account Current was annexed to this Respondents Bill of Complaint and therein and thereby referred to

And this Respondent further admits that the appellant being served with the necessary and usual process to appear to and answer this Respondents Bill of Complaint he did accordingly by his attorney in Court appear and did soon after Exhibit and file his answer

And this Respondent further admits that the appellant did in and by his said answer so filed and Exhibited to this Respondents said Bill of Complaint as aforesaid against other things therein State that he the said appellant did admit to have made the said Promissory note on which this Respondent had brought his said Bill of Compl.t but that the Appellant had not Received any Valuable Consideration for

for the same other than the Sum of Five hundred Star Pagodas which said sum being the only sum which he the said appel-lant in Equity thought himself bounden to pay he was then and at all times had been ready to discharge the same-

And this Respondent further admits that to the appellants said answer this Respondent did exhibit and file his Replication and therein and thereby did state that Kistna Sawmy Braminy of Madras Inha-bitant being indebted to this Respondent in the sum of Eight thousand Pagodas and it being inconvenient for him to discharge the Claim he proposed that this Respondent should in part payment thereof take a promissory note from the said appellant for the Sum of Two thousand Pagodas whom he alledged was indebted to him that this Respondent having a Good Openion of the Character and Circumstances of the appellant and being desirous of accommodating the parties he agreed to take his note for that sum which the appellant accordingly granted in a free and Voluntary manner in the office of this Respondent after which this Respondent did credit the said Kistnasawmy in account with the like sum of Two thousand Pagodas that in such Manner the said note was passed and therefore this Respondent could not pretend to say nor was it material for him to know what Consideration the Appellant might have received from the said Kistnasawmy for granting the said Promissory note and this Respondent did further state that from the many pecuneary Concerns in which the Appellant had been engaged he must have been fully aware of the effect and operation of the said note which was payable to order and that when he granted the same under the Circumstances aforementioned he Voluntarily waved all right to enquire into the Considerations and this Respondent did say that he was surprised at the Nature of the defence set up by the Appellant because a want of money was the only reason which he assigned for not discharging the said debt as by Copy of a Letter from the appellant to this Respondent addressed and to his said Replication annexed this Respondent did state would more fully and at large appear and this Respon-dent did further State that in Consequence of the appellants Situation he was induced to extend the period of payment but finding the Indulgence abused he was under the necessity

necessity of instituting the present Suit

And this Respondent further admits that to his Replica-
tion the appellant did Exhibit and file a General Rejoinder and
issue having thereupon Joined in the said Cause rules did pass
for the examination of witnesses and this Respondent did Examine
one witness who to the Second Interrogatory did depose that he
was employed by this Respondent as Book keeper and in that
capacity entrusted with the Management of his Books and
accounts and that the Promissory note upon which the suit
was brought was received in part payment of a certain Claim
which this Respondent had on one Ristnasawmy and that
Credit was given him for the Amount of the said note as if it
had been Cash actually paid to and received by this Respondent

And this Respondent further admits that Publication
did then pass in the said Cause and the same was set down
to be heard and the same having accordingly come on to be
heard by and before the said Mayors Court on the Twentieth
day of September and present Year of our Lord one thousand
Seven hundred and ninety six when the said Mayors Court
were pleased to order and Decree and did accordingly order

and

and Decree that the said appellant should pay unto this or
Respondent the full and just Sum of Two Thousand and forty
two Pagodas and Twelve fanams Current money of Madras together
with all such Interest as then was or should thereafter become due
thereon until full payment was made together with double Costs
of suit as by Copy of the said Order and Decree to the said appel-
-lants Petition and Appeal annexed relation being thereunto
had will more fully appear

And this Respondent denies that the appellant
is aggrieved by the Decree of the said 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 this Respondent saith that although the Appellant
has alledged that the Decree of the Mayors Court is Contrary
to Evidence yet he hath not attempted to Shew where the
same exists

And this Respondent for answer to the Second
reason or Cause of appeal saith that the granting of the Promissory
note upon which the present action is founded was a Volun-
-tary act of the appellant whereby He agreed to take upon

himself

himself part of a debt due by a third person to this Respondent It is therefore immaterial to this Respondent what sum He received from that person For He ought to have been Satisfied in that respect before He Issued the said Promissory note.

To the third Reason or Cause of appeal this Respondent Saith that the Defence of the appellant being of highly Litigious in its nature that the said Mayors Court acted with great propriety in Taxing the appellant with exemplary Costs.

For all which reasons and such others as may be offered at the Hearing this Respondent prays this Honble Court will be pleased to affirm the Decree of the said Mayors Court and the appellants Petition and Appeal be dismissed with exemplary Costs to be paid by the appellant.

/Signed/ George Chalmer
Solicitor for Respondent

Court

Court of Appeals at Madraspatnam } Thursday the 5th day of January Anno Domini 1797.

Between Trepassore Chinna Mootoo Chitty 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 Honble the Mayors Court together with the Decree of the said Court given in this Cause on Tuesday the 20th 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 Decree of the Honble the Mayors Court do stand affirmed and that the appellants Petition be hence dismissed with double Costs.

By Court

To

To the Kings Most Excellent Majesty in Council

Between Francis Lautour of Madras Merchants Complainant and T. Chinna Mootoo Chitty of the same place Inhabitant Defendant

The Humble Petition and Appeal of the above named Defendant

Most Humbly Sheweth unto your Most Excellent Majesty in Council

That the Complainants above named did some time on or about the 19th Nineteenth day of the Month of March and in the year of Christ One Thousand Seven hundred and ninety Six exhibit and file his Bill of Complaint in the Honble The Mayors Court of Madraspatnam and did therein and thereby amongst other things state that your Petitioner stood justly and truely indebted unto him the said Complainant in the full and just sum of Two thousand and forty two Pagodas and Twelve fanams of the Current Money of Madras aforesaid as by a certain Promissory note and an account Copies whereof were said to have been annexed by the said Complainant to his said Bill of Complaint and of which he craved reference of the said Honble the Mayors Court and prayed that the same might be taken as part and parcel of his said Bill of Complaint The said Complainant did

Filed in my Office the 18th January 1797
J Webbe Clk

did say would appear The Originals whereof the said Complainant did allege were in his the Complainants possession and ready to have been produced to the said Mayors Court when required and the said Complainant after having stated frequent demands upon your Petitioner for the Payment of the aforesaid sum did in and by his said Bill of Complaint pray that the said Honourable the Mayors Court would be pleased to Decree that your Petitioner should pay unto the said Complainant the aforesaid Sum of Two Thousand and forty Pagodas and twelve fanams Together with all such Interest as then was or should thereafter become due thereon and all costs of the said Suit and the said Complainant did farther pray a General Relief in the premisses as such as to the said Honble the Mayors Court should seem agreeable to Equity and good conscience

And your Petitioner most humbly Sheweth unto your most Excellent Majesty in Council That being served with the necessary and usual Process to appear to and answer the said Bill of Complaints of the said Complainant your Petitioner did accordingly by his attorney in the said Honble the Mayors Court appear thereto and soon afterwards exhibit and file

file his answer to the same-

and your Petitioner further Sheweth unto your Most Excellent Majesty in Council that in and by his said answer to the said Bill of Complaint He your Petitioner did amongst other things state That he did admit that he did make the said Promissory or Note on which the said Complainant had brought his said Bill of Complaint But that he your Petitioner did not receive any Valuable consideration therefor other than the sum of Five hundred Star Pagodas which said sum being the only sum which he your Petitioner conceived himself in Equity bounden to pay he was then and at all times therefore had been ready and willing to pay and discharge-

and your Petitioner further Sheweth unto your Most Excellent & Majesty in Council That your Petitioners said answer The Complainant did exhibit and file his Replication and therein and thereby did state That Kistnasawmy Braminy also of Madras Inhabitant being indebted to the Complainant in the sum of Eight Thousand Pagodas and it being inconvenient for him to discharge the same he proposed that the Complainant should in part payment thereof take a promissory note from your

Petitioner

Petitioner for the Sum of Two thousand Star Pagodas whereof the said Kistnasawmy Braminy alleged was indebted to him- That the Complainant having and entertaining a good Opinion of the Character and Circumstances of your Petitioner and being desirous of accomodating the parties He (the said Complainant) did agree to take his (your Petitioners) note for that Sum, which (the Complainant did state) your Petitioner accordingly granted in a free and Voluntary manner in the Office of the said Complainant- after which the Complainant did say he had credited the said Kistnasawmy Braminy in his account with the the Sum of Two thousand Star Pagodas- And the said note was passed- and therefore the said Complainant did state he could not pretend to say nor was it materieal he or alleged for him to know what consideration your Petitioner might have received from the said Kistnasawmy Braminy for granting the said Promissary note- And the Complainant did in and by his said Replication further state That from the many & Pecuniary concerns in which your Petitioner (he alleged) had been engaged he your Petitioner must have been fully aware of the effect and operation of the said Note which was payable

to

to order and that when he your Petitioner granted the same under the or
Circumstances before mentioned he had voluntarily waved (as the
Complainant did pretend) all Right to enquire into the Consideration
and the Complainant did further say That he was surprised at the
Nature of the Defence set up by your Petitioner in his said answer
Because, The Complainant did pretend a want of Money was the only
Reason which he your Petitioner had assigned for not discharging the
said Debt as by a Copy of a Letter from your Petitioner to the Complai
nant addressed and to the Complainants said Replication annexed
The Complainant did state would more fully and at large appear
and the Complainant did further state that in consequence of your
Petitioners alleged situation he had been induced to extend the
period of payment but afterwards finding as he pretended such
Indulgence abused he was under the necessity of instituting
the present suit against your Petitioner.

And your Petitioner further Sheweth unto your most Excellent
Majesty in Council that to the Replication of the said Complai
nant your Petitioner did exhibit and file his General Rejoin
der and that Issue having thereupon Joined in the said Cause
Rules did pass for the Examination of witnesses.

and

And your Petitioner Sheweth unto your Most Excellent Majesty in Council
That one witness examined on the part and behalf of the said Complainant
to the Second Interrogatory did depose, That he was employed by the
said Complainant as a Book keeper and in that capacity entrusted
with the Management of his Books and accounts That he the Depo
nent had looked at the paper Writing produced to him at the time of his
Examination purporting to be a promissory Note received in part
payment of a certain Claim which the Complainant had hadi
on Kistnasawmey Bromney That Credit was accordingly given for
the amounts of the said note in the same manner as if it had been
Cash actually paid to and received by the said Complainant
And your Petitioner further Sheweth unto your Most Excellent
Majesty in Council That upon the Examination of the said or
Witness as aforesaid Publication did pass in the said Cause and
the same was set down for hearing And the same came accordingly
on to be heard and determined by and before the said Honble the
Mayors Court on the Twentieth day of September and or
aforesaid year of Christ One thousand Seven hundred and ninety
Six when the said Honble the Mayors Court was pleased to
Order and Decree and did accordingly Order and Decree That

Your

your Petitioner should pay unto the said Complainant the full and Just sum of Two thousand and forty two Pagodas and Twelve fanams of the Current Money of Madras Together with all such Interest as then was or should thereafter become due thereon untill full &c payment was made together with double Costs of suit as by a &c Copy of the said Order and Decree hereunto annexed for the Inspection of your Most Excellent Majesty in Council to which your Petitioner begs leave to refer and prays that the same may be taken as part and in aid of this his Petition and appeal the Original being ready to be produced at the hearing doth and will more fully and at large appear-

And your Petitioner further Sheweth unto your Most Excellent Majesty in Council That he considered himself very much and Materially injured and aggrieved by the said order and Decree of the said Mayors Court and did therefore appeal therefrom unto the Honble the Court of appeals at Madraspatnam- and your Petitioner did on or about the Third day of October in the said year of Christ one thousand Seven hundred and ninety Six accordingly exhibit and file his Petition and appeal in the Honble the Court of appeals aforesaid and did therein and thereby recite the Bill of Complaint of the said Complainant The answer of your Petitioner and the Complainants said replication together with the General Rejoinder of your Petitioner and the deposition of the witness examined on the part and behalf of the said Complainant in form and substance as the same have been herein before recited and setforth- and your Petitioner did also state unto the said The Honble the Court of appeals the order and Decree of the said Mayors Court in Premises and that he your Petitioner considering himself injured and aggrieved as aforesaid had appealed therefrom for the following amongst other Reasons viz.

First Because the said Decree of the said Mayors Court was contrary to Evidence-

Secondly Because your Petitioners answer being upon oath and your Petitioner having therein and thereby positively sworn to have received no further or other Consideration for the said Promissory Note than the sum of Five hundred Pagodas and the Complainant in his Pleadings not having denied or in the least attempted to controvert the fact your Petitioner did humbly submit to the said Court of appeals that the said Mayors Court ought not in Justice to your Petitioner to have given a Decree for a greater

Sum

Sum than that Confessed by your Petitioner to have been received from the Complainant - and Lastly Because your Petitioners Defence being supported on every equitable view the said Mayors Court ought not to have Taxed your Petitioner with Double Costs. Wherefore your Petitioner did humbly Pray that the said Honble The Court of Appeals for the Reasons herein before recited and such others as might be offered at the hearing would be pleased to reverse the said Decree of the said Mayors Court and grant unto your Petitioner such further Relief in the Premises as to the said Court of Appeals should seem meet And your Petitioner Most humbly Sheweth unto your most Excellent Majesty in Council That some time on or about the fourteenth day of October in the said year of Christ One & Thousand Seven hundred and ninety six The said Complainant did Exhibit and File his answer to the Petition and appeal of your Petitioner in the Honble the Court of Appeals aforesaid and did therein and thereby amongst other things admit that he the said Complainant did some time on or about the Seventeenth day of March which was in the year of Christ One Thousand Seven hundred and ninety six Exhibit and file his Bill of Complaint

Complaint in the Honble the Mayors Court of Madraspatnam against your Petitioner and did therein and thereby charge your Petitioner to stand Indebted to the said Complainant in the just sum of Two thousand and Forty two Pagodas and Twelve fanams Current Money of Madras as and for the Balance due and owing to him the Complainant on a certain promissory Note alleged to have been granted by your Petitioner to the Complainant a Copy whereof as also of an account Current was annexed to the Complainants Bill of Complaint and therein and thereby referred to and the Complainant did further admit that your Petitioner being served with the necessary and usual process to appear to and answer the Complainants Bill of Complaint did accordingly by his attorney in Court appear thereto and did soon after exhibit and file his answer and the Complainant did in and by his said answer further admit That your Petitioner did in and by his said answer so filed and Exhibited as aforesaid amongst other & things state That he your Petitioner did admit to have made the said Promissory note on which the Complainant had brought his said Bill of Complaint But that your Petitioner had not received any valuable Consideration for the same other than

the

the Sum of Five hundred Pagodas which said sum being the only Sum he your Petitioner conceived himself in equity bounden to pay he your Petitioner was then and had been at all times ready to discharge the same And the Complainant did further admit That to your Petitioners said answer He the said Complainant did exhibit and file his Replication and that he had therein and thereby stated the several matters and things herein before recited and stated to have been setforth in the said Replication and the Complainant did further admit that to his Replication your Petitioner did exhibit and file a ye general Rejoinder and Issue having thereupon Joined in the said Cause Rules did pass for the examination of witnesses and that one witness was accordingly examined on the part and on behalf of the said Complainant who did depose to the several matters and things herein also before recited and setforth and the Complainant did also admit that Publication did thereupon pass and the said Cause was set down and came on to be heard by the Honble the Mayors Court on the day and in the year herein before mentioned when the said mayors Court was pleased to order and Decree and did accordingly order and Decree as in by the said Petition and appeal to the Court of appeals was

and

and as herein before is recited and setforth and the Complainant did in and by his said answer to the Petition and appeal of your Petitioner Deny That your Petitioner was aggrieved by the said Order and Decree of the said Mayors Court or that he had any just cause or reason to appeal Therefrom

And your Petitioner most humbly Sheweth unto your Most Excellent Majesty in Council That the said Complainant in answer to your Petitioners ye first cause or Reason of appeal afore recited did state That although Your ye had alleged that the Decree of the said Mayors Court was contrary to Evidence yet the Complainant alleged that your Petitioner had not attempted to shew wherein the same existed and for answer to the Second Reason or Cause of appeal the Complainant did in and by his said answer say That the Granting of the Promissory note on which the Present action was founded was a Voluntary act of your Petitioners whereby he your Petitioner had taken upon himself part of a Debt due by a third Person to the Complainant It was therefore immaterial to him the Complainant did say what sum the he your Petitioner had received from the said third person for that he ought to have been satisfied in that respect prior to his issuing or granting the said Promissory note and to the last Reason or Cause of appeal the said Complainant did answering say That the Defence of your Petitioner being (as he unjustly alleged) highly litigious in

its

its nature That the said Mayors Court acted with great propriety in Taxing your Petitioner with exemplary Costs and the Complainant did in and by his said answer pray That for the Reasons in his said answer assigned the said Court of appeals would be pleased to affirm the said Decree of the said Mayors Court and dismiss the Petition and appeal of your Petitioner with exemplary Costs.

And your Petitioner Most humbly Sheweth unto your Most Excellent Majesty in Council That upon the Pleadings aforesaid being had in the said Court of appeals the said Cause was sett down to be heard and on Thursday the fifth day of January in the year of Christ One thousand Seven hundred and ninety seven the same came on to be heard and determined before the said Court of appeals when the said Court of appeals were pleased to order and Decree that the said Decree of the Honble the Mayors Court should stand affirmed and that the said Petition and appeal of your Petitioners should be thence dismissed with double Costs.

By which said Order and Decree of the said Mayors Court and Order of the Court of appeals your Petitioner doth Consider & himself Materially Injured and aggrieved and doth therefore appeal therefrom unto your Most Excellent Majesty in Council for the following amongst other Reasons.

First ——— Because The said Mayors Court and Court of appeals holding from the Nature of them Constitution a concarrent Jurisdiction with the Courts of Equity ought as your Petitioner humbly Submits to your Most Excellent Majesty in Council to have taken into consideration that part of your Petitioners said answer exhibitted in the said Mayors Court wherein he has upon Oath declared That he did not receive any valuable consideration for the note so by your Petitioner admitted to have been granted other than the sum of Five hundred Star Pagodas which said Sum your Petitioner was at the time of filing his said answer and ever had been ready to pay and discharge.

And Secondly Because the said Decree of the said Mayors Court and order of the said Court of appeals in awarding double Costs to the said Complainant was and is as your Petitioner humbly submits to your Most Excellent Majesty in Council hard and oppressive in as much as your Petitioner had & set up nothing more than a fair and honest defence.

For all which Reasons and such others as may be offered at the Hearing your

Petitioner

Petitioner Most humbly prays your Most
Excellent Majesty in Council will be
pleased to reverse the said Decree of the said
Mayors Court and order of the said Court of
Appeals and further grant unto your
Petitioner such other relief in the premises
as to the wisdom of your Most Excellent
Majesty in Council shall seem meet.

/Signed/ Emanuel Samuel
Solicitor for Appellant

Mayors Court
at
Madraspatnam

Tuesday the 20th day of September
Anno Domini 1796

Present

James Daly Esqr Mayor
Andrew Ross & Benjn Roebuck
Aldermen

Between Francis Lautour of
Madras Merchant Complainant and
Thunnamootoo Chitty of the same place
Defendant

This Cause coming on to be heared and debated this
day in the presence of the attornies on both sides on reading the Complai-
nants Bill with Copies of a Promissory Note and an account
Current annexed the Defendants answer the Replication with one
Exhibit annexed the General Rejoinder the Interrogatories and
Depositions on the part of Complainant with an Exhibit
annexed an Hearing the Pleadings made use of by the
attornies and on due Consideration had thereon This Court
doth think fit to order and Decree and doth accordingly Order
and Decree that the Defendant do pay unto the Complainant
the

the full and Just Sum of Two thousand and forty two Pagodas & Twelve Fanams / Pagodas 2042.12 / to gether with all such Interest as now is or shall hereafter becom due thereon untill full paymnt is made and It is further Order and Decried that the Defendant be Taxed with double costs of Suit.

Hbur /signed/ George Taylor Regr

A True Copy
/signed/ Emanuel Samuel
solicitor for appellant

Court of Appeals at Madraspalnam &c

Thursday the 5th day of January Anno Domini 1797

Between Trepassore Chinnamootoo Chitty of Madras Inhabitant appellant and Francis Lawtour of the same place Merchant Respondent

This cause coming on this day to be heard and Debated before this Court by the Attornies on both sides upon hearing the Petition of Appeal and answer and the several Exhibits of the Honble the Mayors Court together with the Decree of the said Court given in this Cause on Tuesday the 20th 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 Decree of the Honble the Mayors Court do stand affirmed and that the appellants Petition be hence dismissed with double Costs

Hbur /signed/ J. Webbe Clk

A True Copy /signed/ Emanuel Samuel
Solicitor for appellant

Court

To

To the Kings Most Excellent Majesty in Council

Between Francis Lautour of Madras Mer-
chant Complainant and T. Chinna Mootoo
Chitty of the same place Inhabitant Defendant

The Answer of Francis Lautour the above named Complai-
nant To the Petition and appeal of T. Chinna Mootoo Chitty the o[r]
above named Defendant.

This Respondent for answer to the Appellants
Petition and Appeal to your Most Excellent Majesty in Council or
unto so much thereof as is Necessary for him to make answer unto answereth
Filed in my Office
the 11th February 1799 and Saith That he admits that he did some time on or about the nineteenth
J. Webbe Clk day of the Month of March which was in the year one thousand seven
hundred and ninety six Exhibit and file his Bill of Complaint in
the Honble the Mayors Court of Madraspatnam against the said
Appellant and did therein and thereby amongst other things charge
the said Appellant to stand justly and truly indebted unto this
Respondent in the full and just Sum of Two thousand and forty Two
Pagodas and twelve fanams Current Money of Madras as and for
the balance due and owing to him this Respondent on a certain o[r]
Promissory note granted by the appellant to this Respondent

Copy

copy whereof as also of an account Current was annexed to this Respon-
dents Bill of Complaint and therein and thereby referred to And
this Respondent further admits that he did in and by his said
Bill of Complaint pray that the said Honble the Mayors Court
would be pleased to Decree that the said appellant should pay
unto this Respondent the aforesaid sum of Two thousand and forty
Pagodas and twelve fanams together with all such Interest as
there was or should thereafter become due thereon and all Costs of the
said suit

And this Respondent further admits that the Appellant
being served with the necessary and usual process to appear to and o[r]
answer this Respondents Bill of Complaint he did by his Attorney
in the said Honble Mayors Court appear thereto and soon after o[r]
did Exhibit and file his answer to the same and did therein admit
to have made the Promissory note on which this Respondent had
brought his said Bill of Complaint But then the Appellant
alledged that he had not received any Valuable Consideration
for the same other than the Sum of Five hundred Star Pagodas
which said sum which he the said Appellant Conceived
himself in equity bounden to pay he was then and at all

times

times therefore had been ready and willing to pay and discharge the same-

And this Respondent further admits that to the said answer he did Exhibit and file his Replication Setting forth That Kistna=sawmy Braminy of Madras Inhabitant being indebted to this Respondent in the sum of Eight thousand Pagodas and it being incon=venient for him to discharge the Claim he proposed that this Respon=dent should in part payment thereof take a Promissory note from the Appellant for the sum of Two thousand Star Pagodas whom he the said Kistnasawmy alledged was indebted to him that desirous of accommodating the parties This Respondent did agree to take the ab appellants Note for that sum which he accordingly granted in a free and Voluntary manner in the office of this Respondent after which this Respondent did Credit the said Kistnasawmy or Braminy in his account with the like Sum of Two thousand Pagodas That in such manner the said note was passed and therefore this Respondent could not pretend to say nor was it material for him to know what Consideration the appellant might have Received from the said Kistnasawmy Braminy for granting the said Promissory note- And this Respondent further saith that

that other Matters were Setforth and stated in Reply to the Defen=dants said answer But the same being Recited in the appellants Peti=tion and appeal To your Most Excellent Majesty in Council This Respondent craves leave to refer thereunto-

And this Respondent further admits that to his said Replication the Appellant did Exhibit and file a Rejoinder and Issue having thereupon joined in the said Cause, rules did pass for the examination of witness when this Respondent did examine the ab Witness whose Deposition or Testimony is setforth and recited in and by the Appellants Petition and Appeal-

And this Respondent further admits that upon the Exami=nation of the said Witness as aforesaid Publication did pass in the said Cause and the same was set down for hearing and the same having ab accordingly come on to be heard and determined by and before the said Honble the Mayors Court on the Twentieth day of September and year of our Lord one thousand seven hundred and ninety Six when the said Honble the Mayors Court were pleased to order and Decree and did accordingly order and Decree that the said Appellant should pay unto this Respondent the full and just sum of Two thousand and forty Two Pagodas and twelve fanams

Current

Current money of Madras together with all such Interest as there was or should thereafter become due thereon until full payment was & made together with double Costs of Suit as by a Copy of the said order and Decree to the said Appellants Petition and Appeal annexed relation being thereunto had will more fully appear—

And this Respondent denies that the appellant is aggrieved by the decision of the said Mayors Court and Court of Appeals as is untruly and unjustly alledged by him the appel=lant on the Contrary this Respondent saith it is manifest on the face of the Appellants Petition and the Reasons adduced in support thereof that there is no cause or reason whatever for the Appeal—

And to the first Reason wherein it is alledged that Because the said Mayors Court and Court of appeals hold from the nature of their Constitution a Concurrent Jurisdiction with the Courts of Equity they ought to have taken into Consideration that part of his answer to the Bill wherein he swears that he did not Receive more than Five hundred Pagodas For answer thereunto this Respondent saith that from the Nature of the transaction It was immaterial to this Respondent what Consideration was paid by Kistnasawmy at whose & Instance the Appellant came forward and passed the note in question It is sufficient that the said Kistnasawmy had due Credit given him with this Respondent for the amount of the note and the appellant ought to have been Satisfied in respect to the & Consideration before he issued it Wherefore this Respondent submits that the Reasons offered by the appellant are unjust impertin=ent and nugatory—

And to the Second Reason or Cause of appeal This Respondent Saith that the Mayors Court and Court of appeals were fully warran=ted in awarding double Costs being at once a punishment for the litigious Conduct of the Appellant and a recompence for the Injury which this Respondent has Sustained thereby—

For all which Reasons and such others as may be offered at the hearing this Respondent most humbly prays your most Excellent Majesty in Coun=cil to affirm the Decree of the said Mayors Court and Order of the said Court of Appeals and that the Appel=lants Petition and appeal be dismissed with & exemplary Costs to be paid by the Appellant—

/Signed/ George Chalmer
Sol.r for Respon.t

To

To the Right Honourable Lord Hobart

Governor in Council &c &c &c

Fort Saint George

In the Honourable the Court of Appeals at Madraspatnam

Between Rajarom Bochanjee of Madras Inhabitant Complainant and &c

Avadanum Ramasawmy Braminy alias of Madras Inhabitant Defendant

The Humble Petition and appeal of the above named Defendant

Sheweth

That on the Tenth day of august in the present year of our Christ One thousand Seven hundred and ninety Six the above named Complainant did file a Bill of Complaint the Honble the Mayors Court of Madraspatnam against your Petitioner for the recovery of the sum of Six hundred and Six Pagodas three fanams and five Cash Charged to be due and owing unto him the said Complainant on a Bond or Specialty alledged to be Executed by your Petitioner, and on an account Current Copies of which were annexed to the Complainants said Bill of Complaint and your Petitioner further Sheweth that the said

Filed in my Office the 17th October 1796
J Webbe Clk

Complainant

Complainant having sworn to the Justness of his demand a Summons returnable immediately and a warrant of arrest Issued thereon directing the Sheriff of Fort St. George and Town of Madraspatnam aforesaid to apprehend and secure your Petitioner in order that he might answer the said Complainants demand and your &c Petitioner Sheweth that he did accordingly appear by his attorney at Law and did thereon conformable to the Practise of the said Mayors Court file Special Bail in the said Cause and the usual Rules having passed for your Petitioner to answer and your Petitioner not being prepared with his answer in due time the said Mayors Court on the fourth day of &c October now Instant at the Instance of the Attorney for the &c Complainant did pass a Decree that your Petitioner should pay unto the Complainant the full and just sum of six hundred and Six Pagodas three fanams and five Cash together &c with such Interest as there was or might thereafter become &c due thereon together with the Costs of suit as well more fully appear by a Copy or Extract of the said Decree from the &c Minutes of the said Mayors Court annexed and your Petitioner has been led to be of opinion the said Mayors

Court

Court in common Justice to your Petitioner ought to have allowed a further time of two weeks in order that he might have been benifited by his Answer which it was the earnest intention of your ~~Petitioner~~ Petitioner to have filed and your Petitioner prays the said Copy of the said Extract hereunto annexed of the Decree so passed may by this Honble Court be taken and received as part of this his Petition and appeal-

From which Extract order and Decree of the said Mayors Court your Petitioner doth appeal to this Honble Court as he conceives himself materially injured and aggrieved thereby for the following among other Reasons-

First ---- Because it is not unusual with the said Mayors Court to enlarge the Rules for answering and to allow a further time to answer the complainants said Bill of Complaint as your Petitioner was from the matter attendant on your Petitioners Case at the time of the Expiration of the said Rules unprepared to answer fully to the Particulars contained in the said Bill of Complaint yet your Petitioner did not obtain an Enlargement of the said Rules Granted altho uniformly to other Suitors of the said Court for altho it may and in fact does appear by the said Complainants said Bill of

Complaint

Complaint that the Gist of action arrices on a Bond alledged to have been given and executed by your Petitioner unto the said Complainant but altho such circumstance now only appears your Petitioner and the said Complainant had theretofore at ~~o~~ different periods very considerable dealings and money transactions together from which circumstance it surely is a fair and equitable presumption to suppose your Petitioner had good grounds for a Defence to the said Bill of Complaint and it may also be but fair to suppose that your Petitioner since the Execution of the said Bond from the many and different dealings and transaction had together as aforesaid may have liquidated part of same and your Petitioner doth aver the fact so to be and that he has paid off and discharged a part of the said Bond now in suit against your Petitioner and your Petitioner thereby and by Virtue thereof does not, as is untruly alledged in the Complainants said Bill of Complaint stand indebted to the said Complainant in the sum sued for and your Petitioner does humbly contend that had the said Mayors Court given and granted a further time unto your Petitioner it could not be deemed as a prejudicial circumstance to the said Complainant as are

Semilar

indulgence is in most Cases that come before the said Mayors Court allowed and granted but admitting no precedent of the Kind could have been adduced still the equity of your Petitioners Case apparent on the circumstances hereby stated ought to have entitled him to an extension of time more particularly when a Continuation of Interest would have been allowed on such said Principal Sum charged by the said Bill of Complaint to be due and owing by your Petitioner as aforesaid.

Secondly — Because it appears by a Copy of the said Bond annexed to the Complainants said Bill of Complaint that the same is written in the English Language and it does not appear that the same has been translated into your Petitioners Language or that it was previous to the execution thereof explained to your Petitioner and your Petitioner being an Indian native of Madraspatnam such form having been observed might in some degree have or sanctioned the Decree of the said Mayors Court against your Petitioner if the said Mayors Court had not chosen to have indulged your Petitioner with any other or further time but your Petitioner sheweth that the said Mayors Court when and at the time of Passing the said Decree as aforesaid had only an

Exparte

Exparte Evidence whereon such Decree was founded, for by having as aforesaid deprived your Petitioner of filing his answer to the Complainants said Bill of Complaint there was no positive proof before the said Court of the Justness of the said Complainants demand against your Petitioner for the due Execution of the said Bond was not Proved consequently there was not sufficient Evidence before the said Mayors Court whereon to ground a Decree.

Thirdly — Because your Petitioner from the Period when the said Bill of Complaint was so filed as aforesaid until the actual Passing of the said Decree was from severe indisposition prevented from furnishing your Petitioners said Attorney at Law with the proper materials that he might have been inabled to have drawn an answer to the said Complainants said Bill of Complaint and admitting that he your Petitioner had so furnished his said Attorney at Law with the regular instructions for the aforesaid purpose it would have had no effect so as to have prevented the said Mayors Court from passing the said Decree for your Petitioner from such severe and lasting illness as aforesaid would not have been enabled to have quitted his House in order that an Oath might have been administered

to

to him touching the truth of the same consequently had your &c
Petitioners said answer been prepared yet your Petitioner not
having Sworn to the truth thereof the same would not have been
by the said Mayors Court attended to your Petitioner therefore under
the special circumstances of his case is led to solicit that this &c
Honble Court will be pleased to grant a further time of two Weeks
in order that your Petitioner may be empowered to refute the
allegations of the said Complainant charged in and by his said
Bill of Complaint and your Petitioner in order to shew to this
Honble Court that he does not stand indebted unto the said
Complainant in the said sum sued for has hereunto annexed
for the inspection of this Honble Court an account Current
made out and signed by your Petitioner which clearly shews
that your Petitioner has a very good defence to set up to the said &c
Bill of Complaint and should this Honble Court think fit to allow
your Petitioner any other or further time as now prayed for by your
Petitioner your Petitioners said answer will be formed and &c
directed by the said account Current so hereunto annexed as &c
aforesaid and prayed by your Petitioner to be taken as and for
part of your Petitioners said Petition and appeal whereby

and

and appeal whereby and on the face of the same it appears that
your Petitioner does not stand indebted unto the said Complai
nant in the said Sum of Six hundred and Six Pagodas three
fanams and five Cash as charged in and by the said Bill
of Complaint but that your Petitioners stands indebted unto
the said Complainant only in the sum of Two hundred and
Seven Pagodas thirty five fanams and forty Cash and
which said sum of Two hundred and Seven Pagodas
thirty five fanams and forty Cash your Petitioner is now
and at all times ever has been ready and willing to pay
unto him the said Complainant and no more that
being the regular and just Balance now due and owing
to the said Complainant by your Petitioner

Your Petitioner therefore prays that this Honble
Court will be pleased to set aside the Decree
of the said Mayors Court and order that the
said Mayors Court do allow a further time of
two weeks for your Petitioner to file his &c
Answer to the said Bill of Complaint and grant
such other relief as in their Wisdoms may seem meet

Signed Gilbt Richetts
Solicitor for appellant

Extract

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 4th day of October Anno Domini 1796.

Present:

James Daly Esqr. Mayor
James Ball Andrew Ross and
Richard Chase Aldermen

Rajaram Bahanjee
vers
Avadanum Rama Sawmy Braminy.

The Attorney for the Complainant produces to the Court a Certificate from the Register Setting forth. That the usual Rules have issued for the Defendant to answer the Complainants Bill which he has neglected doing. He therefore prays that a Decree may now pass Bill Read.

It Appearing by the Records of this Court that the usual Rules have issued for the Defendant to answer the Complainants Bill which he has neglected doing This Court doth therefore think fit to Order and Decree and doth accordingly Order and Decree that the Defendant shall pay unto the Complainant the full and just Sum of Six hundred

Hundred and Six Star Pagodas Three fanams and five Cash /Star Pagodas 606.3.5./ together with all such Interest as now is or shall hereafter become due thereon untill full & payment is made also all Costs of this suit.

A True Extract
/Signed/ George Taylor Regr

Dr.

D.r Rajaram Bochonjie in account Current with Avadanum Ramasawmey Brammey C.

1796							
March	5th	To cash paid you	328	15	40		
April	17th	To do do	16	"	"		
		To Brokerage for Shauls and other Sundries	40	"	"		
			384	15	40		
Augt	6th	To Interest on the above Sums from their Respective dates @ 9 per cent per annum viz.t					
			yr	mo	Do		
		On Pagodas 328 15 40	"	5	1	12 16 76	
		On do 56 " "	"	3	20	1 24 24	
						13 41 20	
						398 11 60	
		To Balance due				207 35 40	
		Pagodas	606	2	20		

1785							
December	31st	By amount of your Bond	375	"			
1786							
August	6th	By Interest on Do being 7 Months & 6 days @ 9 Cent.p annum	31	2	2		
		Pagodas	606	2	2		

Fort Saint George
15th October 1796.
E. E.

/Signed/ Ramasawmy Brammey

To

The Right Honorable Lord Hobart
Governor in Council &c.
Fort Saint George

The Humble Petition of Rajaram Bramjie
Complainant and Avadanum Ramasawmey
Brammy Defendant

Sheweth

That whereas your Petitioner did on the 15th day of August last present to this Honble Board a Bill of Complaint against the said Defendant praying that he might be compelled to pay unto your Petitioner the sum of six hundred and eighty eight Pagodas 11 Fanams and five Cash due and owing unto him the said Petitioner on a Bond or specialty executed by the Defendant And that the Defendant may be restrained from having any Suit in the Mayors Court of Madrastatnam against the Petitioner in the Mayors Court of Madrastatnam against the Petitioner

Filed in my Office for recovery of the sum of six hundred and six Pagodas two Fanams and five Cash due and owing unto him the said Petitioner

Mr. Hastings

Mr. Ramasawmy Brammy

Defendant

Petitioner

Answer

answer this Respondents demand and this Respondent admits that this Petitioner having appeared by his attorney at Law and filed Special Bail Rules for answering this Respondents said Bill did Issue and that the Petitioner having neglected to exhibit and file the same the said Mayors Court did order and Decree in manner and form as by the Petitioner is in his said Petition of appeal stated and setforth But this Respondent denies that the Petitioner is any wise injured and aggrieved by the said Order and Decree or that he hath any good or Just Cause of appeal therefrom.

And in answer to the Petitioners first Cause or Reason of appeal this Respondent admits that it is not unusual with the said Mayors Court to Enlarge Rules for answering a Plaintiffs Bill when any good or sufficient Cause is shewn to them and this Respondent saith that in the present Case the appellant did receive the utmost possible indulgence which the said mayors Court could have granted him for this Respondent saith that at the End or Expiration of five Weeks which Expired on the Twenty Seventh day of september last when this Respondent was Entitled to a Decree by the practice of the said Mayors Court for want of answer the Petitioner having prayed a further time of one week the same was allowed him and this Respondent saith that as at the End of the said one week also the Appellant did neglect to file his answer and did not attempt by affidavit or otherwise to prove his alledged inability so to do the said Mayors Court were fully Justified in Concluding that the Object of the appellant in praying a further time could be no other than delay and therefore and in order that their Rules of practice should not be innovated or trifled with did Decree as herein above is setforth And this Respondent saith that having fully shewn that the appellant did obtain Every indulgence which the said Mayors Court could in consistence with their practice have granted him this Respondent submits that that part of the appellants said first Reason which would insinuate that he did not obtain an Enlargement of the said Rules granted in Common to other suitors of the said Court is fallacious and incorrect and this Respondent in further answer denies that the remaining part of the appellants said first Reason is in any wise or respect true and submits to this Honble Court that any matter which was not before the said

said Mayors Court cannot be introduced in an appeal to this Honble Court which can only determine upon Matters of fact Established in the Court below this Respondent doth Except to the same as contrary to the practice of this Honble Court and Humbly submits that the same ought to be Expunged

In answer to the appellants second Cause or Reason for appeal this Respondent submits the same to be futile and unfounded for this Respondent is advised that this Honble Court cannot pay any regard to Matters suggested by an interested party and unsupported by Evidence nor doth the Bond which was and appears to have been Executed by the Appellant in due form of Law and in the presence of witnesses warrant the assertions of the Appellant respecting the same and this Respondent humbly submits that if the facts were as charged and that the Appellant was not as it is pretended indebted to this Respondent it is to be presumed he would not have &c neglected the time allowed him for answering this Respondents Bill but would have filed and Exhibited his answer thereto wherein he might have had the full benefit of those Matters now set up by him in Defence and which would have

have been the fit objects of an answer but not of appeal to this Honble Court and this Respondent is further saith that when a Bill is taken pro Confesso (as in the present instance) no other proof is or ought to be required in supports of the Bill the Defendant the other party to the suit not having chosen to deny any of the allegations in the Bill and having declained to Join in any Issue thereon

In answer to the third Cause or Reason of appeal assigned by the Appellant this Respondent saith that if Every suitor in a Court of Justice were to be debarred the prosecution and Recovery of their Just dues by pretexts of illness and indisposition set up by a Defendant there would be an End or to Justice - the Debtor would never be at a loss to plead illness and indisposition after a Decree was had against him to stay Execution being done in satisfaction of a Creditors Just demand and this Respondent humbly submits if the Indisposition of the said Appellant had been any thing more than a pretext, he would have made the same to have appeared to the said Mayors Court by affidavit the only mode by which the said Court could have been acquainted thereof

thereof And this Respondent humbly Observes that as the remaining part of the last Reason or Cause of appeal of the appellant & together with the account Current therewith annexed to his said appeal have not been Exhibited before the said Mayors Court and are wholly impertinent and irrelevant to any point in issue before this Honble Court this Respondent prays the same may be Expunged with Costs.

For all which Reasons and such others as may be offered at the Hearing this Respondent most humbly prays that this Honble Court will be pleased to affirm the said order and Decree of the said Mayors Court and dismiss the appellants Petition of appeal with Costs.

/Signed/ Emanuel Samuel
Solicitor for Respondent

Court

Court of Appeals
at
Madraspatnam

Thursday the 5th day of January
Anno Domini 1797.

Between Avadanum Ramasawmy
Braminy of Madras Inhabitant &
appellant and Rajaram Bahanjee
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 Decree of the said Court given in this Cause on Tuesday the 4th day of October 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.

Hur

To

To the Right Honble Lord Hobart

President in Council &c &c &c

In the Honble the Court of Appeals at Madras patnam } In Fort St George

Between Taunapah Naick Petitioner and Ravoo Sarvana Moodelly Respondent In the Cause wherein the Ravoo Saravana Moodelly is Complai=nant and Parasaram Naick and Sawmy Naick are Defendants

The Humble Petition and Appeal of the above named Taunapah Naick Petitioner.

Sheweth

Filed in my Office the 7th Novr 1796. J Webbe Clk

That sometime on or about the Nineteenth Day of November One thousand Seven hundred and Ninety five the above named Complainant did Exhibit and file his Bill of Complaint in the Honble the Mayors Court at Madras=patnam against the said Defendants for the Recovery of the sum of Eight Hundred and fifty four Pagodas Twenty four fanams and Twenty Cash alledged to be due and owing to the said Complainant upon and by virtue of a pretended Mortgage Bond Mentioned and Referred to in and by an the account Current Copy whereof is to the Complainants said Bill of Complaint annexed That to such Bill a Summons having Issued the said Defendants did appear and acknow=ledge the Justness of the pretended demand whereupon the Honble the Mayors Court was pleased to grant a Decree in favour of the said Complainant for the amount sued for and the term of fourteen days allowed by his Majestys Charter having elapsed without the said Defendants satisfying the said Decree or appealing therefrom the said Honble the Mayors Court was pleased on the Eighth day of December last past to grant a warrant of Execution against the Goods Chattles and the Effects of the said Defendants directed to the Sheriff of the Fort Saint George Town of Madraspatnam and the Districts thereof requiring and Commanding the Sherriff to seize the Premises setforth in the said Pretended Mortgage Bond and by Sale thereof to levy the Amount of the said Complainants demand That the said Warrant of Execution having thereafter Issued directed as aforesaid the said the Sheriff

To the Right Honble Lord Hobart

President in Council &c &c &c

In the Honble the Court of Appeals at Madraspatnam } Fort St George

Between Taunapah Naick Petitioner and Ravoo Sarvana Moodely Respondent In the Cause wherein Ravoo Saravana Moodelly is Complai=nant and Parasaram Naick and Sawmy Naick are Defendants

The Humble Petition and Appeal of the above=named Taunapah Naick Petitioner

Sheweth

That sometime on or about the Nineteenth Day of November One thousand Seven hundred and Ninety five the above named Complainant did Exhibit and file his Bill of Complaint in the Honble the Mayors Court at Madras=patnam against the said Defendants for the Recovery of the sum of Eight Hundred and fifty four Pagodas Twenty four fanams and Twenty Cash alledged to be due and owing to the said Complainant upon and by virtue of a pretended Mortgage Bond Mentioned and Referred to in and by an=account Current Copy whereof is to the Complainants said Bill of Complaint annexed That to such Bill a Summons having Issued the said Defendants did appear and acknow=ledge the Justness of the pretended demand whereupon the Honble the Mayors Court was pleased to grant a Decree in favour of the said Complainant for the amount sued for and the term of fourteen days allowed by his Majestys Charter having elapsed without the said Defendants satisfying the said Decree or appealing therefrom the said Honble the Mayors Court was pleased on the Eighth day of December last past to grant a Warrant of Execution against the Goods Chattles and=Effects of the said Defendants directed to the Sheriff of=Fort Saint George Town of Madraspatnam and the Districts thereof requiring and Commanding the Sherriff to seize the Premises set forth in the said Pretended Mortgage Bond and by Sale thereof to levy the Amount of the said=Complainants demand That the said Warrant of Execution having thereafter Issued directed as aforesaid the said Sheriff

Filed in my Office the 7th Novr 1796. J Webbe Clk

Sheriff did thereupon seize a Certain House and Ground situated at Marratta Town in Linga Chitty's Street between the Houses of Auyacara Soobramonya Chitty and House No 140 as well as certain Joys and Jewells to the amount of Two hundred and Sixteen Pagodas or thereabouts under pretence that the House and Ground and Jewells aforesaid were the property of and belonging to the said Defendants That your Petitioner did thereupon file his Petition in the said Honble the Mayors Court thereby charging that the said House Ground and Jewells were and are the Sole and unincumbered property of your Petitioner and that the Mortgage of the said House and Ground is no other than a fabrication framed between the said Complainant and Defendants with a View to deprive your Petitioner of his Right and Property and your Petitioner in order to set forth to the satisfaction of the said Honble the Mayors Court the pretentions of your Petitioner to the property aforesaid and the motives by which the said Defendants are actuated to deprive your Petitioner of his property aforesaid did state That your Petitioners father dying insolvent leaving your Petitioner and his Brother Parvadaram Naich one of the Defendants aforesaid unprovided for your Petitioner and his Brother died some time after proceed to the Northward and by great labour and industry provided a Small fortune of about Three thousand Pagodas consisting of Houses and Grounds of which the House in Question is one the Gold and Silver Joys and Jewells aforesaid and some ready money the Major part whereof was provided by your Petitioner That some time in the month of September in the year One thousand Seven hundred and ninety three Your Petitioner purchased a Piece of Ground by Publick auction from Pegoe Teagaroy Chitty for the Sum of Three hundred and Twenty one Pagodas and paid for the same and some time afterwards thereon erected & built a House at his own proper Costs and Charges and enjoyed the peaceable possession thereof till the present Seizure But your Petitioner sheweth that some time after building the said House Sawmy Naich the other Defendant above named and who is the Brother in Law of your Petitioners said Brother pretended a Claim against your Petitioner with regard to the House in Question where upon your Petitioner

through

through no way bound to do so yet submitted such Claim to the Arbitration and decision of a few Creditable friends and the said Sawmy Naick agreeing to such decision did in like manner submit his Claim also and the said &c Arbitrators on such Mutual submission did enquire into the Matters alledged to them and after due Examination found the Claim of the said Sawmy Naick to be groundless and in consequence thereof caused the said Sawmy Naick to grant unto your Petitioner a General release or discharge of all Claim whatsoever and which said General release or &c discharge was thereupon by the Mutual consent of the said Sawmy Naick and your Petitioner delivered into the &c hands of one of the said Arbitrators in whose possession as your Petitioner did say he believed and doth now believe the same now remains And your Petitioner did further Shew that sometime in the late year One thousand Seven hundred and ninety five your Petitioner having had &c occasion to go to the Southward in order to secure the &c Title Deeds of the Property he was therefore obliged to leave behind him the same consisting of the said Gold and Silver

Silver Joys and Jewells the Bill of Sale of the House in Question together with another small House all to the amount of the said Sum of Three thousand Pagodas did deposite the same for safe Custody into the Hands of his said Brother in presence of a few Creditable friends with directions to procure a Choultry Bill of Sale for the House now in Question to be made out in his your Petitioners name during his absence as having been previously agreed between them that the Small House should be enjoyed by his Brother and the said Jewells be delivered after his return to madras and your Petitioner did further Shew that during his absence as your Petitioner did say he was informed / the said Defendants confiderating together to deprive your Petitioner of his property aforesaid obtained the Choultry Bill of Sale of the House now in Question in their respective names by means thereof intending to &c deprive your Petitioner of the same But your Petitioner did shew that on his arrival in Madras and of his &c having been informed of the acting and doings of the said Defendants your Petitioner insisted upon his said Brother to give an account of the property that was so &c deposited

deposited and entrusted with him but who instead of so doing lodged a Complaint against your Petitioner to the sitting Justice who thereupon referred the same to the decision of the General head of the Cast who having Examined in the matters alledged to them by your Petitioner and the said Defendants were fully convinced of the fraud practised by the said Defendants and obliged them to pay a Small fine and to render an Inventory of the Joint Estate of your Petitioner and his Brother which being done the said Cast people did determine that the said Defendants should have and enjoy the Small House aforesaid and that a Bill of sale for the same for that purpose should be Executed by your Petitioner and that your Petitioner should have and enjoy the House in Question and a Bill of sale for the same to be granted to your Petitioner by the said Defendants Valueing the same at Eight hundred Pagodas and the other small house allowed to the Defendants at Three hundred Pagodas and the said Cast People did Oblige your Petitioner and the said Defendants to Execute Bills of sale for the same respectively and which respective Bills of sale are now in the Profession of the said Cast People. And your Petitioner did further shew that the said Cast people having obtained such mutual Bills of sale from the Parties in difference directed the said Defendants to bring and to deliver the Chaultry Bill of Sale of the House in Question as aforesaid fraudulently obtained by them as well as the Bill of Sale of the small House and the Gold and Silver Joys and Jewells delivered by your Petitioner to the Care of his Brother the said Parrasaram Vaich for safe Custody in order to devide the said Jewells and finally to decide the Matters in diference submitted to them but your Petitioner did Shew that the said Bill of Sale was in Mortgage to the Complainant and that they could not therefore do so. And your Petitioner did shew that confiderating with the said Complainant the said pretended Mortgage Bond on which the Suit aforesaid was brought in the said Honble the Mayors Court was fabricated by the Defendants and so the judgment of the said Court obtained in the premises as aforesaid with a view to deprive your Petitioner of his Just property as aforesaid. And your Petitioner sheweth that to such his Petition the said Respondent did on the Twelfth Day of April One thousand Seven hundred and Ninety

Ninety Six file his answer and among other things did state that your Petitioner being indebted to different Persons absconded from Madras and went to the Northward and the Respondent did deny that your Petitioner did at the time in his Petition Mentioned or at any time whatever purchase the Ground or build the House which your Petitioner now Claims - and thereupon Issue did Join and witnesses were Examined on both on the part of your Petitioner as well as on the part of the said Respondent And your Petitioner sheweth that Publication did pass and the matter was set down for hearing and the same did on the Twenty fifth Day of October last come on to be heard and determined before the said Honble the Mayors Court when it was ordered that your Petitioners said Petition be dismissed with Treble Costs as by the Copy of an Extract of the said order hereunto annexed for the inspection of this Honble Court to which your Petitioner begs leave to refer and humbly prays that the same may be taken as part of this his Petition and appeal &c May more fully and at large appear By which said Order of the said Honble the Mayors Court your Petitioner

Petitioner doth Consider himself much aggrieved and doth therefore Appeal therefrom unto this Honble Court for the following amongst other Reasons-

Because he your Petitioner having established by a numerous train of respectable witnesses the Material allegations Contained in his said Petition particularly his purchase and property of and in the House in question the fraud of the Respondent became thereby in the main sufficiently Established also and if the date of the Mortgage Bond and Bill of Sale were not found to Correspond with the precise Era of your Petitioners absence the only Effect that such disagreement ought Justly to have had upon your Petitioners case was to deprive it of the Support which it would have derived from the proof of such a Coincidence But this your Petitioners failure in such proof cannot impeach the uniform Consistency of the principal facts nor be so held to do without violence to every principle regulating the value of human Testimony Seeing that the Body of your Petitioners Evidence did infinitely, over-balance any that was adduced to oppose it the fair Conclusion

then

then is either that the Respondents artifice had reached to and provided for the falsification even of the date as well as the substance of the said Bill of sale or that he the Respondent had had the address to carry on his fraudulent machinations without the notice of your Petitioner tho on the spot and so your Petitioner humbly submits he was Entitled to Judgement on the strength of the these leading facts But whatever may be the opinion of this Honble Court upon that point your Petitioner most humbly intreats that to the Misfortune of being deprived of his whole or Chief worldly substance by a fraud abundantly proven and to the further Mortification of being by the wicked refinement of that fraud shut out if such shall be the Sense of this Honble Court from the benefit of the Law and Consequently from all remedy your wretched and impoverished Petitioner doth as he hath said entreat that to such Complicated & accumulated than deserved applications this Honble Court will not suffer to be joined the additional Hardship of ruinous Charges and if this Honble Court shall not see fit to reverse the order of the said Mayors Court into to your Petitioner trusts that at all Events it will be pleased to alleviate rather than increase his distresses and so to annul the said

Order

Order in as far at least as regards the article of treble Costs—

/Signed/ John Wilkinson
Solicitor for appellant

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 25th. Day of October Anno Domini 1796—

Present

James Daly Esqr. Mayor
Andrew Ross John Mitford &
Wiliam Abbott Aldermen

Ravoo Saravana Moodelly
Parasooram Naick and Sawmy Naick

Petitions

Petition of Tanapah Naick Read—

Answer Read—

Interrogatories on the part of the Petitioner Read—

Nine Depositions taken thereto Read

Interrogatories on the part of the Respondent with three Exhibits Annexed Read—

Four

Four Depositions taken thereto Read-

Cross Interrogatories on the part of the Respondent Read

One Deposition taken thereto Read-

Additional Interrogatories on the part of the Respondent Read

One Deposition taken thereto Read-

The Sheriffs return of the Warrant of Execution Read-

The Matter in dispute between the Petitioner Tanapah Naich and the Respondent coming on to be &c. argued and Determined this day in the presence of the attornies on both sides On Hearing the pleadings and arguments used by the attornies and on due Consideration had thereon This Court doth think fit to order and doth accordingly order that the Petitioners Petition be dismissed and that the Petitioner be Taxed with Treble Costs-

A True Extract

/Signed/ G. E. Aitkin
Dy Regr

A true Copy
/Signed/ John Wilkinson
Solicitor for Appellant

To

To the Right Honourable Lord Hobart

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

In the Hon^ble the Court of Appeals

Between Taunapah Naich &c. Petitioner and Ravoo Saravana Moodelly Respondent in this Cause wherein Ravoo Saravana Moodelly is Complainant and Parasooram &c. Naich and Sawmy Naich are &c. Defendants-

Filed in my Office the 23. November 1796
J. Webbe Clk

The Answer of the above named Ravoo Sarvana Moodelly Respondent to the Petition and appeal of the above named Taunapah Naich appellant-

The said Respondent admits that he did on or about the time in the appellants Petition and appeal mentioned file his Bill of Complaint in the &c. Hon^ble the Mayors Court at Madraspatnam against the said Defendants upon their Mortgage Bond and to enforce a Sale of the Mortgaged Premises and Jewels therein mentioned

mentioned and that a Decree did afterwards pass against the said Defendants upon the said Bond and a warrant of Execution having in due course issued upon the foot of the said Decree this Respondent admits the Sheriff did seize the Premises and other property in the said Petition and appeal mentioned and this Respondent admits that the Appellant did afterwards prefer his Petition to the said Mayors Court setting forth the several matters and things stated in the said Appellants Petition and appeal and this Respondent saith that to the said Petition this Respondent filed his &c answer in the said Mayors Court and that he did thereby amongst other things set forth that this Respondent did actually and bona-fide lend and advance unto the said Defendants the Principal &c Sum of Seven hundred and twenty Eight Star Pagodas in the said Bond mentioned and for securing the payment thereof with Interest the said Defendants did lodge and deposit with this Respondent in Mortgage the Bill of Sale of the said Ground and premises together with the Jewels in the said Mortgage Bond and Petition mentioned and upon the Security whereof and not otherwise this Respondent so lend the said Sum of Seven hundred and twenty eight Star Pagodas and this

Respondent

Respondent denied that the said Petitioner either purchased the Ground or built the House which he now Claims for that the said Ground was sold by Public auction and purchased by the &c Defendants from one Pegue Nellah Chitty Teagapah Chitty the former Proprietor thereof and that a Chauttry Bill of sale was granted to the said Defendants for the said Ground in further confirmation of such sale and that this Respondent &c trusting thereto made the said Loan upon the Security of the said Bill of sale and Jewels the said Bill of Sale and Jewels being thereupon deposited with this Respondent a circumstance which this Respondent humbly submits would not have taken place had the said Mortgage been fictitious and this Respondent said that upon inquiry he hath learned that at the time when the said Chauttry Bill of sale &c Mortgaged with this Respondent was granted to the Defendants the said Petitioner was at Madras and that if the said Petitioner had &c then any just or well founded claim to the said Premises he should have prefered such Claim to the Register of the Chauttry Court and have thereby prevented the said Defendants obtaining the said Bill of sale and this Respondent in further testimony of the

any just

unjust conduct of the said Petitioner said that upon recurring to the Records of the Chaultry Court it appeared that a Bill of Sale Number One thousand five hundred and ninety nine of the Premises in question was duly granted to the former Proprietor thereof the said Pegue Nellah Chitty Teagapah Chitty and this Respondent saith that afterwards upon the said Ground being sold to the said Defendants to wit on the fifteenth day of February one thousand seven hundred and Ninety four the said original Bill of Sale was delivered into the Registry of the said Chaultry Court and a memorandum written at the foot thereof in the words and figures following to wit Memorandum that the whole of the Premises herein mentioned has been sold this 15th day of February 1794. to Parasoo Ramah Naick & Tinnelly Sawmy Naick by the owner thereof Pigue Teagapah Chitty as appears by a Chaultry Bill of sale on No. 2407 George Parry Regr" and as by the said original on Chaultry Bill of Sale remaining of Record in the said Chaultry Court doth appear and this Respondent saith that afterwards on or about the fifth day of June one thousand Seven hundred and ninety four the said Mortgage Bond was on executed and the said Bill of Sale of the said seventeenth day

day of February one thousand seven hundred and ninety four deposited with this Respondent as herein before is stated from all which this Respondent humbly trusts it doth evidently appear that the Petition so preferred to the said Mayors Court to stay the Execution of the said Decree was an Expedient concerted between the said Petitioner and the Defendants with a view of defrauding this Respondent of the benefit of his said Mortgage and the monies to this Respondent thereupon owing as by the said answer remaining of record in the said Mayors Court it doth and will appear and this Respondent admits that Issue having been joined upon the said Petition and answer witnesses were examined publication passed and the matter of the said Petition and answer having been set down for hearing the same came on to be heard before the said Mayors Court on the Twenty fifth day of October one thousand seven hundred and ninety Six when the said Court was pleased to order the said Petition to be dismissed with treble costs to be paid by the said then Petitioner now Appellant

This Respondent in answer to the several causes and reasons by the said Appellant assigned as his grounds of appeal saith That though the said appellant hath alleged that the said

Mortgage

Mortgage is fraudulent and that the original Suit as between this Respondent and the Defendants is collusive yet this Respondent saith that the contrary is fully established by incontrevertible facts for besides the House and premises and Jewels in the said appellants Petition and Appeal mentioned there were other Premises by the said Defendants said Bond Mortgaged to this Respondent against which the said Decree of the said Mayors Court passed and which premises were actually sold Publickly as by the Sheriffs return upon the aforesaid Warrant of Execution doth appear a circumstance that would not have taken place had the said Mortgage been fictious neither is it to be presumed that the Defendants would have given this Respondent the possession of the said Jewells or have incurred the Costs of a Suit at Law Sheriffs poundage and other incidental Charges if the said Jewels had not been actually and bonafide Mortgaged as they in fact were with other Property to secure to this Respondent the payment of a Just debt otherwise the said Defendants having the Possession of the said Jewels might have disposed of the same in open market possession of personal property being a sufficient title in the Eye of the Law

Law to a Purchaser for Valuable consideration which Purchasor this Respondent in fact was by having lent his money partly upon the Security of that property and which thereupon actually vested in this Respondents subject however to the Defendants right of redemption upon payment to this Respondent of the money to him owing the lending whereof by this Respondent to the said Defendants is fully and clearly proved and further more this Respondent saith the said appellant doth in his said Petition allege that he the said appellant went to the Southward in the year one thousand seven hundred and ninety five and previously depositted the Bill of Sale of the House in Question with his the said Defendants Brother the Defendant Parasooram Naick in the presence of some creditible Persons friends of the said appellant with directions to procure a Chaultry Bill of Sale of the said House to be made out in the name of the Petitioner during his absence but that the Defendants in the aforesaid suit did fraudulently procure the said Bill of sale to be made out in their names Whereas this Respondent saith that upon reference to the said Bill of sale it will appear to bear date the Seventeenth

day

day of February One thousand seven hundred and ninety four when the said appellant was upon the Spot in Madras and twelve Months previous to the time when such pretended fraud is alledged to have been concerted and effected and which incontrovertible fact doth as this Respondent humbly submits to this Honble Court fully demonstrate the fraudulent machinations of the said appellant in confideracy with his Brothers the Defendants in the said Suit who having borrowed this Respondents money upon the aforesaid Mortgage are now endeavouring to deprive him of his Security—

This Respondent therefore humbly prays that this Honble Court will be pleased to affirm the said Decretal order of the said Mayors Court and that the appellants said Petition of appeal may be dismissed with such costs as to this Honble Court may seem meet.

/Signed/ John White
Solicitor for Respondent

Court

Court of Appeals
at
Madraspatinam

Thursday the 5th day of January
Anno Domini 1797

Between Tanapah Naick of Madras
Inhabitant appellant and Ravoo
Saravana Moodelly 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 the Tuesday the 25th day of October 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 Single Costs in both Courts—

Thur

Extract

Extract from the Minutes of a Court Held on Thursday the 5th day of January Anno Domini 1797

Court of Appeals

Upon Consideration of the &c. application of the Solicitor in the Cause of Thomas Gicls ~~vers.~~ Thomas Hayes to file a Petition of appeal from the Decree of this Court to his Most Excellent Majesty in Council together with the following Opinion of the &c. Attorney General

To the Right Honble Lord Hobart.

President and Governor

In Council

My Lord

Mr. Webbe as Clerk of appeals has transmitted to me a letter from Mr. Samuel. Solicitor for the appellant in the case of Giels vers Hayes covering an appeal from the Decree of the Court of Appeals and has Communicated to me the desire of the Court that I would state my opinion whether according to the Charter this Cause is appealable to the King in Council

By

"By the Charter any person thinking himself aggrieved by a &c. Decree of the Mayors Court may appeal to the President and Council whose determination it says shall be final "if the debt damages or things directed to be paid done or delivered shall not exceed 1000. Pagodas" But in case it exceed that Term any person thinking himself aggrieved by the Judgment made on such appeal, May appeal to his Majesty in Council.

Your Lord Ship will have perceive that in all &c. appeals from the Mayors Court the Grievance complained of in the Decree is the matter in dispute to be determined by the President & Council and that their determination is exclusive of all further appeal when the value of the matter in dispute is but 1000. Pagodas or under But though the Decree of the Mayors Court in the present case was 500. Pagodas only Mr. Samuel thinks his Clients entitled to appeal from the Judgment in affirmance of it upon two grounds. 1st. that the matter in dispute was 20.000 Pagodas. 2dly that the Costs added to the damages awarded amount to more than 1000. Pagodas to the first it may be answered that the amount at which the damages were laid by the Respondent in his Bill of

Complaint

complaint to the Mayors Court being then reduced from 20.000 Pags to the fortieth part of that sum and he acquiesing in the reduction it ceased to be longer a matter of dispute between the Parties and the sum of 500 Pagodas at which these damages were assessed by that Court being more in the appellants mind then they ought to have been computed at become the grievance in the Decree which he ought to have redressed by his petition to the Court of appeals and was therefore the only matter in dispute before them In regard to the Costs or second reason for admitting the appeal they are incident to the event of every Suit and though they necessarily follow the Decree for the payment of the sum adjudged they have never been considered as making a part of that sum nor have they ever been allowed to be a cause of appeal when the merits were against the appellant I therefore submit it to your Lordship as my opinion that according to the Charter this Cause of Lyels. Vers. Hayes is not appealable to the Kg in Council

I have the honor to be

My Lord

your Lordships Most Obedient

Humble Servant

(Signed) Benjamin Sulivan

To

Fort St. George
28th December 1796.

To the Right Honourable Lord Hobart

President and Governour &c in Council

Fort St. George

In the Hble the
Court of appeals

Between John Chamier a Senior
Merchant in the Civil Service of the
United Company of Merchants of
England trading to the East Indies
Complainant
and
James Call Executor of the Estate
and Effects of Andrew Majendie
Deceased Defendant

Sheweth

The Humble Petition and appeal of the above named defendant

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

That the Complainant above named did some time on or about the Twenty fifth day of June and year of our Lord One thousand Seven hundred and ninety five exhibit and file his Bill of
Complaint in the Mayors Court of Madraspatnam against your Petitioner as Executor as aforesaid and did therein and
thereby amongst other things state That Andrew Majendie late

of

of Fort St. George Esquire deceased did in his life time become indebted
unto the Complainant in the sum of Eight hundred and ninety
Pagodas Twenty one fanams and sixty nine Cash Current money
of Madras and for securing the payment thereof did execute unto
the Complainant a bond or obligation in writing bearing date
the First day of December and in the year of our Lord One thousand
Seven hundred and Seventy Eight wherein and whereby the
said Andrew Majendie did become held and firmly bound
unto the Complainant in the Penal sum of One thousand Seven
hundred Eighty Pagodas Forty three fanams and fifty Eight
Cash conditioned for the Payment of the sum of Eight hundred
and Ninety Pagodas Twenty one fanams and sixty nine
Cash together with an Interest thereon at and after the rate
of Twelve per cent per annum and payable on demand
and that the said andrew Majendie having Executed unto the
Complainant the said Bond or Obligation in writing did
depart this life without having paid and satisfied unto the
Complainant the said sum of Eight hundred and ninety or
Pagodas Twenty one fanams and sixty nine Cash or any part
thereof and the same together with the Interest thereon was

still

still due and owing That the said Andrew Majendie in his life
time did duly make and Publish his last will and Testament in
writing and therein and thereby Did nominate Constitute and
appoint your Petitioner James Taylor and George Savage
in the Civil Service of the said united Company of merchants
trading to the East Indies under their presidency of Fort St George
aforesaid his Executors who did sometime on or about the
Twentieth day of December which was in the year of our Lord
One thousand Seven hundred and Eighty four prove the same
in the said Mayors Court in its Ecclesiastical Capacity and
did obtain Probate thereof That the said James Taylor
then resided in England or elsewhere out of the Jurisdiction
of the said Mayors Court and that the said George Savage
had departed this life That your Petitioner had possessed
himself of all and Singular the Goods and Chattels Rights
and Credits of the said andrew majendie to a very considerable
amount and more than sufficient to pay and satisfy the
said sum of Eight hundred and ninety Pagodas Twenty
one fanams and Sixty nine Cash and all the Interest due
thereon amounting to the Sum of One thousand Seven hundred

and

and Sixty Seven Pagodas four fanams and Sixty Cash and making together the sum of Two thousand Six Hundred and fifty Seven Pagodas Twenty Six fanams and forty nine Cash and that by reason of the Premisses your Petitioner as the only Executor in India of the said Andrew Majendie was and stood justly and truly indebted unto the Complainant in the said Sum of Two thousand Six hundred and fifty Seven Pagodas twenty Six fanams and forty Nine Cash as by the Copy of the said Bond and a Copy of an account Current to his said Bill annexed the Complainant did say would appear &c and your Petitioner sheweth that the Complainant did thereupon in and by his said Bill pray that your Petitioner might be Decreed to pay unto the Complainant the aforesaid sum of Two thousand Six hundred and fifty Seven Pagodas twenty six &c fanams and forty nine Cash with all such Interest as then was or should thereafter become due thereon also all Costs of the said Suit

And your Petitioner Sheweth That to the Complainants said Bill of Complaint your Petitioner did exhibit and file his Plea and answer and did therein for Plea state That the said Andrew Majendie deceased in the Bill named did in his life

life time duly make and publish his last will and Testament in writing and therein and thereby did nominate your Petitioner James Taylor and George Savage Executors of the said last will and Testament and that sometime on or about the Twentieth day of December which was in the year of our Lord one thousand Seven hundred and Eighty four the said James Taylor and George Savage together with your Petitioner did prove the same in the said Mayors Court in its Ecclesiastical Capacity and that the said James Taylor and George Savage did take upon themselves the burthen of the Executorship of the said will and did possess themselves together with your Petitioner of the Goods and Chattels Rights and Credits of the said Andrew Majendie &c deceased That the said George Savage was since dead But that the said James Taylor who was stated in the said Bill to reside in England or else where having taken upon himself together with your Petitioner and the said George savage since deceased the burthen and Execution of the said last will and Testament of the said andrew Majendie deceased your Petitioner was advised should have been made a party to the said Bill and therefore your Petitioner did plead in abatement to the Complainants said

said Bill of Complaint and did humbly pray the Judgment of the said Mayors Court whether he should make any further or other answer thereto - And your Petitioner in no sort waiving the benefit of his said Plea but wholly relying and Insisting thereon for answer unto the Complainants said Bill or to so much as your Petitioner was advised was material or necessary for him to make answer unto he your Petitioner did answer and say That the said andrew Majendie late of Fort St. George deceased might have been indebted in his life time unto the said Complainant in the sum of Eight hundred and ninety Pagodas Twenty one fanams and Sixty nine Cash Current money of Madras and for ought your Petitioner knew to the Contrary for the securing the payment of the sum aforesaid He might have or executed unto the said Complainant a Bond or obligation in writing on the day and year charged and alleged in the Complainants Bill yet your Petitioner not being advised of the truth of the Premises could not admit the same but did leave the proof thereof if such proof was in his power to be adduced thereafter by the said Complainant and your Petitioner further said That your Petitioner the said James Taylor and the said George Savage since

dina deceased being the Executors nominated and appointed by and in the last will and Testament of the late Andrew Majendie deceased did duly receive probate thereof from the said mayors Court in its Ecclesiastical Capacity at or about the time mentioned in the Complainants Bill and that the said James Taylor and George Savage together with your Petitioner did take upon themselves the burthen of the Executorship of the said will and did possess themselves together of all and Singular the Goods and Chattels Rights and Credits of the said Andrew majendie to a Considerable amount and to a Greater amount than sufficient to pay and satisfy the said sum together with an Interest thereon conditioned in and upon the said Bond or written obligation on which the said Complainant had founded his said Bill But your Petitioner did further state That he had not present assets in his hands of and belonging to the Estate of the said Andrew Majendie deceased to pay off and satisfy the claim of the said Complainant or any part thereof if the same should thereafter appear and be proven to be well founded or any thing belonging to the said Estate which could be converted into present assets to liquidate the same except certain Securities for money being several

several Bonds or writings Obligatory executed by his Highness the Nabob of the Carnatic to the said Andrew Majendie in his life time in conjunction with the said James Taylor your Petitioner and with Several other Persons Joint Obligees mentioned in and upon the said Bonds or writings Obligatory and your Petitioner did state that the said Bonds or writings Obligatory executed to the said Andrew Majendie in his life time James Taylor your Petitioner and others were executed for and on the Joint account of the said Andrew Majendie James & Taylor your Petitioner and others and that the said sums of money mentioned in and by the said Bonds or writings Obligatory were Jointly advanced to his said Highness the Nabob of the Carnatic the Obligor in the said Bonds or writings Obligatory Named by the said Andrew Majendie James Taylor your Petitioner and others the said Persons Joint Obligees also mentioned in the said Bonds or writings Obligatory and that the said James Taylor and your Petitioner and other Persons mentioned in the said Bonds or writings Obligatory with the said Andrew Majendie were a Company Firm or Concern & formed and constituted for the purpose furnishing and supplying a certain Loan to His said Highness the Nabob and in which said Company Firm or Concern each and every of the said Obligees mentioned in the said Bonds or writings Obligatory as aforesaid bore a proportionate and distinct share according to his or their advances of money or Credit in the said Stock or Capital towards furnishing and supplying the said Loan and your Petitioner did state that several of the said Bonds or writings Obligatory so executed by his said Highness the nabob as aforesaid stood at the time of the decease of the said Andrew Majendie and then stood pledged and mortgaged for the Joint Benefit advantage and use of the said Company & Firm or Concern and that there were several Joint Debts & Specialty then due and owing from the said Company Firm or Concern unto Sundry and Divers persons to a Considerable amount and that as such Bonds or writings Obligatory as were in the Possession of your Petitioner in part belonging appertaining to the Estate of the said Andrew Majendie Deceased were charged with the Joint Debts of the Concern and that as several other Persons were truly and bona fide interested in the same

and

and that as the said Bonds or writings Obligatory could not then be converted into money but at a considerable discount on the sums conditioned by the same The said Bonds of His said Highness the nabob of the Carnatic being below Par on the Intrigue sum for which they were Executed and negotiated your Petitioner was advised that he could not safely convert change the same into Cash or present money without being accountable to all the Parties interested and Concerned in the same for such losses or loss as might arise from the Conversion of the same into immediate money and your Petitioner for further answer did state That he was not indebted unto the said Complai=nant as one of the Executors in India of the said Andrew Mayor=die deceased in the sum of Two thousand Six hundred and fifty Seven Pagodas Twenty Six fanams and forty nine Cash as charged in the said Bill or any other Sum or Sums of Money whatsoever and for the reasons matters and things in your Petitioners plea and answer therein before contained and setforth- and your Petitioner Shweth that to your Petitioners said Plea and answer the Complainant did exhibit and

and file his Replication and did therein and thereby amongst other things state That his Bill of Complaint was good true and sufficient in the Law to be answered unto And that your Petitioners said plea was very evasive and insufficient to be by the Complainant replied unto and for further a Replication did state That in and by his said Bill of a Complaint he did setforth the Names of the several Executors who had been appointed by the said Andrew majendie in and by his last will and Testament and who had proved the same in the said mayors Court in its Ecclesiastical a Capacity and did shew that one of the said Executors that was to say George Savage had long since departed this life and that another of the said Executors that was to say James Taylor was gone beyond sea and was not within the Juris=dictions of the said Mayors Court and so the Complainants did aver the fact to be and did humbly submit to the said Mayors Court that by so doing he did all that was a incumbent on him to do For that where one Executor departs from the Jurisdiction of the Court it was not necessary to

make

make him a Party to a Bill of Complaint brought against the Estate of his Testator because no process to enforce his appearance could issue against him and that it was the Executor or Executors residing within the Jurisdiction who was or were the party or parties against whom such Bill was to be brought as it was against him or them only that Process Could Issue so as to procure an appearance and the Complainant did state that in and by his said Bill of Complaint he did shew and so the truth was that upon the Death of the said George Savage and the Departure from India of the said James Taylor Your Petitioner did possess himself of all and singular the Goods and Chattels Rights and Credits of his Testator the said Andrew Mayendie and therefore that it was to your Petitioner alone to whom the Complainant had a right to look for payment of his demand and consequently it was your Petitioner alone whom the Complainant ought to sue for the Recovery there of and thereupon the Complainant did humbly insist that your Petitioners said Plea in abatement was altogether ill advised misconceived and unfounded and did therefore pray that the same might be overruled with Costs and the Complainant in Reply to the answer of your Petitioner did state That your Petitioner instead of answering in the manner he had done regarding the Complainants demand on the Estate of his your Petitioners Testator ought to have answered positively For that your Petitioner did well know That his Testator did for the securing the payment unto the Complainant of the Sum of Eight Hundred and ninety Pagodas Twenty one fanams and 60 Sixty nine Cash Execute unto the Complainant the Bond in Question For that in the Inventory of the Estate of the said Andrew Mayendie delivered into the said Mayors Court in its Ecclesiastical Capacity by your Petitioner and the other Executors therein above named the said Bond was mentioned amongst other Bonds then outstanding against the Estate of the said Andrew Mayendie and therefore your Petitioner instead of saying "That not being advised of the truth of the premises he could not admit the same but did leave the proof there of if such proof was in his power to be" adduced thereafter by the Complainant was bound to have admitted the same and although your Petitioner

in

in his said answer did state that he had not then afsets in his hands of and belonging to the Estate of the said andrew Majendie to pay off and satisfy the Claim of the Complainant or any of part thereof or any thing belonging to the said Estate that could be converted into present afsets to liquidate the same yet he admitted to have in his posfession certain Securities for money being Several Bonds or writings Obligatory Executed by his Highness the Nabob of the Carnatic to the said Andrew Majendie in his life time in Conjunction with him your Petitioner the said James Taylor and several other Persons and the Complainant did state that the said Bond or writings Obligatory so Executed by his said Highness the Nabob were a species of negotiable Paper and could at all times be converted into money and that it was incumbent on your Petitioner in the discharge of his duty as Executor of the said Andrew Majendie to Convert the same into money or to have made such arrangements thereon as to have enabled him to pay off and satisfy the demand of the Complainant thereon That the Shewing of your

Petitioner

Petitioner in the said answer Contained regarding a Concern or Firm in which the said Andrew Majendie was engaged in his life time had nothing to do with the matter in Question and the more particularly as it appeared by his own Shewing that the said firm or Concern had long since been dissolved by the death of two of the Parties belonging thereto that was to say the said George Savage and the said andrew Majendie and by his said Highness the Nabob having Executed Bonds on account of the advances made to him by the said Parties and which as the Complainant had already shewn were negotiable and could be at all times converted into money That although your Petitioner had in and by his said answer stated That several of the Bonds so Executed by his said Highness the Nabob stood at the time of the decease of the said Andrew majendie, and then stood pleaged or mortgaged for the joint Benefit advantage and use of the said Company Firm or Concern yet your Petitioner had not Shewn that they were mortgaged for their full value and it was evident that their remaining in Pledge or

mortgage

mortgage could no longer be for the Joint Benefit and advantage of a Company Firm or Concern that had long since ceased to Exist and that as to the suggestion in your Petitioners said answer contained that there were several joint Debts of &c specialty still due and owing from the said Company Firm or Concern unto sundry and divers persons &c a Considerable &c amount the Complainant did submit to the said Mayors Court that the same was irrelevant as having no manner of Connexion with the matter in Question For the Complainant had brought his suit for the recovery of a sum of money secured to him by the Bond of your Petitioners Testator and not &c against persons forming a Company Firm or Joint concern That it might be that the said Bonds of his said Highness the &c Nabob were below par and that it was probable That they never might be near Par than at that time But that it was no just Reason for withholding from the Complainant the payment of his just demand as the Complainant did say he was advised that the personal Estate of a deceased person was to be disposed of either by appraisement or Public sale so soon as conveniently might

might be to the Satisfaction of the just Claims of his Creditors and that of your Petitioner should be permitted to retain in his &c possession the said Bonds of his said Highness the Nabob &c until all parties Interested therein gave their Consent to the disposal thereof the Complainant might never receive any manner of Satisfaction on account of his just Claim for the Recovery of the amount whereof he had brought his present suit and the Complainant did protend that notwithstanding your Petitioners Qualified denial of being indebted unto the Complainant in the sum said by the Complainant as aforesaid over That your Petitioner as Executor as aforesaid did stand justly and truely indebted unto the Complainant in the Sum of Two thousand Six hundred and fifty Seven &c Pagodas twenty six fanams and forty nine Cash - and your Petitioner Sheweth that to the Complainants said Replication your Petitioner did exhibit and file his Rejainder and did therein amongst other things state That his Plea and answer and the several matters and things therein contained were good true and sufficient in the

the Law to be replied unto and that the Complainants said Replication was very evasive and insufficient to be by your Petitioner Rejoined unto and did state that although the said Complainant as he had alleged in his said Replication might have set forth and/or Shewn in and by his said Bill of Complaint the names of several the Executors who had been appointed by the said Andrew Majendie in and by his last will and Testament and that they had proved the same in the said mayors Court in its Ecclesiastical Capacity and although he might have Shewn that one of the said Executors namely George Savage had departed this Life previous to the filing of the said Bill and that another of the said Executors to wit James Taylor had gone beyond sea and was not within the Jurisdiction of the said Mayors Court yet your Petitioner was advised that the said Complainant in his said Bill did not do as he had Contended all that was incumbent on him to do in as much as he did not make the said James Taylor as in Law he ought to have done as your Petitioner was well advised a party to the said Bill and although it might be true that the appearance of the said James Taylor to the said Bill could not have been enforced by any process out of the said Mayors Court by reason of his residence without the Jurisdiction thereof yet your Petitioner said as he was advised that the said James Taylor being a co-executor with your Petitioner ought to have been made a party to the said Bill in order that he might have been concluded by the Decree of the said mayors Court and that the Estate of the deceased might not be rendered liable to several actions for one and the same alleged debt and although the appearance of the said James Taylor could not have been procured on the Instant unto the said Bill it was not impossible but that it might have been obtained before a decree could have been had by the said Complainant thereon and more especially as the appearance or non appearance of the said James Taylor could not in any sort or wise have impeded or retarded the said Complainant in the prosecution of his said action as against your Petitioner and your Petitioner did state that although the said Complainant did allege in his said Bill (and did insist

in

in his said Replication that the said allegation was true/ that on the Death of the said George Savage and on the Departure of the said James Taylor from India That your Petitioner did possess himself of all and singular the Goods and Chattels Rights and Credits of his said Testator the said Andrew majendie and that your Petitioner therefore alone was liable to the alleged debt of his said Testator yet your Petitioner said as he was advised That he was by no means liable solely and singularly to the action of the said Complainant for the said alleged Debt in as much as the said Complainant had not charged alleged or stated at the time of the Complainants exhibiting his said Bill against your Petitioner that he your Petitioner then and at that time stood possessed of assets sufficient for the discharge of the debt of the said Complainant and your Petitioner said as in his said answer he had shewn at the time of the Complainants filing his said Bill that he your Petitioner had not present assets in his hands of and belong to the Estate of the said andrew majendie deceased to pay off and satisfy the claim of the said Complainant or any or part thereof and so the fact was and wherefore your Petitioner said that his said Plea was well advised and founded and not mis=conceived as the said Complainant had stated but good and sufficient to all intents and purposes of Law and that your Petitioner ought therefore to have the full and legal benefit and advantage thereof to which he was intitled and your Petitioner in further Rejoinder said in his said answer to so much of the Complainants said Bill as your Petitioner was advised was not material or necessary for him to make answer unto That he your Petitioner had answered in as positive and absolute a manner as was required of him as Executor as aforesaid and more especially as to the said alleged Demand of the said Complainant on the Estate of your Petitioners Testator and your Petitioner said that he was by no means obliged to confess the Right of action of the said Complainant so as to subject the Estate of his said Testator to the demand of the said Complainant in and by virtue of the said Bond or Obligation alleged to have been Executed by your Petitioners Testator in his life time and at the time mentioned in the said Bill and your

Petitioner

Petitioner did admit that in the Inventory delivered into the said Mayors Court in its Ecclesiastical Capacity by your Petitioner and other the Executors in the said & Replication named the said Bond was mentioned & amongst other Bonds then appearing to outstand against the Estate of the said Andrew Majendie But your Petitioner did deny by reason thereof that he was precluded from demanding such proof of the Execution of the said Bond as was demandable by Law for your Petitioner & said in pursuance of his office of Executor it was is duty to require legal satisfaction and proof touching all and every claim against the Estate of his said Testator and that if he had admitted the Execution of the said Bond by his said Testator which the Complainant insisted that he ought to have done and it had thereafter appeared that the same & was deficient in any of the Solemnities common and proper to an Instrument of the nature of a writing obligatory or if it should have appeared on the same or was thereafter & apparent that the said Bond had been released or discharged or had been in part released or discharged then and in such case your Petitioner was advised that he would have rendered himself liable to the suit of other Creditors who might have been injured by your Petitioners admission in the premises But your Petitioner said that he was as much bound in Conscience as Executor as aforesaid as he conceives in personal Justice to require the proof in Question And your Petitioner did further state That although he had admitted in his said Answer that he had in his hands or power certain Securities for money to wit Several writings Obligatory Executed by his Highness the Nabob of the Carnatic to the said Andrew majendie in his life time in conjunction with your Petitioner the said James Taylor and several other persons Joint Obligees in the said Bonds or writings Obligatory named yet your Petitioner said from the admission of the said Bonds or writings Obligatory being in his your Petitioners hands he had not made himself chargeable or liable & with or to the action of the said Complainant in as much as the said Bonds or writings Obligatory were not assets or in

the

the nature of assets and your Petitioner said although the sums secured in and upon the said Bonds or writings Obligatory was presently due to the several Obligees in the said writings Obligatory named yet his said Highness the Nabob the Obligor in the said writings Obligatory bunden was unable or disinclined to discharge the said Sums and your Petitioner said that he had not any other legal Remedy as Executor as aforesaid or knew not of any other legal Remedy to recover the said sums conditioned in and upon the said writings Obligatory of his said Highness the Nabob as aforesaid and until the said Bonds or writings Obligatory should be discharged or so much thereof as to satisfy the said Complainants demand against your Petitioner as Executor as aforesaid He your Petitioner was not liable to the suit of the Complainant in and by virtue of the said Bond alleged to have been executed by your Petitioners said Testator and so the fact was and your Petitioner did further state That the said Bonds or writings Obligatory were not a species of paper absolutely negotiable and could not at all times be converted into money as was alliged by the

the Complainant in his said Replication But your Petitioner did admit that the said Bonds or writings Obligatory might be conditionally transferred yet your Petitioner had Shewn in and by his said answer and so the fact was that the Bonds of his said Highness the Nabob in his said answer mentioned could not be converted into money but at a considerable discount on the sums conditioned in and by the same the said Bonds being below par on the entire and whole sum for which they were Executed and your Petitioner said as Executor as aforesaid he was advised that he had no right to compound the Debts of his said Testator which the Transfer of the said Bonds under the discount to which they were then subject would amount to in contemplation of Law and in the event of a composition of the said Debts by your Petitioners due to the said Testator on the said Bonds if the same should be compounded by your Petitioner through the means of a Transfer He your Petitioner was further advised that he would be liable to the Creditors of the said Andrew majendie for any and every deficiency occasioned by

by the said Transfer and your Petitioner did state that the said James Taylor your Petitioner and several other persons being Joint obligues in the said Bonds or writings Obligatory mentioned with the said Andrew Majendie He your Petitioner said that it would be unreasonable and unjust That he your Petitioner should be compelled to enjure his own property and the property of the said James Taylor and the said several persons Joint obligees as aforesaid as he undoubtedly would do if he were compellable to convert the said Bonds into immediate money under the Circumstances of the said Discount and your Petitioner said that his said office of Executor could not subject him to the loss of his own Property and render him liable to the action of others Jointly interested in the said Bonds for such Injury as might accrue by the Transfer of the same as your Petitioner was advised he would be rendered liable if he converted or Transferred the same for less than the Principal sum and &c Interest Conditioned in and upon the same and your Petitioner in further Rejoinder said that he did admit that the personal Estate of a Deceased person was to be &c disposed

disposed of as soon as conveniently might be to the satisfaction of the Just Claims of his Creditors And your Petitioner had done and was willing to do all in his power to that end and effect &c But the Estate of your Petitioners said Testator being so &c blended and connected with the Interests of others and being so circumstanced as your Petitioner had set forth in his answer to the Complainants said Bill That he your Petitioner had not been able nor had he any knowledge how he could be able to place it in a more advantageous situation than in which it stood to wit in expectance of the due discharge of the said &c Bonds in the Course of payment to which they were subject - and your Petitioner notwithstanding what was alleged by the said Complainant That he your Petitioner ought to have converted the said Bonds into money or to have made &c such arrangements thereon as to have enabled him to pay off and satisfy the demand of the said Complainant did state That he was not by reason of the premises obliged or bound to convert the same into money so as to satisfy the individual alleged Debt of the said Complainant in as much as the

Conversion

conversion of the same into money might render him liable to
an action of waste might injure his own property and the
property of several others being connected with the Estate of
the said Andrew Majendie as your Petitioner had therein
before shewn and might further deprive several other specialty
Creditors Claimants in a like degree with the said Complai-
=nant of the several Debts due to them respectively from
the Estate of your Petitioners Testator And your Petitioner
did further state that notwithstanding what the said 4th
Complainant had setforth in his replication respecting
the said Concern or Firm in which your Petitioner in his
said answer had shewn That the said andrew majendie
was engaged in his life time together with your Petitioner
and others That The shewing of your Petitioner in his said
answer and the several matters and things as related
therewith did appertain and belong and were extremely
pertinent and relevant to the matter in Question and
lastly your Petitioner said as in and by his said 6th
answer he had already shewn. That he was not indebted

unto

unto the Complainant as Executor as aforesaid either in the Sum
sued for or in any other Sum or Sums and for the reasons matters
and things in his said Plea and answer and in his said or
Rejoinder impleaded setforth and contained.

And your Petitioner Sheweth unto this Honble Court that
upon the aforesaid pleadings being had in the said Cause Issue
did join and Rules did pass for the Examination of witnesses
and that Several witnesses were Examined accordingly on the
part and behalf of the Complainant and your Petitioner
Sheweth that John Mitford Esquire a Civil Servant on the
Madras Establishment Examined on the part and behalf of
the Complainant did to the Second Interrogatory depose
that he was well acquainted with the late andrew majendie
in his life time and that he was acquainted with the Charac-
=ter and manner of his hand wreting that he had looked at
the Bond or writing Obligatory produced and shewn to
him at the time of his Examination and said that to the
best of his knowledge the Signature Andrew Majendie
thereunto set and subscribed was of the proper hand wreting of
the said Andrew Majendie and to the Third Interrogatory

the

conversion of the same into money might render him liable to
an action of waste might injure his own property and the
property of several others being connected with the Estate of
the said Andrew Majendie as your Petitioner had therein
before shewn and might further deprive several other specialty
Creditors Claimants in a like degree with the said Complai-
=nant of the several Debts due to them respectively from
the Estate of your Petitioners Testator and your Petitioner
did further state that notwithstanding what the said
Complainant had set forth in his replication respecting
the said Concern or Firm in which your Petitioner in his
said answer had shewn That the said andrew majendie
was engaged in his life time together with your Petitioner
and others That the shewing of your Petitioner in his said
answer and the several matters and things as related
therewith did appertain and belong and were extremely
pertinent and relevant to the matter in Question and
lastly your Petitioner said as in and by his said
answer he had already shewn, that he was not indebted

unto

unto the Complainant as Executor as aforesaid either in the Sum
sued for or in any other Sum or Sums and for the reasons matters
and things in his said Plea and answer and in his said
Rejoinder impleaded set forth and contained.

And your Petitioner Sheweth unto this Honble Court that
upon the aforesaid pleadings being had in the said Cause Issue
did join and Rules did pass for the Examination of witnesses
and that Several witnesses were Examined accordingly on the
part and behalf of the Complainant and your Petitioner
Sheweth that John Mitford Esquire a Civil Servant on the
Madras Establishment Examined on the part and behalf of
the Complainant did to the second Interrogatory depose
that he was well acquainted with the late andrew majendie
in his life time and that he was acquainted with the Charac-
=ter and manner of his hand writing that he had looked at
the Bond or writing Obligatory produced and shewn to
him at the time of his Examination and said that to the
best of his knowledge the Signature Andrew Majendie
thereunto set and subscribed was of the proper hand writing of
the said Andrew Majendie and to the Third Interrogatory

the

the said witness did depose that he was acquainted with John Balfour late of Fort Saint George and was acquainted with the Character and manner of writing of the said John Balfour that he had looked at the Bond or writing Obligatory produced and shewn to him. at the time of his Examination and that the signature "J Balfour" to the best of the Deponents knowledge and belief was of the proper hand writing of the said John Balfour and your Petitioner Sheweth that Sashapillay Dubash to the fourth Interrogatory on the part and behalf of the Complainant did depose That he was acquainted with the late William Dobbyn that he had looked at the Bond or writing Obligatory produced and shewn to him at the time of his Examination and said that the signature "William Dobbyn" thereunto set and subscribed as a witness to the Execution thereof was the proper hand writing of the said William Dobbyn and your Petitioner Sheweth That Thomas Cockburn Esquire of the Honourable Companies Service to the additional Interrogatory on the part and behalf of the Complainant did depose that he was Register of certain Bond Debts usually denominated the Consolidated Debts of the late Nabob Wallajah the late

late nabob of the Carnatic That certain of the said Bonds debts were formed into a Class or description of Debt called or known by the appellation or discription of the Consolidated Debt of the year One thousand Seven hundred and Seventy Seven That he / the Deponent / was Regeiter of the Debt of one thousand Seven hundred and sixty Seven of the Old and new Cavalry or Debts and of the said Debt of One Thousand Seven hundred and Seventy Seven That he did know That andrew Majendie late of Fort Saint George Esquire but since deceased was in his life time considerably interested in the said Bond Debts as being the joint and individual Obligee in several of the said Bonds That he could not say in how many of the said Bonds he was interested But that Bonds then stood Registered in his name jointly with Taylor Savage and Call and seperately in the name of the said andrew Majendie to the amount of Five Lacs of Pagodas and upwards That he did not recollect the several and respective Sums which appeared in the said Bond or Bonds to be payable to the said andrew majendie individually or conjointly with the other Obligees as before set forth nor could he say to what extent or proportion of such Bond or Bonds or

or any or either of them the said Andrew Majendie was or his Estate there was entitled That such Bonds were negotiable and transferable by persons legally authorised to do so in the Registers Books That they were not then saleable and negotiable (as the Deponent did believe) for their specific and declared amount But that they then bore a discaunt (as the Deponent understood) of from Twelve to sixteen per Cent That he did not know nor had he any reason to believe that such Bonds had in their exchange or negotiability ever since he had been Register of the said Debts been saleable or negotiable at par That the Most favourable Terms within his recollection on which such Bonds or any Certificates or Portions of such or Bonds might have been disposed of were at two and a half per Cent and from that to four per Cent discaunts but he did not recollect the time when they could have been so or disposed of That he did not recollect what the discaunt on such Bonds was on or about the ninth day of April and Twenty fifth day of June in the year One thousand Seven hundred and ninety five That any part or proportion of such or Bond or Bonds might be transferred or negotiated by transfer or on the back thereof to the amount of which transfer a Certificate was granted by the Deponent as Register That the nature of such or Certificates was to certify that the sum of money therein set forth had been transferred to the party mentioned in the said Certificate being part of a certain Bond made over to him by a transfer executed in the Registers Books by the Seller and therein or accepted by the purchaser That certain Regulations were established for the payment and discharge of the said Bonds by certain dividends directed to be made from time to time to the Creditors of His said Highness the late Nabob of the Carnatic That such Dividends were made by public Treasury of the Government of Fort St. George in conformity to a certain Treaty entered into Between The Honble united Company of merchants of England trading to the East Indies with his said late Highness the Nabob Wallajah Nabob of the Carnatic for the payment of the said Dividends sanctioned by an act of Parliament That such Dividends were Issued from the Companys Treasury to him the Deponent as Register as aforesaid and by him issued to the Creditors or to their Representatives That the Deponent was elected Register in the year One Thousand Seven

Seven hundred and Eighty Eight by the said Creditors and by them recommended for approbation of their appointment to the Government of Fort St. George who confirmed it and it was afterwards finally approved of by the Court of Directors And your Petitioner Sheweth that the aforesaid Witness John Kitford Esquire again Examined on the part and behalf of the Complainant to the Second further additional Interrogatory did depose That the Complai=nant when the Deponent first became acquainted with him did bear and was known and discribed by the Name of John Des Champs and that he the Deponent knew him by that name about six years That the Complainant had been permitted to assume or take the name of Chamier by his Majestys Royal Licence for that purpose That the Complainant had not lived dwelt and resided at Madras or elsewhere under the Presidency of Fort St. George during the whole of the time since the Deponent first became acquainted with him That the Complainant did some time in the year One thousand seven hundred and &c Seventy nine depart from India for the purpose of proceeding to England and did actually proceed to England as the &c Deponent had heard and did believe That the Complainant had returned from England to India and did reside on his &c return with the Deponent in his house in Fort Saint George and did then reside at a place a short distance from Saint Thome That the Deponent was in the Service of the united Company of Merchants of England trading to the East Indies under their presidency of Fort St. George and that he entered such Service in the year One thousand Seven hundred and Seventy one That the Complainant was in the Service aforesaid and that he was known in the said Service prior to his departure from England by the name of John Des Champs and that he was known acknowledged and recognized on his return to Fort St George by the name of John Chamier

And your Petitioner Sheweth unto this Honble Court That after Examination of the said witnesses Publication did pass in the said Cause and the same was set down to be heard by the said Mayors Court and your Petitioner Sheweth that the same &c coming on accordingly 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 &c accordingly

accordingly order and Decree that your Petitioner do pay unto the Complainant out of the Estate and Effects of Andrew Majendie deceased the full and just Sum of Two thousand Six hundred and fifty seven Pagodas Twenty Six fanams and Forty Nine Cash together with all such Interest as then was or should thereafter become due thereon until full payment was made also all Costs of the said suit as by a Copy of the said Decree hereunto annexed for the Inspection of this Honble Court to which your Petitioner begs leave to refer and prays the same may be taken as part of this his Petition and &c appeal the original being ready to be produced at the &c hearing may more fully and at large appear—

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

First . . . Because the said mayors Court at the time of making the said Decree in the Premisses had not before them the proper and necessary parties against whom the said &c Court might be authorised under the particular &c

circumstances

circumstances of your Petitioners Case to decree therein For your Petitioner humbly Sheweth unto this Honble Court that the Bill of the said Complainant having been instituted for the recovery of a certain principal Sum and Interest said to be secured on a Bond alleged to have been executed by andrew Majendie in his life time to the said Complainant and the said Complainant having charged in his said Bill that previous to the decease of the said andrew Majendie He the said andrew Majendie did duly make and publish his last will in &c writing and did therein nominate constitute and appoint your Petitioner together with James Taylor and George Savage since deceased / as Executors thereof and the said Complainant having further charged that your Petitioners and the said James Taylor and George Savage did prove the said &c will in the said Mayors Court in its Ecclesiastical Capacity and did receive probate thereof your Petitioner is advised That the said James Taylor ought to have been made a &c party with your Petitioner to the Complainants said Bill of Complaint For your Petitioner Sheweth That all the Executors in a will named do together and not singly

form

form a legal representation of the person of the Testator and therefore the Law doth require as your Petitioner is advised That they shall all join in suits against others and that in suits brought by others they shall all be made parties Defendant thereto and for very plain and obvious principles of Equity and Justice and your Petitioner further Sheweth unto this Honble Court That to the said Bill of Complaint of the said Complainant he did plead that the said James Taylor and George Savage did together with your Petitioner prove the will of the said Andrew Majendie deceased and did jointly with your Petitioner take upon themselves the burthen of the Execution of the said will and did possess themselves together with your Petitioner of the Goods and other Chattels Rights and Credits of the said Andrew Majendie deceased That the said George Savage was since deceased but that the said James Taylor who was stated in the Complainants said Bill to reside in England or elsewhere ought to have been made a party defendant with your Petitioner to the said Bill and your Petitioner did therefore plead the said matters in abatement thereof and your Petitioner humbly contends that he ought to have had the benefit of the said Plea to whereby Law

Law he doth seem entitled For it is plainly laid down that where there are Co executors in a will named and they together prove the said will and that one of them be afterwards sued singly and he plead the said matter in abatement that he shall have advantage of such Plea. And your Petitioner Humbly Sheweth unto This Honble Court That the matters and things set forth by the said Complainant in his Replication to the said Plea of your Petitioner are not as far as the same are admitted or proved sufficient to take the case of the said Complainant out of the General Rule of Law so applicable to Co executors For whether the appearance of the said James Taylor could have been procured or not was not as your Petitioner is advised of material to the Suit as the said suit could not be retarded or impeded thereby in as much as where a Debt is prosecuted against several Executors and one only appeareth and the rest make default the one appearing shall answer alone without his Companions And if Judgement pass for Complainant he shall have judgement and execution against him that hath pleaded and against the others named in the Bill of the Testators Goods as well as if they had all

and your Pet.r therefore humbly Sheweth that he said suggestion
all pleaded of an inconvenience which might result from making the said James
Taylor a party to the said Bill must vanish if the explanation
of the Law as regards this point be rightly understood and
stated by your Petitioners and which your Petitioner humbly
trusts the same is and your Petitioner further Sheweth that
it was not impossible But that the said James Taylor might
have come within the Jurisdiction of the said Mayors Court
during the continuance of the suit and might have had some-
thing to plead for the advantage of his Testators estate to the
said Bill of the Complainant and it is clear that the Law
exacts that all the Co. executors of a will shall be made parties
to a Suit for these manifest Reasons. In order that the defence
best or most beneficial for the Testators estate may be set up
and that the matter in controversy may be peremptorily
settled - and the Estate of a deceased person protected from
the evil of a multiplicity of actions for one and the same
Debt. And as to the other matters alleged in the said Bill
of the said Complainant That your Petitioner after the or
decease of the said George Savage and the departure of the
said James Taylor from India did possess himself of all
and

and Singular the Goods and Chattels Rights and Credits of the
said Andrew Majendie deceased - and therefore that your Petitio-
ner was alone liable to the suit of the said Complainant. your
Petitioner humbly Sheweth unto this Hon.ble Court that the same
if it could operate after due proof being had thereof so as to
charge your Petitioner seperately with the debt sued for by
the said Complainant is nothing more than a bare unsupported
allegation of the said Complainant and not attempted to be or
substantiated by evidence And is moreover fully controverted
and denied by your Petitioners answer to the said Bill -
and your Petitioner therefore humbly contendeth that his
said Plea so impleaded by him ought to have prevailed with the
said mayors Court and the said suit in consequence should and
ought to have abated thereupon -

Secondly - - - - Because the said decree of the said Mayors Court against
your Petitioner is made as if your Petitioner had been possessed
of assets of and belonging to the Estate of his said Testator to
satisfy the same whereas your Petitioner humbly Sheweth
unto this Hon.ble Court That although the said Bill of the
said Complainant did suggest assets to be in the hands of
your

your Petitioner yet your Petitioner in his said answer to the &c
said Bill did specially and specifically deny such fact averring
That he your Petitioner had not present afsets in his hands to
pay off and satisfy the claim of the said Complainant or any
part thereof or any thing belonging to the estate of the said &c
Andrew Majendie deceased which might be converted into
present afsets except certain Bonds or securities for money
executed by his Highness the Nabob of the Carnatic to the said
Andrew Majendie in conjunction with others - And your Petitio
-ner Sheweth that the said said Complainant in his Replication
thereto exhibited did take an Issue on such fact as laid down
by your Petitioner as relative to the afsets suggested to be in
the hands of your Petitioner in and by the said will and did
allege That the said Bonds or securities for money executed by his
said Highness the Nabob were a species of negotiable paper and
could at all times be converted into money and that your &c
Petitioner ought to have converted the same or to have made
such arrangement thereon so as to have enabled your Petitioner
to pay off the Complainants Demand And your Petitioner
further Sheweth unto this Honble Court that the said Complai-
-nant did not aver nor did he any where attempt to shew or prove
that your Petitioner had any thing or things in his hands of
and belonging to the Estate of his said Testator in the nature
of afsets nor did the Complainant set forth any matter &c as
to raise a presumption that your Petitioner had property
Money Goods or Chattels Rights or Credits of the said &c
deceased in his possession other than the said Bonds or &c
securities for money So that your Petitioner doth humbly
contend that the only Issue in respect to afsets between your
Petitioner and the said Complainant was whether the said &c
Bonds or securities for money executed by his said Highness the
Nabob were or were not such in the hands of your Petitioner
And your Petitioner doth humbly hope to shew to the &c
satisfaction of this Honble Court that the same were in no sort
Afsets so as to charge your Petitioner with the Debt of the
said Complainant - For your Petitioner humbly Sheweth &c
unto this Honble Court That Debts due to a Testate Person
whether by Bond Judgement Mortgage or in any way &c
soever are not not considered as afsets in the hands of an
Executor but as so many Chases in action until the &c
Sum

sum secured thereby shall be recovered unless the Executor shall release the Debt or action or fail to put the same into suit so that any thing to be derived from such securities be lost to the Testators Estate by the default and negligence of the Executor - and such doctrine in respect to the personal Estate of a Testator is by a variety of legal precedents clearly fixed and established - and your Petitioner further Sheweth that it is no where averred or proved that your Petitioner hath released any Debt secured by the said Bonds executed by his said Highness the Nabob or that he hath commenced and released any action touching the same or that your Petitioner from the nature of such or Bonds or securities for money could have put the same in or suit and your Petitioner hath Shewn in his said rejoinder that the said Bonds of his said Highness the Nabob could not have been urged in suit in the said Mayors Court and your Petitioners doth therefore humbly contend that the said Bonds could not in any view of the same or from any fault negligence or omission on the part of your Petitioner be considered and adjudged as assets in your Petitioners hands and therefore or that your Petitioner should not have been charged therewith as

as he hath been in the said Decree of the said Mayors Court and your Petitioner humbly Sheweth to this Honble Court that the Suggestion of the said Complainant that the said Bonds of his said Highness the Nabob are a species of negotiable paper and therefrom inferring that your Petitioner should have converted the same into money and that the same if they could not strictly be deemed legal that they were equitable or assets is a semblable rather than a true deduction from the Nature of the Thing in question your Petitioner doth admit that the Bonds of his Highness the Nabob are negotiable or Paper - But your Petitioner humbly Sheweth that it is not negotiable for its full and declared value, i.e. for the apparent value upon the face of such paper but that it is subject to a Considerable discount and your Petitioner is advised or and so he firmly believes the Law to be that had your Petitioner converted the said Bonds into money as it is said by the Complainant that your Petitioner ought to have done that he your Petitioner in such event would have been liable to the rest of the said Creditors of his Testators Estate for such sum or sums as should appear to be the difference or differences or between

between the money actually received and the money declaredly secured in and by the said Bonds For it is incontrovertibly &c maintained by numberless authorities That if an Executor sells his Testators Goods at an under value he shall answer for their &c real value and if he release a Debt due to his Testator Poor perhaps the Executor do not receive near so much as is due this shall charge him with the whole Debt or if even the Executor submit the debt due to his Testator to arbitration and the arbitrators award him less than what is apparently due such will be in the eye of the Law a devastavit in the Executor and will subject him to the total amount thereof- and your &c Petitioner therefore doth humbly contend that such being the strict law as applying to Executors That your Petitioners was not baunden under any equitable consideration to change or alter the nature of the said Bonds so as to expose your Petitioner to an action of waste at the suit of the Creditors of his said Testators and your Petitioner hath attempted to shew and doth trust that he hath shewn that without changing or altering the same that the said Bonds were not Assets and that therefore in respect to the said Bonds That your Petitioner was not chargeable with

with the Debt of the said Complainant and that the said &c Decree of the said Mayors Court in the premisses is therefore erroneous and ought to be reversed

Lastly -- Because under the circumstances specially and particularly setforth by your Petitioner in his said answer the Estate of the said Andrew Majendie was subject to claims of a higher nature than that of the said Complainant to the liquidation whereof the Assets of the said Estate whensoever they should be realized would be primarily appliable- For your Petitioner Sheweth That he averred in his said answer That several of the said Bonds of His said Highness the Nabob having been jointly executed unto your Petitioners said Testator the said James Taylor &c George Savage and your Petitioner for sums jointly advanced were at the time of the decease of the said Andrew Majendie and at the time of filing the said answer pledged or mortgaged for the joint advantage and use of your Petitioners said &c Testator and others just before mentioned and although the said Complainant did not deny the fact of their being so &c pledged yet did he insist in his said replication that the circumstance of the said Mortgage did not in any sort &c affect

affect the right of him the said Complainant But your Petitioner humbly Contends that the said Estate of his said Testator being charged with such said several mortgage Debts as discribed was first bounden to the discharge of the same before the Bonded claim of the said Complainant even had there been presented assets for the satisfaction thereof and therefore the said Decree of the said Mayors Court which would give a priority of payment to the demand of the said Complainant in preferrence to the sd said Mortgage Debts outstanding against the Estate of your Petitioners Testator and for the discharge of which Petitioner hath not nor had he at the time of answering the said Bill any (means) is further erroneous and should and ought your Petitioner doth humbly contend to be reversed by this Honourable Court

For all which Reasons and such others as may be offered at the hearing your Petitioner most humbly prays This Honble Court will be pleased to reverse the said Decree of the said Mayors Court and grant unto your Petitioner such further and other relief in the premises as in the wisdom of this Honble Court shall seem meet

/Signed/ Emanuel Samuel
Solicitor for appellant

Mayors

Mayors Court at Madraspatnam

Tuesday the 2d day of August Anno Domini 1796

(P.L)

Mayors Court

Present

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

Between John Chamier a Senior Merchiant in the Civil Service of the united Company of Merchants of England trading to the East Indies under their presidency of Fort Saint George Complainant and James Call of Fort St. George Executor of the last will and Testament of Andrew Majndie Deceased Defendants

This Cause coming on to be Heard and Debated this day in the presence of the Attornies on both sides on reading the Complainants Bill with an Account Current annexed The Defendants Plea & answer - The Repluation

The

The Rejoinder The Interrogatories and Depositions on the part of the Complainant with an original Bond annexed one Exhibit on the part of the Complainant on Hearing the pleadings made use of by the Attornies and on due Consideration had thereon This Court doth think fit to order and Decree and doth or Accordingly order and Decree that the Defendant do pay unto the Complainant out of the Estate & Effects of Andrew Majendie Deceased the full and Just Sum of Two thousand Six hundred and fifty Seven Pagodas Twenty Six fanams and forty nine Cash / Pagodas 2657.26.49./ together with all such Interest as now is or shall hereafter become due thereon until ful payment is made also all Costs of this suit

A true Copy
/Signed/ Emanuel Samuel
Solicitor for appellant

/Signed/ G. E. Ashton
Dy Regr

To the Right Honourable Lord Hobart

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

In the Hon^ble the Court of Appeals

Between John Chamier a Senior of the Merchant in the Civil Service of the united Company of Merchants of England trading to the East Indies Complainant and James Call Executor of the Estate and of Effects of Andrew Majendie deceased Defendant

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

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

This Respondent admits that he did some time on or about the Twenty fifth day of June and year of our Lord one thousand seven hundred and ninety five exhibit and file his Bill of Complaint in the Mayors Court of Madraspatnam against the Petitioner as Executor of andrew Majendie late in the Civil service of the united Company of Merchants of England trading to the East Indies

Indies aforesaid under their Presidency of Fort St. George deceased and did therein and thereby amongst other things state that Andrew Majendie late of Fort St. George Esquire deceased did in his life time become indebted unto this Respondent in the Sum of Eight hundred and ninety Pagodas twenty one fanams and Sixty nine Cash Current Money of Madras and for securing the Payment thereof did execute unto this Respondent a Bond or obligation in writing bearing date the first day of December and in the year of our Lord One thousand seven hundred and seventy eight wherein and whereby the said Andrew Majendie did become bound unto this Respondent in the penal sum of one thousand seven hundred and eighty Pagodas forty three fanams and fifty eight Cash Conditioned for the Payment of the sum of Eight hundred and ninety Pagodas twenty one fanams and Sixty nine Cash together with an Interest thereon at and after the rate of Twelve per Cent per annum and payable on demand and that the said Andrew Majendie having Executed unto this Respondent the said Bond or obligation in writing did depart this life without having paid and satisfied unto this Respondent the said sum of Eight hundred and ninety Pagodas twenty one fanams and sixty nine Cash or any part thereof and the same together with the interest thereon was still due and owing. And this Respondent admits he did in his said Bill further allege that the said Andrew Majendie in his life time did duly make and publish his last will and Testament in writing and therein and thereby did nominate constitute and appoint the Petitioner James Taylor and George Savage all of them in the Civil service of the said united Company of Merchants trading to the East Indies under their Presidency of Fort St. George aforesaid his Executors who did same time on or about the Twentieth day of December which was in the year of our Lord One thousand seven hundred and Eighty four prove the same in the said Mayors Court in its Ecclesiastical Capacity and did obtain Probate thereof and this Respondent did further state that the said James Taylor then resided in England or elsewhere beyond the Jurisdiction of the said Mayors Court that the said George Savage had departed this life and that the Petitioner had professed himself of all

and

and singular the Goods and Chattels Rights and Credits of the said andrew Majendie to a very Considerable amount and more than sufficient to pay and satisfy the said sum of Eight hundred and ninety Pagodas twenty one fanams and sixty nine Cash and all the interest due thereon amounting to the sum of one thousand seven hundred and sixty seven Pagodas four fanams and sixty Cash making together the sum of Two thousand six hundred and fifty seven Pagodas Twenty six fanams and forty nine Cash and that by reason of the Premises the Petitioner as the only executor in India of the said Andrew Majendie was and stood justly and truely indebted unto this Respondent in the said sum of Two thousand six hundred and fifty seven Pagodas twenty six fanams and forty nine Cash as by the Copy of the said Bond and a Copy of an account Current to his said Bill annexed this Respondent did say would appear and this Respondent admits he did in and by his said Bill pray that the Petitioner might be decreed to pay unto this Respondent the aforesaid sum of Two thousand six hundred and fifty seven Pagodas twenty six fanams and forty

forty nine Cash with all such Interest as then was or should thereafter become due thereon also all Costs of the said suit

And this Respondent further admits that to this Respondents said Bill of Complaint the Petitioner did exhibit and file his Plea and answer and did therein for Plea state that the said andrew Majendie deceased in this Respondents said Bill of Complaint named did in his life time duly make and publish his last will and Testament in writing and therein and thereby did nominate the Petitioner and James Taylor and George Savage Executors of his said last will and Testament and that some time on or about the Twentieth day of December which was in the year of our Lord one thousand seven hundred and eighty four the said James Taylor and George Savage together with the Petitioner did prove the said will in the said Mayors Court in its Ecclesiastical Capacity and that the said Petitioner and the said James Taylor and George Savage did take upon themselves the burthen of the Executorship of the said will and did possess themselves of the Goods and Chattels Rights and Credits of the said

andrew

andrew Majendie deceased that the said George Savage was since dead but that the said James Taylor who was stated in the said Bill of this Respondent to reside in England or else where in Great Britain having taken upon himself together with the Petitioner and the said George Savage since deceased the burthen and execution of the said last will and Testament of the said andrew Majendie deceased the Petitioner was advised should have been made a party to the said Bill and therefore the Petitioner did Plead in abatement to this Respondents said Bill of Complaint and did humbly pray the Judgement of the said Mayors Court whether he should make any further or other answer thereto.

And this Respondent admits that the Petitioner reserving to himself all benefit of his said Plea for answer unto the residue of this respondents said Bill he the Petitioner did say that the said Andrew Majendie late of Fort Saint George deceased might have been indebted in his life time unto this Respondent in the sum of Eight hundred and ninety Pagodas twenty one fanams and sixty nine Cash Current money of Madras and for ought he the Petitioner knew to the contrary for the securing the Payment of the sum aforesaid the said andrew Majendie might have executed unto this Respondent a Bond or Obligation in writing on the day and year charged and alleged in this Respondents Bill yet the Petitioner not being advised of the truth of the premises could not as he did say admit the same but did leave the proof thereof if such proof was in his this Respondents power to be adduced thereafter by this Respondent and which this Respondent submits to this Honble Court was altogether improper in the said Petitioner in as much as the fact of his Testator having granted to this Respondent the Bond on which this Respondent had brought his said suit was within the knowledge of the said Petitioner wherefore the requisition of proof of the execution of the said Bond could be for no other purpose than to occasion unnecessary expence and delay and this Respondent sheweth the said Petitioner did further say and admit that himself and the said James Taylor and the said George Savage did take out probate

of

of the last Will and Testament of the said deceased Andrew Majendie about the time in this Respondents said Bill &c alleged and that they did take upon themselves the burthen of the Executorship of the said will and did possess themselves together of all and singular the Goods and Chattels Rights and Credits of the said Andrew Majendie to a Considerable amount and to a greater amount than sufficient to pay and satisfy the said sum together with an Interest thereon conditioned in and upon the said Bond &c or written &c Obligation on which this Respondent had founded his said Bill. And this Respondent admits that the said &c Petitioner did in his answer to this Respondents said Bill further state that he had not present assets in his hands of and belonging to the Estate of the said Andrew Majendie deceased to pay off and satisfy the Claim of this &c Respondent or any part thereof if the same should &c thereafter appear and be proven to be well founded or any thing belonging to the said Estate which could be Converted into present assets to liquidate the same &c

except

except certain securities for money being several Bonds or writings Obligatory executed by his Highness the Nabob of the Carnatic to the said Andrew Majendie in his life time in Conjunction with the said James Taylor the Petitioner and with several other Persons joint obligees mentioned in and upon the said Bonds or writings obligatory and this Respondent also &c admits the Petitioner did state that the said Bonds or writings obligatory executed to the said Andrew Majendie in his life time the said James Taylor the Petitioner and others were executed for and on the joint account of the said Andrew Majendie James Taylor the Petitioner and others and that the said sums secured in and by the said Bonds or writings Obligatory were jointly advanced to his said Highness the Nabob of the Carnatic the obligor in the said Bonds or writings Obligatory named by the said Andrew Majendie James Taylor the Petitioner and others the said Persons joint obligees also mentioned in the said Bonds or writings Obligatory and that the said James Taylor and the Petitioner and other Persons mentioned in

the

the said Bonds or writings obligatory with the said andrew &c
Majendie were a Company Firm or Concern formed and Consti
tuted for the purpose of furnishing and supplying a Certain
loan to his said Highness the Nabob and in which said &c
Company Firm or Concern each and every of the said obligees
mentioned in the said Bonds or writings obligatory as aforesaid
bore a proportionate and distinct share according to his or their
advances of Money or Credit in the said stock or Capital to
wards furnishing and supplying the said loan and this &c
Respondent further admits that the Petitioner did state
that several of the said Bonds or writings obligatory so &c
executed by his said Highness the Nabob as aforesaid
stood at the time of the decease of the said andrew Majen
die and then stood pledged and mortgaged for the Joint
benefit advantage and use of the said Company Firm or &c
Concern and that there were several joint debts of speciality
then due and owing from the said Company Firm or Concern
unto sundry and divers persons to a Considerable amount
and that as such Bonds or writings Obligatory as were

in

in the posession of the Petitioner in part belonging and appertaining to the Estate of the said andrew Majendie deceased were charged with the Joint Debts of the Concern and that as several other persons were truly and bona fide interested in the same and that as the said Bonds or writings obligatory could not then be converted into money but at a Considerable discaunt on the sums conditioned by the same the said Bonds of his said Highness the Nabob of the Carnatic being below par on the Integral sum for which they were executed and that he the Petitioner did say he was advised that he could not safely convert and change the same into Cash or present money without being accountable to all the parties interested and concerned in the same for such losses or loss as might arise from the conversion of the same into immediate money and this Respondent admits the Petitioner for further Answer did state that he was not as one of the executors in India of the said Andrew Majendie deceased indebted to this Respondent in the sum of Two thousand six hundred and fifty Seven Pagodas Twenty Six fanams and forty nine

Cash

Cash as Charged in the said Bill or any other sum or sums of
Money whatsoever and for the reasons matters and things in his the
Petitioners said Plea and answer therein before contained and
set forth And this Respondent doth admit that to the Petition-
=ers said Plea and answer this Respondent did exhibit and
file his Replication and did therein state that his Bill of
Complaint was good true and sufficient in the Law to be
answered unto and that the Petitioners said Plea was very
evasive and insufficient to be by this Respondent replied
unto and did further state that in and by his said Bill of
Complaint he did set forth the names of the several executors
who had been appointed by the said Andrew Majendie
in and by his last will and Testament and who had proved
the same in the said Mayors Court in its Ecclesiastical
Capacity and did shew that one of the said Executors that is
to say George Savage had long since departed this life
and that another of the said Executors that is to say James
Taylor was gone beyond sea and was not within the Jurisdic-
=tion of the said Mayors Court and so this Respondent

did

did aver the fact to be and did humbly submit to the said Mayors
Court that by so doing he did all that was incumbent on him to do
For that where one Executor departs from the Jurisdiction of the Court
it was not necessary to make him a Party to a Bill of Complaint
brought against the Estate of his Testator because no process to
enforce his appearance could issue against him and that if
was the Executor or Executors residing within the Jurisdiction
who was or were the Party or parties against whom such Bill
was to be brought as it was against him or them only that
Process could issue so as to procure an appearance the reason
of which this Respondent submits is so strikingly evident
that no comment thereon can be here required and this Respon
=dent admits he did in his said Replication further state that
he had shewn that upon the death of the said George Savage
and the departure from India of the said James Taylor
the Petitioner did possess himself of all and singular the goods
and Chattels Rights and Credits of his Testator the said
Andrew Majendie and therefore that it was to the Petitioner
alone to whom this Respondent had a right to look for

Payment

Payment of his demand and consequantly it was the Petitioner alone whom this Respondent ought to sue for the recovery thereof and &c thereupon this Respondent did humbly insist that the Petitioners said Plea in abatement was altogether ill advised misconceived and unfounded and did therefore pray that the same might be over ruled with Costs and this Respondent admits that in &c reply to the answer of the Petitioner he this Respondent did state that the Petitioner instead of answering in the Manner he had done regarding this Respondents demand on the Estate of his the Petitioners Testator ought to have &c answered fairly and positively For that the Petitioner did well know that his Testator did will and Truly execute unto this Respondent the Bond in question for that in the Inventory of the Estate of the said andrew Majendie delivered into the said Mayors Court in its Ecclesiastical Capacity by the Petitioner and the other Executors therein named the said Bond was mentioned amongst other Bonds then outstanding against the Estate of the said Andrew Majendie and therefore the Petitioner instead of saying that not being

being advised of the truth of the Premises he could not admit the same but did leave the proof thereof if such proof was in his power to be adduced thereafter by the Complainant meaning this Respondent was bound to have admitted the same and although the Petitioner in his said Answer did state that he had not then assets in his hands of and belonging to the &c Estate of the said Andrew Majendie to pay off and satisfy the claim of this Respondent or any part thereof or any thing belonging to the said Estate that could be converted into &c present assetts to liquidate the same yet he admitted to have on his possession certain Securities for money being several &c Bonds or writings Obligatory executed by his Highness the Nabob of the Carnatic to the said Andrew Majendie in his life time in Conjunction with him the Petitioner the said James Taylor and several other Persons and this &c Respondent admits he did state that the said Bonds or writings Obligatory so executed by his said Highness the &c Nabob were a species of Negotiable Paper and could at all times be converted into money and that it was

incumbent

incumbent on the Petitioner in the discharge of his duty as
Executor of the said Andrew Majendie to convert the same
into money or to have made such arrangements thereon
as to have enabled to him to pay off and satisfy the
demand of this Respondent thereon And this Respondent
admits that he did in his said Replication combat and
resist the matters setforth in the Petitioners said Plea and
answer regarding a Firm or Concern in which it was alleged
the said Andrew Majendie had been engaged and this
Respondent doth further admit that he did in his said
Replication allege the several other matters and things as
stated and setforth in the Petitioners said Petition of appeale

And this Respondent doth admit that to this
this Respondents said Replication the Petitioner did
rejoin and did contend that his said Plea and answer
were valid and true and did further state that although
this Respondent might have setforth the names of several
the Executors who had been appointed by the said Andrew
Majendie in and by his last will and Testament

and

and that they had proved the same in the said Mayors Court in
its Ecclesiastical Capacity and that one of the said Executors
namely George savage had departed this life previous to
the filing of the said Bill and that another of the said
Executors to wit James Taylor had gone beyond sea and
was not within the Jurisdiction of the said Mayors Court
yet the Petitioner (as he did say) was advised that this
Respondent in his said Bill had not done all that
was incumbent in as much as he this Respondent had
not made the said James Taylor as in law he ought to
have done as the Petitioner (as he did say) was well advised
a party to the said Bill and although it might be true
that the appearance of the said James Taylor to the
said Bill could not have been enforced by any process out of
the said Mayors Court by reason of his residence without
the Jurisdiction thereof yet the Petitioner did say that the
said James Taylor being a Coexecutor with him the Petitioner
ought to have been made a party to the said Bill in
order that he might have been concluded by the Decree of

the

the said Mayors Court and that the Estate of the deceased sh^d might not be rendered liable to several actions for one and the same alleged Debt and although the appearance of the said James Taylor could not have been procured on the Instant unto the said Bill it was not impossible but That it might have been obtained before a Decree could have been had by this Respondent therein and more especially as the^w appearance or non appearance of the said James Taylor sh^d could not in any sort or wise have impeded or retarded this Respondent in the prosecution of his said action as against the Petitioner And this Respondent doth further admit that the said Petitioner did in his said rejoinder urge for the reasons therein stated that he the Petitioner was by no means solely and singularly liable to this Respondents said action and more particularly for that this Respondent in his said Bill had not charged or alleged that at the time of this Respon=dents Exhibiting his said Bill against the Petitioner he the Petitioner then stood possessed of assets suffici=ent for the discharge of the debt of this Respondent and that the Petitioner said as in his said answer he had shewn at the time of this Respondents filing his said Bill that he the Petitioner had not present assets in his hands of and belonging to the Estate of the said Andrew Majendie deceased to pay off and satisfy the claim of this Respondent or any part thereof and wherefore the Petitioner said that his said Plea was well advised and founded and not misconceived as this Respondent had stated but good and sufficient whereas this Respondent humbly submits that the matters so urged in the Petitioners rejoin=der and as stated in the said Petition of appeal are by no^w means well founded for in the first place this Respondent^s humbly contends that it is not of necessity for nor is it required of a plaintiff in an action against an executor to allege assets for that assetts shall be intended and as to the assertion of the Defendant that he had not assetts at the time of this Respondents filing his Bill this Respondent humbly contends that the Bonds of his Highness the Nabob^w acknowledged by the Petitioner to be in his Possession are assetts to all intents and purposes as this Respondent trusts he

he will hereafter more fully shew/ and even if they were not to be
considered as assetts yet the said Petitioner having possessed
himself of other the Estate and Effects of his said Testator to a
very considerable amount and much more than sufficient to
pay off and satisfy this Respondents Claim this Respondent
submits [in as much as it is incumbent on every Executor to
plead fairly and honestly] the said Petitioner ought to have &
shewn not only that the assets of which he had been previously
possessed had been fully and duly administered but how the &
same had been administered and this Respondent in further
answer to the Petitioners said Petition of appeal doth aver that
the said Petitioner did by no means answer this Respondents
Bill of Complaint so fully and positively as he ought to
have done for well knowing of the Execution of the said Bond
by his said Testator to this Respondent and which he hath
admitted in and by his said rejoinder and Petition of appeal
the putting of this Respondent to the unnecessary expence
of examining witnesses to the proof of the execution of the said
Bond could be for no other purpose than that of creating &

delay

delay and this Respondent in answer to that part of the &
Petitioners said Petition of appeal wherein he states that altho
he had admitted in his answer to be possessed of certain &
writings Obligatory executed by his Highness the Nabob
of the Carnatick in conjunction with him this Petitioner and
other Persons joint obligees in the said Bonds named yet the
Petitioner from such his admission did not [as he did say]
render himself liable to the action of this Respondent in
as much as the said Bonds were not assetts or in the &
Nature of assetts. this Respondent saith that the said &
admission of the said Petitioner in his said answer is in itself
sufficient to Establish this Respondents right of action for
this Respondent saith the said Bonds or assetts with
which the Petitioner is by law chargeable notwithstanding
the allegations of the Petitioner to the Contrary and this
Respondent in answer to that Part of the Petition of appeal
wherein the Petitioner pretends that his highness the nabob
the Obligor in the said writings Obligatory bounden was
either unable or disinclined to discharge the said Bonds and

that

that he the Petitioner had not any legal remedy as Executor as aforesaid nor knew he of any legal remedy to recover the said sums condetioned in and upon the said writings &c Obligatory of his said Highness the Nabob as aforesaid further said that as to the disinclination of his Highness the Nabob to pay the several sums due to his Creditors and &c amongst others those for the payment of which he was bound by his said writings Obligatory to the Petitioner and his said Testator and the said James Taylor and other the joint &c Obligees therein named the same as to the disinclination of his said Highness may be true as alleged in the said Petition and it may be in consequence of such disinclination that the Legislature hath wisely provided for the payment of such debts of his said highness the Nabob as is more particularly explained in the &c deposition of Thomas Cockburn one of the witnesses examined in this Cause on the part of this Respondent and this Respon: dent further begs to observe and humbly prays this Honble Court will notice the very evasive manner in which the &c Petitioner throughout his Pleadings hath expressed himself

has

has regarding the said Bonds of his said Highness the Nabob some times pretending that they were no possible means of obtaining payment thereof and further pretending that the said Bonds were not in there nature negociable and at other times &c admitting that the said Bonds might be conditionally &c transferred but then pretending that they could not be converted into money but at a considerable discount and that therefore he the Petitioner as Executor as aforesaid by transferring the said Bonds or any part thereof under a discount would be liable to the creditors of his said Testator for any and every deficiency occasioned by such transfer all which matters this Respondent submits to this Honble Court are mere &c pretences set up for the convenience of the said Petitioner for even if it were true that the said Bonds were not in their nature absolutely transferrable the Contrary of which is proved by the deposition of the said Thomas Cockburn yet as it is also in proof that Bonds now stand registered in the office of the said Thomas Cockburn in the name of the said andrew Majendie conjointly with the said

James

James Taylor George Savage and the Petitioner and also separately in the name of the said andrew Majendie to the amount of five Lacks of Pagodas and that the said Bonds are in a course of payment by certained devidend issued from the Treasury of the united Company of merchants of England trading to the East Indies under the orders of the Government of Fort St. George aforesaid it is not difficult to discover that the object of the Petitioner in setting up such pretences as he hath done in opposition to the claim of this Respondent is that he the Petitioner may the longer retain the un and management of the amount of the said dividends on the said Bonds of his said Highness the Nabob and as to the pretence of the Petitioner that he would be liable to the Creditors of the said andrew majendie for any difficiency occasioned by a transfer of the said Bonds or any part thereof this Respondent humbly begs to observe that if it be true that the Petitioner was in the least fearful of incurring any such responsibility there are a variety of legal methods by which he could relieve himself from any such apprehensions did they exist and if there were any causes from

which

which the Petitioner had reason to suppose he would render &c himself responsible to other creditors of his said Testator by reason of such Transfer there is no doubt but that the Petitioner would have availed himself of the opportunity of setting forth such causes in order to give in some degree a Color of excuse for withholding from this Respondent the amount due to him on the Bond of the said Testator of the said Petitioner and as to the further matter as stated by the said Petitioner in his said Petition of appeal of himself and the said James Taylor and several other persons being joint Obligees in the said Bonds or writings Obligatory mentioned together with the said andrew Majendie and that therefore it would be unreasonable that he the Petitioner should be compelled to injure his own property and that of the said James Taylor and the said several other Obligees as he &c undoubtedly would do (as he did say) if he were compellable to convert the said Bond into immediate money under the circumstances of the said discount this Respondent humbly submits that as far as relates to the Estate of his said &c

Testator

Testator the same should as soon as possible have been realized so as to satisfy the claims of the several creditors thereof and as an Executor the said Petitioner as this Respondent humbly submits cannot be warranted in exercising that discretionary Judgment as he might have been or may be as to his own individual property for in the one instance the creditors have alone to look for so much of the Estate of the deceased as can be realized towards satisfaction of their claims in the other if the creditor could not obtain payment from the person the Law will afford him satisfaction against the person of the debtor and it is not to be presumed that the petitioner would prefer the confinement of his Person to the loss of two and a half percent discount and as to the circumstances stated by the Petitioner that the office of Executor could not subject him to the loss of his own property and render him liable to the action of others jointly interested in the said Bonds for such injury as might accrue from the Transfer of the same this Respondent humbly submits and for the reasons aforesaid that the preference of the Petitioner in continuing his property in the said

funds

funds when he had so favorable an opportunity of disposing of his interest therein at the rate of discount of only two and an half perbent altho it may tend to evince his good opinion of the security and solidity of the said funds yet it can by no means operate as a reason for his detention of his Testators Property therein to the injury of the Creditors of the said deceased who might be desirous of recovering their claims and disposing of the amount in such other mode or manner as they should themselves think proper and as it is in proof that any part of any one of the Bonds of his said highness the Nabob may be transferred by way of certificate as explained in the said Deposition of the said Thomas Cockburn it is sufficiently shewn that so much of the said Bonds or any part of them as appertain to the Estate of the said Deceased Andrew Majendie might and ought to have been transferred and disposed of towards satisfaction of the claims of his Creditors and in answer to that part where the Petitioner states "that he had not any knowledge how he could be able to place his Testators Estate in a more advantageous situation

than

than that in which it stood to wit in expectance of the due discharge of the said Bonds in the course of payment to which they were subject This Respondent humbly begs to observe it can by no means be considered as or reasonable that the Petitioner should hold the creditors of the said Andrew Majendie at arms length until the whole of the said five lacks of Pagodas shall have been so discharged but on the contrary this Respondent humbly submits that it was and is the bounden and honest duty of the said Petitioner to have made paid and to pay unto the credi= tors of the said Estate the amount of the dividends on the said Bonds of his said Highness the Nabob paid and payable unto him the the Petitioner as Executor as aforesaid soon often and in such proportion as he hath received or hereafter may receive them this Respondent further humbly submits that the pretence of the Petitioner that he would have had he Converted into money his said Testators interest in the said Bonds rendered himself liable to an action of waste altogether Idle and unfounded—

And this Respondent admits that upon the pleadings

pleadings so as aforesaid had issue did Join and that the several witnesses as named in the Petitioners said Petition of appeal were examined on the part of this Respondent and this Respon= dent admits that publication did pass in the said cause and that the same was set down to be heard by the said Mayors Court and was accordingly heard on the second day of the Month of august in the present year one thousand seven hun= dred and ninety six and that the said Mayors Court was pleased to order and Decree that the Petitioner should pay unto this Respondent out of the Estate and Effects of the said deceased andrew Majendie the sum of two Thousand six hundred and fifty seven Pagodas twenty six fanams and forty nine Cash together with all such interest as there was or should thereafter become due thereon until full payment should be made also all Costs of the said suit as by a Copy of the said Decree annexed to the Petitioners said Petition of= appeal for the inspection of this Honble Court and to which the Petitioner begged leave to refer and prayed the same might be taken as part of his said Petition and

appeal

appeal the Original being ready to be produced at the hearing
might as the said petitioner did say more fully and at large
appear and by which said order and Decree of the said &c
Mayors Court the said Petitioner did conceive himself as he
did say very materially injured and aggrieved and did &c
therefore appeal therefrom to this Honble Court for the &c
several reasons in his said Petition and appeal contained.

But this Respondent doth deny that the said
Petitioner hath any cause or reason of appeal and doth deny
that he was or is in any wise injured or aggrieved by the
said order and Decree of the said Mayors Court as aforesaid.

And this Respondent in answer to the Petitioners
first reason or cause of appeal saith that the said Mayors
Court had before them all proper and necessary parties under
the particular Circumstances of the case to authorize them
to pass the said Decree from which the said Petitioner hath
thought Proper to appeal. and though as alleged by the
Petitioner this Respondents Bill of Complaint was &c
instituted for the recovery of a certain principal sum
and

and Interest thereon said to be secured on a certain Bond
alleged to have been executed by the Petitioners Testator to
this Respondent and although this Respondent did in
his said Bill charge that previous to the decease of the said
Petitioners said Testator did duly make and publish his
last will and Testament in writing and did thereby
nominate and appoint the Petitioner together with
James Taylor and George Savage since deceased as &c
Executors thereof and although this Respondent did also
in his said Bill charge that the Petitioner and the said
James Taylor and the said George Savage did all of them
prove the said will of the said deceased Andrew &c
Majendie in the said Mayors Court in its Ecclesiastic-
-cal Capacity and did receive probate thereof yet this
Respondent denieth that he ought in consequence to
have made the said James Taylor a party with the &c
Petitioner to this Respondents said Bill of Complaint
nor doth this Respondent admit either the facts as stated
in the Petitioners said first cause of appeal or his reasoning

Whereupon

thereupon yett this Respondent is willing to allow that all &c
Executors should regularly sue and be sued nevertheless as every
case depends upon its own particular circumstances so in the
present instance the circumstances of this case take it out of the
general rule for though the said Petitioner did in his said &c
pretended Plea setforth that the said James Taylor and George
Savage and the Petitioner did together prove the will and take
upon themselves the burden of the execution thereof and did
therefore plead in abatement another Executor not named yett
this Respondent humbly submits that having admitted
this Respondent did in his said Bill allege that George
Savage was dead and that James Taylor was at the time
this Respondent filed his Bill resident in England or &c
elsewhere in Great Britain and it being further admitted
that this Respondents said allegations were true he the
said Petitioner must have foreseen the futility of such
a Plea and that the same could be of no avail for this
Respondent submits that it is fully established by legal
authorities and decisions that "where there are two Executors

and

and one of them lives beyond sea the Executor abroad need &c
not be made a party" and this Respondent further humbly &c
submits that the Rule is by no means so strict as to Executors
and so would seem to be the Opinions in the case of Hudson
vers Hudson First Athyns Pages four hundred and sixty
and four hundred and sixty one and also of my Lord Bacon in
his treatise on the use of the Law wherein he says any one
Executor may convey the Goods or release Debts without
his Companion and any one by himself may do as much
as altogether though the act of one shall not charge the
other but shall only charge the party himself who did so
release or convey and this Respondent doth deny that
it was immaterial whether the appearance of the said
James Taylor could have been procured or not for this
Respondent saith that as the said James Taylor was
beyond Sea and out of the reach of the process and &c
Jurisdiction of the said Mayors Court which it is admitted
he was it would have been not only unnecessary but
absurd to have prayed the said and process of the said

Mayors

Mayors Court as against him the said James Taylor and so would seem to be the reasoning in the case of Darwent vers Walton second Atkyns Page five hundred and eleven and notwithstanding the Petitioner hath stated in his Petition of appeal that when a debt is prosecuted and one only appears and the rest made default the one appearing shall answer alone without his Companions and if Judgement passes for Complainant he shall have Judgment and Execution &c against him that pleaded and against the others named in the Bill of the Testators Goods as well as if they had also pleaded yet this Respondent is at a loss to conjecture in what particular respect the Petitioner would apply the same to the point in question and this Respondent saith it would seem if the said statement as made by the said &c appellant applies at all according to the Rule laid down by the Lord Chancellor Hardwicke in the above Case of Darwent versus Walton To wit that it is in vain to take out process &c when the joint debtor is out of the Kingdom that the same applies to the reasoning of this Respondent rather than to that

that of the appellant and to that part of the said first reason or cause of appeal stated by the said appellant which states that it is clear that the Law exacts that all the Co Executors of a will shall be made parties to a suit for these manifest reasons In order that the defence ~~best or defence~~ best or most beneficeal for the Testators Estate may be set up this Respondent saith he hath already shewn that it is not necessary &c to make a Co executor a party who has departed the Jurisdiction and in corroboration that the Law and Rule with Respect to Executors is not so confined as the said &c appellant would insinuate the same to be and to prove &c that a Co executor may be sued alone this Respondent saith that it is laid down in Comynses Digest first Volume Page twenty three That for an act done by one of the Executors only an action may be maintained against him alone as in Detinue of Charters when the Charters came to the &c Hands of one of the Executors only so Dower was brought against one Executor alone as Guardian who possessed the ward alone so if an Executor die the action shall be &c

against

against the survivor alone without joining the Executors of the Executor who died which last may fairly beheld and construed as being analogous with and consonant to the present case as between this Respondent and the appellant and this Respondent doth deny that by reason of the premises the said appellant is any way prevented from or impeded in setting up any the best or most beneficial defence for the Testators Estate as by Counsel learned in the Law he may be advised or counselled to set up any thing in the said Petition of appeal alledged notwithstanding and as to the assertion of the said appellant with respect to the other matters alledged in the Bill of Complaint wherein this Respondent did say the said appellant after the decease of the said George Savage and the departure of the said James Taylor from India did possess himself of all and singular the Goods and Chattles Rights and Credits of the said Andrew Majendie deceased and was therefore alone liable to the suit of this Respondent this Respondent saith the same is true and the legal reasons for the same are to be found in the herein just before quoted passages from Comyns's Digest And this Respondent submits the same cannot now be controverted or disputed by the said Appellant for this Respondent denies the same (as asserted by the said Appellant) to be nothing more than a bare unsupported allegation of this Respondent for this Respondent saith that the said Appellant having admitted that he does possess the said Bonds and securities is thereby precluded from denying the same and therefore this Respondent submits that the said Plea was ill advised and that the said Mayors Court were justifiable in overruling the same and that the same was over ruled for legal and just Reasons.

And in Answer to the second cause or reason of appeal stated by the said appellant or to that part thereof which sets forth that although the said Bill of this Respondent did suggest assets to be in the hands of the said Petitioner yet that the said Petitioner had in his said answer specially and specifically denied such

fact

fact and had averred that he the said Petitioner had not present assets in his hands to pay off and satisfy the claim of this Respondent or any part thereof or any thing belonging to the Estate of the said Andrew Majendie which might be converted into present assets except certain Bonds or securities for money executed by his Highness the Nabob of the Carnatic to the said Andrew Majendie in conjunction with others and that this Respondent had taken an Issue on such fact and alledged that such Bonds or securities for money executed by his said Highness the Nabob were a species of negotiable paper and could at all times be converted into money and that the appellant ought to have converted the same or have made some arrangement thereon so as to have enabled him to pay off this Respondents demand and to the appellants assertion that this Respondent did not aver in any where attempt to prove or shew that the said appellant had any thing or things in his hands of and belonging to the Estate of his said Testator in the nature of assets

assets other than the said Bonds or securities for Money — This Respondent saith that he is advised it was not incumbent on him to set forth assets for that the same in Equity as in Law shall be intended but to exhibit in the fullest manner the fallacy of the said Appellant and with what act he strives to mislead and deceive this Honble Court this Respondent submits and trusts it will be sufficient for him to set forth in contradistenction to the unqualified assertions of the appellant that he did aver the said Appellant to have assets in his Hands and did maintain the said Bonds or securities to be assets in the Hands of the said appellant and in proof thereof did call on Thomas Cockburn Esquire Register of the said Consolidated fund - who this Respondent sheweth did in his Examination depose that there were certain Bonds registered in the office of him the said Thomas Cockburn in the name of the said Andrew Majendie jointly with Taylor savage and Call and separately in the name of the said andrew Majendie to the amount of Five hundred Thousand Pagodas and this Respondent

Sheweth

Sheweth that the said Thomas Cockburn did further depose that the Dividends on the said Bonds on account of the said Andrew Majendie and others the joint Obligees named in the same were and have been for a certain time now elapsed and past paid under the sanction of a certain act of parliament made in the twenty fourth year of the reign of his present majesty and therefore and as it appeared in proof to the said Mayors Court that the said Bonds were and are presently in a Course of payment under the sanction and authority of the said act of Parliament this Respondent submits that the same were and are assets in the Hands of the said appellant and liable to the specialty Debt of this Respondent for this Respondent saith he is advised that assets in hand is when a man indebted makes an Executor or Executors and leaves them sufficient to pay - or some commodity or profit - is come to them in right of their Testator and this is called assets in their Hands and this Respondent hath shewn that there was sufficient to pay independent and exclusive of the encreasing devidend to be received under the

the said act of parliament as a commodity or profit agreeably to the definition before laid down of what shall be esteemed assets in the hand of an Executor and this Respondent saith that under a certain treaty entered into between his said Highness the late Nabob of the Carnatic and the most noble marquis Cornwallis the annual sum regulated and agreed to be paid to the Creditors of the said Nabob on account of the said Consolidated Fund amounted to six hundred and twenty one thousand two hundred and five Pagodas being at and after the rate of six per cent per annum on the whole Debt which Principal sum this Respondent saith was certified to the Government of Fort Saint George to be and amount to the sum of fifty four Lacks ninety eight thousand and four hundred and ninety nine Pagodas twenty three fanams and seventy one cash and which Principal sum by the annual payment of principal and Interest aforesaid was as this Respondent sheweth on the thirty first day of august of the present year reduced to the sum of Thirty eight Lacs eighty three thousand three hundred and

and

and eighty four Pagodas And this Respondent saith that the amount share of five hundred thousand Pagodas the sums registered in the said office in the name of the said Andrew Majendie and others the said joint and several Obligees and Obligees at the rate of sixe per cent per annum aforesaid amounts to the annual sum of Thirty Thousand Pagodas or thereabouts which this Respondent saith the said James Call as Executor aforesaid hath received and doth now continue annually to receive for and on account of the said Bonds and therefore this Respondent submits that it was the bounden duty of the said Appellant to have set forth how and in what manner he had disposed of the said Dividends what share of the said sum of Thirty Thousand Pagodas fell to his said Testator individually and what under the general Firm or Concern as pleaded by the said appellant And this Respondent in further answer to the said second Reason of appeal of the said Appellant and to shew that the same were assets saith he is advised that in many cases Equity goes further than Law with respect to assets and that it has been adjudged that

that an advowson in Gross however doubtful it may be at Common Law whether it may be extendible on an Elegit / because no yearly value can be put upon it / yet in the Case of Tong versus Robinson Lord Chancellor King decreed it to be sold and that decree was affirmed by the House of Lords - And this Respondent saith that although he admits the General legal merit of the appellants reasoning when he says that Debts due to a Testate Person whether by Bond Judgment mortgage or in any way soever are not considered as assets in the hands of an Executor but as so many Chases in action until the sums thereby due shall be recovered yet this Respondent saith he doth not admit but on the Contrary doth deny the application thereof made by the Appellant to his own Case as Executor aforesaid for these Respondents hath shewn that the said Appellant had already received many and large dividends on the said Bonds and which Dividends were and are assets in his hands and this Respondent thereupon further saith that it is

to

to be presumed that the said Mayors Court were influenced in making such their Decree against the Appellant by several adjudged Cases and amongst others that referred to in Comyns Digest fifth Volume page two hundred and seven namely &c That if assets are found though to a small value there shall be Judgment for the whole debt and which this Respondent saith is reported at large in Crokes Elizabeth Page five hundred and ninety two Crokes Charles Pages one hundred and sixty seven and three hundred and seventy three and fully confirmed by the Doctrine laid Down by Lord Hardwicke in the Case Johnson verseus Mills reported in the first volume of Browns abridgment Page four hundred and fifty seven First Vezy Page two hundred and eighty two where his Lordship is reported to have said that he thought nothing was better settled than what was then made a question To wit whenever a demand was made out of assets certainly due but payable at a future time the person entitled thereto might come against the Executor to have it secured for his Benefit and set apart in the mean time that he might not afterwards be Obliged to pursue those assets through

through several hands And this Respondent doth admit that the Bonds in question as against the said Nabob could not nor can be put in suit but this Respondent submits to this Honble Court that the appellant by the manner in which he has worded such his suggestion &c apparently means to mislead this Honble Court into a belief that such Bonds of his said Highness the Nabob were not consolidated and are not negotiable or if negotiable at a Great loss neither of which this Respondent sheweth is the fact for that the said Bonds have ever since their institution under the Guaranty of the said act of the British Parliament been considered as transferable and negotiable in India and in Europe and therefore this Respondent &c submits that the said Mayors Court in granting a Decree in this Respondents favor have acted up to and in conformity with the adjudged Cases and precedents to be found in the reporters and that according to the Law laid down by Lord Hardwicke in the Case Johnson &c verseus Mills herein before specified these Bonded Claims being

being certainly due although the whole amount be not presently payable are liable to be secured and ought to be set a part for the benefit of the Creditors of the Testator of the Appellant the said Andrew Majendie and of course for the benefit of this Respondent. And this Respondent in answer to the reasoning made use of by the Appellant in the latter part of his said Second reasons or Cause of appeal wherein he endeavours to evidence that although the said Bonds are as he admits negotiable paper yet that the same are not negotiable for its full value but subject to a considerable discount and whence the said Appellant infers that had he converted the same into money as this Respondent did say and now says he ought to have done he the appellant would have been liable to an action of waste this Respondent says and so he is advised the law to be that every Executor is in duty bound to dispose of his Testators Effects at a fair market price and therewith or out of the proceeds thereof to satisfy such Creditors as are legally entitled how much more then would the said Appellant be exonerated when under a Decree of the said Mayors Court

Court he should be as he ought to be compelled to make the most money of such his Testators Estate in marked event and by whom could he then be called into question on an action of Devastavit as the appellant has endeavoured to induce this Honble Court into an opinion he should be and this Respondent denies that the said Appellant hath in any wise shewn that without changing or altering the same the said Bonds were not assets and that therefore the Appellant was not chargeable with the Debt of this Respondent or that the said Decree of the said Mayors Court was therefore erroneous and ought to be reversed for this Respondent trusts he hath proved that the said Bonds as far at least as Dividends on them have been received by the appellant are assets in his hands and as such liable to the Debts of his Testator and therefore that so far from the said Decree of the Mayors Court being erroneous or that the same ought to be reversed the same ought by every Rule and principle of Law and Equity to stand and continue in force against the

said

said appellant and that the said Dividends ought to be assigned over to this Respondent under the above authorities until satisfaction be made of his just and legal demand-

And in answer to the appellants last reason or cause of appeal wherein he sets forth that the Estate of the said Andrew Majendie was subject to claims of an higher nature than that of this Respondent to which the assets of the said Estate when realized would be primarily liable this Respondent saith that he is advised had such been the case and that such encumbrances on the said Estate did really and truly exist as pretended by the said appellant that it was incumbent on the appellant to have set forth the same specially and that he had legal notice thereof and had fully administered in all cases except for dues to the Crown and Debts due on record of which he is bound at his peril to take Cinuzance because otherwise it would be in an Executors power to evade all just demands made by bonafide Creditors on his Testators Estate by setting up a pretended prior Claim

without setting forth and proving the same and keeping the same on foot by fraud and Cain to wrong them and therefore this Respondent saith he the said appellant ought to have shewn by Evidence that he had laid out the assets in discharge of the said prior claims for in the office of Executor Page one hundred and thirty seven and second volume of Bacons abridgment Page four hundred and thirty three it is said "that though an Executor may plead generally that he hath fully administered without Shewing that he did administer in payments of Debts of as high a nature but yet that must be proved upon the Evidence else the Trial will fall out against the Executor- and this Respondent sheweth that the said appellant hath not set forth how many of the said Bonds are or were mortgaged nor for what amount nor to what amount the Interest of his Testator therein extended which this Respondent is advised he ought to have done and this Respondent saith it appears extraordinary that the appellant should come forwards and say that such Bonds are or were pledged or mortgaged to certain

certain persons on account of the joint Concern of his Testator and others the Firm or Company herein before mentioned and yet at the same time admit and allow the same to be in his own possession as Executor aforesaid for this Respondent saith it is reasonable to suppose that the same would in that case be in the hands of the Mortgagee and which is an additional reason why he ought to have set forth the same fully and at large and this Respondent saith he is advised with respect to the Idea set up and advanced by the said Appellant that the Estate of the said Testator Andrew Majendie is not liable to this Respondents debt because he was in his life time jointly concerned with the said Firm or Company that the same is of itself altogether erroneous and this Respondent further saith he is advised that an action instituted is the only legal notice to an Executor of outstanding Claims and this Respondent having brought such his action and having proved in the Cause that Bonds to the amount of Five hundred thousand Pagodas standing Jointly

Jointly and separately in the name of the appellants Testator have been consolidated under the sanction of the said act of Parliament and are in the course of present payment to the annual amount of thirty thousand Pagodas and that the appellant has received and is now legally authorized to receive such Dividends as may become payable thereon the same is and are legal assets in his hands and more than sufficient to satisfy this Respondents demand and as this Respondent is advised ought to be applied thereto and this Respondent in further answer saith that although he is ready to admit that an Executor may in debts of equal degree retain so much of his Testators Estate as will go to the discharge of his own yet this Respondent doth not allow that an Executor can retain any part of the assets of his Testators Estate towards payment of his the Executors own debts to third Persons—

And Lastly this Respondent saith the whole reasoning of the appellant on which his prayer that the

the said Decree of the Mayors Court may be reversed is founded is fallacious and necgatory for this Respondent saith he hath shewn that the first point the appellant relied upon namely another Executor not named was unfounded and that from the various precidents hereinbefore quoted it appears to be Law that "where there are two Executors and one of them is beyond sea the Executor abroad need not be made a party if the Executor here has afsets in his hands" and this Respondent saith that as it is admitted the appellant conjointly with the Executors did collect in the Estate of their Testator and as he has now alleged that he has not present afsetts in his hands nor any thing as he says that can be converted into afsetts it was altogether necessary that the said appellant should have shewn that the whole amount of the Estate therefore collected had been applied and administered in the discharge of the just debts of the Creditors of their Testator and in the manner and priority prescribed by Law and if the appellant relies on his pretended Mortgages he ought first to

first to have fully set forth the same and not having done so the Court could not intend the same but must suppose his reasoning intended to mislead the Judgement of the said Mayors Court and this Respondent further saith that the several statements of the appellant as regarding the said Bonds are indefinite inconclusive deceptive and uncertain and from which the said appellant as this Respondent trusts can derive to himself no advantage whatever they are deceptive in as much as the said appellant hath alleged the only Bonds in his Possession are those of his Highness the Nabob to his Testator conjointly with the said appellant the said James Taylor and others the Obligees therein named and that the discharge of the said Bonds depended intirely on the ability and inclination of his said Highness the Nabob whereas it is in proof that besides the Bonds in which the said Testator was jointly concerned with the appellant the said James Taylor and others there are other Bonds in which the said Testator was the individual Obligee and

that

that the amount of the said Bonds in which he was and the appellant as Executor aforesaid now is so jointly and individually interested is five Lacs or five hundred thousand Pagodas and that the Payment of the said Bonds so far from having been dependent on the inclination or ability of his said Highness the Nabob are secured to the Creditors by the united Company of Merchants of England trading to the East Indies under the sanction and authority of the Parliament of Great Britain and this Respondent saith that the said allegations of the said appellant are indefinite and uncertain in as much as the said appellant hath altogether omitted to shew to whom and how many of the said Bonds / or any further than by his own allegation that any of them / are mortgaged or if any of them are mortgaged it is not shewn to what extent any such of the said several Bonds are mortgaged or to whom or under any and what condetions and Lastly this Respondent saith he is advised that an executor as such is bound to plead fairly and honestly and in conscience to apply the Effects towards the discharge of his Testators debts that in the Eye of the Law he is a Trustee for that purpose and is guilty of a breach of Trust in not so doing and therefore this Respondent saith the Decree of the said Mayors Court is founded in Law Justice and conscience and ought to be affirmed

For all which reasons and such others as may be offered at the hearing of the appellants said Petition and appeal this Respondent humbly prays that the said Decree of the said Mayors Court may stand and be affirmed and that the Petition of the said appellant be hence dismissed with exemplary Costs to be paid to this Respondent by the said appellant and that this Respondent may be further and otherwise relieved in the premises as to this Hon^ble Court shall seem meet and as the nature merits and Circumstances of this Respondents case shall require

/Signed/ Robert Williams
Solicitor for Respondent

Court

Court of Appeals at Madraspatnam } Thursday the 16th day of March Anno Domini 1797.

Between James Ball of Fort Saint George Esqr Executor named in the last will and Testament of Andrew Majendie Deceased Appellant and John Chamier a senior Merchant in the Civil Service of the United Company of Merchants of England trading to the East Indies under their Presidency of Fort Saint George Respondent.

The attorney for the appellant moves for leave to withdraw his appeal on payment of Costs and the attorney for the Respondent having Consented thereto ordered accordingly.

Extr

To the Right Honourable Lord Hobart

Governor &c in Council

Fort Saint George

In the Hble the Court of Appeals } Between George Wynch by his Atty John Wynch Complainant and Goomedy Poody Cooty Chitty Defendant.

The Humble Petition and appeal of the above named Defendant

Sheweth

That on or about the Twenty first day of may which was in the year of Christ one thousand seven hundred and ninety five the abovenamed Complainant by his attorney aforesaid did file and Exhibit a Bill of Complaint in the Hble the Mayors Court at Madraspatnam against your Petitioner for the recovery of the sum of one thousand Nine hundred and Twelve Star Pagodas twenty fanams and forty Cash for Principal and Interest alleged to be due.

Filed in my Office the 30th may 1796
J Webbe Clk

due and owing from your Petitioner unto the said Complainant on a Bond or writing Obligatory Executed by your Petitioner and your Petitioner humbly Sheweth unto this Honble Court that to the said Bill of Complaint your Petitioner within the ordinary time allowed on that behalf did Exhibit his answer and your Petitioner Sheweth unto this Honble Court that to your Petitioners said answer the Complainant did Exhibit and file a General Replication and your Petitioner did thereafter file a General Rejoinder and issue having thereupon ot Joined Rules did pass for the Examination of witnesses in the said Cause But your Petitioner humbly Sheweth that your Petitioner having since the period the Rules did so pass for the Examination of witnesses and more particularly since the month of February now last past been taken Dangerously ill he was obliged to remove himself into the Country for the benefit of his health and was thereby rendered unable to attend personally as he would otherwise have done to the Rules of the said Court in Examining the ot Witnesses he had to produce in support of his said Cause

and

and your Petitioner Sheweth that in order therefore to obtain a further Extension of time for the Examination of his said witnesses on the Seventeenth day of the present month of may when the ot Rule for that purpose issued by the said Court was about to Expire your Petitioner did Exhibit and file the affidavit of Veerdapen and Veerapathan two persons in the service of your Petitioner in Testimony of the fact aforestated and in Testimony of your Petitioners inability by reason of the dangerous situation in which he was to have proceeded to madras for the purpose aforesaid and did thereupon Pray a further Extension of time for the Examination of his said witnesses but your Petitioner Sheweth that notwithstanding the premises and the peculiar Circumstances attending his case the said mayors Court was pleased to disregard the affidavit so filed by your Petitioner and to over rule the Prayer by him thereon made and to order that Publication should finally pass in the said Cause as by Copy of the said order hereunto annexed for the inspection of this Honble Court and to which your Petitioner craves leave to refer the original being in the possession of your Petitioner

and

and ready to be produced if required-

By which said order your Petitioner doth Conceive himself much aggrieved and doth therefore appeal therefrom to this Honble Court for the following amongst other Reasons-

Because it is Customary for the said Mayors Court on ordinary occasions to stay and enlarge Publication for several weeks on a Common motion on the behalf of a Party suking to stay and enlarge the same a practice warranted by the High Court of Chancery in a like case and even in a Case where Publication hath been enlarged by a precedent Order if any reasonable Cause can be shewn the said Court hath enlarged Publication and given a party an opportunity to Examine Witnesses and your Petitioner humbly Sheweth to this Honble Court that a reasonable Cause was shewn to the said mayors Court why they should have allowed your Petitioner a further time for the Examination of witnesses in the affidavit filed by him on the said seventeenth day of may now last past Copy whereof is hereunto annexed for the Inspection of this Honble Court and to which your Petitioner humbly Prays leave to refer-

For which Reasons and such others as may be offered at the hearing your Petitioner humbly Prays that the said order of the said mayors Court may be reversed and that your Petitioner may be allowed the further term of Fourteen Days to Examine Witnesses and that your Petitioner may have such other relief in the Premises as to this Honourable Court shall seem meet-

/Signed/ Emanuel Samuel
Solicitor for appellant

In

In the Honble the Mayors
Court at Madraspatnam.

Between George Wynch by his
attorney John Wynch Complainant and
Goomoodroopody Cooly Chitty Defendant

The affidavit of Veerdapen and Veerapauthan of madras
Inhabitants—

The abovenamed Deponents jointly and
Severally make oath and say that they are Employed by the
Defendant in the Capacity of Peons and these Deponents
further say that the said Defendant was advised by his Doctor
Some time in the month of February last to go into the Country
to wit to Goomoodoopody for the benefit of his health which
at that time was much impaired and that the said Defen-
=dant did go inconsequence of such advice to Goomoodoopody
as aforesaid in the said month of February and these Depo-
=nents further say that the said Defendant has resided there
since the said month of February and has been for the whole of
that

that time in a very infirm state and that he hath twice attempt-
=ted during that period to procud to madras with a view to
instruct his attorney with the matters to be Examined to and
the names of his witnesses to be Exhibited in the above
cause but was at both times prevented by his Doctor from so
doing and these Deponents say that the last time the said
Defendant was preparing to go to madras was towards
the End of the Month of april now last past when his
Doctor dissuaded him and did assure him the said Defendant
that in all probability he the said Defendant might be
enabled to proceed to madras within a few weeks without
Danger to his health but which at that time to wit the
Latter End of the said Month of april he the said Defen
=dant could not do without great hazard and peril—

/Signed/ Veerdapen
Veerapauthan

A True Copy
/Signed/ Emanuel Samuel
Solicitor for appellant

Extract

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 21st day of May Anno Domini 1776

Present

James Daly Esqr Mayor
James Ball Andrew Ross and
John Mitford Aldermen

The Mayor being interested goes off the Bench and the Maces are taken away and Mr alderman Ball takes the Chair

George Wynch by his attorney John Wynch

vers

Goomoodoopody Booty Chitty

Mr Robert Williams attorney for the Complainant prays that Publication may pass in this Cause to which Mr Emanuel Samuel the opposite attorney objects and prays leave to file the affidavit of Mr Verdapilla and Verapathum Shewn to before the Mayor the 18th Instant upon which he Prays he may be allowed a further time of 14 day to Examine Witnesses Affidavit read and filed ordered that Publication do Pass Publication is passed in this Cause

A True Copy

/Signed/ Emanuel Samuel
Solicitor for appellant

A True Extract

/Signed/ George Taylor
Regr

To

To the Right Honourable Lord Hobart

Governor in Council

In the Honourable the Court of Appeals } Fort St. George.

Between George Wynch by his attorney John Wynch Complainant and Goomoodoospody Coorty Chitty Defendant.

The answer of the abovenamed Complainant to the humble Petition and appeal of the abovenamed Defendant.

Filed in my Office the 18th July 1796.
J Webbe Clk

This Respondent admits that he did on or about the Twenty first day of may which was in the year one thousand Seven hundred and ninety five file and or Exhibit his Bill of Complaint in the Honble the Mayors Court at Madraspatnam against the said Petitioner for the recovery of the sum of one thousand nine hundred and twelve Pagodas twenty fanams and forty Cash as the same is stated and setforth in the said Petition and appeal and that the appellant did thereunto exhibit his answer as the same is shewn in and by the said Petition of appeal and this Respondent also admits that he did thereto file his General Replication and that the said Petitioner did thereafter file a or General Rejoinder and that issue having thereupon Joined rules did pass for the Examination of witnesses in the said Cause and this Respondent admits that the said appellant in order to obtain a further extension of time for the Examination of witnesses did on the Seventeenth day of May now last past file and exhibit a certain affidavit of two persons called veerdapen and Veerapathan whom it would seem and was alleged were in the service of the said Petitioner and Consequently under his Influence and Controul and that the said Petitioner did thereupon pray a further extension of time for the Examination of his said witnesses and this Respondent further admits that the said Mayors Court disregarding the said Affidavit was pleased to overrule the said Prayer by the said Petitioner thereon made and did order that Publication should pass in the said Cause as setforth by the said Petitioner by the Copy of the said order to his said Petition of appeal annexed.

But

But this Respondent doth deny that the said Petitioner is thereby in any wise aggrieved or that he hath any reason whatever to appeal therefrom to this Honble Court for this Respondent sheweth to this Honble Court that the said Mayors Court could not consistently with the rules of Law and Equity or with any degree of Justice to this Respondents Cause have received the said Affidavit

And in answer to the Reason given by the said appellant for appealing therefrom this Respondent saith he is advised that it may have been sometimes the practice of the said Mayors Court and of the High Court of Chancery to stay and enlarge publication on motion made in Court for that purpose yet this Respondent saith the same hath never been done or except on a reasonable and fair Cause shown or when the necessity and Justice of the case absolutely required such indulgence and this Respondent sheweth that neither did the necessity or Justice of the Petitioners case require any such indulgence the same being offered only in delay nor did the said Petitioner set forth advance or shew any one reasonable Cause which might operate on the said Mayors Court to grant the same and therefore this Respondent saith he is advised that the said Mayors Court acted justly and wisely in rejecting the said affidavit and in further answer to the said Reason in the Petition and appeal of the said appellant contained this Respondent in contradiction to the reasoning of the said appellant saith that the said Affidavit is altogether insufficient and in no manner whatever relevant to the purpose - for this Respondent saith there was no manner of necessity for the personal attendance of the said appellant at Madras for this Respondent saith the same persons who came into Court to swear to the said affidavit being the Servants of the said appellant might have conveyed all and every the necessary information to the said appellants attorney to have enabled him to prosecute the said cause and have Examined witnesses as perfectly and in every point of view as properly as through the appellant had himself been present and this Respondent saith that no reason appears on the face of the said Affidavit or is any thing therein alledged or even attempted to be alledged that could give the said Mayors Court room to suppose

supipose there was any disability of appearing in any witness &c
whose testimony was requisite on the part of the said appellant or
in the support of his said Cause all which (as this Respondent
saith he is advised) was requisite and ought to have been clearly
set forth and shewn by the said Affidavit in order to have &c
induced the said mayors Court to have granted the Prayer thereon
urged and this Respondent further saith he is advised that the
said Affidavit is materially deficient in many essential &c
points. For the said affidavit styling & discribing the said
deponents calls them Peons of the said appellant which is an
uncertain Discription of the said Deponents and by no means
sufficient in legal acceptation for this Respondent saith he
is advised that the true place of residence and habitation
and also the true title and addition of every Person who makes
an affidavit ought to be inserted therein and this Respondent
sheweth that the said affidavit goes only to the opinion of
the Doctor who as it was pretended did attend the said &c
appellant and therefore is insufficient in as much as the &c
Doctor ought to have sworn the same (if the opinion of the

Doctor

Doctor on such an occasion and to the points to which the said
Peons have presumed to depose could have availed any thing
towards convincing the said Mayors Court of the Propriety of
Granting the Prayer of the said Defendant) for this Respondent
saith he is advised that it is a Maxim in Law and of all &c
maxims the most certain that all Evidence to be good shall
be the best that can be procured and this Respondent further
sheweth that the said affidavit is also insufficient inasmuch
as the said Deponents having shewn in and by their said
affidavit that the said appellant went to Goomoodoopody
in February and resided there since that time they ought to
have shewn where Goomoodoopody is and what is its distance
from Madras and that he could not possibly have carried
on his suit whilst he so resided there and that the said affidavit
is deficient and uncertain in point of Circumstance and Time
For this Respondent saith he is advised that issue having
joined in the month of october one thousand Seven hundred
and ninety five the said Affidavit ought to have set forth
where the Defendant was or resided and what was his disability

&

of acting in the said Cause from the said month of October One thousand seven hundred and ninety five to February one thousand seven hundred and ninety six a period of between three and four months nor does the same in any shape attempt to account for the silence and inactivety of the said appellant during the said period in which this Respondent saith there was ample time to have examined witnesses had he ever intended so to do or had any to produce and this Respondent submits it would seem to be essential to the appellants case that he should have set forth that he had witnesses to have examined during the &c period aforementioned To wit between October one thousand &c Seven hundred and ninety five and February one thousand Seven hundred and ninety six and whom they were and why and for what reason they could not have attended and why they were not called upon to attend as witnesses in the said Cause nor does the said affidavit set forth that he never left Goomoodoopody from February to the day of the date of the said Affidavit as it ought to have done for this Respondent saith he is advised that in Harrisons Practice of the High Court of Chancery Volume the second Page Seventy two it is laid down as a rule of that Court that the Court on Cause shewn and some times on motion will enlarge Publication but it must be on notice and good reason offered to the Court and affidavit shewing the reason why the party could not examine before and it is seldom if ever done where it is to put off the hearing of the cause and this Respondent sheweth to this Honble Court that the said appellant did not at her before such his motion given the requisite &c notice according to the Rules and practice of the said &c Mayors Court and the said High Court of Chancery nor did he offer any one reason that the Court did or could have considered the said affidavit as solid good and &c efficient nor doth the said affidavit made on his behalf contain or shew any cause why the Party did not or any &c reason why he could not examine witnesses before that is to say between the month of October and February aforesaid and this Respondent saith that the said &c Deponents having set forth in the said affidavit that

the

the said appellant was in a very infirm state the same is also a very uncertain discription of the disorder under which the said appellant might have laboured for although he might have been infirm yet this Respondent saith he might nevertheless have been well able to travel to madras had his personal attendance there been at all necessary (which this Respondent doth by no means admit or allow and this Respondent saith that the said affidavit ought specifically to have set forth the disease and have ascertained and proved certain and absolute inability if the inability of the said Defendant to come to madras were at all to be observed as a matter worthy of consideration in the present case under discussion and this Respondent saith he is further advised that an affidavit must set forth the matter positively and all material circumstances attending it that the Court may Judge whether the Deponents conclusion be just or not.

And this Respondent saith that the said affidavit is moreover insufficient and uncertain for as much as the same only sets forth that the said appellant did twice attempt to come to madras to instruct his attorney and was both times prevented by the Doctor which this Respondent saith is a negative pregnant as it allows a possibility of his being able to go because this Respondent saith had he been wholly unable to come to Madras there could have been no occasion for the interference of the Doctor to prevent his coming and this Respondent saith the said affidavit is deficient in that the deponents have not stated where the said appellant now is nor have they set forth the reasons of their knowledge of the facts deposed to and which as a matter of Evidence it was materially necessary they should have done for in stating that the Doctor assured the said appellant that in all probability he would enabled to proceed without danger to his Health in a few weeks they put a bare probability for certainly nor do they so much as say who the said Doctor is or what his name is nor even that they heard him give or deliver such his

opinion

opinion to the said appellant whereas they ought so to have done and have shewn to the satisfaction of the said Mayors Court that at no time since Issue Joined had the Defendant been able to attend or to Examine or to procure the attendance of his witness or witnesses for the purpose of being examined and in further elucidation of the insuf-ficiency of the said affidavit and the propriety wisdom and Justice of the said Mayors Court in rejecting the same this Respondent submits to this Honble Court that the said affidavit on the very face of it carries only an inference that the saids appellant and then Defendant might possibly have been ill in the months of February and april because he was then prevented or dissuaded from coming to madras by his Doctor and that there was a probability of his recovery in a few weeks whereas it hath been shewn that affidavits must be positive and conclusive and directly to the point at issue not argumentative and illusive and this Respondent in further answer saith that the said affida-vit having been filed and exhibited for the purpose of enlarging publication and for further time to Examine witnesses ought therefore to have stated the names of such witnesses according to

to the long established and unvaried practice of the said High Court of Chancery / whose practice having been quoted by the said appellant in support of his argument cannot now be by him denied as conclusive against him / for this Respondent Sheweth to this Honble Court that in Harrisons Practice of the said Court volume the first Page fifty six is the following passage which this Respondent submits is precisely in ye point To wit where any motion or Petition is grounded upon affidavit for time to Examine witnesses the affidavit must contain the names of such witnesses to the end that the Court may Judge of them and so prevent unnecessary delay and therefore this Respondent submits to this Honble Court that the said Mayors Court were perfectly well founded in rejecting the said affidavit in over ruling the said motion made in Court by the attorney of the said appellant and in ordering that Publication should pass on the said Seventeenth day of May the said Appellants conduct evidently being with a view to delay and thereby harrass and impede this Respondent

in

in the recovery of his just demand acknowledged by the said appellant by his Bond to be due to this Respondent and this Respondent saith that the Present Petition and appeal of the said appellant being brought on the same principles of delay and injustice is an additional proof if any were necessary of the unjust litigious and vexations spirited of the appellant and his unwarrantable design of harrassing and oppressing this Respondent

For all which Reasons and such others as may be offered at the Hearing this Respondent humbly prays that this Honble Court will be pleased to affirm the said order of the said Mayors Court and that the said Petition of appeal may be dismissed with exemplary Costs to be paid by the said appellant for his litigious and vexations conducts

/Signed/ Robert Williams
Solicitor for Respondent

Court

Court of Appeals at Madraspatnam

Tuesday the 15th day of March Anno Domini 1797

Between Goomedy spoody booty Chitty of Madras Merchant appellant and George Wynch of Fort St. George Esquire by his attorney John Wynch also of Fort St. George Esqr. Respondent

The Attorney for the appellant moves for leave to withdraw his appeal on each party paying their own Costs and the attorney for the Respondent having Consented thereto

Ordered accordingly

Clerk

To

To the Right Honourable Lord Hobart

President and Governor &c in Council

Fort St. George

In the Honourable
The Court of Appeals

Between Charles Edward Jones by his attorney John Turing by his attorneis Benjamin Roebuck and William abbott Complainants-

and

James Call Executor of the Estate and Effects of andrew majendie deceased Defendant

The Humble Petition and appeal of the above named Defendant

Sheweth

That the Complainant by his attornies above named did at some time on or about the ninth day of april and year of our Lord One Thousand seven hundred and ninety five exhibit and file his Bill of Complaint in the Mayors Court of Madraspatnam against your Petitioner as Executor as aforesaid and did therein and thereby amongst other things state

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

state That andrew Majendie late of Fort Saint George Esquire deceased Did in his life time become indebted unto the Complainant in the sum of Two thousand Seven hundred and ninety four Pagodas twenty nine fanams and Ten Cash Current money of Madras and for securing the payment thereof Did Execute unto the Complainant a Bond or Obligation in writing bearing date the first day of January and in the year of our Lord one thousand seven hundred and seventy Nine wherein and whereby the said andrew Majendie Did become held and firmly bound unto the Complainant in the Penal sum of Five thousand five hundred and Eighty nine Pagodas Sixteen fanams and Twenty Cash conditioned for the payment of the sum of Two thousand seven hundred and ninety four Pagodas twenty nine fanams and ten Cash together with an Interest thereon at and after the rate of Twelve per cent per annum and payable in twelve months from the date thereof and that the said andrew Majendie having executed unto the Complainant the said Bond or obligation in writing did depart this

life

life without having paid and satisfied unto the Complai=
nant the said sum of Two thousand seven hundred and
ninety four Pagodas twenty nine fanams and ten Cash
or any part thereof and the same together with the Interest
thereon was still due and owing That the said Andrew
Majendie did in his life time duly make and publish
his last will and Testament in writing and therein
and thereby did nominate constitute and appoint your
Petitioner James Taylor and George Savage in the ser=
vice of the united Company of merchants trading
to the East Indies under the Presidency of Fort Saint George
aforesaid his Executors who did some time on or about the
Twentieth day of December which was in the year of our
Lord one thousand seven hundred and Eighty four prove
the same in the said Mayors Court in its Ecclesiasti=
cal capacity and obtained probate thereof That the
said James Taylor then resided in England or else where
out of the Jurisdiction of the said Mayors Court and that
the said George Savage had departed this life That your
Petitioner

Petitioner had possessed himself of all and singular the Goods
and Chattels Rights and Credits of the said Andrew Majen=
die to a considerable amount and more than sufficient to pay
and satisfy the said sum of Two thousand Seven hundred and
ninety four Pagodas twenty nine fanams and ten Cash and
all the Interest due thereon That the Complainants said at=
torney the said John Turing as assignee of Paul Benfield
late also of Fort Saint George aforesaid but then of the King=
dom of Great Britain Esquire having claimed to be due
to him from the Complainant By virtue of and under
an award made by Mawbray Thomas Cockburn
and James Amas at Fort Saint George aforesaid the Twenty
seventh day of January one thousand seven hundred and
ninety the sum of Twenty four thousand Eight Hundred
and sixty two Pagodas and Eighteen fanams together with
certain Law Charges as in the said award mentioned and
the Complainant not having paid the said sum of Twenty
Four thousand Eight hundred and sixty two Pagodas
and Eighteen fanams and the said Costs so awarded to be
paid

paid to the said John Turing as aforesaid He the said John Turing did Commence an action against the Complainant for the recovery thereof and the Complainant not being able to pay the same it was proposed by and between the said John Turing and the Complainant That the Complainant should make an absolute assignment to the said John^{or} Turing of the said herein before recited Bond or obligation Together with all Interest due and to grow due thereon in part payment of the said sum of Twenty four thousand Eight hundred and sixty two Pagodas and Eighteen fanams and Costs so^{to} awarded to be paid to the said John Turing as aforesaid That in pursuance and performance of the said recited agreement and that for and in Consideration of the said sum of Twenty four thousand Eight hundred and sixty two Pagodas and Eighteen fanams and the Costs so awarded to be paid by the Complainant to the said John Turing as aforesaid and in part payment thereof the Complainant Bargained sold assigned transferred and set over unto the Complainants said attorney the said John Turing the said herein before in

part

part recited Bond or obligation from the said andrew majendie^{or} unto the Complainant together with all principal and Interest accrued and to accrue and to become due thereon and all the Right Title Interest Property Claim and Demand whatsoever of the Complainant of in and to the said Bond and monies thereby secured Together with the said Bond or writing obligatory and all Benefit and advantage to be had and made thereof To have hold receive take and enjoy the said Bond monies and all and singular the Premises unto and for the only use and benefit of the Complainants said attorney the said John Turing his Executors administrators and assigns for ever as in and by a certain^{or} Indenture in writing made the Twenty Eighth day of November in the year of our Lord one thousand seven hundred and ninety three Between the Complainant of the first part John Turing the Complainants said attorney of the second part and Benjamin Roebuck and william abbott James Taylor John Mitford and George Taylor of the third part reference being thereunto had would more fully and at large appear That by reason of the premises your Petitioner

as

as Executor as aforesaid Did stand justly and truely indebted
unto the Complainant in the said Principal Sum of Two thousand
seven hundred and ninety four Pagodas Twenty nine fanams &
and Ten Cash together with the Interest due thereon amounting
to the sum of Five thousand four hundred and forty nine &
Pagodas twenty five fanams and ten Cash and making together
the sum of Eight thousand two hundred and forty four Pagodas
ten fanams and twenty Cash Current money of madras as by
the Copy of the said Bond and the Copy of an account &
Current to his said Bill annexed the Complainant did say
would appear and your Petitioner Sheweth that the Complai
-nant did thereupon in and by his said Bill pray that
your Petitioner might be decreed to pay unto the Complai
-nant by his said attorney the aforesaid sum of Eight thousand
Two hundred and forty four Pagodas ten fanams and &
twenty Cash with all such Interest as then was or should
thereafter become due thereon also all Costs of the said suit
and your Petitioner Sheweth that to the Complainants
said Bill of Complaint your Petitioner did exhibit and
file his Plea and answer and did therein for Plea state
That the said andrew Majendie deceased in the &
Complainants Bill named did in his life time duly
make

make and publish his last will and Testament in writing and
therein and thereby did nominate your Petitioner James Taylor
and George Savage Executors of the said last will and Testament
and that some time on or about the Twentieth day of December
which was in the year of our Lord One thousand seven hundred
and Eighty four did prove the same in the said mayors Court
into Ecclesiastical Capacity and that the said James Taylor
and George Savage did take upon themselves the burthen of the
Executorship of the said will and did possess themselves together
with your Petitioner of the Goods and Chattels Rights and
Credits of the said andrew Majendie Deceased That the
said George Savage was since dead That the said James Taylor
who was stated in the said Bill to reside in England or
else where having taken upon himself together with your
Petitioner and the said George Savage since deceased the
burthen and execution of the said last will and Testament of the
said andrew Majendie deceased your Petitioner was advised
should have been made a party to the said Bill and therefore
your Petitioner did plead in abatement to the Complainants
said Bill of Complaint and did humbly pray the Judgement
of the said mayors Court whether he should make any &
further or other answer thereto and your Petitioner in so

sort

sort waving the Benefit of his said Plea but wholly relying and insisting thereon for answer unto the Complainants said Bill or to so much thereof as your Petitioner was advised was material or necessary for him to make answer unto He your Petitioner did answer and say That the said andrew Majendie late of Fort St. George Deceased might have been indebted in his life time unto the said Complainant in the sum of Two thousand seven hundred and ninety four Pagodas twenty nine fanams and Ten Cash Current money of Madras and for ought your Petitioner knew to the Contrary for securing the payment of the sum aforesaid he might have executed unto the said Complainant a Bond or other Obligation in writing on the day and year charged and alleged in the Complainants Bill yet your Petitioner not being advised of the truth of the premises did state he could not admit the same but did leave the proof thereof if such proof was in his power to be adduced hereafter by the said Complainant and your Petitioner did further state that your Petitioner the said James Taylor and the said George Savage since deceased being the Executors nominated and appointed by and in the said last will and Testament of the late andrew Majendie Deceased

Deceased did duly receive probate thereof from out the said Mayors Court in its Ecclesiastical Capacity at or about the time mentioned in the Complainants Bill and that the said James Taylor and George Savage together with your Petitioner did take upon themselves the burthen of the Executorship of the said will and did possess themselves together of all and singular the Goods and Chattels Rights and Credits of the said Andrew majendie to a Considerable amount and to greater amount than sufficient to pay and satisfy the said sum together with an Interest thereon contained in and upon the said Bond or written Obligation on which the Complainant had founded his said Bill But your Petitioner did further state that he had not present assets in his hands of and belonging to the estate of the said andrew majendie deceased to pay off and satisfy the claim of the said Complainant or any part thereof if the same should thereafter and be proven to be well founded or any thing belonging to the said Estate which could be converted into present assets to liquidate the same except certain Securities for money being several Bonds or writings Obligatory executed by his Highness the nabob of the Carnatic to the said andrew majendie in his life time in conjunction with the said James Taylor

and

and your Petitioner and with several other Persons joint obligees mentioned in and upon the said Bonds or writings Obligatory and your Petitioner did state that the said Bonds or writings Obligatory executed to the said Andrew majendie in his life time James Taylor and your Petitioner and others were executed for and on the Joint account of the said andrew Majendie James Taylor your Petitioner and others and that the said sums of money secured in and by the said Bonds or writings Obligatory were Jointly advanced to his Highness the Nabob of the Carnatic the obligor in the said Bonds or writings Obligatory ~~were Jointly~~ advanced to his Highness the Nabob ~~of the~~ in the ~~said Bonds or writings~~ Obligatory named by the said andrew majendie James Taylor your Petitioner and others the said Persons Joint obligees also mentioned in the said Bonds or writings Obligatory and the said James Taylor and your Petitioner and other persons mentioned as obligees in the said Bonds or writings obligatory with the said andrew Majendie were a Company firm or Concern formed and Constituted for the purpose of furnishing and supplying a certain or Loan to his said Highness the Nabob and in which said Company firm or Concern each and every of the said obligees

mentioned

mentioned in the said Bonds or writings Obligatory as aforesaid bore a proportionate and distinct share according to his or their advances of money or Credit in the said stock or Capital towards furnishing and supplying the said Loan and your Petitioner did state that several of the said Bonds or writings Obligatory so executed by his Highness the nabob as aforesaid stood at the time of the Decease of the Executed by his Highness the Nabob as aforesaid stood at the time of the Decease of the said Andrew majendie and then stood pledged and mortgaged for the Joint Benefit advantage and use of the said Company firm and Concern and that there were several Joint Debts of speciality still due and owing from the said Company firm and Concern to sundry and divers persons to a considerable amount and that as such Bonds or writings Obligatory as were in the Possession of your Petitioner in part belonging and appertaining to the Estate of the said andrew majendie deceased were or charged with the Joint Debts of the Concern and that as several other persons were truely and bonafide interested in the same and that as the Bonds or writings Obligatory could not then be converted into money but at a considerable Discount on the sums conditioned by the same the said Bonds of his

Highness

Highness the Nabob of the Carnatic being below par on the Integral sum for which they were executed and negotiated your Petitioner was advised that he could not safely convert and change the same into Cash or present money without &c being accountable to all the parties interested and Concerned in the same for such losses or loss as might arise from the Conversion of the same into immediate money and your Petitioner for further answer did state that he knew not whether by &c virtue of an award or otherwise as setforth and alleged in the Complainants said Bill the said Bond in part recited in the said Bill and on which the said Complainant had founded his claims against your Petitioner was or was not assigned absolutely to John Turing and for the &c consideration mentioned in the said Bill, nor did your Petitioner know any thing of the other matters or things which Concern or touch the said assignment or Transfer of the same if the same should appear to be transferred or assigned But if the said Bond or obligation should appear to have been duly transferred or assigned to the said John &c Turing yet your Petitioner as one of the Executors of the said Andrew majendie did deny by reason of the said transfer

or

or assignment that he stood indebted unto the said Complainant in the sum of Eight Thousand Two hundred and forty four Pagodas ten fanams and twenty Cash as charged in the Bill or any &c other sum or sums of money whatsoever and for the reasons matters and things in your Petitioners Plea and answer therein before recited and setforth

And your Petitioner sheweth that to your Petitioners said Plea and answer the Complainant did exhibit and file his Replication and did therein and thereby amongst other &c things state That his Bill of Complaint was good true and certain in the Law to be answered unto and that your Petitioners said Plea and answer was very evasive and insufficient to be the Complainant replied unto- And for further Replication did say that in and by his said Bill of Complaint he did setforth the names of the several Executors who had been appointed by the said Andrew Majendie in and by his said last will and Testament and who had &c proved the same in the said mayors Court in its Ecclesiastical Capacity and did shew that one of the said &c Executors that was to say George Savage had long since departed this life and that another of the said Executors

that

Executors that was to say James Taylor was gone beyond sea and
was not within the Jurisdiction of the said Mayors Court and so the
Complainant did aver the fact to be and did humbly submit
to the said Mayors Court that by so doing he did all that was
incumbent on him to do For that where one Executor departs from
the Jurisdiction of the Court it was not necessary to make him
a party to a Bill of Complaint brought against the Estate of
his Testator because no process to enforce his appearance could
Issue against him and that it was the Executor or Executors &c
residing within the Jurisdiction who was or were the party or
parties against whom such Bill was to be brought as
was against him or them only that process could Issue
so as to procure an appearance and the Complainant did &c
state that in and by his said Bill of Complaint he did
shew and so the truth was that upon the death of the said &c
George Savage and the departure from India of the said &c
James Taylor your Petitioner did possess himself of all and
singular the Goods and Chattels Rights and Credits of &c
his Testator the said andrew majendie and therefore that
it was to your Petitioner alone to whom the Complainant
had a right to look for payment of his demand and &c

consequently

consequently it was your Petitioner alone whom the Complai=
nant ought to sue for the recovery thereof and thereupon the
Complainant did humbly insist that your Petitioners said
Plea in abatement was ill advised misconceived and unfounded
and did therefore pray that the same might be overruled with
Costs and the Complainant in reply to the answer of your
Petitioner did state That your Petitioner instead of answering
in the manner he had done regarding the Complainants
demand upon the Estate of his your Petitioners Testator &c
ought to have answered positively for that your Petitioner
did well know that his said Testator for securing unto the Complai=
nant the Payment of the sum of Two thousand seven hundred
and ninety four Pagodas Twenty nine fanams and Five Cash
did execute unto the Complainant the Bond in question for that in
the Inventory of the Estate of the said andrew Majendie delivered
into the said Mayors Court in its Ecclesiastical Capacity
by your Petitioner and the Executors above named the said
Bond was mentioned amongst other Bonds then outstan=
=ding against the Estate of the said andrew majendie and
therefore your Petitioner instead of saying that not being &c
advised of the truth of the premises he could not admit the

same

same but left the proof thereof if such proof be in his power &c
to be adduced thereafter by the Complainant was bound as
the Complainant did humbly submit to the said mayors Court
to have admitted the same and that although your Petitioner
in his said answer did state that he had not then assets in his
hands of and belonging to the said Estate of the said andrew
Majendie to pay off and satisfy the claim of the Complai
=nant or any part thereof or any thing belonging to the said
Estate that could be converted into present assets to liquidate
the same yet he admitted to have in his possession certain
securities for money being several Bonds or writings Obligatory
Executed by his Highness the Nabob of the Carnatic to the said
andrew majendie in his life time in conjunction with him
your Petitioner the said James Taylor and several other &c
persons and the Complainant did state that the said &c
Bonds or writings obligatory so executed by his Highness the
Nabob were a species of negotiable paper and could at all
times be converted into money and that it was incumbent
on your Petitioner in the discharge of his duty as Executor
of the said andrew majendie to convert the same into money
or to have made such arrangements thereon as to have enabled

him

him to pay off and satisfy the demand of the Complai
=nant thereon That the shewing of your Petitioner in the
said answer contained regarding a concern or firm in which
the said andrew majendie was engaged in his life time
had nothing to do with the matter in question and the
more particularly as it appeared by his own shewing that
the said firm or concern had long since been dissolved by
the death of two of the parties belonging thereto that was
to say the said George Savage and the said andrew &c
Majendie and by his said Highness the Nabob having
executed Bonds on account of the advances made to
him by the said parties and which were negotiable and
could be at all times converted into money that although
your Petitioner had in and by his said answer stated that
several of the said Bonds so executed by his said Highness
the Nabob stood at the time of the decease of the said &c
andrew Majendie and then stood pledged or mortgaged
for the Joint Benefit advantage and use of the said Company
firm and concern yet your Petitioner had not shewn
that they were mortgaged for their full value and it
was evident that their remaining in pledge or mortgage

could

could no longer be for the Joint Benefit and advantage of a Company firm or concern that had long since ceased to exist and that as to the suggestion in your Petitioners &c said answer contained that there were several joint debts of speciality still due and owing from the said Company &c firm or concern unto sundry and divers persons unto &c Considerable amount the Complainant did submit to the said Mayors Court that the same was irrelevant &c having no manner of Connexion with the matter in Question For that the Complainant had brought his suit for the recovery of a sum of money secured to him by the Bond of your Petitioners Testator and not against persons forming a Company Firm or Joint Concern That it might be that the said Bonds of his said Highness the Nabob were below Par and it was probable they never might be nearer Par than at that time But that it was not just reason for with holding from the Complainant the payment of his just demand as the Complainant did say he was advised that the Personal Estate of a deceased person was to be disposed of either by appris-ment or public sale so soon as conveniently might be to the satisfaction

satisfaction of the Just claims of his Creditors and that if your &c Petitioner should be permitted to retain in his possession the said Bonds of his said Highness the Nabob until all parties Interested therein gave their Consent to the disposal thereof the Complainant might never receive any manner of satisfaction on account of his Just Claim for the recovery of the amount &c whereof he had brought his present suit and the Complainant did pretend that notwithstanding your Petitioners Qualified denial of being indebted unto the Complainant in the sum sued for the Complainant did aver that your Petitioner as Executor as aforesaid did stand justly and truly &c indebted unto him in the sum of Eight thousand Two hundred and Forty four Pagodas ten fanams and Twenty Cash.

And your Petitioner Sheweth unto this Honble Court that to the Complainants said Replication your Petitioner did exhibit and file his Rejoinder and did therein amongst other things state That his Plea and answer and the several matters and things therein contained were good true and sufficient

sufficient in the Law to be replied unto and the Complainants said Replication was very evasive and insufficient to be by your o^r Petitioner Rejoinded unto and that although the said Complai nant as had alleged in his said Replication might have set forth and shewn by his said Bill of Complaint the names of severall the Executors who had been appointed by the said andrew mycndie in and by his last will and Testament and that they had proved the same in the said mayors Court in its Ecclesiastical o^r Capacity and although he might have shewn that one of the said Executors namely George Savage had departed this life previous to the filing of the said Bill and that another of the said Executors to wit James Taylor had gone beyond the sea & and was not within the Jurisdiction of the said mayors Court yet your Petitioner was advised that the said Complainant in his said Bill did not do as he had contended all that was incumbent on him to do in as much as he did not make the said James Taylor as in Law he ought to have done as your Petitioner was well advised a party to the said Bill and although it might be true that the appearance of the said James

Taylor

Taylor to the said Bill could not have been enforced by any^r Process out of the said mayors Court by reason of his Residence o^r without the Jurisdiction thereof yet your Petitioner said as he was advised that the said James Taylor being a Co executor with your Petitioner ought to have been made a party to the said Bill in order that he might have been concluded by the Decree of the said mayors Court and that the Estate of the said Deceased might not be rendered liable to several actions for one and the same alleged Debt and your Petitioner said although the appearance of the said James Taylor could not have been procured on the Instant unto the said Bill it was not impossible but that it might have been obtained o^r before a Decree could have been had by the said Complai - nant thereon and more especially as the appearance or non apparance of the said James Taylor could not in any sort or wise have impeded or retarded the said o^r Complainant in the prosecution of his said action as against your Petitioner and your Petitioner for further Rejoinder said that although the said Complainant did

allege

allege in his said Bill and did insist in his said Replication that his allegation was true that on the Death of the said George savage and on the Departure of the said James Taylor from India that your Petitioner did possess himself of all and ev singular the Goods and Chattels Rights and Credits of his said Testator the said andrew Majendie and that your Petitioner therefore alone was liable to the alleged Debt of his said Testator yet your Petitioner said as he was advised that he was by no means liable solely and singularly to the action of the said Complainant for the said alleged Debt in as much as the said Complainant had not charged alleged or stated at the time of the Complainants exhibiting the said Bill against your Petitioner that he your Petitioner then and at that time stood possessed of assets sufficient for the discharge of the debt of the said Complainant— and your Petitioner said as in his said answer he had shewn at the time of the Complainants filing his said Bill That he your Petitioner had not present assets in his hands of and belonging to the Estate of the said andrew Majendie deceased to pay off and satisfy the claim of the said Complainant or any part thereof and so the fact was and therefore it is your Petitioner said Plea was well advised and founded and not misconceived as the said Complainant had stated but good and sufficient to all intents and purposes of Law and that your Petitioner therefore ought to have the full and legal Benefit and advantage thereof to which he was entitled— and your Petitioner in further Rejoinder said in his said answer to so much of the Complainants said Bill as your Petitioner was advised that it was material or necessary for him to make answer unto That he your Petitioner had answered in as positive and absolute a manner as was required of him as Executor as aforesaid and more especially as to the said alledged Demand of the said Complainant on the Estate of your Petitioners Testator and your Petitioner said That he was by no means obliged to confess the Right of action of the said Complainant so as to subject the Estate of his said Testator to the demand of the said Complainant in and by virtue of the said Bond or obligation alleged to have been Executed by your Petitioners Testator in

in his life time and at the time mentioned in the said Bill and your Petitioner did admit that in the Inventory delivered into the Mayors Court in its Ecclesiastical Capacity by your Petitioner and the other Executors in the said Replication named the said Bond was mentioned amongst other Bonds then appearing to outstand against the Estate of the said Andrew Majendie But your Petitioner did deny by reason thereof that he was precluded from demanding such proof of the Execution of the said Bond as was demanded by Law For your Petitioner said in pursuance of his office as Executor it was his duty to require legal satisfaction and proof touching all and every claim against the Estate of his said Testator and your Petitioner said if he had admitted the Execution of the said Bond by his said Testator which the Complai= =nant insisted that he might have done and it had thereafter appeared that the same was deficient in any of the Solem= =nities proper and Common to an Instrument of the nature of a writing Obligatory or if it should have appeared on the same or was thereafter apparent that the said Bond had been released or discharged or had been in part released and discharged then and in such case your Petitioner was advised that he would have rendered himself liable to the suit of other Creditors who might have been injured by your Petitioners admission in the premises But your Petitioner said that he was as much bound in consience as Executor as he conceived in personal Justice to require the proof in question and your Petitioner further said that although he had admitted in his said answer that he had in his hands or power certain Securities for money to wit several writings Obligatory executed by his Highness the Nabob of the Carnatic to the said Andrew Majendie in his life time in conjunction with your Petitioner the said James Taylor and several other persons Joint Obligees in the said Bonds or writings Obligatory named yet your Petitioner said from the admission of the said Bonds or writings Obligatory being in his your Petitioners hands he had not made himself charge= =able or liable with or to the action of the said Complainant in as much the said Bonds or writings Obligatory were not assets or in the nature of assets And your Petitioner said although the

the sums secured upon and in the said writings Obligatory be presently due to the said Obligees in the said writings Obligatory named yet His said Highness the nabob the obligor in the said writings Obligatory bounden was unable or disinclined to discharge the said sums and your Petitioner said that he had not not any legal remedy as Executor as aforesaid or knew not of any legal remedy to recover the said sums conditioned in and upon the said writings Obligation of His said Highness the Nabob as aforesaid And your Petitioner said until the said Bonds or writings Obligatory should be discharged or so much thereof as to satisfy the said Complainants demands &c on and against your Petitioner as Executor as aforesaid He your Petitioner was not liable to the suit of the said Complainant in and by virtue of the said Bonds alleged to have been executed by your Petitioners said Testator your Petitioner in his said answer having shewn that he had not any assets in his hands of and belonging to the Estate of his said Testator and so the fact was and your Petitioner further said That the said Bonds or writings Obligatory were not

not a species of paper absolutely negotiable and could not at all times be converted into money as was alleged by the Complainant in his said Replication But your Petitioner did admit that the said Bonds or writings Obligatory might be conditionally transferred yet your Petitioner had shewn in and by his said answer and so the fact was That the said Bonds of his said Highness the Nabob in his said answer Mentioned could not be converted into money but at a considerable Discount on the sums conditioned in and by the said Bonds being below par or the entire and whole sums for which they were executed and your Petitioner said as Executor as aforesaid he was advised that he had no right to compound the Debts of his said Testator which the transfer of the said Bonds under the discount to which they were then subject would amount to in contemplation of Law in the event of a composition of the said Debts by your Petitioner due to his said Testator on the said Bonds if the same should have been compounded by your Petitioner through the means of a transfer He your &c

Petitioner

Petitioner was further advised that he would be liable to the Credi
tors of the said andrew majendie for any and every deficiency occas
=sioned by the said Transfer. and your Petitioner further said that the
said James Taylor your Petitioner and several other persons being
Joint obligees in the said Bonds or writings obligatory mentioned
with the said andrew majendie He your Petitioner said it would
have been unreasonable and unjust that he your Petitioner
should be compelled to injure his own property and the property
of the said James Taylor and the said several other persons as
Joint obligees as aforesaid as he undoubtedly would do if he
were compellable to convert the said Bonds into immediate
money under the circumstance of the said discount and your
Petitioner said that his said office of Executor could not
subject him to the loss of his own property and render or
him liable to the action of others Jointly interested in the said
Bonds for such injury as might accrue by the transfer
of the same as your Petitioner was advised he would be or
rendered liable if he converted or transferred the same for less
than the principal sum and Interest conditioned in and
upon

upon the same and your Petitioner further said that he admitted
that the personal Estate of a deceased person was to be disposed
of as soon as conveniently might be to the satisfaction of the
Just claims of his Creditors and your Petitioner had done
and was willing to do all in his power to that end and
effect But the Estate of your Petitioners said Testator
being so blended and connected with the Interests of others
being so circumstanced as your Petitioner had set forth
in his answer to the Complainants said Bill That
he your Petitioner had not then been able nor had
he any knowledge how he could be able to place it in
a more advantageous situation than which it stood to
wit in expectance of the due discharge of the said Bonds
in the Cause of payment to which they were subject
and your Petitioner in further Rejoinder notwith
=standing what was alleged by the Complainant in
his said Replication that he your Petitioner ought
to have converted the said Bonds into money or to
have made such arrangements thereon as to have or
enabled

enabled him to pay of and satisfy the demand of the said Complai=
nant said that he was not by reason of the premises obliged
or bound to convert the same into money so as to satisfy the
individual alleged Debt of the said Complainant inasmuch
as the conversion of the same into money might render him
liable to an action of waste might injure his own property
and the property of several others connected with the Estate
of the said andrew majendie as your Petitioner had therein
before shewn and might further deprive several other speci=
alty Creditors claimants in a like degree with the said or
Complainant of the several other Debts due to them respec=
tively from the Estate of your Petitioners Testator and your
Petitioner further said That notwithstanding what the said
Complainant had setforth in his said Replication &
respecting the said concern or Firm in which your Petitioner
in his said answer had shewn that the said andrew majendie
was engaged in his life time together with your Petitioner
and others That the said shewing of your Petitioner in his
said answer and the several matters and things as related
therewith

therewith did appertain and belong and were extremely perti=
nent to the matter in Question and lastly your Petitioner
said as in and by his said answer he had already shewn
That he was not indebted unto the said Complainant as or
Executor as aforesaid either in the sum sued for or in any
other sum or sums and for the reasons matters and things
in his said Plea and answer and in that his said Rejoinder
impleaded setforth and Contained and your Petitioner &
Sheweth unto this Honourable Court that upon the aforecited
pleadings being had in the said Cause Issue did Join and
Rules did pass for the Examination of witnesses and that several
witnesses were examined accordingly on the part and behalf of
the Complainant and your Petitioner Sheweth That Shasla
pilly Dubash examined on the part and behalf of the Complai=
nant did to the Second Interrogatory depose That he had
looked upon the Deed or writing Obligatory then produced
and shewn to him at the time of his Examination purporting
to be a Bond from andrew Majendie late of Fort Saint George
deceased to Charles Edward Jones and that the said produced

writing

writing was on the day of the date thereof signed sealed and &c
delivered by the said Andrew majendie since deceased in the
presence of the Deponent. and in the presence of Mr. William &c
augustus Dobbyn deceased late in the Service of the Honble
Company that his name and signature was set and subscribed
to the said produced writing as a witness to the execution thereof
by the said Andrew majendie and that his said signature was
of the Deponents proper hand writing that he was acquainted
with the manner or Character of hand writing of William
Dobbyn and that he had seen him write and received &c
Letters from him that the Deponent had looked at the Signa-
ture William Dobbyn at the foot of the said Bond also set and
subscribed as a witness to the signing sealing delivery &c
execution thereof by Andrew majendie and said that the same
was of the proper hand writing of the said William Dobbyn
and that he believed the said William Dobbyn did so set
and subscribe his name to the said produced writing in
presence of this Deponent and your Petitioner sheweth unto
this Honble Court that James Taylor to the second &c
additional

additional Interrogatory on the part and behalf of the Complai-
nant did depose. That he knew Charles Edward Jones Esquire
late of Fort Saint George in the Coast of Coromandel but now
of the City of London and that he had so known him about
fifteen years That he was well acquainted with the manner
of hand writing of the said Charles Edward Jones That he
had looked at the Deed of Assignment or Parchment writing
produced and shewn to him at the time of his examination
and deposed that the signature C. E. Jones was of the proper hand
writing of the said Charles Edward Jones To the sixth additio-
nal Interrogatory the said Witness did depose that he
knew John Mitford of Fort Saint George on the Coast of
Coromandel in the East Indies and that he had so known
him about nine months That he was acquainted with
the hand writing of the said John Mitford That he had seen
the Deed of Assignment or Parchment writing Produced and
shewn to him and did say that to the best of his knowledge
and belief the signature John Mitford thereunto set and
subscribed was of the proper hand writing of the said John &c
Mitford

Mitford and to the seventh additional Interrogatory the said Witness did depose That he did know George Taylor of Fort Saint George on the Coast of Coromandel in the East Indies Esquire and that he had so known him about sixteen years that he was acquainted with and knew the hand writing of the said George Taylor That he had looked at the Deed of assignment or Parchment writing produced and shewn to him at the time of his Examination and said that the signature George Taylor thereunto set and subscribed was of the proper hand writing of the said George Taylor and your Petitioner Sheweth that nathaniel Edward hinderseley to the Third additional Interrogatory on the part and behalf of the Complainant did depose That he did know John Turing late of Fort Saint George on the Coast of Coromandel in the East Indies but then of the City of the London and that he had so known him about fifteen years That he was well acquainted with and did know the manner of the hand writing of the said John Turing that the Deponent had looked at the Deed of assignment or parchment writing

writing then produced and shewn to him at the time of his Examination and that to the best of his belief the signature John Turing thereunto set and subscribed was of the proper hand writing of the said John Turing and your Petitioner Sheweth that anthonio Fonseca to the fourth additional Interrogatory did depose that he knew Benjamin Roebuck at present of Fort Saint George on the Coast of Coromandel in the East Indies and that he had so known him for nine years That this Deponent did know and was acquainted with the hand writing of the said Benjamin Roebuck That he had looked at the Deed of assignment or Parchment writing then produced and shewn to him at the time of his Examination and that the signature Benjamin Roebuck thereunto set and subscribed was of the proper hand writing of the said Benjamin Roebuck To the fifth additional Interrogatory the said witness did further depose That he knew William abbott of Fort Saint George on the Coast of Coromandel in the East Indies Esquire and that he had known him nine years That he was acquainted with

with and did know the hand writing of the said William abbott That he had looked at the Deed of assignment or Parchment writing then produced and shewn to him at the time of his Examination and said That the signature William abbott set and subscribed thereunto was of the proper hand writing of the said William abbott To the Eighth additional Interrogatory the said witness did further depose That he did know James Stuart Hall late of Fort Saint George on the Coast of Coromandel Esquire and that he knew him about six years that he was acquainted with and did know the hand writing of the said James stuart Hall That the Deponent had looked at the deed of assignment or parchment writing produced and shewn to him at the time of his examination and said That the signature J. Stuart Hall set and subscribed on the back of the said Deed of assignment as a witness thereto was of the proper hand writing of the said James Stuart Hall And your Petitioner Sheweth That Thomas Cockburn also examined on the part and behalf of the Complainant did to the

Second

Second further additional Interrogatory depose that he was Register of certain Bond Debts usually denominated the Consolidated Debts of the late nabob Wallajahow the late Nabob of the Carnatic That certain of the said Bond Debts were formed into a Class or description of Debt called or known by the appellation or discription of the Consolidated Debt of the year One Thousand seven hundred and seventy seven That he was Register of the Debt of one Thousand seven hundred and sixty seven of the old and new Cavalry Debts and of the said Debt of one thousand seven hundred and seventy seven That andrew majendie late of Fort Saint George Esquire but since deceased was in his life time considerably interested in the said Bond Debt as being the joint and individual obligee in several of the said Bonds That he could not say in how many of the said Bonds he was interested But that Bonds then stood Registered in his name jointly with Taylor Savage and Call and seperately in the name of the said andrew majendie to the amount

of

of Five Lacs of Pagodas and upwards That he did not recollect the several and respective sums which appeared in the said Bond or Bonds to be payable to the said Andrew Majendie individually or conjointly with the other Obligees as above set forth nor could he say to what extent or proportion of such Bond or Bonds or any or either of them the said Andrew Majendie was or his Estate then was intitled That such Bonds were negotiable and transferable by persons legally authorised to do so in the Registers Books That they were not then saleable and negotiable as the Deponent believed for their specific and declared amount but that they bore a discount as the Deponent understood of from Twelve to sixteen per cent That he did not know nor had he any reason to believe that such Bonds had in their exchange or negotiability ever since he had been Register of the said Debts been saleable or negotiable at par That the most favourable Terms within his recollection on which such Bonds or any Certificate or portions of such Bonds might have been disposed of were at two and half per cent and from that to four per Cent discount but he did not recollect the time when they could have been so disposed of That he did not recollect what the discount on such Bonds was on or about the ninth day of april and twenty fifth day of June in the year one thousand seven hundred and ninety five That any part or proportion of such Bond or Bonds might be transferred and or negotiated by transfer on the back thereof to the amount of which Transfer a Certificate was granted by the Deponent as Register That the nature of such Certificates was to certify that the sum of money therein set forth had been transferred to the party mentioned in the said Certificate being part of a certain Bond made over to him by a transfer executed in the Registers Books by the Seller and therein accepted of by the purchaser That certain orders Regulations were established for the payment and discharge of the said Bonds by certain Devidends directed to be made from time to time to the Creditors of his said Highness the late Nabob of the Carnatic That such Dividends were made by publick orders of the Government of Fort Saint George in conformity to a certain Treaty entered into between the Honble the united Company of Merchants of England trading to the East Indies

with

with his said late Highness the Nabob Wallajah the Nabob of the Carnatic for the payment of the said Dividends sanctioned by an act of Parliament That such Dividends were Issued from the Company Treasury to him the Deponent as Register as aforesaid and by him Issued to the Creditors or to their Representatives That he was elected Register in the year one thousand seven hundred and Eighty Eight by the said Creditors and by them recommended for approbation of their appointment to the Government of Fort Saint George who confirmed it and it was afterwards finally approved of by the Court of Directors.

And your Petitioner Sheweth unto this Honble Court That after examination of the said witnesses Publication did pass in the said cause and the same was set down to be heard by the said Mayors Court and your Petitioner sheweth that the same coming on accordingly to be heard before the said Mayors Court on the second day of the present Instand 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 out of the Estate and Effects andrew Majendie deceased the full and just sum of Eight Thousand Two hundred and forty four Pagodas Nineteen fanams and Twenty Cash Together with all such Interest as then was or should thereafter become due thereon until full payment was made also all costs of this suit as by a Copy of the said Decree hereunto annexed for the inspection of this Honble Court to which your Petitioner begs leave to refer and prays the same may be taken as part of this his Petition and appeal the Original being ready to be produced at the hearing may more fully and at large appear.

By which said order and Decree of the said Mayors Court your Petitioner doth conceive himself very materially injured and aggrieved and doth therefore appeal therefrom to this Honble Court for the following amongst other Reasons.

First — Because the said mayors Court at the time of making the said Decree in the premisses had not before them the proper and necessary parties against whom the said Court might

might be authorised under the particular circumstance of your Petitioners case to decree therein For your Petitioner humbly Shew unto this Honble Court That the Bill of the said Complainant having been instituted for the recovery of a certain principal sum and Interest said to be secured on a Bond alleged to have been executed by one andrew Majendie in his life time to the said Complainant - and the said Complainant having charged in his said Bill that previous to the decease of the said Andrew Majendie he did duly make and publish his will in writing and did therein nominate Constitute and appoint your Petitioner together with James Taylor and George Savage since deceased as Executors thereof And the said Complainant having further alleged that your Petitioner and the said James Taylor and George Savage did prove the said will in the said mayors Court in its ecclesiastical Capacity and did receive probate thereof your Petitioner is advised that the said James Taylor ought to have been made a party with your Petitioners to the Complainants said Bill of Complaint For your Petitioner sheweth that all the Executors in a will named do

do together and not singly form a legal representation of the Dt. person of the Testator and therefore the Law doth require as Dt. your Petitioner is advised that they shall all join in suits against others and that in suits brought by others they shall all be made parties Defendant thereto and for very plain and obvious princi-ples of Equity and Justice And your Petitioner further Sheweth to this Honble Court that to the said Bill of Complaint of the said Complainant he did plead that the said James Dt. Taylor and George savage did together with your Petitioners Dt. prove the will of the said andrew majendie deceased and did Dt. jointly with your Petitioner take upon themselves the burthen of the execution of the said will and did possess themselves together with your Petitioner of the Goods and Chattels Dt. Rights and Credits of the said Andrew majendie deceased that the said George savage was since deceased But that the said James Taylor who was stated in the said Complainants Bill to reside in England or else where ought to have been made a party Defendant with your Petitioner to the said Bill and your Petitioner humbly contendeth that he ought

to

to have had the benefit of the said Plea to which by Law he doth seem entitled For it is plainly laid down that where there are Co executors in a will named and they together prove the said will and that one of them be afterwards sued singly and he plead the said matter in abatement that he shall have advantage of such plea and your Petitioner humbly Sheweth unto this Honble Court that the matters and things set forth by the said Complainant in his replication to the said Plea of your Petitioner are not as far as the same are admitted or proved sufficient to take the Case of the said Complainant out of the General rule of Law as applicable to Co-executors For whether the appearance of the said James Taylor could have been procured or not was not as your Petitioner is advised material to the suit as the said suit could not be retarded or impeded thereby in as much as where a debt is prosicuted against several Executors and one only appeareth and the rest make default the one appearing shall answer alone without his Companions and if Judgement pass for Complainant he shall have

judgement

judgement and execution against him that hath pleaded and against the others named in the Bill of the Testators Goods as well as if they had all pleaded and your Petitioner therefore humbly Sheweth that the said suggestion of an inconvenience which might result from making the said James Taylor a party to the Bill must vanish if the explanation of the Law as regards this point be rightly understood and stated by your Petitioner and which your Petitioner humbly trusts the same is and your Petitioner further Sheweth That it was not impossible But that the said James Taylor might have come with in the Jurisdiction of the said mayors Court during the continuance of the suit and might have had something to plead for the advantage of his Testators Estate to the said Bill of the Complainant and it is clear that the Law exacts that all the Co-executors of a will shall be made parties to a suit for these manifest Reasons In order that the defence best or most beneficial for the Testators Estate may be set up and that the matter in controversy may be peremptorily settled and the

Estate

Estate of a deceased person protected from the Evil of a multiplicity of actions for one and the same Debt and as to the other matter alleged in the said Bill of the Complainant That your Petitioner after the decease of the said George &c Savage and the departure of the said James Taylor for India did possess himself of all and singular the Goods and Chattle Rights and Credits of the said andrew Majendie deceased and therefore that your Petitioner was alone liable to the &c suit of the said Complainants your Petitioner humbly sheweth unto this Honble Court that the same if it could operate after due proof being had thereof so as to charge your Petitioner seperately with the Debt sued for by the said Complainant is nothing more than a bare unsupported allegation of the said Complainant and not attempted to be substantiated by Evidence and is moreover fully controverted and denied by your Petitioners answer to the said Bill and your Petitioner therefore humbly contendeth that his said Plea so impleaded by him ought to have prevailed with the said mayors Court and the said suit in consequence should and ought to

to have abated thereupon—

Secondly—Because the said Decree of the said mayors Court against your Petitioner is made as if your Petitioner had been &c possessed of assets of and belonging to the Estate of his said Testator to satisfy the same whereas your Petitioner humbly Sheweth unto this Honble Court That although the said Bill of the said Complainant did suggest assets to be in the hands of your Petitioner yet your Petitioner in his said answer to the said Bill did specially and specifically deny such fact averring that he your Petitioner had not present assets in his hands to pay off and satisfy the claim of the said Complainant or any part thereof or any thing belonging to the Estate of the said andrew majendie deceased which might be converted into present assets except certain Bonds or securities for money executed by his Highness the Nabob of the Carnatic to the said andrew majendie in Conjunction with others and your &c Petitioner sheweth that the said Complainant in his &c replication thereto exhibited did take an Issue on &c such

such fact as laid down by your Petitioner as relative to the
afsets suggested to be in the hands of your Petitioner in and
by the said Bill and did allege That the said Bonds or
securities for money executed by his said Highness the
Nabob were a species of negotiable Paper and could at all
times be converted into money and that your Petitioner ought
to have converted the same or to have made some arrangement
thereon so as to have enabled your Petitioner to pay off the Complai
nants demand and your Petitioner further sheweth unto this Honble
Court that the said Complainant did not aver nor did he any
where attempt to prove or shew that your Petitioner had any
thing or things in his hands of and belonging to the Estate of his
said Testator in the nature of afsets nor did the said Complai
nant set forth any matter so as to raise a persumption that
your Petitioner had property money Goods or chattels
Rights or Credits of the said deceased in his posession
other than the said Bonds or securities for money So that
your Petitioner doth humbly contend that the only
Issue in respect to afsets between your Petitioner and
the

the said Complainant was whether the said Bonds or
securities for money executed by his said Highness the nabob
were or were not such in the Hands of your Petitioner and
your Petitioner humbly hopes to shew to the satisfaction
of this Honble Court that the same were in no sort afsets
so as to charge your Petitioner with the Debt of the said
Complainant For your Petitioner humbly sheweth unto
this Honble Court That Debts due to a Testate persons
whether by Bond Judgement mortgage or in any way
so ever are not considered as afsets in the hands of an
Executor but as so many Chases in action until the sums
secured thereby shall be recovered unless the Executor shall
release the Debt or action or fail to put the same into suit so
that any thing to be derived from such securities be lost
to the Testators estate by the default and negligence
of the Executor and such doctrine in respect to the
personal Estate of a Testator is by a variety of legal
precedents clearly fixed and established — And your Petitioner
further Sheweth that it is no where averred or proved that
your

your Petitioner hath released any Debt secured by the said Bond executed by his said Highness the Nabob or that he hath commenced and released any action touching the same or that your Petitioner from the nature of such Bonds or securities of money could have put the same in suit and your Petitioner hath shewn in his said rejainder that the said Bonds of his said Highness the nabob could not have been urged in suit in the said mayors Court and your Petitioner doth therefore humbly contend that the said Bonds could not in any view of the same or from any fault negligence or omissions on the part of your Petitioner be considered and adjudged as assets in your Petitioners hands and therefore that your Petitioner should not have been charged or therewith as he hath been in the said Decree of the said Mayors Court And your Petitioner Humbly Sheweth to this Honble Court that the suggestion of the said complainant that the said Bonds of his Highness the nabob are a species of negotiable paper and therefrom inferring that your Petitioner should have converted the same into money and that the same if they could not be strictly deemed legal that they were equitable assets is a semblable rather than a true deduction from the nature of the thing in question. Your Petitioner doth admit that the Bonds of his Highness the nabob are negotiable paper But your Petitioner humbly Sheweth that it is not negotiable for its full and declared value i. e. for the apparent value on the face of such paper but that it is subject to a considerable discount and your Petitioner is advised and so he firmly believes the Law to be that had your Petitioner converted the said Bonds into money as it is said by the Complainant that your Petitioner ought to have done That he your Petitioner in such event would have been liable to the rest of the Creditors of his Testators Estate for such sum or sums as should appear to be the difference or differences between the money actually received and the money declaredly secured in and by the said Bonds For it is incontrovertibly maintained by numberless authorities That if an Executor sells his Testators Goods at an under value he shall answer for the real value and if he release a debt due to his Testator through perhaps

perhaps the Executor do not receive near so much as is due this shall charge him with the whole debt or if even the Executor submit the Debt due to his Testator to arbitration And the arbitrators award him less than what is apparently due such will be in the eye of the Law a devastavit in the Executor and will subject him to the total amount thereof And your Petitioner therefore doth humbly contend that such being the strict Law as applying to Executors that your Petitioner was not bounden under any equitable consi = deration to change or alter the nature of the said Bonds so as to expose your Petitioner to an action of waste at the suit of the Creditors of his said Testator and your Petitioner hath attempted to shew and trusts that he hath sh shewn that without changing or altering the same that the said Bonds were not assets and that therefore in respect to the said Bonds that your Petitioner was not charge = able with the debt of the said Complainant and that the said Decree of the said Mayors Court in the premises is therefore erroneous and ought to be reversed

Lastly

Lastly Because under the circumstances specially and particularly set forth by your Petitioner in his said answer the estate of the said Andrew majendie was subject to claims of a higher nature than that of the said Complainant to the liquidation whereof the assets of the said Estate whensoever they should be realized would be primarily applicable For your Petitioner sheweth That he hath averred in his said answer that several of the said Bonds of his said Highness the Nabob having been jointly executed unto your Petitioners said Testator the said James Taylor Georges Savage and your Petitioner for sums jointly advanced were at the time of the decease of the said Andrew Majendie and at the time of filing the said answer pledged or mortgaged for the joint advantage and use of your ~~Petitioner~~ Petitioners said Testator and others just before mentioned and although the said Complai = nant did not deny the fact of their being so pledged yet did he insist in his said Replication that the circumstance of the said mortgage did not in any wise affect the right of him the said Complainant But your Petitioner humbly contends that the said Estate of his said Testator being charged with such said

and

and several mortgage Debts as discribed was first boarden to the discharge of the same before the boroded claim of the said Complainants even had there been present assets for the satisfaction thereof and therefore the said Decree of the said mayors Court which would give a priority of payment to the demand of the said Complainant in preferance to the said mortgage Debts outstanding against the Estate of your Petitioners Testator and for the discharge of which your Petitioner hath not nor had at the time of answering the said Bill any means is further erroneous and should and ought your Petitioner doth humbly contend to be reversed by this Honble Court

For all which Reasons and such others as may be offered at the hearing your Petitioner most humbly prays This Honble Court will be pleased to reverse the said Decree of the said mayors Court and grant unto your Petitioner such further and other relief in the premises as in the wisdom of this Honble Court shall seem meet &c

/Signed/ Emanuel Samuel
Solicitor for Appellant

Mayors

Mayors Court at }
Madraspatnam }

L.S.

Mayors Court

Tuesday the 2nd day of August
Anno Domini 1796.

Present

James Daly Esqr Mayor
Andrew Ross & Alexander Brackenbury
Aldermen.

Between Charles Edward Jones heretofore of Madras but now of the Kingdom of Great Britain Esquire by his attorney John Turing formerly of Fort St George but now also of the Kingdom of Great Britain Esquire by his attornies Benjamin Roebuck and William Abbott of Fort St George aforesaid Merchants Complainant and James Ball Executor named in the last will and Testament of Andrew Majendie deceased Defendant

This cause coming on to be Heard and debated this

this day in the presence of the attornies on both sides on reading the Complainants Bill with Copies of a Bond and an account Current annexed The Defendants Plea and answer The Replication The Rejoinder The Interrogatories and Depositions on the part of the Complainant with an original Bond annexed One Exhibit on the part of the Complainant On Hearing the Pleadings made use of by the attornies and on due consideration had thereon This Court doth think fit to order and Decree and doth accordingly order and Decree that the Defendant do pay unto the Complainant out of the Estate and Effects of Andrew Majendie deceased the full and just sum of Eight thousand Two hundred and forty four Pagodas nineteen fanams and twenty Cash Pagodas 8244.19.20. together with all such Interest as now is or shall hereafter become due thereon until full payment is made also all Costs of this Suit

By Court

(Signed) G. E. Ashing By Register

A True Copy

(Signed) Emanuel Samuel
Solicitor for Appellant

To

To the Right Honourable Lord Hobart

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

In the Hble the Court of appeals

Between Charles Edward Jones by his attorney John Turing by his attornies Benjamin Roebuck and William Abbott Complainant
and
James Call Executor of the Estate and Effects of Andrew Majendie deceased Defendant

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

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

This Respondent admits that he by his attornies abovenamed sometime on or about the ninth day of April and year of our Lord One thousand Seven hundred and ninety five exhibit and file his Bill of Complaint in the Mayors Court of Madraspatnam against the Petitioner as Executor as aforesaid and did thereon and thereby amongst other things

that the said George Savage had departed this life and this Respondent admits that he did in his said Bill further allege that the said Petitioner had possessed himself of all and singular the Goods and Chattels rights and Credits of the said andrew Majendie to a Considerable amount and more than sufficient to pay and satisfy the said sum of Two thousand seven hundred and ninety four Pagodas twenty nine fanams and ten Cash and all the interest due thereon - and this Respondent further admits that his said attorney the said John Turing as assignee of Paul Benfield late also of Fort Saint George aforesaid but thereafter of the Kingdom of Great Britain Esquire having claimed to be due to him the said John Turing from this Respondent by virtue of and under an award made by George Maubray Thomas Cockburn and James Amas at Fort Saint George aforesaid Esquires the twenty seventh day of January one thousand seven hundred and ninety the sum of Twenty four thousand eight hundred and sixty two Pagodas and Eighteen fanams together with certain law Charges as in the said award mentioned and that

that this Respondent not having paid the said sum of Twenty four thousand eight hundred and sixty two Pagodas and eighteen fanams and the said Costs so awarded to be paid to the said John Turing as aforesaid he the said John Turing did commence an action against this Respondent for the recovery thereof and that this Respondent not being able to pay the same it was proposed by and between the said John Turing and this Respondent that this Respondent should make an absolute assignment to the said John Turing of the said herein before recited Bond or obligation from the said andrew Majendie to this Respondent together with all interest due and to grow due thereon in part payment of the said sum of Twenty four thousand eight hundred and sixty two Pagodas and eighteen fanams and Costs so awarded to be paid to the said John Turing as aforesaid and that in pursuance and performance of the said recited agreement and for and in Consideration of the said sum of Twenty four Thousand eight hundred and sixty two Pagodas and eighteen fanams and the Costs so awarded to be paid by this Respondent to the said John Turing as aforesaid and in part payment thereof this Respondent bargained sold

sold assigned transferred and setover unto this Respondents said
attorney the said John Turing the said herein before in part of
recited Bond or obligation from the said andrew Majendie unto
this Respondent together with all Principal and Interest
accrued and to accrue and to become due thereon and all the
right title interest property claim and demand whatsoever of
this Respondent of in and to the said Bond and monies
thereby secured together with the said Bond or writing obliga-
-tory and all benefit and advantage to be had and made
thereof To have hold receive take and enjoy the said Bond
monies and all singular the Premises unto and for the only
use and benefit of this Respondents said attorney the said
John Turing his Executors and administrators and assigns
for ever as in and by a certain Indenture in writing made
the Twenty eighth day of November in the year of our
Lord one thousand seven hundred and ninety three between
this Respondent of the first Part John Turing this Respon
dents said attorney of the second Part and Benjamin Roe
and William Abbott James Taylor John Mitford and
George

George Taylor of the third Part reference being thereunto had would
more fully and at large appear and that by reason of the Premises the
said Petitioner as Executor as aforesaid did stand justly and
truly indebted unto this Respondent in the said Principal
sum of Two thousand seven hundred and ninety four Pagodas
twenty nine fanams and ten Cash together with the Interest
due thereon amounting to the sum of five thousand four hundred
and forty nine Pagodas twenty five fanams and Ten Cash and
making together the sum of Eight thousand two hundred and
forty four Pagodas Ten fanams and twenty Cash Current money
of madras as by the Copy of the said Bond and the Copy of an
account Current to his said Bill annexed this Respondent did
say would appear and this Respondent further admits that he
did in and by his said Bill pray that the Petitioner might be
decreed to pay unto this Respondent by his said attorney the
aforesaid sum of Eight thousand Two hundred and forty
four Pagodas ten fanams and twenty Cash with all such
interest as then was or should thereafter become due thereon
also all Costs of the said suit- and this Respondent admits that

to

to the said Bill of Complaint the Petitioner did exhibit and file his Plea and answer and did therein for Plea state that the said andrew Majendie deceased in this Respondents Bill named did in his life time duly make and publish his last will and Testament in writing and therein and thereby did nominate the Petitioner James Taylor and George Savage Executors of his said last will and Testament and that same time on or about the Twentieth day of December which was in the year of our Lord one thousand seven hundred and eighty four the same was proved in the said Mayors Court in its Ecclesiastical Capacity and that the said James Taylor and George Savage did together with the said Petitioner take upon themselves the burthen of the Executorship of the said will and did possess themselves of the Goods and Chattels Rights &c and Credits of the said andrew Majendie deceased that the said George Savage was since dead but the said James Taylor who was stated in the said Bill to reside in England or elsewhere without Great Britain having taken upon himself &c together with the Petitioner and the said George Savage since deceased the burthen and execution of the said last Will and Testament of the said Andrew Majendie deceased the said Petitioner (as he did say) was advised should have been made a party to the said Bill and therefore the Petitioner did plead in abatement to this Respondents said Bill of Complaint and did humbly pray the Judgment of the said Mayors Court whether he should make any further or other answer thereto—

And this Respondent admits that the Petitioner reserving to himself all benefit of his said Plea for answer unto the residue of this Respondents said Bill he the Petitioner did say that the said Andrew Majendie late of Fort St George deceased might have been indebted in his life time unto this Respondent in the sum of Two thousand seven hundred and ninety four Pagodas twenty nine fanams and ten cash Current money of Madras and for aught he the Petitioner knew to the Contrary for the securing the payment of the sum aforesaid the said Andrew Majendie might have executed unto this Respondent a Bond or obligation in writing

writing on the day and year charged and alleged in this Respon-
dents Bill yet the Petitioner not being advised of the truth
of the premises could not as he did say admit the same but did
leave the proof thereof if such proof was in his this Respondents
power to be adduced thereafter by this Respondent and which
this Respondent submits to this Honble Court was altogether
improper in the said Petitioner in as much as the fact of his
Testator having granted to this Respondent the Bond on
which this Respondent had brought his said suit was within
the knowledge of the said Petitioner wherefore the requisition
of proof of the execution of the said Bond could be for no other
purpose than to occasion unnecessary expence and delay-
And this Respondent sheweth the said Petitioner did
further say and admit that himself and the said James
Taylor and the said George savage did take out Probate
of the last will and Testament of the said deceased
Andrew Majendie about the time in this Respondents
said Bill alleged and that they did take upon themselves
the burthen of the Executorship of the said wills and did

possess

possess themselves together of all and singular the Goods and &c
Chattels Rights and Credits of the said Andrew Mayendie
to a considerable amount and to a greater amount than suffici-
ent to pay and satisfy the said sum together with an Interest
thereon conditioned in and upon the said Bond or written &c
Obligation on which this Respondent had founded his said
Bill- And this Respondent admits that the said &c
Petitioner did in his answer to this Respondents said
Bill further state that he had not present afsetts in his
hands of and belonging to the Estate of the said Andrew
Majendie deceased to pay off and satisfy the claim of this
Respondent or any part thereof if the same should thereafter
appear and be proven to be well founded or any thing belong-
-ing to the said Estate which could be converted into present
afsets to liquidate the same except certain securities for
money being several Bonds or writings Obligatory executed
by his Highness the Nabob of the Carnatick to the said
Andrew Majendie in his life time in conjunction
with the said James Taylor the Petitioner and with

several

several other Persons joint Obligees mentioned in and upon the said Bonds or writings Obligatory and this Respondent also admits the Petitioner did state that the said Bonds or writings Obliga=tory to the said Andrew Majendie in his life time the said James Taylor the Petitioner and others were executed for and on the joint account of the said Andrew Majendie James Taylor the Petitioner and others and that the said sums secured in and by the said Bonds or writings Obligatory were jointly advanced to his said Highness the Nabob of the Carnatic the Obligor in the said Bonds or writings Obligatory named by the said Andrew Majendie James Taylor the Petitioner and others the said Persons joint Obligees aforementioned in the said Bonds or writings Obligatory and that the said James Taylor and the Petitioner and other Persons mentioned in the said Bonds or writings Obligatory with the said Andrew Majendie were a Company Firm or Concern formed and constituted for the purpose of furnishing and supplying a certain Loan to His said Highness the Nabob and in which said Company Firm or Concern each and every of the said Obligees mentioned in the said Bonds or writings Obligatory as aforesaid bore a proportionate and distinct share or

according

according to his or their advances of money or Credit in the said stock or Capital towards furnishing and supplying the said Loan and this Respondent further admits that the Petitioner did state that several of the said Bonds or writings Obligatory so executed by His said Highness the Nabob as aforesaid stood at the time of the decease of the said Andrew Majendie and then stood pledged and mortgaged for the joint benefit advantage and use of the said Company Firm or Concern and that there were several joint debts of speciality then due and owing from the said Company Firm or Concern unto sundry and divers persons to a considerable amount and that as such Bonds or writings Obligatory as were in the possession of the Petitioner in part belonging and appertaining to the Estate of the said Andrew Majendie deceased were charged with the Joint Debts of the Concern and that as several other Persons were truly and bonafide interested in the same and that as the said Bonds or writings Obligatory could not then be converted into money but at a considerable discount on the sums conditioned by the same the said Bonds of his said Highness the Nabob of the

Carnatic

barinatic being below par on the Integral sum for which they were executed and negotiated he the Petitioner did say he was advised that he could not safely convert and change the same into cash or present money without being accountable to all the Parties or interested and Concerned in the same for such Losses or Loss as might arise from the conversion of the same into immediate money And thise Respondent admits the Petitioner for further Answer did state that he knew not whether by virtue of an award or other= =wise as setforth and alleged in this Respondents said Bill of Complaint the said Bond in part recited in the said Bill and on which this Respondent had founded his Claims or against the said Petitioner was or was not assigned absolutely to the said John Turing and for the Consideration mentioned in the said Bill nor did the Petitioner know any thing (as he did state) of the other matters or things which concern or touch the said assignment or Transfer of the same if the same should appear to be transferred or assigned but that if the said Bond or obligation should appear to have been duly transferred or assigned to the said John Turing yet the said Petitioner did

did say, as one of the Executors of the said Andrew Majon= =die he did deny by reason of the said Transfer or assignment that he stood indebted unto this Respondents in the sum of Eight thousand two hundred and forty four or Pagodas Ten fanams and Twenty Cash as charged in this Respondents said Bill or any other sum or sums of money whatsoever and for the reasons matters and things in his the Petitioners said Plea and Answer therein before contained and setforth.

And this Respondent at admit that to the Petitioners said Plea and Answer this Respondent did exhibit and file his Replication and did therein state that his Bill of Complaint was good true and sufficient in the Law to be answered unto and that the Petitioners said Plea was very evasive and insuffi= =cient to be by this Respondent replied unto and did further state that in and by his said Bill of Complaint he did setforth the names of the several Executors who had been appointed by the said Andrew Majendie in

~~Majendie~~ in and by his last will and Testament and who had proved the same in the said Mayors Court in its Ecclesiastical Capacity and did shew that one of the said Executors that is to say George Savage had long since departed this life and that another of the said Executors that is to say James Taylor was gone beyond sea and was not within the Jurisdiction of the said Mayors Court and so this Respondent did aver the fact to be and did humbly submit to the said Mayors Court that by so doing he did all that was incumbent on him to do For that where one Executor departs from the Jurisdiction of the Court it was not necessary to make him a party to a Bill of Complaint brought against the Estate of his Testator because no process to enforce his appearance could issue against him and that it was the Executor or Executors residing within the Jurisdiction who was or were the Party or Parties against whom such Bill was to be brought as it was against him or them only that Process could issue so as to procure an appearance the reason of which this Respondent submits is so strikingly evident that no comment thereon can be here required And this Respondent admits he did in his said Replication further state that he had shewn that upon the death of the said George savage and the departure from India of the said James Taylor the Petitioner did possess himself of all and singular the Goods and Chattels Rights and Credits of his Testator the said Andrew Majendie and therefore that it was to the Petitioner alone to whom this Respondent had a right to look for payment of his demand and consequently it was the Petitioner alone whom this Respondent ought to sue for the recovery thereof and thereupon this Respondent did humbly insist that the Petitioners said Plea in abatement was altogether ill advised misconceived and unfounded and did therefore pray that the same might be over ruled with Costs And this Respondent admits that in reply to the answer of the Petitioner he this Respondent did state that the Petitioner instead of answering in the manner he had done regarding this Respondents demand on the Estate of his the Petitioners Testator ought to have answered fairly and positively

For

For that the Petitioner did well know that his Testator did &c
well and truly execute unto this Respondent the Bond in &c
question for that in the Inventory of the Estate of the said Andrew
Majendie delivered into the said Mayors Court in its Eccles-
astical Capacity by the Petitioner and the other Executors &c
therein named the said Bond was mentioned amongst other
Bonds then outstanding against the Estate of the said andrew
Majendie and therefore the Petitioner instead of saying that
not being advised of the truth of the premises he could not
admit the same but did leave the proof thereof if such proof was
in his power to be adduced thereafter by the Complainant
(meaning this Respondent) was bound to have admitted the
same and although the Petitioner in his said answer did state
that he had not then assets in his hands of and belonging
to the Estate of the said Andrew Majendie to pay off and
satisfy the Claim of this Respondent or any part thereof or &c
any thing belonging to the said Estate that could be converted
into present assetts to liquidate the same yet he admitted
to have in his possession certain securities for money &c
being

being several Bonds or writings Obligatory executed by his
Highness the Nabob of the Carnatic to the said andrew &c
Majendie in his life time in conjunction with him the
Petitioner the said James Taylor and several other Persons
and this Respondent admits he did state that the said &c
Bonds or writings Obligatory so executed by his said &c
Highness the Nabob were a species of negotiable Paper and
could at all times be converted into money and that he was
incumbent on the Petitioner in the discharge of his duty as
Executor of the said Andrew Majendie to convert the
same into money or to have made such arrangements thereon
as to have enabled him to pay off and satisfy the demand
of this Respondent thereon And this Respondent admits
that he did in his said Replication combat and &c
resist the matters setforth in the Petitioners said Plea
and Answer regarding a Firm or Concern in which it was
alleged the said Andrew Majendie had been engaged
and this Respondent doth further admit that he did
in his said Replication allege the several other matters

and

and things as stated and setforth in the Petitioners said Petition of appeal-

And this Respondent doth admit that to his this Respondents said Replication the Petitioner did rejoin and did contend that his said Plea and Answer were valid and true and did further state that although this Respondent might have setforth the names of several the Executors who had been appointed by the said Andrew Majendie in and by his last will and Testament and that they had proved the same in the said Mayors Court in its Ecclesiastical Capacity and that one of the said Executors namely one George savage had departed this life previous to the filing of the said Bill and that another of the said Executors to wit James Taylor had gone beyond sea and was not within the Jurisdiction of the said Mayors Court yet the Petitioner (as he did say) was advised that this Respondent in his said Bill had not done all that was incumbent in as much as he this Respondent had not made the said James Taylor as in law he ought to have done as the Petitioner (as he did say)

was

was well advised a party to the said Bill and although it might be true that the appearance of the said James Taylor to the said Bill could not have enforced by any process out of the said Mayors Court by reason of his residence without the Jurisdiction thereof yet the Petitioner did say that the said James Taylor being a Co executor with him the Petitioner ought to have been made a Party to the said Bill in order that he might have been concluded by the Decree of the said Mayors Court and that the Estate of the Deceased might not be rendered liable to several actions for one and the same alleged Debt and although the appearance of the said James Taylor could not have been procured on the Instant unto the said Bill it was not impossible but that it might have been obtained before a Decree could have been had by this Respondent thereon and more especially as the appearance or non appearance of the said James Taylor could not in any sort or wise have impeded or retarded this Respondent in the prosecution of his said action as against the Petitioner And this Respondent doth further admit that the said Petitioner did in his said

Rejoinder

Rejoinder urge for the reasons therein stated that he the Petitioner was by no means solely and singularly liable to this Respondents said action and more particularly for that this Respondent in his said Bill had not charged or alleged that at the time of this Respondents exhibiting his said Bill against the Petitioner he the Petitioner then stood possessed of assetts sufficient for the discharge of the Debt of this Respondent and that the Petitioner said as in his said Answer he had shewn at the time of this Respondents filing his said Bill that he the Petitioner had not present assetts in his hands of and belonging to the Estate of the said Andrew Mayendie deceased to pay off and satisfy the Claim of this Respondent or any part thereof and wherefore the Petitioner said that his said Plea was well advised and founded and not misconceived as this Respondent had stated but good and sufficient whereas this Respondent humbly submits that the matters so urged in the Petitioners Rejoinder and as stated in the said Petition of appeal are by no means well founded for in the first place this Respondent humbly contends that it is not of necessity for nor is it required

required of a plaintiff in an action against an Executor to allege assetts for that assetts shall be intended and as to the assertion of the Defendants that he had not assetts at the time of this Respondents filing his Bill this Respondent humbly contends that the Bonds of His Highness the Nabob acknowledged by the Petitioner to be in his possession are assetts to all intents and purposes (as this Respondent trusts he will hereafter more fully shew) and even if they were not to be considered as assetts yet the said Petitioner having possessed himself of all the Estate and Effects of his said Testator to a very considerable amount and much more than sufficient to pay off and satisfy this Respondents Claim this Respondent submits (inasmuch as it is) incumbent on every Executor to plead fairly and honestly the said Petitioner ought to have shewn not only that the assetts of which he had been previously possessed had been fully and duly administered but how the same had been administered. And this Respondent in further answer to the Petitioners said Petition of appeal doth aver that the said Petitioner did by no means answer this Respondents Bill of Complaint so fully and positively as he ought to have done for well knowing of the execution of the said Bond by his said Testator to this Respondent and

and which he hath admitted in and by his said Rejoinder and to Petition of appeal the putting of this Respondent to the unnecessary expence of examining Witnesses to the proof of the execution of the said Bonds could be for no other purpose than that of creating delay And this Respondent in answer to that part of the Petitioners said Petition of appeal wherein he states that although he had admitted in his Answer to be possessed of certain writings Obligatory executed by his Highness the Nabob of the Carnatick in conjunction with him the Petitioner and other Persons joint obligees in the said Bonds named yet the Petitioner from such his admission did not (as he did say) render himself liable to the action of this Respondent in as much as the said Bonds were not assetts or in the nature of assetts" this Respondent saith that the said admission of the said Petitioner in his said answer is in itself sufficient to establish this Respondents right of action for this Respondent saith the said Bonds are assetts with which the Petitioner is by Law chargeable notwithstanding the allegations of the Petitioner to the contrary and this Respondent in answer to that part of the Petition of appeal wherein the Petitioner pretends that His Highness the Nabob the obligor in the said writings Obligatory bounden was either unable or disinclined to discharge the said Bonds and that he the Petitioner had not any legal Remedy as Executor as aforesaid nor knew he of any legal Remedy to Recover the said sums conditioned in and upon the said writings Obligatory of his said Highness the Nabob as aforesaid further saith that as to the disinclination of his Highness the Nabob to pay the several sums due to his Creditors and amongst others those for the payment of which he was bound by his said writings Obligatory to the Petitioner and his said Testator and the said James Taylor and others the joint obligees therein named the same as to the disinclination of his said Highness may be true as alleged in the said Petition and it may be in consequence of such disinclination that the Legislature hath wisely provided for the payment of such Debts of his said Highness the Nabob as is more particularly explained in the Deposition of Thomas Cockburn one of the Witnesses examined in this Cause on the part of this Respondent and this Respondent further begs to observe and humbly prays this Honble Court will notice the very evasive manner in which the Petitioner throughout his Pleadings hath expressed himself as to

regarding

regarding the said Bonds of his said Highness the Nabob sometimes &c
pretending that there were no possible means of obtaining payment
thereof and further pretending that the said Bonds were not in their &c
nature negotiable and at other times admitting that the said Bonds
might be conditionally transferred but then pretending that they
could not be converted into money but at a considerable discount
and that therefore he the Petitioner as Executor as aforesaid by trans
=ferring the said Bonds or any part thereof under a discount would
be liable to the Creditors of his said Testator for any and every &c
deficiency occasioned by such Transfer all which matters this
Respondent submits to this Honble Court are mere pretences
set up for the convenience of the said Petitioner for even if it were
true that the said Bonds were not in their nature absolutely trans=
ferable (the contrary of which is proved by the Deposition of the said
Thomas Cochburn) yet as it is also in proof that Bonds now stand
registered (in the office of the said Thomas Cochburn) in the name
of the said Andrew Majendie conjointly with the said &c
James Taylor George Savage and the Petitioner and also &c
separately in the name of the said Andrew Majendie to the
amount

amount of Five Lacs of Pagodas and that the said Bonds are
in a course of payment by certain Devidends issued from the
Treasury of the united Company of Merchants of England
trading to the East Indies under the orders of the Government of
Fort St. George aforesaid it is not difficult to discover that the
Object of the Petitioner in setting up such pretences as he
hath done in opposition to the Claim of this Respondent
is that He the Petitioner may the longer retain the use
and management of the amount of the said Devidends on
the said Bonds of His said Highness the Nabob and as to the
pretence of the Petitioner that he would be liable to the Credi
=tors of the said Andrew Majendie for any deficiency occasi
=oned by a transfer of the said Bonds or any part thereof this
Respondent humbly begs to observe that if it be true that
the Petitioner was in the least fearful of incurring any such
responsibility there are a variety of legal methods by which
himself
he could relieve from any such apprehensions did they &c
exist and if there were any causes from which the Petitioner
had reason to suppose he would render himself responsible

to

to other Creditors of his said Testator by reason of such transfer there is no doubt but that the Petitioner would have availed himself of the opportunity of setting forth such causes in order to give in some degree a color of excuse for withholding from this Respondent the amount due to him on the Bonds of the said Testator of the said Petitioner and as to the further matter as stated by the said Petitioner in his said Petition of appeal of himself and the said James Taylor and several other Persons being joint obligees in the said Bonds or writings Obligatory mentioned together with the said Andrew Mayendie and that therefore it would be unreasonable that he the Petitioner should be compelled to injure his own property and that of the said James Taylor and the said several other Obligees as he undoubtedly would do (as he did say) if he were compellable to convert the said Bonds into immediate money under the circumstances of the said discount this Respondent humbly submits that as far as relates to the Estate of his said Testator the same should as soon as possible have been realized so as to satisfy the Claims of the several Creditors thereof and as an Executor the said Petitioner as this Respondent humbly submits cannot be warranted in exercising that discretionary Judgment as he might have been or may be as to his own individual Property for in the one Instance the Creditors have alone to look for so much of the Estate of the Deceased as can be realized towards satisfaction of their Claims in the other if the Creditor could not obtain payment from the Purse the Law will afford him satisfaction against the Person of the Debtor and it is not to be presumed that the Petitioner would prefer the confinement of his person to the loss of two and one half per cent discount and as to the Circumstances stated by the Petitioner that the Office of Executor could not subject him to the loss of his own property and render him liable to the action of others jointly interested in the said Bond for such injury as might accrue from the transfer of the same this Respondent humbly submits and for the reasons aforesaid that the preference of the Petitioner in continuing his Property in the said Funds when he had so favorable an opportunity of disposing of his Interest thereon at the rate of discount of only two and one half per cent although it may tend to

evince

evince his good opinion of the security and solidity of the said Funds yet it can by no means operate as a reason for his detention of his Testators property therein to the injury of the Creditors of the said Deceased who might be desirous of recovering their Claims and disposing of the amount in such other mode or manner as they should themselves think proper and as it is in proof that any part of any one of the Bonds of his said Highness the Nabob may be transferred by way of Certificate as afore-=said in the said Deposition of the said Thomas Cochburn it is sufficiently shewn that so much of the said Bonds or any part of them as appertain to the Estate of the said Deceased Andrew Majendie might and ought to have been transferred and disposed of towards satisfaction of the Claims of his Creditors And in answer to that part where the Petitioner states that he had not any knowledge how he could be able to place his Testators Estate in a more advantageous situation than that in which it stood to wit in expectance of the days of discharge of the said Bonds in the course of payment to which they were subject this Respondent humbly begs to observe

it

it can by no means be considered as reasonable that the Petitioner should hold the Creditors of the said Andrew Majendie at arms length until the whole of the said five Lacks of Pagodas shall have been discharged but on the contrary this Respondent humbly submits that it was and is the bounden and honest duty of the said Petitioner to have paid and to pay unto the said Creditors of the said Estate the amount of the Dividends on the said Bonds of His said Highness the Nabob paid and payable unto him the Petitioner as Executor as aforesaid so often and in such proportion as he hath received or hereafter may receive them This Respondent further humbly submits that the Pretence of the Petitioner that he would have rendered himself liable to an action of waste had he converted into money his said Testators Interest in the said Bonds is altogether idle and unfounded

And this Respondent admits that upon the Pleadings so as aforesaid had issue did join and that the several witnesses as named in the Petitioners said Petition of appeal were examined on the part of this Respondent And this Respon-dent admits that Publication did pass in the said cause

and

and that the same was set down to be heard by the said Mayors Court and was accordingly heard on the second day of this Inst. month of august in the present year one thousand seven hundred and ninety six and that the said Mayors Court was pleased to order and Decree that the Petitioner should pay unto this Inst. Respondent out of the Estate and Effects of the said Deceased Andrew Majendie the sum of Eight thousand two hundred and forty four Pagodas nineteen fanams and twenty Cash together with all such Interest as then was or should Inst. thereafter become due thereon until full payment should be made also all Costs of the said suit as by a Copy of the said Decree annexed to the Petitioners said Petition of appeal for the inspection of this Honble Court and to which the Petitioner begged leave to refer and prayed the same might be taken as part of his said Petition and appeal the original being ready to be produced at the hearing might (as the said Petitioner did say more fully and at large appear and by which said Order and Decree of the said mayors Court the said Petitioner did conceive himself

himself as he did say very materially injured and aggrieved and did therefore appeal therefrom to this Honble Court for the several Reasons in his said Petition and appeal contained.

But this Respondent doth deny that the said Petitioner hath any cause or reason of appeal and doth deny that he was or is in any wise injured or aggrieved by the said order and Decree of the said Inst. Mayors Court as aforesaid.

And this Respondent in answer to the Petitioners first reason or Cause of appeal saith that the said Inst. Mayors Court had before them all proper and necessary parties under the particular Circumstances of the case to authorize them to pass the said Decree from which the said Petitioner hath thought proper to appeal and Inst. through as alleged by the Petitioner this Respondents Bill of Complaint was instituted for the recovery of a certain principal sum and Interest thereon said to be secured on a certain Bond alleged to

have

have been executed by the Petitioners Testator to this Respondent and although this Respondent did in his said Bill charge that previous to the decease of the said Petitioners said Testator he the said Testator did duly make and publish his last will and Testament in writing and did thereby nominate and appoint the Petitioner together with James Taylor and George savage since deceased as Executors thereof and although this Respondent did also in his said Bill charge that the Petitioner and the said James Taylor and the said George savage did all three prove the said will of the said Deceased Andrew Majendie in the said Majors Court in its Eccle= =siastical Capacity and did receive Probate thereof yet this Respondent denieth that he ought in consequence to have made the said Jamess= =Taylor a Party with the Petitioner to this Respondents said Bill of Complaint nor doth this Respondent admit either the facts as= stated in the Petitioners said first Cause of appeal or his reasoning thereupon yet this Respondent is willing to allow that all Executors should regularly sue and be sued nevertheless as every Case depends upon its own particular circumstances so in the present instance the Circumstances of this Case take it out of the general Rule for

though

though the said Petitioner did in his said Pretended Plea set forth that the said James Taylor and George Savage and the Petitioner did together prove the will and take upon themselves the burden of the Ex= execution thereof and did therefore plead in abatement another Executor not named yet this Respondent humbly submits that having admitted this Respondent did in his said Bill allege that George savage was dead and that James Taylor was at the time this Respondent filed his Bill resident in England in Great Britain and it being further admitted that this Respondents said allegations were true he the said Petitioner must have foreseen the futility of such a Plea and that the same could be of no avail for this Respondent submits that it is fully established by legal authorities and decisions that where there are two Executors and one of them lives beyond sea the Executor abroad need not be made a Party- and this Respondent further humbly submits that the rule is by no means so strict as to Executors and so would seem to be the opinions in the case of Hudson Vers= Hudson First Athyns Pages four hundred and sixty and= four hundred and sixty one and also of my Leard Bacon in his treatise on the use of the Law wherein he says "any one

Executor

Executor may convey the Goods or release debts without his compa-
nion and any one by himself may do as much as altogether though
the act of one shall not charge the other but shall only charge the party
himself who did so release or convey" And this Respondent doth
deny that it was immaterial whether the appearance of the said
James Taylor could have been procured or not for this Respon-
dent saith that as the said James Taylor was beyond sea and
out of the reach of the process and Jurisdiction of the said Mayors
Court which it is admitted he was it would have been not
only unnecessary but absurd to have prayed the aid and &c
process of the said Mayors Court as against him the said
James Taylor and so would seem to be the reasoning in the
case of Darwent verse Walton second atkyns Page five hundred
and seven and notwithstanding the Petitioner hath stated
in his Petition of appeal that when a debt is prosecuted
and one only appears and the rest make defaults the one
appearing shall answer alone without his Companions
and if Judgment passes for Complainant he shall have &c
Judgment and Execution against him that pleaded and &c

against

against the others named in the Bill of the Testators Goods as well
as if they had all pleaded yet this Respondent is at a loss to &c
conjecture in what particular respect the Petitioner would
apply the same to the point in question and this Respon-
dent saith it would seem if the said statement as made by
the said appellant applies at all according to the Rule laid
down by the Lord Chancellor Hardwicke in the above case
of Darvent verses Walton To wit that it is in vain to take
out process when the joint Debtor is out of the Kingdom
that the same applies to the reasoning of this Respondent
rather than to that of the appellant and to that part of the
said first reason or Cause of appeal stated by the said &c
Appellant which states that it is clear that the Law
exacts that all the Co. executors of a will shall be made parties to a
suit for these manifest reasons In order that the Defence best or most
beneficial for the Testators Estate may be set up this Respondent
saith he hath already shewn that it is not necessary to make a Co
Executor a party who has departed the Jurisdiction and in &c
corroboration that the Law and Rule with respect to Executors is

not

not so confined as the said appellant would insinuate the same to be and to prove that a Co executor may be sued alone this Respondent saith that it is laid down in Comyns Digest first Volume Page twenty three That for an act done by one of the Executors only an action may be maintained against him alone as in Detinue of Charters when the Charters came to the Hands of one of the Executors only so Dower was brought against one Executor alone as Guardian who possessed the wards alone so if an Executor die the action shall be against the survivor alone without joining the Executors of the Executor, who died which last may fairly be held and construed as being analogous with and consonant to the present case as between this Respondent and the appellant And this Respondent doth deny that by reason of the premises the said appellant is any way prevented from or impeded in setting up any the best or most beneficial defence for the Testators Estate as by Counsel learned in the Law he may be advised or counselled to set up any thing in the said Petition of appeal alleged notwithstanding And as to the assertion of the said appellant with respect to the other matters alleged in the Bill of Complaint

wherein

wherein this Respondent did say the said Appellant after the decease of the said George savage and the departure of the said James Taylor from India did possess himself of all and singular the Goods and chattles Rights and credits of the said Andrew Majendie deceased and was therefore alone liable to the suit of this Respondent this Respondent saith the same is true and the legal reasons for the same are to be found in the herein just before quoted passages from Comyns Digest And this Respondent submits the same cannot now be controverted or disputed by the said appellant for this Respondent denies the same /as asserted by the said appellant/ to be nothing more than a bare unsupported allegation of this Respondent for this Respondent saith that the said appellant having admitted that he does possess the said Bonds and securities is thereby precluded from denying the same and therefore this Respondent submits that the said Plea was ill advised and that the said Mayors Court were justifiable in over ruling the same and that the same was over ruled for legal and just reasons-

And

And in answer to the second Cause or reason of appeal stated by the said Appellant or to that part thereof which sets forth that although the said Bill of this Respondent did suggest assets to be in the hands of the said Petitioner yet that the said Petitioner had in his said Answer specially and specifically denied such fact and had averred that he the said Petitioner had not present assets in his hands to pay off and satisfy the Claim of this &c Respondent or any part thereof or any thing belonging to the &c Estate of the said Andrew Majendie which might be converted into present assets except certain Bonds or securities for money executed by his Highness the Nabob of the Carnatic to the said &c Andrew Majendie in conjunction with others and that this Respondent had taken an issue on such fact and alleged that such Bonds or securities for money executed by his said Highness the Nabob &c were a species of negotiable Paper and could at all times be &c converted into money and that the appellant ought to have converted the same or have made some arrangement thereon so as to have &c enabled him to pay off this Respondents demand and to the appellants assertion that this Respondent did not aver nor any

where

where attempt to prove or shew that the said appellant had any thing or things in his hands of and belonging to the Estate of his said Testator in the nature of assets other than the said Bonds or securities for money this Respondent saith that he is advised it was not incumbent on him to set forth assets for that the same in Equity as in Law shall be intended but to exhibit in the fullest manner the fallacy of the said appellant and with what art he strives to mislead and deceive this Honble Court this Respondent submits and trusts it will be sufficient for him to set forth in contradistinction to the unqualified assertions of the appellant &c that he read over the said Appellant to have assets in his hands and did maintain the said Bonds or securities to be assets in the hands of the said appellant and in proof thereof did call on Thomas Cochburn Esquire Register of the said Consolidated Fund. who this Respondent sheweth did in his examination depose that there were certain Bonds registered in the office of him the said Thomas Cochburn in the name of him the said Andrew Majendie jointly with Taylor Savage and Call and separately in the name of the said andrew &c Majendie to the amount of Five hundred Thousand Pagodas

And

others the said joint and several obligee and obligees at the rate of six
per Cent per annum aforesaid amounts to the annual sum of Thirty
thousand Pagodas or thereabouts which this Respondent saith the said
James Call as Executor aforesaid hath received and doth now continue
annually to receive for and on account of the said Bonds and therefore
this Respondent submits that it was the bounden duty of the said
Appellant to have set forth how and in what manner he had disposed
of the said Dividends what share of the said sum of Thirty thousand
Pagodas falls to his said Testator individually and what under the general
Firm or Concern as pleaded by the said Appellant and this Respondent
in further answer to the said second Reason of appeal of the said
Appellant and to shew that the same were assets saith he is advised
that in many cases Equity goes further than Law with respect to assets
and that it has been adjudged that an advowson in Gross however
doubtful it may be at Common Law whether it may be Extendible
on an Elegit (because no yearly value can be put upon it) yet in
the case of Long versus Robinson Lord Chancellor King decreed
it to be sold and that Decree was affirmed by the House of Lords
and this Respondent saith that although he admits the general

legal

legal merit of the appellants reasoning when he says that debts
due to a Testate person whether by Bond Judgment mortgage
or in any way soever are not considered as assets in the hands of an Executor
but as so many Choses in action until the sums thereby due shall
be recovered yet this Respondent saith he doth not admit but on the
contrary doth deny the application thereof made by the appellant to
his own case as Executor aforesaid for this Respondent hath shewn
that the said appellant had already received many and large
dividends on the said Bonds and which Dividends were and are
assets in his hands and this Respondent thereupon further saith
that it is to be presumed that the said mayors Court were influenced
in making such their Decree against the appellant by several
adjudged cases and amongst others that referred to in Comyns's Digest
fifth volume Page two hundred and seven namely That if assets are
found though to a small value there shall be Judgment for the
whole debt and which this Respondent saith is reported at Large
in Crokes Elizabeth Page five hundred and ninety two Crokes
Charles Pages one hundred and sixty seven and three hundred and
seventy three and fully confirmed by the Doctrine laid down by

Lord

Lord Hardwicke in the Case Johnson versees Mills reported in the first volume of Bro.ns abridgment Page four hundred and fifty two First vezey Page two hundred and eighty two where is Lordship is reported to have said that he thought nothing was better settled than what was then made a question To wit whenever a demand was made out of assets certainly due but payable at a future time the person entitled thereto might come against the Executor to have it secured for his benefit and set apart in the mean time that he might not afterwards be obliged to pursue these assets through several Hands And this Respondent doth admit that the Bonds in question as against the said Nabob could not nor can be put in suit but this Respondent submits to this Honble Court that the appellant by the manner in which he has worded such his suggestion apparently means to mislead this Honble Court into a belief that such Bonds of his said Highness the Nabob were not consolidated and are not negotiable or if negotiable at a Great loss neither of which this Respondent sheweth is the fact for that the said Bonds have ever since their institution under the Guaranty of the said act of the British Parliament been considered as transferable and negotiable in India and in Europe and therefore this Respondent submits that the said Mayors Court in granting a Decree in this Respondents favor have acted up to and in conformity with the adjudged Cases and precedents to be found in the Reports and that according to the Law laid down by Lord Hardwicke in the Case Johnson versees Mills hereinbefore specified these Bonded claims being certainly due although the whole amount be not presently payable are liable to be secured and ought to be set apart for the Benefit of the Creditors of the Testator of the appellant the said Andrew Majendie and of course for the benefit of this Respondent - And this Respondent in answer to the reasoning made use of by the appellant in the latter part of his said second reason or Cause of appeal wherein he endeavours to evince that altho the said Bonds are as he admits negotiable paper yet that the same are not negotiable for its full value but subject to a considerable discount and whence the said Appellant infers that had he converted the same into money as this Respondent did say and now says he ought to have done he the appellant would have been liable to an action of waste this Respondent says and so he is advised the Law to be that every executor is in duty bound to dispose of his

Testators

Testators Effects at a fair market price and therewith or ought of the
proceeds thereof to satisfy such Creditors as are legally entitled how
much more than would the said appellant be exonerated when under
a Decree of the said Mayors Court he should be as he ought to
be compelled to make the most money of such his Testators Estate
in Market overt and by whom could he then be called into question
on an action of Devastavit as the appellant has endeavoured to
induce this Honble Court into an opinion he should be - And this
Respondent denies that the said Appellant hath in any wise
shewn that without changing or altering the same the said Bonds
were not afsets and that therefore the Appellant was not chargeable
with the Debts of this Respondent or that the said Decree of the
said Mayors Court was therefore erroneous and ought to be
reversed for this Respondent trusts he hath proved that the
said Bonds as far at least as Dividends on them have been
received by the appellant are afsets in his hands and as such
liable to the Debts of his Testator and therefore that so far from
the said Decree of the mayors Court being erroneous or that the
same ought to be reversed the same ought by every rule and
principle

principle of Law and Equity to stand and Continue in force
against the said Appellant and that the said Dividends
ought to be afsigned over to this Respondent under the above
authorities until satisfaction be made of his just
and legal demand -

And in answer to the appellants last
reason or Cause of appeal wherein he sets forth that the Estate
of the said Andrew Majendie was subject to Claims of
an higher nature than that of this Respondent to which
the afsets of the said Estate when realized would be
primarily liable this Respondent saith that he is advised
had such been the case and that such incumbrances on
the said Estate did really and truly exist as pretended
by the said Appellant that it was incumbent on the
appellant to have set forth the same specially and that
he had legal notice thereof and had fully administered
in all cases (except for dues to the Crown and Debts
due on record of which he is bound at his peril to
take Conuzance) because otherwise it would be

in

in an Executors power to evade all just demands
made by bona fide Creditors on his Testators Estate
by setting up a pretended prior Claim without setting
forth and proving the same and keeping the same
on Foot by fraud and Covin to wrong them and
therefore this Respondent saith he the said
Appellant ought to have shewn by Evidence
that he had laid out the Assets in discharge
of the said prior Claims for in the Office of
Executor Page One hundred and thirty seven
and second Volume of Bacons abridgment Page
four hundred and thirty three it is said that
though an Executor may plead generally
that he hath fully administered without
shewing that he did administer in payments
of Debts of as high a nature but yet that must
be proved upon the Evidence else the Trial
will fall out against the Executor And this
Respondent

Respondent sheweth that the said Appellant hath not
set forth how many of the said Bonds are or were mortgaged
nor for what amount nor to what amount the Interest of
his Testator therein extended which this Respondent is
advised he ought to have done and this Respondent saith
it appears extraordinary that the Appellant should come
forwards and say that such Bonds are or were pledged
or mortgaged to certain persons on account of the joint
Concern of his Testator and others the Firm or Company herein
before mentioned and yet at the same time admit and allow
the same to be in his own possession as Executor aforesaid
for this Respondent saith it is reasonable to suppose that
the same would in that case be in the Hands of the
Mortgagee and which is an additional reason why he
ought to have set forth the same fully and at large And
this Respondent saith he is advised with respect to the
Idea started and advanced by the said Appellant that
the Estate of the said Testator Andrew Majendie

is

is not liable to this Respondents debt because he was in his life time jointly concerned with the said Firm or Company that the same is of itself altogether erroneous and this Respondent further saith he is advised that an action instituted is the only legal notice to an Executor of outstanding claims and this Respondent having brought such his action and having proved in the Cause that Bonds to the amount of five hundred thousand Pagodas standing jointly and separately in the name of the Appellants Testator have been consolidated under the sanction of the said act of Parliament and are in the course of present payment to the annual amount of Thirty thousand Pagodas and that the Appellant has received and is now legally authorized to receive such Dividends as may become payable thereon the same is and are legal assets in his hands and more than sufficient to satisfy this Respondents

demand

demand and as this Respondent is advised ought to be applied thereto And this Respondent in further answer saith that although he is ready to admit that an Executor may in debts of equal degree retain so much of his Testators Estate as will go to the discharge of his own yet this Respondent doth not allow that an Executor can retain any part of the Assets of his Testators Estate towards payment of his the Executors own debts to third persons-

And lastly this Respondent saith the whole reasoning of the Appellant on which his prayer that the said Decree of the Magistrates may be reversed is founded is fallacious and nugatory for this Respondent saith he hath shown that the first point the Appellant relied upon namely another Executor not named was unfounded and that from the various precedents herein before quoted it appears to be Law that where there are two Executors and one of them is beyond Sea the Executor abroad need not be made a party if the Executor here has assets in his hands- And this Respondent saith that as it is admitted the Appellant conjointly

with

with the Executors did collect in the Estate of their Testator and as he has now alleged that he has not present effects in his hands nor any thing as he says that can be converted into effects it was altogether necessary that the said Appellant should have shewn that the whole amount of the Estate therefore collected had been applied and administered in the discharge of the just debts of the creditors of their Testator and in the manner and priority prescribed by Law and if the appellant relies on his pretended Mortgages he ought first to have fully set forth the same and not having done so the Court could not intend the same but must suppose his reasoning intended to mislead the Judgement of the said Mayors Court And this Respondent further saith that the several statements of the Appellant as regarding the said Bonds are indefinite inconclusive deceptive and uncertain and from which the said appellant as this Respondent trusts can derive to himself no advantage whatever they are deceptive in as much as the said Appellant hath alleged the only Bonds in his possession are those of his Highness the Nabob to his Testator

Testator conjointly with the said appellant the said James Taylor and others the Obligees therein named and that the discharge of the said Bonds dependid entirely on the ability and inclination of his said Highness the Nabob whereas it is in proof that besides the Bonds in which the said Testator was jointly concerned with the appellant the said James Taylor and others there are other Bonds in which the said Testator was the sole individual Obligee and that the amount of the said Bonds in which he was and the appellant as Executor aforesaid now is so jointly and individually interested is five Lacs or five hundred thousand Pagodas and that the paymen[illegible] of the said Bonds so far from having been dependent on the inclination or ability of his said Highness the Nabob are secured to the Creditors by the united Company of Merchants of England trading to the East Indies under the sanction and authority of the Parliament of Great Britain and this Respondent saith that the said allegations of the said Appellant are indefinite and uncertain in as much as the said appellant hath

altogether

altogether omitted to shew to whom and how many of the said Bonds for any further than by his own allegation that any of them / are mortgaged or if any of them are mortgaged it is not shewn to what extent any such of the said several Bonds are mortgaged or to whom or under any and what conditions- And lastly this Respondent saith he is advised that an Executor as such is bound to plead fairly and honestly and in conscience to apply the Effects towards the discharge of his Testators debts that in the Eye of the Law he is a Trustee for that purpose and is guilty of a Breach of Trust in not so doing- and therefore this Respondent saith the Decree of the said Mayors Court is founded in Law Justice and Conscience and ought to be affirmed-

For all which Reasons and such others as may be offered at the hearing of the appellants said Petition and Appeal this Respondent humbly prays that the said Decree of the said Mayors Court may stand and be

be affirmed and that the Petition of the said appellant be hence dismissed with exemplary Costs to be paid to this Respondent by the said appellant and that this Respondent may be further and otherwise relieved in the premises as to this Honourable Court shall seem meet and as the nature merits and circumstances of this Respondents Case shall require

Signed Robert Williams
Solicitor for Respondent

Court

Court of Appeals
at
Madraspatnam

Tuesday the 15th day of March
Anno Domini 1797.

Between James Call of Fort Saint George Esqr Executor named in the last will and Testament of Andrew Majendie Deceased appellant and Charles Edward Jones heretofore of Fort Saint George but now of the Kingdom of Great Britain Esquire by his attorney John Turing formerly of Fort St George but now also of the Kingdom of Great Britain Esqr by his attornies Benjamin Roebuck and William Abbott of Fort St George Merchants Respondents.

The attorney for the appellant moves for leave to withdraw his appeal on payment of Costs and the attorney for the Respondent having Consented thereto-

Ordered accordingly-

Hur

To

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

In the Honble the
Court of Appeals

Between Colly Lucas a Surgeon in the Service of the United Company of Merchants of England trading to the East Indies under their Presidency of Fort St George Complainant — and James Call Executor of the Estate and Effects of Andrew Majendie deceased Defendant —

The Humble Petition and appeal of the above named Defendant —

Humbly Sheweth,

That the Complainant above named did some time on or about the Seventh day of May And year of Our Lord One thousand Seven hundred And Ninety five Exhibit And file his Bill of Complaint in the Mayors Court of Madraspatnam against your Petitioner as Executor as aforesaid and did therein and thereby Amongst other things State that Andrew Majendie late of Fort St George Merchant deceased did in his life time become indebted unto the Complainant in the Sum of Two thousand Nine hundred and forty Pagodas Eighteen fanams and Seven Cash

Filed in my Office the 15th August 1796
J Webbe Clk

and

And for Securing the payment thereof did Execute unto the Complainant one Bond or Obligation in Writing bearing Date the first day of January One thousand Seven hundred And Seventy eight wherein and whereby he the Said Andrew Majendie did become Bound unto the Complainant in the Penal Sum of Five thousand eight hundred and Eighty Pagodas thirty Six fanams and fourteen Cash Conditioned for the payment of the Said Sum of Two thousand Nine hundred and forty Pagodas eighteen fanams and Seven Cash together with an Interest thereon at and after the Rate of twelve per Cent per Annum and payable on demand And the Complainant did Shew that the Said Andrew Majendie having executed unto the Complainant the Said Bond or Obligation died depart this life Without discharging the Same or any part thereof and the Said Sum of Two thousand Nine hundred and forty Pagodas eighteen fanams and Seven Cash together with Interest thereon was then due and owing unto the Complainant that the Said Andrew Majendie did in his life time duly Make and publish his last Will and Testament in Writing and therein and thereby did Nominate Constitute and Appoint your Petitioner James Taylor and George Savage in the Civil Service of the Said United Company of Merchants under their Said Presidency of Fort St George executors thereof And who did Some time on or about the Twentieth day of December which was in the year of Our Lord One thousand

Seven

Seven hundred and Eighty four prove the Same in the Said Mayors Court in its Ecclesiastical Capacity And obtained Probate thereof That the Said James Taylor then resided in England or elsewhere out of the Jurisdiction of the Said Mayors Court and the Said George Savage had some time ago departed this life And that your Petitioner had possessed himself of all and Singular the Goods and Chattles Rights and Credits of the Said Andrew Majendie to a Very considerable Amount and much More than Sufficient to pay and Satisfy unto the Complainant the Said Sum of Two thousand Nine hundred And forty Pagodas Eighteen fanams and Seven Cash and the Interest due thereon Amounting to the Sum of Six thousand and fifty Seven Pags. ten fanams and Twenty Cash and Making together the Sum of eight Thousand Nine hundred and Ninety Seven Pags. twenty Eight fanams and Twenty Seven Cash and that by Reason of the Premises your Petitioner as the only Executor in India of the Said Andrew Majendie was and Stood Justly and truly indebted unto the Complainant in the Said Sum of Eight thousand Nine hundred and Ninety Seven Pagodas Twenty eight fanams and Twenty Seven Cash as by the Copy of the Said Bond and a Copy of an Account Current to his Said Bill annexed the Complainant did Say Would Appear And your Petitioner Sheweth that the Complainant did thereupon in and by his said Bill pray that your Petitioner might be decreed to pay unto the Complainant the aforesaid Sum of Eight thousand Nine hundred and Ninety Seven Pagodas twenty eight fanams and Twenty Seven Cash.—

With

With all Such Interest as then was or Should thereafter become due thereon also all Costs of the Said Suit.—

And your Petitioner Sheweth that to the Complainants Said Bill of Complaint your Petitioner did exhibit and file his Plea and Answer and did therein for Plea State that the Said Andrew Majendie deceased in the Bill Named did in his life time duly make And publish his last Will and Testament in Writing And therein and thereby did Nominate your Petitioner James Taylor and George Savage Executors of his said last Will and Testament And that Some time on or about the Twentieth day of December which was in the Year of Our Lord One thousand Seven hundred and eighty four the Said James Taylor and George Savage together with your Petitioner did prove the Same in the Said Mayors Court in its Ecclesi-astical Capacity And that the Said James Taylor and George Savage did take upon themselves the burthen of the Executorship of the said will and did possess them-selves together with your Petitioner of the Goods and Chattles Rights and Credits of the Said Andrew Majendie deceased. that the Said George Savage was since dead but that the Said James Taylor who was stated in the said Bill to reside in England or elsewhere having taken upon himself together with your Petitioner and the Said George Savage since deceased the Burthen and execution of the Said last

will

will and Testament of the Said Andrew Majendie deceased your Petitioner was advised Should have been made a party to the Said Bill and therefore your Petitioner did plead the same in Abatement to the Complainants Said Bill of Compliant and did humbly pray Judgment of the said Mayors Court whether he should make any further or other answer thereto. And your Petitioner in so sort waving the Benefit of his said Plea but wholly relying and insisting thereon for answer unto the Complainants Bill or to so much thereof as your Petitioner was advised was Material or Necessary for him to make Answer unto he your Petitioner did answer and say that the Said Andrew Majendie late of Fort St George deceased might have been indebted in his life time unto the Said Complainant in the Sum of Two thousand Nine hundred and forty Pagodas eighteen Fanams and Seven Cash Current Money of Madras and for ought your Petitioner knew to the Contrary for the Securing the Payment of the Sum aforesaid he might have executed unto the Said Complainant a Bond or Obligation in Writing on the day and year Charged and alleged in the Complainants Bill yet your Petitioner not being advised of the truth of the premises could not admit the Same but left the proof thereof if Such proof was in his power to be adduced thereafter by the Said Complainant and your Petitioner further Said that your Petitioner the Said James Taylor and the Said George Savage Since deceased being the Executors Nominated And Appointed by

by and in the last will of the late Andrew Majendie deceased did duly receive Probate thereof from the said Mayor's Court in its Ecclesiastical Capacity at or about the time Mentioned in the Complainants Bill and that the said James Taylor and George Savage together with your Petitioner did take upon themselves the burthen of the Execution of the said Will and did possess themselves together of all and Singular the Goods and Chattles Rights and Credites of the said Andrew Majendie to a considerable Amount And to a greater Amount than Sufficient to pay and Satisfy the said Sum together with an Interest thereon conditioned in and upon the said Bond or Written Obligation on which the said Complainant had founded his said Bill But your Petitioner did further state that he had not present assets in his hands of and belonging to the Estate of the said Andrew Majendie Deceased to pay off and Satisfy the Claim of the said Complainant or any part thereof if the same should thereafter appear and be proven to be well founded or any thing belonging to the said Estate which could be converted into present assets to liquidate the same except certain Securities for Money being several Bonds or Writings Obligatory executed by his Highness the Nabob of the Carnatick to the said Andrew Majendie in his life time in conjunction with the said James Taylor and your Petitioner and with several other Persons Joint Obligees Mentioned in and upon the said Bonds

or

or Writings Obligatory And your Petitioner did State that the said Bonds or Writings Obligatory executed to the said Andrew Majendie in his life time James Taylor your Petitioner and others were executed for and on the Joint Account of the said Andrew Majendie James Taylor your Petitioner and others and that the said Sums Secured in and by the said Bonds or Writings Obligatory were Jointly Advanced to his said Highness the Nabob of the Carnatic the Obligor in the said Bonds or Writings Obligatory Named by the said Andrew Majendie James Taylor your Petitioner And others the said Persons Joint Obligees also Mentioned in the said Bonds or Writings Obligatory And that the said James Taylor and your Petitioner and the persons Mentioned in the said Bonds or Writings Obligatory With the said Andrew Majendie Were a Company Firm or concern formed and constituted for the purpose of furnishing And Supplying a Certain Loan to his said Highness the Nabob And in which said Company Firm or Concern each and every of the said Obligees Mentioned in the said Bonds or Writings Obligatory as aforesaid bore a proportionate And distinct share According to his or their Advances of Money or Credit in the said Stock or Capital towards furnishing and Supplying the said Loan And your Petr. did State that Several of the said Bonds or Writings Obligatory So executed by his said Highness the Nabob as aforesaid stood at the time of the Decease of the said

Andrew

Andrew Majendie and then Stood pledged And Mortgaged for
the Joint Benefit advantage and use of the Said Company firm
or Concern and that there were Several Joint Debts of
Specialty Still due and owing from the Said Company
firm or Concern unto Sundry and divers persons to a conside=
=rable amount and that as such Bonds or Writings —
Obligatory as were in the Posession of your Petitioner
in part belonging and Appertaining to the Estate of the
Said Andrew Majendie deceased Were Charged with
the Joint Debts of the Concern and that as Several other
persons Were truly and bonafide interested in the Same
And that as the Said Bonds or Writings Obligatory could
not then be converted into Money but at a considerable
Discount on the Sums conditioned by the Same, the Said
Bonds of His Highness the Nabob of the Carnatic being
below Par on the integral Sum for which they Were —
Executed And Negotiated your Petitioner Was advised
that he could not Safely convert and Change the Same
into Cash or present Money Without being Accountable
to all the Parties Interested And Concerned in the Same
for Such losses or loss as might Arise from the Conversion
of the Same into immediate Money. And your Petitioner
for further Answer did State that he was not indebted
to the Said Complainant as one of the Executors in India
of the late Andrew Majendie deceased in the Sum of
Eight Thousand Nine hundred And Ninety Seven Pag.
twenty eight Fanams and Twenty Seven Cash as Charged

in

in the Said Bill or any other Sum or Sums of Money whatsoever
And for the Reasons Matters and things in your Petitioners
Plea and answer therein before contained and Set forth
And your Petitioner Sheweth that to your Petitioners Said Plea
And Answer the Complainant did exhibit and file his Replica=
=tion and did therein and thereby Amongst other things State
that his Bill of Complaint was good true certain and Suffici
=ent in the Law to be Answered unto And that your Petitioners
Said Plea and Answer Was very evasive and insufficient to be
by the Complainant Replied unto and for further Replication
did say that in and by his said Bill of Complaint he did set forth
the Names of the Several Executors who had been appointed
by the the Said Andrew Majendie in and by his said last
Will and Testament and Who had proved the Same in the
Said Mayors Court in its Ecclesiastical Capacity And did
Shew that one of the said Executors / that was to Say / George —
Savage had long Since departed this life and that another
of the Said Executors that was to Say James Taylor Was gone —
beyond Sea, and was not within the Jurisdiction of the Said
Mayors Court and so the Complainant did aver the Fact to be
And did humbly Submit to the Said Mayors Court that by
So doing he did all that was incumbent on him to do, for that
Where one Executor departs from the Jurisdiction of the Court
it Was not Necessary to make him a party to a Bill of
Complaint brought against the Estate of his Testator because
no process to enforce his Appearance could Issue against

him

him and that it was the Executor or Executors residing within the Juriſdiction who was or were the party or Parties against whom Such Bill was to be brought as it was against him or them only that proceſs could Iſsue so as to procure an appearance And the Complainant did State that in and by his Said Bill of Complaint he did Shew And so the truth was that upon the Death of the Said George Savage and the Departure from India of the Said James Taylor your Petitioner did poſsess himself of all and Singular the Goods and Chattels Rights and Credits of his Testator the Said Andrew Majendie And therefore that it was to your Petitioner alone to whom the Complainant had a right to look for payment of his Demand And Conse=quently it was your Petitioner alone whom the Complainant ought to Sue for the Recovery thereof And thereupon the Complainant did humbly insist that your Petitioners Said Plea in abatement was altogether ill advised misconceived And unfounded And did therefore pray that the Same might be over ruled With Costs — And the Complainant in reply to the Answer of your Petitioner did State that your Petr. instead of Answering in the Manner he had done regar=ding the Complainants Demand on the Estate of his your Petitioners Testator ought to have Answered poſitively for that your Petitioner did well know that his Testator did for the Securing the payment unto the Complainant of the Sum of Two thousand Nine hundred And forty Pagodas Eighteen fanams and Seven Cash Execute unto the Complainant the

the Bond in Question for that in the Inventory of the Estate of the Said Andrew Majendie delivered into the Said Mayors Court in its Eccleſiaſtical Capacity by your Petitioner and the other Executors therein above Named the Said Bond was Mentioned amongst other Bonds then outstanding against the Estate of the Said Andrew Majendie and Therefore your Petitioner instead of Saying "that not "being advised of the truth of the Premises he could not "admit the Same but did leave the proof thereof if Such "proof was in his Power to be adduced thereafter by the "Complainant" was bound as the Complainant did humbly Submit to the Said Mayors Court to have Admitted the Same and although your Petitioner in his Said Answer did State that he had not then Aſsets in his hands of and belonging to the Said Estate of the Said Andrew Majendie to pay off and Satiſfy the Claim of the Complainant or any part thereof or any thing belonging to the Said Estate that Could be converted into present aſsets to liquidate the Same Yet he admitted to have in his Poſsession certain Securities for money being Several Bonds or Writings Obligatory Executed by his Highneſs the Nabob of the Carnatic to the Said Andrew Majendie in his life time in Conjunction With him your Petitioner the Said James Taylor And Several other persons And the Complainant did State that the Said Bonds or Writings Obligatory So executed by his Said Highneſs the Nabob were a Species of Negociable

paper

Papers and Could at all times be converted into Money and that it was incumbent on your Petitioner in the discharge of his duty as Executor of the Said Andrew Majendie to have converted the Same into Money or to have Made Such Arrangement therein as to have enabled him to pay off and Satisfy the demand of the Complainant thereon that the Shewing of your Petitioner in the Said Answer Contained Regarding a Concern or firm in which the Said Andrew Majendie was engaged in his lifetime had nothing todo with the Matter in Question and the more particularly as it appeared by his own Shewing that the Said firm or Concern had long Since been dissolved by the death of two of the Parties belonging thereto that was to Say the Said George Savage and the Said Andrew Majendie and by his Said Highness the Nabob having Executed Bonds on account of the Advances Made to him by the said parties, and which as the Complainant had already Shewn were Negotiable and could be at all times converted into Money that although your Petr. had in and by his Said Answer Stated that several of the Said Bonds So Executed by his Said Highness the Nabob Stood at the time of the Decease of the Said Andrew Majendie and then stood pledged or Mortgaged for the Joint benefit advantage and use of the Said Company firm and Concern yet your Petr. had not Shewn that they were Mortgaged for their

full

full Value and it was evident that their remaining in pledge or Mortgage could no longer be for the Joint Benefit and advantage of a Company firm or Concern that had long Since ceased to exist and that as to the Suggestion in your Petitioners Said Answer contained that there were Several joint Debts of Specialty Still due and owing from the Said Company firm or Concern unto Sundry and divers persons to a Considerable Amount the Complainant did Submit to the Said Mayors Court that the Same was irrelevant as having no Manner of Connexion with the Matter in Question for the Complainant had brought his Suit for the Recovery of a Sum of Money Secured to him by the Bond of your Petitioners Testator and of his Highness the Nabob were below par and that it was probable that they Never Might be Nearer Par then at that time But that it was no Just Reason for withholding from the Complainant the payment of his Just Demand as the Complainant did Say he was advised that the Personal Estate of a deceased person was to be disposed of either by Appraisement or Public Sale So soon as conveniently might be to the Satisfaction of the Just Claims of his Creditors and that if your Petitioner Should be permitted to Retain in his possession the Said Bonds of his Said Highness the Nabob until all parties interested

thereon

therein gave their consent to the disposal thereof the Complainant Might Never receive any Manner of Satisfaction on account of his Just Claim for the Recovery of the amount Whereof ~~Satisfaction on account of his Just Claim for the Recovery of the amount whereof~~ he had brought his present Suit And the Complainant did pretend that Notwithstanding your Petitioners qualified denial of being indebted unto the Complainant in the Sum Sued for the Complainant did aver that your Petitioner as Executor as aforesaid did stand Justly and truely indebted unto the Complainant in the Sum of Eight Thousand Nine hundred And Ninety Seven Pagodas twenty eight Fanams and Twenty Seven Cash — And your Petitioner sheweth that to the Complainants said Replication your Petitioner did exhibit and file his Rejoinder and did therein Amongst other things state that his Plea and Answer and the several Matters and things therein Contained were good true and Sufficient in the Law to be replied unto and that the Complainants said Replication was very evasive and insufficient to be by your Petitioner Rejoined unto and did State that although the said Complainant as he had alleged in his said Replication might have set forth and Shewn in and by his said Bill of Complaint the Names of Several the Executors who had been appointed by the said Andrew Majendie in and by his last Will and Testament and that they had proved the Same in the Said Mayors Court

in its

Ecclesiastical Capacity And although he might have shewn that one of the said Executors Namely George Savage had departed this life previous to the filing of the said Bill and that another of the said Executors to Wit James Taylor had gone beyond the Sea and was not within the Jurisdiction of the said Mayors Court yet your Petitioner was advised that the said Complainant in his said Bill did not do as he had contended all that was incumbent on him to do in as much as he did not make the said James Taylor as in Law he ought to have done as your Petitioner well advised a party to the said Bill and although it might be true that the appearance of the said James Taylor to the said Bill could not have been enforced by any process out of the said Mayors Court by reason of his residence without the Jurisdiction thereof yet your Petitioner said as he was advised that the said James Taylor being a Co executor with your Petitioner ought to have been made a party to the said Bill in order that he might have been concluded by the Decree of the said Mayors Court and that the Estate of the said Deceased might not be rendered liable to Several Actions for one and the same alleged debt and although the appearance of the said James Taylor could not have been procured on the Instant unto the said Bill it was not impossible but that it might have been obtained before a Decree could have been had by the said Complainant thereon and More especially as the Appearance or non Appearance of the said James Taylor would not in any sort or wise

have

have impeded or retarded the said Complainant in the prosecution of his said action as against your Petitioner: and your Petitioner did state that although the said Complainant did allege in his said Bill / and did insist in his said Replication that the said allegation is true / that on the Death of the said George Savage and on the Departure of the said James Taylor from India that your Petitioner did possess himself of all and Singular the Goods and Chattles Rights and Credits of his said Testator the said Andrew Majendie and that your Petr. therefore alone was liable to the alleged Debt of his said Testator yet your Petitioner said as he was advised that he was by no Means liable Solely and Singularly to the action of the said Complainant for the said alleged Debt in as much as the said Complainant had not Charged alleged or Stated at the time of the Complainants exhibiting his said Bill against your Petitioner that he your Petitioner then and at that time Stood possessed of Assets Sufficient for the discharge of the Debt of the said Complainant and your Petitioner said as in his said answers he had shewn at the time of the Complainants filing his said Bill "that he your Petitioner "had not present Assets to in his hands of and belonging "to the Estate of the said Andrew Majendie deceased to pay "and Satisfy the Claim of the said Complainant or any part "thereof And so the fact was, And Wherefore your Petitioner said that his said Plea was well advised and founded and not misconceived as the said Complainant had stated but Good and Sufficient to all Intents and purposes of Law and

And that your Petitioner had ought thereafter to have the full and legal benefit and Advantage thereof to which he was entitled And your Petitioner in further Rejoinder said in his said Answer to so much of the Complainants said Bill as your Petitioner was advised that it was material or Necessary for him to Make Answer unto that he your Petitioner had Answered in as positive and Absolute a Manner as was required of him as Executor as aforesaid and More especially as to the said alleged Demand of the said Complainant on the Estate of your Petitioners Testator And your Petitioner said that he was by no Means Obliged to Confess the Right of Action of the said Complainant so as to Subject the Estate of his said Testator to the Demand of the said Complainant in and by Vertue of the said Bond or Obligation Alleged to have been Executed by your Petitioners Testator in his life time and at the time Mentioned in the said Bill And your Petitioner did Admit that in the Inventory delivered into the said Mayors Court in its Ecclesiastical Capacity by your Petitioner and the other Executors in the said Replication Named the said Bond was mentioned Amongst other Bonds then Appearing to Autstand Against the estate of the said Andrew Majendie But your Petr. did deny by reason thereof that he was precluded from Demanding such proof of the execution of the said Bond as was demandable by law for your Petitioner said in pursuance of his Office as executor it was his Duty to Require legal Satisfaction And proof touching all and

every

very claim against the Estate of his said Testator and that if he had admitted the Execution of the said Bond by his said Testator which the Complainant insisted that he ought to have done and it had thereafter appeared appeared that the same was difficient in any of the Solemnities proper and Common to an Instrument of the Nature of a Writing Obligatory or if it should have appeared on the same or was thereafter apparent that the said Bond had been released or discharged or had been in part Released or discharged then and in such case your Petitioner Was advised that he would have rendered himself liable to the Suit of other Creditors who might have been injured by your Petitioners admissions in the Premises But your Petitioner said that he was as much bound in Conscience as Executor as aforesaid as he conceived in Personal Justice to require the Proof in question, and your Petitioner did further State that although he had admitted in his said Answer that he had in his hands or power certain Securities for Money to Wit Several Writings Obligatory Executed by his Highness the Nabob of the Carnatick to the said Andrew Majendie in his life time in Conjunction with your Petitioner the said James Taylor and Several other persons, Joint Obligees in the said Bonds or Writings Obligatory named yet your Petitioner said from the admission of the said Bonds or Writings Obligatory being in his your Petitioners hands he had not Made himself Chargeable or liable With or to the Action of the said Complainant in as much as the said Bonds or Writings Obligatory Were not Assets or in the Nature of Assets

and

and your Petitioner said although the Sums Secured in and upon the said Writings Obligatory Was presently due to the Several Obligees in the said Writings Obligatory Named yet his said Highness the Nabob the Obligor in the said Writings Obligatory bounden was unable to discharge the said Sums and your Petitioner, said that he had not any legal Remedy as Executor as aforesaid or knew not of any legal Remedy to Recover the said Sums Condetioned in and upon the said Writings Obligatory of his said Highness the Nabob as aforesaid And your Petitioner said untell the said Bonds or Writings Obligatory Should be discharged or so much thereof as to Satisfy the said Complainants Demand on and Against your Petitioner as Executor as aforesaid He your Petitioner Was not liable to the Suit of the Complainant in and by Virtue of the said Bond alleged to have been executed by your Petitioners said Testator And so the fact Was and your Petitioner did further State that the said Bonds or Writings Obligatory Were not a Species of paper Absolutely Negotiable and could not at all times be converted into Money as was Alleged by the Complainant in his said Replication But your Petitioner did admit that the said Bonds or Writings Obligatory Might be condetionally transferred yet your Petitioner had Shewn in and by his said Answer and so the

fact

fact was that the Bonds of his said Highness the Nabob in his said Answer Mentioned could not be converted into Money but at a considerable discount on the Sums conditioned in and by the same the said Bonds being below Par on the entire and whole Sum for which they were executed. And your Petitioner said as Executor as aforesaid he was advised that he had no right to Compound the Debts of his said Testator which the transfer of the said Bonds under the discount to which they were then Subject would Amount to in Contemplation of Law and in the event of a composition of the said Debts by your Petitioner due to his said Testator on the said Bonds if the same should be compounded by your Petitioner through the Means of a transfer He your Petitioner was further advised that he would be liable to the Creditors of the said Andrew Majendie for any and every Difficiency occasioned by the said Transfer and your Petitioner did State that the said James Taylor your Petitioner and several other Persons being Joint Obligees in the said Bonds or Writings Obligatory Mentioned With the said Andrew Majendie He your Petitioner said it Would be unreasonable and unjust that he your Petitioner should be compelled to injure his own property and the property of the said James Taylor and the said several persons Joint Obligees as aforesaid as he undoubtedly Would do if he were compellable to convert the said Bonds into immediate

Money

Money under the Circumstances of the said discount and your Petitioner said that his said office of Executor could not Subject him to the loss of his own Property and render him liable to action of others Jointly Interested in the said Bonds for such Injury as might accrue by the Transfer of the Same as your Petitioner was advised he would be rendered liable if he converted or transferred the Same for less than the Principal Sums and Interest Conditioned in and upon the Same And your Petitioner in further Rejoinder said that he did admit that the Personal Estate of a Deceased Person was to be disposed of as soon as Conveniently might be to the Satisfaction of the Just Claims of his Creditors - and your Petitioner had done and was willing to do all in his power to that end and effect But the estate of your Petitioners said Testator being And connected With the Interests of others and being so Circumstanced as your Petitioner had set forth in his Answer to the Complainants said Bill. that he your Petr. had not then been able nor had he any knowledge how he could be able to place it in a More advantageous Situation than in which it stood / to Wit / in expectance of the due discharge of the said Bonds in the Course of payment to Which they Were Subject. And your Petitioner notwithstanding What was alleged by the said Complainant that he your Petitioner ought to have converted the said Bonds into Money or to have Made such arrangements thereon as to have enabled him to pay off and satisfy the demand

of

of the Said Complainant did state that he was not by reason of the premises obliged or bound to convert the same into money so as to Satisfy the Individual alleged debt of the said Complainant in as much as the Conversion of the same into Money Might render him liable to an action of Waste Might injure his own property and the property of Several others being connected With the Estate of the said Andrew Majendie as your Petitioner had therein before shewn And Might further deprive Several other Speciality Creditors Claimable in a like degree With the said Complainant of the Several debts due to them respectively from the Estate of your Petitioners Testator. And your Petitioner did further state that Notwithstanding What the said Complainant had Set forth in his said Replication — Respecting the Said Concern or firm in which your Petr in his said Answer had shewn that the Said Andrew Majendie was engaged in his life time together With your Petitioner and others. that the Said Shewing of your Petitioner in his said Answer and the Several matters and things as related thereunto do appertain and belong and are extremely pertinent and relevant to the Matter in Question and Lastly your Petitioner did State as in and by his said Answers he had already shewn that he was not indebted unto the Said Complainant as Executor as aforesaid either in the Sum Sued for or in any other Sum or Sums And for the Reasons Matters and things in his said Plea and Answer and in his said Rejoinder impleaded Set forth and Contained. —

And

And your Petitioner Sheweth unto this Honble Court that upon the afore recited pleadings being had in the said Cause Issue did Joen and Rules did pass for the examination of Witnesses And that Several Witnesses Were examined Accordingly on the part and behalf of the Complainant and your Petitioner Sheweth that Mauselamoney Moodelliar Dubash examined on the part and behalf of the Complainant did to the Second Interrogatory depose that he had looked at the Exhibit then produced and Shewn to him at the time of his examination Marked With the Letter. A. and purporting to be a Bond from your Petitioners Testator Andrew Majendie to the Complainant for the Sum of Two thousand Nine hundred and forty Pagodas eighteen fanams and Seven Cash and bearing date the first day of January One thousand Seven hundred and Seventy eight. the Deponent Said that he had Seen the Said Andrew Majendie but Was not Well acquainted with him that he did not recollect to have seen the Said — Andrew Majendie Write nor was he Well acquainted With the Manner and Character of the Said Andrew — = Majendies hand Writing and to the third Interrogatory the Said Witness did depose that he had looked again at the Said produced exhibit and declared that he believed the Name Andrew Majendie appearing to be Set and Subscribed opposite to the Seal at the foot of the Said Exhibit to be of the proper hand Writing of the Said Andrew Majendie because he had Seen the Same Signature affixed to Bonds and other papers belonging to the concern of Majendie Savage Call and Taylor

and

And your Petitioner Sheweth that Thomas Coke a Captain in the Service of the Honble East. Indies Company to the fourth Interrogatory on the part and behalf of the Complainant did depose that he had looked at the Exhibit produced and Shewn to him at the time of his Examation And Marked with the Letter A. and purporting to be a Bond from your Petitioners Testator to the Complainant for the Sum of Two thousand Nine hundred and forty Pagodas eighteen fanams and Seven Cash And bearing date the first day of January in the year of Christ One thousand Seven hundred and Seventy Eight that he was in the life time of Robert Kelly who was late a Colonel in the Service of the Honble the United Company of Merchants of England trading to the East Indies under their Presidency of Fort St George well acquainted with and personally known to him and that he hath often received Letters from him And seen him Write and thereby obtained a knowledge and Remembrance of the hand Writing of the Said Robert Kelly. And to the fifth Interrogatory the Said Witness did depose that he had looked again at the Said produced Exhibit and declared that he believed the Signature R: Kelly Appearing to be Set And Subscribed as a Witness to the Said Bond was of the proper hand Writing of the Said Robert Kelly Whose Name Appeared as one of the Subscribing Witnesses to the Said Bond so produced before the Deponent at the time of his Examination and your

Pett.

Petitioner Sheweth that Peter Mapey Esqr Merchant to the fourth Interrogatory on the part and behalf of the Complainant did depose that he had looked at the Exhibit produced and Shewn to him at the time of his Examation Marked with the Letter A. and purporting to be a Bond from your Petitioners Testator to the Complainant for the Sum of Two thousand Nine hundred and forty Pagodas Eighteen fanams and Seven Cash and bearing date the first day of January One thousand Seven hundred and Seventy Eight that he was in the life time of Robert Kelly Who was late a Colonel in the Service of the Honble the United Company of Merchants of England trading to the East Indies under their Presidency of Fort St George Well Acquainted with and personally known to him and had seen him Write and frequently received Letters from him and thereby had obtained a knowledge and Remembrance of the Manner and Character of the hand Writing. And to the fifth Interrogatory the Said Witness did depose that he had looked again upon the said Produced Exhibit and declared that the Signature "R: Kelly appearing to be set and Subscribed as a Witness to the Said Bond was to the best of his knowledge and belief of the proper hand Writing of the Said Robert Kelly Whose name appeared as one of the Subscribing Witnesses to the Said Bond so produced before him at the time of his Examination And your Petitioner Sheweth that John Haddox to the 6th Interrogatory on the part and behalf of the Complainant did depose that he was on the life time of Charles Bromley late

late an Attorney in the Honble the Mayors Court / will
Acquaint with and personally known to him and had often
seen him Write and was thereby well acquainted with the
Manner and Character of his hand Writing And to the Seventh
Interrogatory the said Witness did depose that he had looked
at the Exhibit produced and Shewn to him at the time of
his Examination Marked with the Letter A. purporting to be
a Bond from your Petitioners Testator Andrew Majendie
to the Complainant and declared that the Signature Charles
Bromley Appearing to be set and Subscribed as one of the
Subscribing Witnesses to the said Bond Was of his the
said Charles Bromley's own hand Writing. And your Pet.
Sheweth that Domingos Johnson to the Sixth Interrogatory
on the part and behalf of the Complainant did depose that
he was in the life time of Charles Bromley / late an Attorney
in the Honble the Mayors Court at Madraspatnam / well
Acquainted With and personally known to him that he had
frequently seen the said Charles Bromley Write and
was thereby familiarized and well acquainted with the
Manner and Character of his hand Writing And to the —
Seventh Interrogatory the said Witness did depose
that he had looked at the Exhibit produced and Shewn
to him at the time of his Examination Marked With the
Letter A. And purporting to be a Bond from your
Petitioners Testator Andrew Majendie to the Complainant
and declared that the Signature Charles Bromley appearing
to be set and Subscribed as one of the Subscribing Witnesses
to

to the said Bond Was of the proper hand Writing of the said Chas
Bromley and your Petitioner Sheweth unto this Honble Court
that after examination of the said Witnesses Publication did
pass in the said Cause and the same was set down to be heard
by the said Mayors Court And your Petitioner Sheweth that
the Same coming on to be heard Accordingly before the said
Mayors Court on Tuesday 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 out of the
Estate and effects of the said Andrew Majendie deceased
the full and just Sum of eight Thousand Nine hundred
and Ninety Seven Pagodas Twenty Eight fanams and
Ninety Seven Cash, together With all such Interest as then
was or Should thereafter become due thereon untill full
payment Should be made also all Costs of this Suit as
by Copy of the said Decree hereunto Annexed for the —
inspection of this Honble Court to which your Petitioner
begs leave to Refer and prays that the Same may be
taken as part of this his Petition and Appeal the original
being Ready to be produced at the Hearing May More
fully and at large appear. —

By which said order and Decree of the said
Mayors Court your Petitioner doth Conceive himself very
Materially injured and Aggrieved and doth therefore
appeal therefrom to this Honble Court for the following —

Arranga

amongst other Reasons —

Forest. Because the Said Mayors Court at the time of Making the Said Decree in the premises had not before them the proper and Necessary parties against whom the Said Court Might be Authorised under the particular circumstance of your Petitioners Case to decree thereon for your Petitioners Humbly Shew unto this Hon^ble Court that the Bill of the said Complainant having been instituted for the Recovery of a certain Principal Sum and Interest Said to be Secured on a Bond alleged to have been executed by one Andrew Majendie in his life time to the Said Complainant And the said Complainant having Charged in his said Bill that previous to the decease of the Said Andrew Majendie the the Said Bill that previous to the decease of the Said Andrew Majendie he the Said Andrew Majendie did duly Make and publish his last Will in writing and did therein Nominate Constitute and appoint your Petitioner together with James Taylor / and George Savage Since deceased / as Executors thereof and the Said Complainant having further Charged that your Petitioner and the Said James Taylor and George Savage did prove the said Will in the Said Mayors Court in its Ecclesiastical Capacity and did Receive probate thereof your Petitioner is Advised that the said James Taylor ought to have been Made a party With your Petitioner to the Complainants Said Bill of Complaint — for your Petitioner Sheweth that all the Executors in a Will Named do together and not Singly form a legal Representation of the

the person of the Testator and therefore the Law doth Require as your Petitioner is Advised that they Shall all Join in Suits against others - and that in Suits brought by others they Shall all be Made parties defendant thereto And for very plain and obvious principles of Equity and Justice — And your Petitioner further Sheweth unto this Hon^ble Court that to the Said Bill of Complaint of the Said Complainant He did plead that the Said James Taylor and George Savage did together With your Petitioner prove the Will of the Said Andrew Majendie deceased and did Jointly with your Petitioner take upon themselves the burthen of the execution of the Said Will And did possess themselves together with your Petitioner of the Goods and Chattles Rights and Credits of the Said Andrew Majendie deceased That the Said George Savage Was Since deceased But that the Said James Taylor Who was stated in the Said Complainants Bill to reside in England or elsewhere ought to have been Made a party Defendant With your Petitioner to the Said Bill: and your Petitioner did therefore plead the Said Matter in abatement thereof - And your Petitioner humbly contends that he ought to have had the benefit of the Said plea to Which by law he doth deem entitled: for it is plainly laid down that Where there are co executors in a Will Named and they together prove the Said Will and that one of them be afterwards sued singly and he plead the Said Matter in abatement that he shall have advantage of the Said Plea: — And your Petitioner humbly Sheweth unto this Hon^ble Court that the Matters and things Set forth by the Said Complainant in his Replication to the Said Plea

of

of your Petitioner are not as far as the Same are Admitted or proved Sufficient to take the Case of the Said Complainant out of the General Rule of Law as Applicable to Executors for whether the Appearance of the Said James Taylor could have been procured or not was not as your Petitioner is Advised Material to the Suit: as the Said Suit could not be retarded or impeded thereby - Inasmuch as when a Debt is prosecuted against several Executors and are only appeareth and the Rest Make default the one appearing shall answer alone without his Companions. — And if Judgment pass for Complainant he shall have Execution Against him that Although hath pleaded and Against the others Named in the Bill of the Testators Goods as well as if they had all pleaded. — And your Petitioner therefore humbly sheweth that the Said Suggestion of an inconvenience which might result from Making the Said James Taylor a party to the Bill must Vanish if the explanation of the Law as regards this point be rightly understood and stated by your Petitioner: and which your Petitioner humbly trusts the Same is. — And your Petitioner further sheweth that it was not impossible but that the Said James Taylor might have come within the Jurisdiction of the Said Mayors Court during the Continuance of the Suit. and might have had something to plead for the Advantage of his Testators Estate to the Said Bill of the Complainant: and it is clear that the Law exacts that all the co-executors of a will shall be Made parties to a Suit - for these Manifest Reasons. — In

Order

Order that the Defence best or Most beneficial for the Testators Estate May be set up and that the Matter in controversy May be peremptorily Settled - and the Estate of a deceased person protected from the evil of a Multiplicity of Actions for one And the Same Debt. — And as to the other Matter alleged in the Said Bill of the Said Complainant — "that your "Petitioner after the decease of the said George Savage "And the departure of the said James Taylor from India "did possess himself of all and Singular the Goods and "Chattels Rights and Credits of the Said Andrew Mayen- "-die deceased. — and therefore that your Petitioner was alone "liable to the Suit of the Said Complainant. — " your Petitioner humbly Sheweth unto this Honble Court that the Same if it could operate after due proof being had thereof so as to Charge your Petitioner seperately with the Debt Sued for by the Said Complainant is Nothing More than a bare unsupported allegation of the Said Complainant and Not attempted to be Substantiated by Evidence, and is Moreover fully controverted and denied by your Petitioners Answer to the Said Bill — and your Petitioner therefore humbly — contendeth that his Said plea so impleaded by him ought to have prevailed with the Said Mayors Court. And the Said Suit in consequence should and ought to have been abated thereupon. —

Secondly — Because the Said Decree of the Said Mayors Court against your Petitioner is Made as if your Petitioner had been possessed of assets of and belonging to the

Estate

Estate of his Said Testator to Satisfy the Same Whereas your Petitioner humbly Sheweth unto this Honble Court that although the Said Bill of the Said Complainant did Suggest Assets to be in the hands of your Petitioner yet your Petitioner in his Said Answer to the Said Bill did Specially and Specifically deny Such fact Averring that he your Petitioner had not present Assets in his hands to pay off and Satisfy the Claim of the Said Complainant or any part thereof: or any thing belonging to the estate of the Said Andrew Stayendie deceased which might be converted into present Assets except certain Bonds or Securities for Money executed by his Highness the Nabob of the Carnatic to the Said Andrew Stayendie in Conjunction with others" And your Petitioner further Sheweth that the Said Complainant in his Replication thereto exhibited did take an Issue on Such fact as laid down by your Petitioner as relative to the Assets Suggested to be in the hands of your Petitioner in and by the Said Bill and did allege "that the Said Bonds or Securities for Money executed by his Said Highness the Nabob were a Species of Negotiable Paper and Could at all times be converted into Money and that your Petitioner ought to have converted the Same or to have Made Some arrangement thereon So as to have enabled your Petitioner to pay off the Complainants Demand" And your Petitioner further Sheweth to this Honble Court that the Said Complainant did

did Not Aver Nor did he any where attempt to prove or Shew that your Petitioner had any thing or things in his hands of and belonging to the Estate of his Said Testator in the Nature of Assets Nor did the Said Complainant set forth any Matter So as to raise a presumption that your Petitioner had property Money Goods or Chattles Rights or Credits of the Said deceased in his possession other than the Said Bonds or Securities for Money. — So that your Petitioner doth humbly contend that the only Issue in respect to Assets between your Petitioner And the Said Complainant Was — Whether the Said Bonds or Securities for Money Were or were not Such in the hands of your Petr And your Petitioner humbly hopes to Shew to the satisfaction of this Honble Court that the same were in no sort Assets So as to Charge your Petitioner with the Debt of the Said Complainant. — for your Petitioner humbly Sheweth unto this Honble Court. — that Debts due to a Testate Person whether by Bond Judgment Mortgage or in any way So ever are not considered as Assets in the hands of an Executor But as So Many Choses in action until the Sums Secured thereby shall be Recovered, Unless the Executor shall release the Debtor action or fail to put the Same into Suit So that any thing to be derived from Such Securities be lost to the Testators estate by the default and Negligence of the Executor. and Such

Doctrine

Doctrine in Respect to the personal estates of a Testator. is by a Variety of legal Precedents clearly fixed and established.— And your Petitioner further Sheweth that it is no Where averred or proved that your Petitioner hath Released any Debt Secured by the said Bonds executed by His said Highness the Nabob, or that he hath commenced And Released any Action touching the Same or that your Petitioner from the Nature of Such Bonds or Securities of Money could have put the Same in Suit.— And your Petitioner hath Shewn in his said Rejoinder that the said Bonds of his said Highness the Nabob could not have been urged in Suit in the said Mayor's Court: and your Petitioner doth therefore humbly contend that the said Bonds could not in any wise View of the Same or from any fault Negligence or Omission on the part of your Petitioner be considered and Adjudged as Assets in your Petitioners hands and therefore that your Petitioner Should not have been Charged therewith as he hath been in the said Decree of the said Mayor's Court and your Petitioner humbly Sheweth to this Honble Court that the Suggestion of the said Complainant that the said Bonds of His Highness the Nabob are a species of Negotiable paper and therefrom inferring that your Pet.r Should have converted the Same into Money: and that the Same if they could not be strictly deemed Legal that they were Equitable Assets is a Semblable rather than a true Deduction. from the Nature of the thing in question.— Your Petitioner doth Admit that the Bonds of His Highness the Nabob are Negotiable paper But your Petitioner humbly Sheweth that it is not Negotiable for its full and declared Value — i.e for the Apparent Value on the face of Such paper: but that it is Subject to a Considerable discount and your Petitioner is advised and so he doth firmly believe the Law to be that had your Petitioner converted the said Bonds into Money and as it is said by the Complainant that your Petitioner ought to have done that he your Petitioner in Such event would have been liable to the rest of the Creditors of his Testators Estate for such Sum or Sums as should appear to be the difference or differences between the Money — Actually received And the Money declared Secured in and by the said Bonds.— for it is incontrovertibly maintained by numberless authorities that if an Executor Sells his testators goods at an under Value he shall answer for the Real Value and if he release a Debt due to his testator though perhaps the Executor do not receive near so much as is due this Shall Charge him with the whole Debt or if even the Executor Submit the Debt due to his Testator to arbitration and the arbitrators award him less than what is apparently due.— Such will be in the eyes of the Law a devastavit in the Executor and will Subject him to the total Amount thereof.— And your Petitioner doth therefore humbly contend that Such being the Strict Law

Law is applying to Executors that your Petitioner was not bound under any equitable consideration to Change or alter the Nature of the Said Bonds so as to expose your Petitioner to an action of Waste at the Suit of the Creditors of his Said Testator — And your Petitioner hath attempted to Shew and trusts that he hath shewn that without changing or altering the Same that the Said Bonds were not Assets and that therefore in respect to the Said Bonds that your Petitioner was not Chargeable with the Debt of the said Complainant and that the Said Decree of the Said Mayors Court in the premises is therefore erroneous and ought to be Reversed —

Lastly — Because under the Circumstances Specially and particularly set forth by your Petitioner in his Said Answer the estate of the Said Andrew Mayendie was Subject to claims of a higher Nature than that of the Said Complainant to the liquidation Whereof the Assets of the Said Estate whensoever they Should be realized would be primarily Applicable — for your Petitioner Sheweth that he averred in his said Answer that Several of the Said Bonds of His Highness the Nabob having been jointly executed unto your Petitioners Said Testator the Said James Taylor George Savage and your Pett.r for Sums Jointly Advanced Were at the time of the decease of the Said Andrew Mayendie and at the time of filing the Said Answer pledged or Mortgaged for the Joint advantage and use of the Said Andrew Mayendie your

Pett.rs

Petitioners Said Testator And others Just before Mentioned And although the Said Complainant did not deny the fact of their being So pledged yet did he insist in his said Capacity that the circumstance of the Said Mortgage did not in any Wise affect the Right of him the Complainant But your Petitioner — humbly contends that the Said estate of the Said Testator being Charged With Such Said Several Mortgage Debts as described Was first bounden to the discharge of the Same before the Bonded Claim of the Said Complainant even had there been present Assets for the Satisfaction thereof And therefore the Said Decree of the Said Mayors Court which Would give a priority of payment to the demand of the Said Complainant in preference to the Said Mortgage Debts outstanding against the Estate of your Petitioners Testator / and for the discharge of which your Petitioner hath not Nor had at the time of answering the Said Bill any Means is further erroneous and Should and ought your Petitioner doth humbly contend to be Reversed by this Honble Court. —

For all which Reasons and Such others as may be offered at the hearing your Petitioner Most humbly prays this Honble Court will be pleased to Reverse the Said Decree of the Said

Mayors

Court and grant unto your Petitioner Such further and other Relief in the Premises as in the Wisdom of this Honble Court Shall Seem Meet.——

/Signed/ Emanuel Samuel
Solicitor for appellant

Mayors Court

Mayors Court
at
Madraspatnam

Tuesday the 2d. day of August
Anno Domini 1796.—

P.P.

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

Between Colly Lucas a Surgeon in the Service of the United Company of Merchants of England trading to the East Indies under their Presidency of Fort St George Complai=nant and James Call Executor in India of the last Will and Testament of Andrew Majendie deceased Defendant. —

Mayors Court

This Cause coming on to be heard and debated this day in the presence of the attornies on Reading the Complainants Bill with Copies of a Bond and an account Current annexed — the Defendants Plea and Answer — the Replication the Rejoinder the Interrogatories and Depositions on the part of the Complai=nant with an Original Bond annexed — On Hearing the Pleadings Made use of by the attornies and on due consideration had thereon This Court doth think fit to Order and Decree and doth — Accordingly

Court and grant unto your Petitioner Such further and other Relief in the Premises as in the Wisdom of this Honble Court Shall Seem Meet.—

/Signed/ Emanuel Samuel
Solicitor for appellant

Mayor's Court

Mayor's Court
at
Madraspatnam

Tuesday the 2d. day of August
Anno Domini 1796.—

P.S

Present,
James Daly Esquire Mayor.—
Andrew Ross & William Abbott
and Alexander Cockburn — Aldermen

Between Colly Lucas a Surgeon in the Service of the United Company of Merchants of England trading to the East Indies under their Presidency of Fort St George Complai=nant and James Call Executor in India of the last Will and Testament of Andrew Majendie deceased Defendant. —

Mayor's Court

This Cause coming on to be heard and debated this day in the presence of the attornies on Reading the Complainants Bill With Copies of a Bond and an account Current annexed — the Defendants Plea and Answer — the Replication the Rejoinder the Interrogatories and Depositions on the part of the Complai=nant With an Original Bond Annexed — On Hearing the Pleadings Made use of by the attornies and on due consideration had thereon This Court doth think fit to Order and Decree and doth Accordingly

Accordingly Order and Decree that the Defendant do pay unto the Complainant out of the Estate and Effects of Andrew Majendie deceased the full and Just Sum of Eight thousand Nine hundred and Ninety Seven Pagodas Twenty eight Fanams and Ninety Seven Cash / Pagodas 8997. 28. 97 / together With all Such Interest as now is or shall hereafter become due thereon until full payment is made also all Costs of this Suit. —

Thus
/Signed/ G. E. Atkin

A true Copy
/Signed/ Emanuel Samuel
Solr for Appellant—

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

In the Honble the Court of Appeals }

Between Colly Lucas a Surgeon in the Service of the United Company of Merchants of England trading to the East Indies under their Presidency of Fort Saint George Complainant —
and
James Ball Executor of the Estate and Effects of Andrew Majendie deceased Defendant —

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

Filed in my Office the 31st August 1796
J. Webbe clk

This Respondent admits that he did some time on or about the Seventh day of May and year of Our Lord One thousand Seven hundred and Ninety five. Exhibit and file his Bill of Complaint in the Mayors Court of Madraspatnam against the Petitioner as Executor as aforesaid and this Respondent does also admit he did therein and thereby amongst other things state That andrew Majendie late of Fort Saint George Merchant deceased did in his life time become indebted unto this Respondent in the sum of Two thousand Nine hundred and forty Pagodas Eighteen fanams and Seven Cash and for securing

Securing the payment thereof did execute unto this Respondent one Bond or Obligation in writing bearing date the first day of January One thousand Seven hundred and Seventy eight wherein and whereby he the said Andrew Majendie did become bound unto this Respondent in the penal Sum of Five thousand Eight hundred and Eighty Pagodas thirty Six fanams and fourteen cash Conditioned for the payment of the said Sum of Two thousand nine hundred and forty Pagodas eighteen fanams and Seven cash together with an Interest thereon at and after the rate of twelve perbent per annum and payable on demand and this Respondent does also admit he did shew that the said Andrew Majendie having executed unto this [illegible] the said before in part recited Bond or Obligation did depart this life without discharging the same or any part thereof and the said Sum of Two thousand nine hundred and forty Pagodas eighteen fanams and Seven cash together with Interest thereon was then due and owing unto this Respondent and that the said Andrew Majendie did in his life time duly make and publish his last Will and Testament in writing and therein and thereby did Nominate Constitute and appoint the said Petitioner James Taylor and George Savage in the Civil Service of the said United Company of Merchants under their said presidency of Fort Saint George executors thereof and who did some

Some time on or in about the Twentieth day of December which was in the year of Our Lord One thousand Seven hundred and eighty four prove the same in the said Mayors Court in its Ecclesiastical Capacity and Obtained probate thereof That the said James Taylor then resided in England or else where out of the Jurisdiction of the said Mayors Court and the said George Savage had some time ago departed this life and that the said Petitioner had possessed himself of all and singular the Goods and Chattels Rights and Credits of the said Andrew Majendie to a very Considerable amount and much more than sufficient to pay and satisfy unto this Respondent the said Sum of Two thousand nine hundred and forty Pagodas Eighteen fanams and Seven cash and the Interest due thereon Amounting to the Sum of Six thousand and fifty Seven Pagodas Ten fanams and Twenty cash and making together the Sum of Eight thousand nine hundred and ninety seven Pagodas Twenty Eight fanams and Twenty seven cash and that by reason of the premises the said Petitioner as the only Executor in India of the said Andrew Majendie was and stood justly and truly indebted unto this Respondent in the said Sum of Eight thousand nine hundred and ninety Seven Pagodas twenty Eight fanams and twenty seven cash as by the Copy of the said Bond and a Copy of an

account

Account Current to this Respondents said Bill annexed this Respondent admits he did say would appear and this Respondent does further admit that he did thereupon in and by his said Bill pray that the said Petitioner might be decreed to pay unto this Respondent the aforesaid Sum of Eight thousand nine hundred and Ninety seven Pagodas twenty eight fanams and twenty seven Cash with all such Interest as then was or should thereafter become due thereon also all Costs of the said Suit. —

And this Respondent does also admit that to his said Bill of Complaint the said Petitioner did — exhibit and file his Plea and Answer and did therein for plea state that the said Andrew Majendie Deceased in the Bill named did in his life time duly make and publish his last Will and Testament in writing and therein and — thereby did Nominate the said Petitioner James Taylor and George Savage Executors of his said last Will and — Testament and that some time on or about the Twentieth day of December which was in the year of Our Lord One thousand Seven hundred and Eighty four, the said James Taylor and George Savage together with the said Petitioner did prove the same in the said Mayors Court in its — Ecclesiastical Capacity and that the said James Taylor and

George

George Savage did take upon themselves the burthen of the Executorship of the said Will and did possess themselves together with the said Petitioner of the Goods and Chattels Rights and Credits of the said Andrew Majendie deceased That the said George Savage was since dead but that the said James Taylor who was stated in the said Bill to Reside in England or else where having taken upon himself together with the said Petitioner and the said George Savage since deceased the burthen and execution of the said last Will and Testament of the said Andrew Majendie deceased the said Petitioner pretended he was advised should have been made a party to the said Bill and therefore the said Petitioner did plead the same in abatement to this Respondents said Bill of Complaint and did humbly pray Judgment of the said Mayors Court whether he should make any further or other answer thereto and the said Petitioner in no sort waving the Benefit of his said Plea but wholly relying and insisting thereon for answer unto this Respondents Bill or to so much thereof as the said Petitioner pretended he was advised was material or necessary for him to make answer unto he the said Petitioner this Respondent admits did answer and say that the said Andrew Majendie late of Fort Saint George deceased might have been —

indebted

Indebted in his lifetime unto this Respondent in the Sum of Two thousand nine hundred and forty Pagodas eighteen fanams and Seven Cash Current Money of Madras and for ought the said Petitioner Knew to the Contrary for the Securing the payment of the sum aforesaid He might have executed unto this Respondent a Bond or Obligation in writing on the day and year Charged and alledged in this Respondents Bill yet the said Petitioner did alledge not being advised of the truth of the premises could not admit the same but left the proof thereof if such proof was in his power to be adduced thereafter by this Respondent and this Respondent admits the said Petitioner further said that the said Petitioner the said James Taylor and the said George Savage since deceased being the Executors nominated and appointed by and in the last Will of the late Andrew Mayendie deceased did duly receive probate thereof from the said Mayors Court in its Ecclesiastical Capacity at or about the time mentioned in this Respondents Bill and that the said James Taylor and George Savage together with the said Petitioner did take upon themselves the burthen of the Executorship of the said Will and did possess themselves together of all and Singular the Goods and Chattels Rights

Rights and Credits of the said Andrew Mayendie to a considerable Amount and to grater Amount than sufficient to pay and Satisfy the said Sum together with an Interest thereon conditioned in and upon the said Bond or written Obligation on which this Respondent had founded his Bill and this Respondent Admits the said Petitioner did further state that he had not present asserts in his hand of and belonging to the Estate of the said Andrew Mayendie deceased to pay off and Satisfy the claim of this Respondent or any part thereof if the same should thereafter appear and be proven to be well founded or any thing belonging to the said Estate which could be Converted into present asserts to liquidate the same except certain Securities forming being Several Bonds or writings Obligatory executed by his Highness the Nabob of the Carnatic to the said Andrew Mayendie in his life time in conjunction with the said James Taylor and the said Petitioner and with Several other Persons Joint Obligies mentioned in and upon the said Bonds or writing Obligatory and this Respondent does also admit the said Petitioner did state that the said Bonds or writings Obligatory executed to the said Andrew Mayendie in his life time James Taylor the said Petitioner and others were

were excecuted for and on the Joint account of the said Andrew Majendie James Taylor the said Petitioner and others and that the said Sums secured in and by the said Bonds or writings Obligatory were jointly advanced to his said Highness the Nabob of the Carnatic the Obligor in the said Bonds or writings Obligatory named by the said Andrew Majendie James Taylor the said Petitioner and others the said persons joint Obligees also mentioned in the said Bonds or writings Obligatory and that the said James Taylor and the said Petitioner and other Persons mentioned in the said Bonds or writings Obligatory with the said Andrew Majendie were a Company firm or concern formed and constituted for the purpose of furnishing and Supplying a certain Loan to his said Highness the Nabob and in which said Company firm or concern each and every of the said Obligees mentioned in the said Bonds or writings Obligatory as aforesaid bore a proportionate and distinct share according to his or their advances of Money or Credit in the said Stock or Capital to wards furnishing and Supplying the said Loan and this Respondent does also admit the said Petitioner did state that Several of the said Bonds or writings Obligatory so executed by his said Highness the Nabob as aforesaid stood at the time of the decease of the said

Andrew

Andrew Majendie and then stood pledged and mortgaged for the Joint benefit advantage and use of the said Company Firm or concern and that there were several Joint Debts of Specialty still due and owing from the said Company firm or concern unto Sundry and divers persons to a Considerable amount and that as such Bonds or writings Obligatory as were in the posfession of the said Petitioner in part belonging and appertaining to the Estate of the said Andrew Majendie Deceased were charged with the Joint Debts of the concern and that as several other persons were truly and bonafide interested in the same and that as the said Bonds or writings Obligatory could not then be converted into money but at a Considerable discount on the Sums conditioned by the same the said Bonds of his Highness the Nabob of the Carnatic being below Par on the integral Sum for which they were Executed and Negotiated the said Petitioner alledged he was advised that he could not safely convert and Change the same into Change or present money without being accountable to all the Parties Interested and Concerned in the same for which losses or loss as might arise from the conversion of the same into immediate money and this Respondent admits the said Petitioner for further Answer did state That he was not Indebted to this

Respondent

Respondent as one of the Executors in India of the late Andrew Mayendie deceased in the Sum of Eight thousand nine hundred and ninety Seven Pagodas twenty eight fanams and twenty seven Cash as Charged in the said Bill or any other Sum or Sums of Money whatsoever and for the reasons matters and things in the said Petitioners Plea and Answer therein before Contained and Setforth And this Respondent does also Admit that to the said Petitioners said Plea and answer this Respondent did exhibit and file his Replication and did therein and thereby amongst other things State that his Bill of Complaint was good true certain and Sufficient in the Law to be answered unto and that the said Petitioners said Plea and Answer was very evasive and insufficient to be by this Respondent Replied unto And this Respondent does also admit for further Replication he did say that in and by his said Bill of Complaint he did setforth the Names of the several Executors who had been appointed by the said Andrew Majendie in and by his said Last Will and Testament and who had proved the same in the said Mayors Court in its Ecclesiastical Capacity and this Respondent admits he did also shew that one of the said Executors / that was to say / George Savage had long since departed this life and that another of the said Executors that was to say James Taylor

Taylor was gone beyond sea and was not within the Jurisdiction of the said Mayors Court and so this Respondent did aver the fact to be and did humbly Submit to the said Mayors Court that by so doing he did all that was incumbent on him to do for that where one Executor departs from the Jurisdiction of the Court it was not necessary to make him a party to a Bill of Complaint brought against the Estate of his Testator because no process to enforce his appearance could Issue against him and that it was the Executor or Executors residing within the Jurisdiction who was or were the party or parties against whom such Bill was to be brought as against him or them only that process could Issue so as to procure an appearance and this Respondent does also admit he did further State that in and by his said Bill of Complaint he did shew and so the truth was and is that upon the death of the said George Savage and the departure from India of the said James Taylor the said Petitioner did posess himself of all and Singular the Goods and Chattels Rights and Credits of his Testator the said Andrew Majendie and therefore that it was to the said Petitioner alone to whom this Respondent had a Right to look for Payment of his Demand and Consequently it was the said Petitioner alone whom this Respondent ought to

sue

Respondent as one of the Executors in India of the late Andrew Majendie deceased in the Sum of Eight thousand nine hundred and ninety Seven Pagodas twenty eight fanams and twenty seven Cash as Charged in the said Bill or any other Sum or Sums of Money whatsoever and for the reasons matters and things in the said Petitioners Plea and Answer therein before Contained and Setforth And this Respondent does also Admit that to the said Petitioners said Plea and answer this Respondent did exhibit and file his Replication and did therein and thereby amongst other things State that his Bill of Complaint was good true certain and Sufficient in the Law to be answered unto and that the said Petitioners said Plea and Answer was very evasive and insufficient to be by this Respondent Replied unto And this Respondent does also admit for further Replication he did say that in and by his said Bill of Complaint he did setforth the Names of the several Executors who had been appointed by the said Andrew Majendie in and by his said Last Will and Testament and who had proved the same in the said Mayors Court in its Ecclesiastical Capacity and this Respondent admits he did also shew that one of the said Executors / that was to say / George Savage had long since departed this life and that another of the said Executors that was to say James Taylor

Taylor was gone beyond sea and was not within the Jurisdiction of the said Mayors Court and so this Respondent did aver the fact to be and did humbly Submit to the said Mayors Court that by so doing he did all that was incumbent on him to do For that where one Executor departs from the Jurisdiction of the Court it was not necessary to make him a party to a Bill of Complaint brought against the Estate of his Testator because no process to enforce his appearance could Issue against him and that it was the Executor or Executors residing within the Jurisdiction who was or were the party or parties against whom such Bill was to be brought as it was against him or them only that process could Issue so as to procure an appearance and this Respondent does also admit he did further State that in and by his said Bill of Complaint he did shew and so the truth was and is that upon the death of the said George Savage and the departure from India of the said James Taylor the said Petitioner did possess himself of all and Singular the Goods and Chattels Rights and Credits of his Testator the said Andrew Majendie and therefore that it was to the said Petitioner alone to whom this Respondent had a Right to look for Payment of his Demand and Consequently it was the said Petitioner alone whom this Respondent ought to

sue

Sue for the recovery thereof and thereupon this Respondent did humbly insist that the said Petitioners said Plea in abatement was altogether ill advised Misconceived and unfounded and this Respondent did therefore pray that the same might be Over ruled with Costs — and this Respondent does admit that in reply to the answer of the said Petitioner he did State that the said Petitioner instead of answering in the manner he had done Regarding this Respondents Demand on the Estate of his the said Petitioners Testator ought to have answered positively For that the said Petitioner did well know that his Testator did for the Securing the payment unto this Respondent of the Sum of Two thousand nine hundred and forty Pagodas Eighteen fanams and Seven Cash — Execute unto this Respondent the Bond in Question for that in the Inventory of the Estate of the said Andrew Majendie delivered into the said Mayors Court in its Ecclesiastical Capacity by the said Petitioner and the other Executors therein above named the said Bond was mentioned amongst other Bonds then outstanding against the Estate of the said Andrew Majendie and therefore the said Petitioner instead of saying "that not being — advised of the truth of the premises he could not admit the

the same but did leave the proof thereof if such proof was in his power to be adduced thereafter by the Complainant" was bound as this Respondent did humbly Submit to the said Mayors Court to have admitted the same and although the said Petitioner in his said answer did State that he had not then afsets in his hands of and belonging to the said Estate of the said Andrew Majendie to pay off and satisfy the Claim of this Respondent or any part thereof or any thing belonging to the said Estate that could be Converted into present afsets to liquidate the same yet he admitted to have in his posfesion certain securities for money being several Bonds or writings Obligatory executed by his Highness the Nabob of the Carnatic to the said Andrew Majendie in his life time in conjunction with him the said Petitioner the said James Taylor and several other persons and this Respondent does admit he did also state that the said Bonds or writings Obligatory so executed by his said Highness the Nabob were a species of negotiable paper and could at all times be converted into money And that it was incumbent on the said Petitioner in the discharge of his duty as Executor of the said Andrew Majendie to have Converted the same into money or to have made such arrangement thereon as was to have — enabled

enabled him to pay off and Satisfy the Demand of this Respondent thereon that the Shewing of the said Petitioner in the said Answer Contained regarding a Concern or firm in which the said Andrew Mayendie was engaged in his life time had nothing to do with the matter in Question and the more particularly as it appeared by his own Shewing that the said firm or concern had long since been dissolved by the death of two of the Parties belonging thereto that was to say the said George Savage and the said Andrew Mayendie and by his said Highness the Nabob having Executed Bonds on account of the advances made to him by the said parties and which as this Respondent had already shewn were negotiable and could be at all times converted into Money That although the said Petitioner had in and by his said answer stated That Several of the said Bonds so Executed by his said Highness the Nabob stood at the time of the decease of the said Andrew Mayendie and then stood pledged or mortgaged for the Joint benefit advantage and use of the said Company Firm and concern yet the said Petitioner had not Shewn that they were mortgaged for their full value and it was evident that their remaining in pledge or mortgage could not longer be for the Joint Benefit and Advantage of a Company firm or concern that had long since ceased to exist and

and that as to the suggestion in the said Petitioners said answer Contained that there were several Joint Debts of specialty still due and owing from the said Company Firm or concern unto Sundry and divers persons to a Considerable Amount this Respondent did Submit to the said Mayors Court that the same was irrelivant as having no manner of Connection with the matter in Question for this Respondent had brought his Suit for the recovery of a Sum of Money secured to him by the Bond of the said Petitioners Testator and not against persons forming a Company Firm or Joint Concern that it might be that the said Bonds of his Highness the Nabob were below par and that it was probable that they never might be nearer Par then at that time But that it no just Reason for with holding from this Respondent the payment of his just Demand as this Respondent Admits he did say he was advised that the personal Estate of a deceased person was to be disposed of either by appresement or Public Sale so soon as conveniently might be to the Satisfaction of the just Claims of his Creditors and that if the said Petitioners should be permitted to retain in his posession the said Bonds of his said Highness the Nabob untill all

parties

parties interested therein gave their consent to the disposal thereof this Respondent might never receive any manner of Satisfaction on account of his just claim for the Recovery of the Account whereof he had brought his present Suit and this Respondent Admits he did alledge that notwithstanding the said Petitioners Qualified denial of being indebted unto this Respondent in the Sum sued for this Respondent did aver that the said Petitioner as Executor as aforesaid did Stand justly and truly indebted unto this Respondent in the Sum of Eight thousand nine hundred and Ninety Seven Pagodas twenty Eight fanams and Twenty seven Cash And this Respondent does also admit that to his said Replication the said Petitioner did Exhibit and file his Rejoinder and did therein Amongst other things state That his Plea And answer and the several matters and things therein Contained were good true and sufficient in the Law to be replied unto and did therein pretend this Respondents said Replication was very evasive and insufficient to be by the said Petitioner Rejoined unto and this Respondent does admit that the said Petitioner might have stated that although this Respondent as he had alledged in his said Replication might have setforth and shewn in and by his said Bill of Complaint the nams of Several the Executors who had been appointed by the said Andrew Majendie in and by his last will and Testament and that they had proved the same in the said Mayors Court in its Ecclisiastical Capacity and although he might have shewn that one of the said Executors namely George Savage had departed this life previous to the filing of the said Bill and that Another of the said Executors James Taylor had gone beyond the Sea and was not within the Jurisdiction of the said Mayors Court Yet the said Petitioner pretended he was advised that this Respondent in his said Bill Did not do as he had contended all that was incumbent on him to do in as much as he did not make the said James Taylor as in Law he ought to have done as the said Petitioner also pretended he was well advised a party to the said Bill and although it might be true that the appearance of the said James Taylor to the said Bill could not have been enforced by any process out of the said Mayors Court by reason of his residence without the Jurisdiction thereof Yet the said Petitioner pretended he was advised that the said

James

James Taylor being a Co Executors with the said Petitioner ought to have been made a party to the said Bill in Order that he might have been concluded by the Decree of the said Mayors Court and that the Estate of the said Deceased might not be rendered liable to several actions for one and the same alledged debt and — although the appearance of the said James Taylor could not have been procured on the Instant unto the said Bill yet the said Petitioner did pretend it was not impossible but that it might have been Obtained before a Decree could have been had by this Respondent thereon and more specially as the Appearance or non appearance of the said James Taylor would not in — any sort or wise have impeded or retarted this respondent in the prosecution of his said Action as against the said Petitioner and this Respondent admits that the said Petitioner might have stated that although this Respondent did allege in his said Bill / and did insist in his said Replication that the said allegation is true / that on the Death of the said George Savage and on the departure of the said James Taylor from India That the said Petitioner did posses himself of all and Singular the Goods and Chattels Rights and Credits of his said

Testator

Testator the said Andrew Majendie and that the said — Petitioner therefore alone was liable to the Debt of his said Testator Yet the said Petitioner pretended he was advised that he was by no means liable solely and Singularly to the action of this Respondent for the said Debt — pretending as this Respondent had not charged alledged or stated at the time of this Respondents exhibiting his said Bill Against the said Petitioner That he the said Petitioner then and at that time stood — possessed of Assets sufficient for the discharge of the Debt of this Respondent and the said Petitioner said as in his said answer he had Shewn at the time of this Respondents filing his said Bill that he the said Petitioner had not present assets in his hands of and belonging to the Estate of the said Andrew Majendie Deceased to pay off and Satisfy the claim of this Respondent or Any part thereof and wherefore the said Petitioner might have pretended that his said Plea was well advised and founded and not Misconceived as this Respondent had stated but did also pretend it was Good and Sufficient to all Intents and purposes of Law and that the said Petitioner ought thereafter to have the full and legal benefit and Advantage thereof to

which

which he was intitled And this Respondent admits that the said Petitioner might in further Rejoinder say his ſaid Said Answer to so much of this Respondents said Bill as the said Petitioner pretended he had been advised that it was material or necessary for him to make answer unto that he the said Petitioner had Answered in as positive and absolute amanner as was required of him as Executor as aforesaid and more especially as to the said Demand of this Respondent on the Estate of the said Petitioners Testator and this Respondent admits the said Petitioner might have said that he was by no means Obliged to confess the Right of action of this Respondent so as to subject the Estate of his said Testator to the Demand of this Respondent in and by virtue of the said Bond or Obligation Executed by the said Petitioners Testator in his life time and at the time Mentioned in the said Bill and this Respondent does allow the said Petitioner did Admit that in the Inventory delivered into the said Mayors Court in its Ecclesiastical Capacity by the said Petitioner and the Other Executors in the said Replication named the said Bond was mentioned amongst other Bonds then appearing to outstand Against the Estate of the said

Andrew

Andrew Hayendice But the said Petitioner did pretend by Reason thereof that he was precluded from Demanding such proof of the Execution of the said Bond as was Demandable by Law For the said Petitioner did pretend in pursuance of his Office as Executor it was his Duty to require legal Satisfaction and proof Touching all and every claim Against the Estate of his said Testator and that if he had admitted the Execution of the said Bond by his said Testator which this Respondent admits he insisted that he ought to have done and pretending that it had thereafter appeared that the same was difficient in any of the Solemnities proper and common to an Instrument of the nature of a writing Obligatory or pretending if it should have appeared on the same or was thereafter apparent that the said Bond had been released or discharged or had been in part Released or Discharged then and in such Case the said Petitioner pretended he had been advised that he would have Rendered himself liable to the suit of Other Creditors who might have been injured by the said Petitioners Admission in the premises And this Respondent admits the said Petitioner might have advanced that he was as much bound in Conscience as Executor as aforesaid as he conceived in Personal Justice to

Require

Require the proof in Question and this Respondent Admits the said Petitioner Did further state that although he had admitted in his said Answer that he had in his hands or power certain Securities for money, to wit, Several writings Obligatory Executed by his Highness the Nabob of the Carnatic to the said Andrew Majendie in his lifetime in conjunction with the said Petitioner the said James Taylor and several other persons Joint Obligees in the said Bonds or writings Obligatory named yet the said Petitioner pretended to say from the admission of the said Bonds or writings Obligatory being in his the said Petitioners hands he had not made himself chargeable or liable with or to the Action of this Respondent also pretending that the said Bonds or writings Obligatory were not afsets or in the nature of afsets and this Respondent admits the said Petitioner said although the Sums secured in and upon the said writings Obligatory was presently due to the several Obligees in the said writings Obligatory named yet his said Highness the Nabob the Obligor in the said writings Obligatory bounden was unable or disinclined to discharge the said Sums and this Respondent admits that the said Petitioner further said that he had not any legal remedy as Executor as aforesaid or knew not of any legal remedy to recover the said Sums Conditioned in and upon the said writings Obligatory of his said Highness the Nabob as aforesaid and this Respondents does also admit the said Petitioner said until the said Bonds or writings Obligatory Should be discharged or so much thereof as to Satisfy this Respondents Demand on and Against the said Petitioner as Executor as aforesaid he the said Petitioner was not liable to the Suit of this Respondent in and by virtue of the said Bond alledged to have been Executed by the said Petitioners said Testator and this Respondent does also admit the said Petitioner did further state that the said Bonds or writings Obligatory were not a species of paper absolutely negotiable and could not at all times be converted into money as was alledged by this Respondent in his said Replication But the said Petitioner did admit that the said Bonds or writings Obligatory might be Conditionally transferred yet the said Petitioner pretended he had Shewn in and by his said Answer that the Bonds of his said Highness the Nabob in his said Answer Mentioned Could not be Converted into Money but at a Considerable discount

on

on the Sums Conditioned in and by the same the said Bonds being below Par on the Entire and whole Sum for which they were Executed and this Respondent admits the said Petitioner said as Executor as aforesaid he was advised that he had no right to Compound the Debts of his said Testator which the Transfer of the said Bonds under the discount to which they were than Subject would Amount to in Contemplation of Law and in the event of a Composition of the said Debts by the said Petitioner due to his said Testator on the said Bonds if the same Should be Compounded by the said Petitioner throughthe means of a transfer he the said Petitioner pretended he was further advised that he would be liable to the Credits of the said Andrew Mayendie for any and every difficiency Occasioned by the said Transfer and this Respondent admits that the said Petitioner did State that the said James Taylor the said Petitioner and several other Persons being Joint Obligees in the said Bonds or writings Obligatory Mentioned with the said Andrew Mayendie He the said Petitioner Said it would be unreasonable and unjust that he the said Petitioner should be Compelled to injure his Own property and the property of the said James Taylor and the said Several persons Joint Obligees as

as aforesaid as he undoubtedly would do if he were Compellable to Convert the said Bonds into immediate money under the Circumstances of the said Discount and this Respondent does also admit the said Petitioner said that his said Office of Executor could not Subject him to the loss of his own property and render him liable to action of others Jointly Interested in the said Bonds for such Injury as might accrue by the Transfer of the same as the said Petitioner pretended he was advised he would be rendered liable if he Converted or transferred the same for less then the principal Sum and Interest Conditioned in and upon the same and this Respondent does also admit the said Petitioner in further rejoinder said that he did admit that the personal Estate of a Deciased person was to be disposed of as soon as Conveniently might be to the Satisfaction of the just Claims of his Creditors and the said Petitioner pretended he had done and was willing to do all in his power to that End and Effect But the Estate of the said Petitioner said Testator being so blended and Connected with the Interests of others and being so Circumstanced as the said Petitioner had set forth in his answer to this Respondents said Bill that he the

Said

Said Petitioner pretended he had not then been able nor had he any knowledge how he could be able to place it in a more advantageous situation than in which it stood to wit/ in Expectance of the due discharge of the said Bonds in the Course of Payment to which they were Subject and the said Petitioner notwithstanding what was alledged by the said Petitioner ought to have converted the said Bonds into money or to have made such arrangements thereon as to have enabled him to pay off and Satisfy the Demand of this Respondent and the said Petitioner pretended to state that was not by reason of the premises Obliged or bound to convert the same into money so as to Satisfy the Individual alledged debt of this Respondent pretending in as much as the conversion of the same into money might render him liable to an action of Waste might injure his own property and the property of Several others being Connected with the Estate of the said Andrew Mayendie as the said Petitioner had therein before shewn and also pretended it might further deprive Several other Speciatly Creditors Claimable in alike degree with this Respondent of the several debts due to them Respectively from the Estate of the said Petitioners Testator and this Respondent admits the said Petitioner did further state that notwithstanding what this Respondent had setforth in his said Replication respecting the said Concern or firm in which the said Petitioner in his said answer had shewn that the said Andrew Mayendie was engaged in his life time together with the said Petitioner and others thereby pretending that the said shewing of the said Petitioner in his said answer and the several matters and things as Related therewith did appertain and belong and were extremely pertinent and relevant to the matter in Question and Lastly this Respondent admits the said Petitioner did pretend to state as in and by his said answer he had already attempted to shew that he was not indebted unto this Respondent as Executor as aforesaid either in the Sum sued for or in any other Sum or Sums and for the Reasons matters and things in his said Plea and answer and in his said Rejoinder impleaded setforth and Contained.

And this Respondent does admit That upon the aforerecited pleadings being had in the said Cause Issue did Join and Rules did pass for the Examination of Witnesses were Examined Accordingly on the part and behalf of this Respondent and this Respondent further admits.

Admits that Masdamony Moodaliar Dubash Examined on the part and behalf of this Respondent did to the Second Interrogatory depose that he had looked at the Exhibit then produced and Shewn to him at the time of his Examination marked with the Letter A. and purporting to be a Bond from the said Petitioners Testator Andrew Mayendie to this Respondent for the Sum of Two thousand nine hundred and forty Pagodas eighteen fanams and seven Cash and bearing date the first day of January One thousand Seven hundred and Seventy Eight and this Respondent admits The Deponent said that he had seen the said andrew Mayendie but was not well Acquainted with him that he did not Recollect to have seen the said Andrew Mayendie write nor was he well acquintid with the manner and Character of the said Andrew Mayendies hand writing and this Respondent also admits to the Third Interrogatory the said Witness did depose that he had looked Again at the said produced Exhibit and declared that he believed the name Andrew Mayendie appearing to be set and Subscribed Opposite to the Seal at the foot of the said Exhibit to be of the proper hand

hand writing of the said Andrew Mayendie because he had seen the same Signature affixed to Bonds and Other papers belonging to the concern of Mayendie Savage Call and Taylor and this Respondent also admits that Thomas Coke a Captain in the Service of the Honble East India Company to the fourth Interrogatory on the part and behalf of this Respondent did depose that he had looked at the Exhibit produced and shewn to him at the time of his Examination and marked with the Letter A and purporting to be a Bond from the said Petitioners Testator to this Respondents for this Sum of Two thousand Nine hundred and forty Pagodas eighteen fanams and seven Cash and bearing date the first day of January in the year of Christ One thousand Seven hundred and Seventy Eight that he was in the life time of Robert Kelly / who was late a Colonel in the Service of the Honble the united Company of Merchants of England trading to the East Indies under their Presidency of Fort Saint George well Acquinted with and personally known to him and that he had often Received Letters from him and seen him write and thereby Obtained a Knowledge and

and Remembrance of the hand writing of the said Robert Kelly and this Respondent does also Admit to the fifth Interrogatory the said Witness did depose that he had looked again at the said produced Exhibit and declared that he believed the Signature Robert Kelly appearing to be set and subscribed as a Witness to the said Bond was of the proper hand writing of the said Robert Kelly whose name appeared as one of the Subscribing Witnesses to the said Bond so produced before the Deponent at the time of his Examination And this Respondent admits that Peter Mafoey Cafsin Merchant to the fourth Interrogatory on the part and behalf of this Respondent did depose that he had looked at the Exhibit produced and shewn to him at the time of his Examination marked with the Letter A: and purporting to be a Bond from the said Petitioners Testator to this Respondent for the Sum of Two thousand Nine hundred and forty Pagodas Eighteen fanams and Seven Cash and bearing date the first day of January One thousand Seven hundred and Seventy eight that he was in the life time of Robert Kelly who was late a Colonel in the Service of the Honble the united Company of Merchants of England trading to the East Indies under their precidency of Fort St. George well

well Acquainted with and personally known to him and had seen him write and frequently received Letters from him and thereby had Obtained a Knowledge and Remembrance of the manner and Character of the hand writing and to the fifth Interrogatory this Respondent also admits the said Witness did depose that he had looked Again upon the said produced Exhibit and declard that the Signature Robert Kelly appearing to be set and subscribed as a Witness to the said Bond was to the best of his knowledge and belief of the proper hand writing of the said Robert Kelly whose name appeared as one of the Subscribing Witnesses to the said Bond so produced before him at the time of his Examination and this Respondent also admits that John Maddox to the Sixth Interrogatory on the part and behalf of this Respondent did depose that he was in the life time of Charles Bromley late an attorney in the Honorable the Mayors Court well acquainted with and personally known to him and had often seen him write and was thereby well acquainted with the manner and Character of his hand writing and to the seventh Interrogatory the said Witness did depose that he had looked at the Exhibit produced and shewn to him at the time

of

of his Examination Marked with the Letter A purporting to be a Bond from the said Petitioners Testator Andrew Mayendie to this Respondent and declared that the Signature Charles Bromley appearing to be set and Subscribed as one of the Subscribing Witnesses to the said Bond was of his the said Charles Bromleys own hand writing and this Respondent does also Admit that Domingos Johnston to the Sixth Interrogatory on the part and behalf of this Respondent did depose that he was in the life time of Charles Bromley late an attorney in the Honorable the Mayors Court at Madraspatnam well Acquainted with and personally known to him that he had frequently seen the said Charles Bromley write and was thereby familiarised and well acquainted with the manner and Character of his hand writing and this Respondent also admits to the seventh Interrogatory the said Witness did depose that he had looked at the Exhibit produced and shewn to him at the time of his Examination marked with the Letter A and purporting to be a Bond from the said Petitioners Testator Andrew Mayendie to this Respondent and declared that the Signature Charles Bromley appearing to be set and Subscribed as one of the Subscribing Witnesses to the said Bond was of the proper

Proper hand writing of the said Charles Bromley and this Respondent does also admit That after Examination of the said Witnesses Publication did pass in the said Cause and the same was set down to be heard by the said Mayors Court and this Respondent admits that the same came on to be heard accordingly before the said Mayors Court on Tuesday 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 the said Petitioner Do pay unto said Andrew Mayendie Deceased the full and just Sum of Eight thousand nine hundred and Ninety Seven Pagodas Twenty eight fanams and Ninety seven Cash together with all such Interest as then was or should thereafter become due thereon untill full payment should be made also all Costs of this Suit as by Copy of the said Decree annexed to the said Petitioners said Petition and appeal for the inspection of this Honble Court and to which this Respondent begs leave to refer and prays that the same may be taken as part of this his Answer the

Original

Original being in Pssefsion of the said Petitioner Reference being had thereto may more fully and at large appear by which said order and Decree of the said Mayors Court this Respondent doth deny that the said Petitioner is as is untruly alledged in his said Petition and appeal very materially injured and Aggrieved as this Respondent is advised the said Mayors Court could not Decree otherwise than as before setforth.—

And this Respondent in answer to the first reason afsigned by the said Petitioner for appealing from the said Decree of the said Mayors Court does deny the afsertion by the said Petitioner therein charged and in part as follows "to wit" —

"Because the said Mayors Court at the time of making "the said Decree in the premises had not before them the proper and necefsary parties Against whom the said Court "might be Authorized under the particular circumstance of your Petitioners Case to Decree therein "the foregoing in part recited first reason adduced by the said Petitioner together with the Subsequent Matter in the said Petitioners said Petition and appeal afsigned as Cause of appeal as aforesaid this Respondent does maintain is altogether fallacious and unsupported in Law or in Equity as this Respondent

547

Respondent will herein and hereafter clearly shew to the Satisfaction of this Honble Court but this Respondent does admit as charged by the said Petitioner that he did file his Bill of Complaint in the Honble the Mayors Court for the recovery of a certain Principal Sum and Interest not only as by the said Petitioner expreſsed said to be secured to this Respondent but Actually and bona fide secured by a Bond or written Obligation executed in the life time of the said Petitioners said Intestate unto this Respondent and this Respondent does also admit that he might also in his said Bill have charged that previous to the decease of the said Andrew Majendie He the said Andrew Majendie did duly make and Publish his last Will and Testament in writing and did thereby and therein Nominate Constitute and appoint the said Petitioner together with James Taylor and George Savage since deceased as Executors thereof And this Respondent does also admit that he might in his said Bill of Complaint so filed and Exhibited in the said Mayors Court as aforesaid have further charged that the said Petitioner and the said James Taylor and George Savage did prove the said Will ~~on the said~~ in the said Mayors Court

Court in its Ecclesiastical Capacity and did Accordingly
Receive probate thereof but this Respondent by Reason of
the Premises before set forth and alledged by the said
Petitioner does not any way allow or admit that the said
James Taylor ought to have been made a party with the
said Petitioner to this Respondents said Bill of Complaint
And this Respondent does deny the Argument Advanced
by the said Petitioner in support thereof to carry any
weight with it as the said Petitioner does pretend confidently
to Assert "that all the Executors in a Will named together
" and not singly form a legal Representation of the person
" of the Testator "this most undoubtedly is an erroneous
principal as it tends to shew that all the Executors
named in a Will whether or not the whole of them
accept the trust or Whether one singly should prove
the Will of the Testator still According to the said
Petitioners mode of reasoning all the Persons Named in
the Will are to be considered as the Representatives of
the Testator this surely cannot be the meaning of the
Law for this Respondent is advised if one Executor appears
and proves the Will although the other Refuses he may
afterwards prove the Will and surely until he has so done
he cannot be considered as the Legal representatives of the
deceased

5:1

Deceased and Consequently could not join in Suits with the
other Executor until he had Regularly proved the said
Will of his Testator as it is not the bear Nomination by
the Testator only which constitutes a Person his represen-
tative but the mode and form prescribed by Law
added to the Nomination of the Testator which occasions
a legal Representation to take place but this
Respondent admits that all such Executors as may
have proved the Will of their Testator ought regularly
to join in Suits against others but this Respondent
does deny that the same rule holds regarding Suits
brought by others against them and this Respondent
will in due time state to this Honble Court his
Reason for such his denial And this Respondent
admits that the said Petitioner to the Bill of
Complaint of this Respondent did Plead that the
said James Taylor and George Savage did together
with the said Petitioner prove the Will of the said
Andrew Majendie Deceased and did Justly with the
said Petitioner take upon themselves the burthen of
the Execution of the said Will and did possess
themselves together with the said Petitioner of the
Goods and Chattels Rights of the said Andrew
Majendie

Majendie deceased that the said George Savage was since deceased But that the said James Taylor who was stated in this Respondents Bill to reside in England or else where ought to have been made a Party Defendant with the said Petitioner to the said Bill and the said Petitioner this Respondent does also Admit did plead the said matters in abatement thereof But this Respondent is advised that the inference and reasoning drawn and adduced by reason thereof touching the Subject of the said Plea does not in every case apply but is merely to be taken as a general principal attendant upon common cases and does by no means bind or conclude the present case but is pertinent only in such cases where the Executors are together and upon the spot or when they may happen to be within the Jurisdiction of the Court where Process may have Issued without trouble or inconvenience against both of them and this Respondent is Advised that the Plea offered by the said Petitioner was for the sake of delay and as such opposed to this Respondents Cases merited the attention it received from the said Mayors Court and the said Petitioner in and by his first Reason for appealing from the Decree of the said Mayors Court does not attempt to shew any substantial Substantial reason why the said James Taylor ought to have been made a party to the present suit but Solely rests his Argument upon an immaterial Issue which he endeavours to establish as a matter of form only now this Respondent will as he before premised he would do shew to this Honorable Court that he has been strictly Observant with regard to the Law attendant upon Cases similar and ahologeous to the Case of this Respondent as this Respondent will make appear by a Case cited and an Opinion delivered by the Lord Chancellor thereon and which is laid down in Chancery Presidents Case 75. Cowsland vers Cely And this Respondent is advised the Reasoning advanced by the said Petitioner respecting the possibility that the said James Taylor might have come within the Jurisdiction of this Mayors Court during the Continuance of the Suit and that he might have had some thing to plead for the advantage of his Testators Estate to the said Bill of this Respondent is in itself a very immaterial circumstance and on worthey the attention of this Respondent And this Respondent admits that he might in said Bill have alledged that the said Petitioner after

after the decease of the said George Savage and the departure of the said James Taylor from India did possess himself of all and Singular the Goods and Chattels Rights and Credits of the said Andrew Mayendie deceased and therefore that the said Petitioner was alone liable to the Suit of this Respondent and this Respondent notwithstanding what has been urged by the said Petitioner to the Contrary thereof does maintain the fact so to be for in and by his said Answer to this Respondents said Bill of Complaint the said Petitioner doth therein and thereby unequivocally admit and allow that he does retain some of the Bonds of His Highness the Nabob of the Carnatic Executed in favor of the said Petitioner his Testator the said Andrew Mayendie and others the Obligees therein Named and that others of the said Bonds so by his Highness the Nabob Executed in favor of the said Petitioner his Testator the said Andrew Mayendie and others the Obligees therein also named now stand Pledged and Mortgaged for the Joint and use of the several and Respective persons intitled to benefit thereby Among whom is the said Petitioners said Testator the said Andrew Mayendie This Respondent is therefore advised that such the declaration of the said Petitioner in his said Answer contained must Fully

Substantiates

Substantiates what was by him alledged in and by his said Bill of Complaint Relative to the said Petitioner now and at this times Possessing himself as Executor as aforesaid of all and Singular the Goods Chattels Rights and Credits of the said Andrew Mayendie Deceased This Respondent doth therefore in answer to the latter part of the said first reason aduced by the said Petitioner deny that his said Plea so by him impleaded ought to have prevailed with the said Mayors Court and that the said Suit in Consequence should and ought to have been abated thereupon as such the doctrine by the said Petitioner set forth would tend to Operate Innatically in Opposition to the opinion of the Lord Chancellor in a Case Strictly Analogous to this Respondents Reference being thereunto had the same will to this Honorable Court morefully and at large appear

This Respondent in answer to the second reason by the said Petitioner Assigned is advised that the Decree of the said Mayors Court was Strictly conformable to Equity and Justice in as much as this Respondent exhibited and filed his Bill of Complaint in the said Mayors Court against the said Petitioner as the acting Executor in India of the said Andrew Mayendie deceased this Respondent having been informed and advised that

the

the said Petitioner hold Securities for money to a very large and Considerable Amount and a certain portion or part of which of right belonged to the Estate of the said Petitioners said Intestate and this Respondent being well advised that such said Securities for Money so held and retained by the said Petitioner was then and at all times negotiable and as such to be deemed and taken as Cash at the regular stipulated discount of the day and under these circumstances from a fact so very Notorious this Respondent is advised such said specious of negotiable Paper can be considered in no other light or point of view than as afsets in the hands of the said Petitioner apperlaining and belonging to the Estate of the said andrew Majendie This Respondent admits that the said Petitioner in his said answer to the said Bill of this Respondent did specially and specifically deny such fact avering that he the said Petitioner had not present afsets in his hands to pay off and Satisfy the claim of this Respondent or any part thereof or any thing belonging to the Estate of the said andrew Majendie deceased which might be converted into present afsets except certain Bonds or Securities for money executed by his Highness the Nabob of the Carnatic to the said Andrew Majendie in Conjunction

Conjunction with others and this Respondent admits in his Replication thereto exhibited he did take an Issue on such matter as laid down by the said Petitioner relative to the afsets suggested to be in the hands of the said Petitioner in and by the said Bill and did alledge that the said Bonds or securities for money executed by his said Highness the Nabob were a species of negotiable Paper and could at all times be converted in to money and that the said Petitioner ought to have converted the same or to have made some arrangement thereon so as to have enabled the said Petitioner to pay off this Respondents Demand And this Respondent denies as is setforth by the said Petitioner that he did not aver that the said Petitioner had any thing or things in his hands of and belonging to the Estate of his said Testator in the nature of Afsets for this Respondent in and by his said Bill of Complaint did Among other Matters and things therein and thereby setforth as follows "to wit" "that the said James Call has possessed himself of all and Singular the Goods and Chattels Rights and Credits of the said Andrew Majendie to a very Considerable Amount and much more then sufficient to Copy and satisfy unto

yours

"your Orator the said Sum of Two thousand nine hundred and
"forty Pagodas eighteen fanams and Seven Cash and the Interest
"due thereon Amounting to the Sum of Six thousand and
"fifty seven Pagodas ten fanams and twenty Cash and
"making together the sum of Eight thousand nine hundred
"and Ninety Seven Pagodas twenty eight fanams and
"twenty seven Cash": this Respondent is therefore advised
that such the said Assertion of the said Petitioner as
herein before alluded to well to this Honble Court appear
totally void of foundation And that it will appear to
this Honble Court that this Respondent did most
positively aver and declare in and by his Bill of
Complaint every matter and thing that was in any
way requisite or material for him so to do in order to
support his Claims thereby alledged and particularly
specified and setforth And this Respondent is advised
that the reasoning adduced by the said Petitioner touching
and concerning the Question of Assets arising from and
out of the Bonds or Securities for money in allusion
and as termed by the said Petitioner the point at
Issue between the said Petitioner and this Respondent
is altogether fallacious and chimerical as this Respondent
will clearly point out from the said Petitioners own
Reasoning

Reasoning the said Petitioner in that heard Reasons as
follows to wit "That Debts due to a Testate person
"whether by Bond Judgement Mortgage or in any way
"so ever are not Considered as Assets in the hands of an
"Executor But as so many Choses in action until the
"sums secured thereby shall be recovered unless the
"Executor shall release the Debt or action or fail to
"put the same in suit so that any thing to be derived
"from such securities be lost to the Testators estate by
"the Default and negligence of the Executor and such
"Doctrine in respect to the personal Estate of a Testator
"is by a variety of legal presidents clearly fixed and established
That such is the Law held out as a guidance and rule
for Executors none will dispute but this Respondent is
advised by such Legal prescription advanced by the said
Petitioner there is both a duty to be observed and performed
and by the Observation of such duty as thereby is very
clearly and distinctly enjoyned the Law affords protection
as far as the rule of Law extends and it will also
be noticed by the concluding part of the said legal
doctrine it only affords protection on the presumption
of having stedfastly and unerringly followed up such
right Observance And this Respondent is advised
that

that the concluding part of such legal Doctraine militates greatly in his favor for it is thereby laid down that Bonds shall not be taken as afsets but under certain Restrictions and one of which restrictions appears to be this unless the Executor shall fail to put the Bond in Suit so that any thing to be derived from such Security be lost to the Testators Estate by the default and negligence of the Executor" Now this Respondent is advised that this very closely applies to his this Respondents Case and that the Bonds admitted by the said Petitioner to be in his Custody as aforesaid must be held and taken as afsets belonging to the Estate of the said Andrew Majendie for although this Respondent admits the said Petitioner could not put the said Bonds in Suit yet he might have done what the Law would have held considered and esteemed as equivalent thereto which would have been to have Sold and disposed of the said Bonds which this Respondent is advised the said Petitioner might have frequently and often times done without in any way materially injuring the Estate of his said Testator but on the Contrary as Circumstances now are such the doing of the said Petitioner would have greatly benefited his said Testators

Testators Estate as the Value of the said Bonds is very fluctuating and uncertain therefore this Respondent having been advised that he has clearly shewn to this Honble Court that the said Petitioner in not having disposed of the said Bonds or Security for Money has most undoubtedly occasioned / although being a party interested no doubt / innocently / a severe loss Consequently the said Bonds must be Considered and taken as afsets the said Petitioner having it at his immediate election to Convert them into Cash and thereby Satisfy the said Decree of the said Mayors Court and by not having earlier so done the Estate of his said Testator this Respondent is advised will be materially injured thereby And this Respondent is advised with regard to the Argument by the said Petitioner adduced Respecting "Executors disposing of their Testators Goods at an under Value in which Case "they shall answer for the whole Value," that nothing "more Reasonable ought to take place but this Respondent is at a loss to Know how that Argument applies to the present Case because this Respondent has shewn to this Honble Court that the under Value Occasioned in the present Case arises from a very Opposite Conduct in the said Petitioner as Acting Executor as aforesaid of the

the said Andrew Mayendie and from the said Petitioner not having taken advantage of a favorable period of disposing of the said Bonds or Securities for Money therefore this Respondent is advised the Application of the Law suggested by the said Petitioner and dewelt upon as sheltering the said Petitioner from reproach can in no wise operate favorably touching the present Case but must be considered to apply in such Cases where an Executor biassed by fraudulent Motives and has taken upon himself to accept and take a lesser Value for a greater in open violation of the trust Reposed him this Respondent is advised such is the inference only to be drawn and Concluded on from the rule of Law urged by the said Petitioner as applicable to his the said Petitioners Case but which this Respondent is advised does by no means apply as the said Bonds or security for money held by the said Petitioner and a certain portion or part of which belongs to the Estate of the said Andrew Mayendie as this Respondent has before Shewn is a Species of Negotiable Paper and as such may be either purchased or Sold at all times at the Regular Premium or discount of the day as the Case may prove under which Circumstances this Respondent is advised

advised had the said Petitioner Sold and disposed of a certain Portion or Part of the said Bonds or securities for Money when and at the times he had been called upon by this Respondent so to do no blame whatever could have attached to the said Petitioner for having so done admitting the said Bonds or Securities for Money might have Sold for a less Sum than may be specified in the body of the same because this Respondent is advised such the acting and doing of the said Petitioner would have been an open and bona fide transaction and as such would have fully Justified the measure notwithstanding that has by the said Petitioner been urged to the Contrary thereof and also pursuing the measure which must have been adopted by the said Andrew Mayendie the said Petitioners said Testator had he himself been living and with Respect to the Argument next adduced by the said Petitioner touching "an Executor "releasing a Debt due to his Testator tho' not having "himself received near samuch as is due that such "doing of the said Executor shall charge him with "the whole debt" this Respondent is advised that this cannot in any way apply to this Respondents Case as this Respondent is not calling the said Petitioner to account

Account for any mal- Administration of his trust to which this Argument tends to go as also to shew that if a Man acting in the Room and stead of another does that which in itself is an illegal act he by such his acting and doing holds himself Responsible for the same surely this is deservedly just and strictly conformable to every principal both in Law and in Equity and also with regard to the following Argument by the said Petitioner introduced touching "an Executor Submitting a Debt due to his "Testator to Arbitration and the Arbitrators award him "less than what is apparently due such will be in the "eye of the Law a Devastavit in the Executor and will "subject him to the total amount thereof." This Respondent is advised such the Reasoning of the said Petitioner is merely introduced to draw the attention of this Honble Court from the only question now in Agitation and for the Determination of this Honble Court to other questions very opposite and in no wise connected herewith And this Respondent is advised that the said Petitioner has very Artfully laid down the last principal of Law without setting forth the most material matter which leads to the termination of the said Principal as this Respondent is advised that the legal doctrine laid down

Down on this point is simply plain and Confined solely to one point and not generally as applied by the said Petitioner for this Respondent is advised the Law cannot be Considered as oppressive when it points out what is legal and what is otherwise and moreover by an adoption of what is right every protection and aid is afforded the Subject as by the Opposite proceeding such protection is reversed Now this Respondent is advised that the Law as introduced by the said Petitioner as Regarding Executors submitting to Arbitration appears not only harsh but rigidly oppressive but this Respondent craves leave to elucidate the Law as in justice it ought by the said Petitioner to have been Represented on that head Now this Respondent is advised the legal acceptation touching Executors Submitting to arbitration is Confined to one point only and which is this where they have lavishly and want only submitted Claims to Arbitration which in Right of their Testator they were entitled to but by their own Voluntary act they have chosen to submit the Subject of their Claim to Arbitration this alone charges and surely most deservedly so an Executor in the same manner as if he had received the Money due on such Claim

this

this Respondent is advised the said Petitioner by his mode of reasoning wished to convey an Idea to this honble Court that an Executor Acting from the most upright and best possible principles submitting any thing to the Determination of Arbitrators which did not terminate favorable was himself accountable for any deficiency that might be wanting whereas the fact is such punishment attaches to Executors only in Cases where they might have followed up the Claim as a matter of positive Right but from motives of Collusion or ignorance they chose to pursue and abide by a different and other decision than in such Cases by Law has been prescribed for them to adopt and as such are become actors in their own Wrongs

And this Respondent in answer to the last reason by the said Petitioner assigned as Cause of Appeal from the Decree of the said Mayors Court does deny that the pretended Claims by the said Petitioner alledged to be due and Owing to Persons to this Respondent unknown are to be paid off and discharged previous to the Debt due and owing to this Respondent for although the said Petitioner might have averred in his said Answer to this Respondents said Bill of Complaint that several of the

Said

Said Bonds of his said Highness the Nabob having been jointly Executed unto the said Petitioners said Testator the said James Taylor George Savage and the said Petitioner for sums jointly advanced were at the time of the decease of the said Andrew Mayendie and at the time of filing the said Answer pledged or Mortgaged for the joint advantage and use of the said Andrew Mayendie the said Petitioners said Testator and others just before Mentioned yet this Respondent is advised that such the aforegoing Assertion contained in the Answer of the said Petitioner can carry with it no weight whatever for at the best it is a mere Common Assertion unsupported by any proof whatever Consequently could not by the said Mayors Court be attended to and this Respondent most readily admits as by the said Petitioner set forth and alledged that he did not deny the said Assertion so advanced and contained in the Petitioners said Answer as it was not possible for this Respondent to Know whither or not the said Bonds were so mortgaged and this Respondent admits that in answer to such the Assertion of the said Petitioner he did in his said Replication Contend and insist that the Circumstance of the said Mortgage did not in any wise affect the Right of this Respondent and such the Reply of this Respondent is now most amply verified

by

by the Decree of the said Mayors Court And this Respondent is advised the said Mayors Court could not Decree other than as before alluded to having at the time of making such Decree full proof of every matter and thing alledged and advanced by this Respondent in support of his this Respondents case And this Respondent is advised that there was no proof of any Kind whatever before the said Mayors Court touching the Many things advanced and set up by the said Petitioner in Opposition to the Claim of this Respondent Consequently the said Mayors Court this Respondent is advised could not Decree Otherwise than as aforesaid Notwithstanding the assertion Advanced by the said Petitioner in Opposition thereto And this Respondent is advised that the said pretended debts alledged by the said Petitioner to be due and owing to some Person or Persons unknown to this Respondent is at this time entirely out of the Question as the monies due and Owing to this Respondent is by the warding and Passing of the said Decree secured to this Respondent and must be hereafter Deemed and taken as a Debt due by Virtue of a Judgement passed thereon

and

And as such must be paid off and discharged previous to the said pretended Debts alledged by the said Petitioner to be due and Owing as aforesaid —

For all which Reasons and such other as may be offered at the hearing this Respondent most humbly prays this Honble Court will be pleased to affirm the said Decree of the said Mayors Court and grant unto this Respondent such further and other relief in the premises as in the wisdom of this Honble Court Shall seem meet —

[Signed] Gilbert Ricketts
Solicitor for Respondent

Court

Court of Appeals
at
Madrasspatnam

Tuesday the 21st day of March
Anno Domini 1797

Between James Call of Fort St George
Esqr Executor Named in the last will and Testament
of Andrew Majendie Deceased Appellant
and Colly Lucas a Surgeon in the Service of the
United Company of Merchants of England
trading to the East Indies under their Presidency
of Fort St George Respondent —

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

Ordered Accordingly.

Weir