137

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Appeals to Comm. Treaty

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Serial No. 35

General No. 12095

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22

Friday the 6th day of October 1797.

Present.

The Right Honble Lord Hobart,

Edward Saunders and Ernst William Falkfield Esqrs

To the Right Honble Robert Lord Hobart,

President in Council &c.a

Fort St George

In the Court of Appeals

Between Richard Parker the only Executor in India of John Douglas deceased Complainant — and Paucala Ramayalen Naick Administrator of Paucala Rangay Naick deceased — Defendant

The humble Petition and Appeal of the Above Named Complainant

Sheweth,

That sometime on or about the Fifteenth day of the Month of March which was in the Year of Christ One Thousand Seven hundred and Ninety four your Petitioner the only Executor in India of John Douglas late of Fort deceased did file his Bill of Complaint in the Honble the Mayors Court of Madraspatnam against the Abovenamed Defendant as Administrator of Paucala Rangaday Naick deceased for the Recovery of the Sum of Two Thousand Three hundred and thirty five Pagodas thirty Five fanams and Ten Cash Charged to be due and Owing unto your Petitioner as

Filed in my Office the 15th June 1795
J Webbe
Clk

Ninety four did Make an aggregate Sum of Two thousand Six hundred and thirty five Pagodas thirty Six fanams And Ten Cash And your Petitioner further Sheweth unto this Honble Court that he did state in his said Bill that he had frequently and in a Amicable Manner Requested Payment of the said Sum of Two thousand Six hundred and thirty five Pagodas thirty Six fanams And Ten Cash from the said Paucala Ramangaloo Naick who had Refused to pay the Same or to give your Petitioner any Satisfaction in the Premises And your Petitioner further Sheweth that he did thereupon pray Such Relief in his said Bill as should appear to the said Mayors Court agreeable to equity And good Conscience And your Petitioner further Sheweth unto this Honble Court that on the Usual Summons being Served on the said Defendant he did appear in the said Mayors Court by his Attorney and did thereafter Namely on or About the third day of June which was in the said year of Our Lord One thousand Seven hundred And Ninety four file and Exhibit a Plea and Answer unto your Petitioners said Bill wherein and whereby he did Say that his Intestate the said Rangasay Naick deceased did depart this life Insolvent and long before your Petitioner did Exhibit And file his said Bill of Complaint against the said Defendant that he the said Defendant being pressed by the Specially Creditors of this Intestate did Mortgage And otherwise dispose of the Estate And Effects of his said Intestate to pay off and Discharge the Claims of the said Specialty Creditors And did from and out of his own proper Monies advance over And above the produce of the

said

said Estate and Effects of his said Intestate Considerable Sums Money in liquidation of the bonafide Claims thereon And which he did so Advance in Justice to the Memory of the said Intestate Who was his father And your Petitioner Sheweth that the said Defendant did further Say that he had not then in his Custody or Possession / Meaning at the time when he filed his said Plea and Answer / any Assets belonging to the Estate of his said Intestate And that he did therefore plead the said Want of Assets in Bar to the Complainants said Bill of Complaint And did thereupon Pray the Judgment of the said Mayors Court whether he should be Compelled to make any further or other Answer unto your Petitioners said Bill than as aforesaid And your Petitioner further Sheweth that the said Defendant in Answer to the Residue of your Petitioners Bill did say that he admits that his Intestate the said Paucala Rangasay Naick might in his Life time have Executed the Bond in Question but did not admit that thereby or by reason thereof that his said Intestate did Stand Indebted unto your Petitioner in the said Sum of Two thousand Six hundred And thirty five Pagodas thirty Six fanams and ten Cash or in any other Sum or Sums of Money whatsoever And your Petitioner further Sheweth that the said Defendant in Order to Avoid the said Sum of Two thousand Six hundred and thirty five Pagodas thirty Six fanams and ten Cash did Depose in his said Answer that during the period when John Whitehill Esqr. presided as Governor of Fort St George Jiggapatty Ruiz Zemindar of the District of Masulipatnam had been Summoned to Fort St George aforesaid for the purpose of Settling his Zamabundy Accounts and that for certain Reasons which the said Defendant

in his Said Answer alleged to be unknown to him the Said Juggapaty Raeuze had engaged to give unto Samuel Johnson and Charles Smith at that time Members of Council of Fort St George aforesaid the Sum of Ten thousand three hundred Swamy or Madras Pagodas as a Present And your Petitioner Sheweth that the Said Defendant did further State that the Said Juggapetty Raeuze not having ready Money wherewith to pay the Same did Execute unto the Said Samuel Johnson and Charles Smith his Bond or Obligation for the Said Sum of Ten thousand three Swamy or Madras Pagodas as aforesaid And your Petitioner Sheweth that the Said Defendant did also Set forth that Some time after the Execution of the Said Bond the Said Juggapetty Raeuze having Obtained leave from the Government of Fort St George to return to his Country And being about to do so the Said Samuel Johnson and Charles Smith did Require of him a Security for the Payment of the Sum Condtioned in and upon the Said Bond and that he the Said Juggapetty Raeuze being unable to pay the Same the Said Samuel Johnson and Charles Smith did insist that before the Said Juggapetty Raeuze should leave Fort St George as aforesaid that he should procure Some Native Resident at Madras to give his Bond for the Payment of the Said Sum of Ten thousand Madras Pagodas in the Room And Stead of the Bond Executed as aforesaid by the Said Juggapetty Raeuze And your Petitioner Sheweth that the Said Defendant did represent in his Said

Answer

Answer that the Said Juggapatty Raeuze fearing he might be detained in the Case of his refusal to Comply with the Said Requisition of the Said Samuel Johnson and Chas Smith did intreat the Said Defendants Intestate to Execute unto the Said Samuel Johnson and Charles Smith his own Bond for the Said Sum of Ten thousand Madras Pag and that the Defendants Said Intestate did thereupon and by Reason of Such Entreaty Wait upon the Said Samuel Johnson and the Said Charles Smith Who the Said Defendant did allege did inform the Said Intestate Paucala Rangasay Mauch Deceased / as he the Said Defendant affirmed that he had heard and Verily believe / that if he the Said Intestate Would Execute his Bond to them the Said Samuel Johnson and Charles Smith that they Would Never call him the Said Intestate to Reckoning an Account thereof but that the Said Juggapatty Raeuze should at the Same time execute his Bond to the Said Intestate and that they the Said Samuel Johnson and Charles Smith by exercising their Interest with the Band of Masulipatnam Would procure the Same to be discharged Which they could not effect by a Bond Executed by the Said Juggapatty Raeuze to themselves And your Petitioner Sheweth that the Said Defendant did further in his Said Answer Set forth that by Reason of the Persuasion of the Said Samuel Johnson and Charles Smith as aforesaid and for the Said Consideration the Said Defendants Intestate did Agree to Execute the Bond required and that the Said Samuel Johnson and Charles Smith as the Said Defendant did Aver that he had heard and Verily believe

did

did require that the Defendants Said Intestate Should
Execute the Said Bond for the Said Sum of Ten thousand Madras
Pagodas on account of the Said Juggapatty Rauze unto
the Said John Douglas your Petitioners Said Testator and
Who as the Defendant in his Said Answer also alleged
that he had heard and did believe acted as the private
Agent of the Said Samuel Johnson and Charles Smith on a
Variety of Similar Occasions And your Petitioner Sheweth
that the Said Defendant in his Said Answer did further
Say that the Said Defendants Intestate did Execute the
Bond in Question Without Receiving from the Said John
Douglas or from any other Person any Consideration therefore
other than the Obligation of the Said Juggapatty Rauze
And that the Said John Douglas had no other Interest therein
than as the Agent of the Said Samuel Johnson and Charles
Smith Who the Said Defendant in his Said Answer
did also State from what he had heard and believed
Never did give nor did the Said John Douglas ever
give from what also the Defendant in his Said Answer
Stated that he had heard And believed Nor did the Said
Juggapatty Rauze receive from them or either of them any
Consideration Whatever on Account thereof And your Petr
Sheweth that the Said Defendant also Set forth that about
three Months after the execution of the Said Bond the Said
Samuel Johnson and Charles Smith did call upon the
Defendants Said Intestate for the Payment of the Sum
conditioned on the Same and that the Defendants Intestate
as the Said Defendant in his Said Answer Averred from an

Desire

desire of living under the favorable Opinion of the Said Samuel
Johnson and Charles Smith And from an Apprehension of Disagree-
able Consequences Should he displease them did pay unto the
Said Samuel Johnson and Charles Smith With the knowledge
And Consent of the Said John Douglas the Sum of Ten thousand
Star Pagodas And your Petitioner Sheweth that the Said
Defendant did also allege in his Said Answer that Sometime
after the Payment of the Said Sum of Ten thousand Star Pagodas
as aforesaid When the Said Pawcala Rangasoy Naick the
Defendants Intestate as it was pretended in the Said Answer
found it was impossible to Recover from the Said Juggapa-
patty Rauze the Amount of his Obligation on account of the
Bond Executed by the Said Defendants Intestate that he
the Said Intestate did represent the Said fact to the Said
Samuel Johnson and Charles Smith who are Stated in
the Said Answer to have promised to the Said Intestate to
deliver up the Said Bond executed by the Said Intestate
And to have Accordingly directed the Said John Douglas
your Petitioners Intestate to deliver up the Same to be
Cancelled And your Petitioner Sheweth that the Said Defen-
dant did also State in his Said Answer that the Said John
John Douglas did from time to time Promise to de-
up the Said Bond but did Neglect so to do under
Various excuses and pretences and the Said Defendant
did also State in his Said Answer that the reason which
did induce the Said John Douglas to With hold the Said
Bond was to procure a Sum of Money by way of
Danceur and that the Said John Douglas did actually

demand

demand the Same but that the Bond was not delivered up to the Said Paucala Rungasay Naick in his life time and your Petitioner Sheweth that the Said Defendant did also Set forth in his Said Answer that after the death of the Said Paucala Rangasay Naick the Said Defendants Father the Said Defendant did himself importune the Said John Douglas to deliver up the Said Bond to be Cancelled which he frequently did promise to do but that the Said John Douglas died without having given up the Bond and your Petitioner Sheweth that the Said Defendant further Stated in his said answer that he did thereafter apply to Alexander Davidson late of Fort St George Esq.r one of the Executors Named in the Will of the Said John Douglas and did Mention the facts relative to the Said Bond and that he did prevail on the Said Alexander Davidson to promise to Deliver up the Same. But that the Said Alexander Davidson left Madras Without delivering the Same to the Said Defendant. And your Petitioner Sheweth that the Said Defendant in his Said Answer did further Set forth that the Said Alexander Davidson some time afterwards departed this life and that the Bond thereupon did come into the Possession of your Petitioner And your Petitioner further Sheweth that the Said Defendant in his said Answer did lastly Submit to the Said Mayors Court that the Manner in which your Petitioner had Made up his Account Current Annexed to your Petitioners Bill was usurious and Contrary to Law. —

And your Petitioner further Sheweth unto this

this Honble Court that to the Defendants said Answer he did on or about the fifteenth day of July in the Said year of Christ One thousand Seven hundred And Ninety four file his Replication wherein and whereby he did allege that a Plea of Want of Assets by an Administrator was no Bar to the Right of Action of a Creditor against the Estate of his Debtor Nor to his Obtaining Judgment for the Same in case such Creditor proves that his action be well founded And your Petitioner Sheweth that he did Reply that the imputed Juggling Charged to have been practised in the Defendants said Answer between Samuel Johnson Charles Smith Suggaputty Rauze and Paucala Rangasay Naick Could Not have Any Relation to your Petitioner as Executor of the Said John Douglas or Operation against the Demand of your Petitioner in that Capacity And your Petitioner further Observed in Replication to the Said Answer that of the Matters and things were as the Said Defendant in his Said Answer had pretended they were the Said Paucala Rungasay Naick deceased it Was Reasonable to Suppose Must have had some Voucher or Declaration from the Said Samuel Johnson And Chas. Smith to indemnify him in the Premises And your Petr further Contended in his Said Replication that as the Execution of the Bond was admitted by the Said Defendant that he ought to have Judgment Against the Estate of the Said Paucala Rangasay Naick for the Amount due thereon And your Petitioner in his Said Replication further insisted that the Account Current Annexed to your Petitioners Bill though Charged by the Said Defendant to be usurious

And

And Contrary to Law was for the reasons Specially Set forth in your Petitioners Bill of Emplaint Warranted And Authorised under the Circumstances of your Petitioners Case And your Petitioner Sheweth that to the Replication filed by your Petitioner the said Defendant did on or About the Nineteenth day of August in the said year of Christ One thousand Seven hundred and Ninety four file his Rejoinder wherein and whereby he did Contend that his said Plea of want of Assets was an effectual Bar of the Right of action of your Petitioner And that he had further Shewn that the Estate of his said Intestate was Insolvent at the time of the decease of the said Intestate And that he had Applied Several Sums out of his proper Money to Supply the Deficiency in the Same, And your Petitioner further Sheweth that to the said Defendant in his said Rejoinder did generally insist that the Matters and things Set forth in his said Answer was good And true and Should have been Specially replied unto And that on account of Such Matters And things in the said Answer Contained your Petitioners said Bill ought to be dismissed, And your Petitioner further Sheweth that on the Pleadings hereinbefore Enumerated And Set forth Issue was Joined between your Petitioner And the said Defendant and that Rules did pass for the Examination of Witnesses And that Witnesses were accordingly Examined on the part and behalf of the said Defendant.

And your Petitioner Sheweth that Vencata Ramanjalo Naich was first Examined And did depose that the said Juggapatty Rauze did come to Madras in the Government of Sir Thomas Rumbold to Settle the Sawabandy of the Country And that he the said Vencata Ramanjalo had heard that the said Juggapatty Rauze did Agree to give unto the said Samuel Johnson and Charles Smith the sum of Ten Thousand Pagodas and that the said Vencata Ramanjalo had also heard that the said Juggapatty Rauze did Execute his Bond to the said Samuel Johnson and Charles Smith for the said Sum and your Petitioner Sheweth that the said Vencata Ramanjalo did further depose that he did know that the said Juggapatty Rauze did some time after the said agreement prepare to proceed to the Northward and that the said Samuel Johnson and Charles Smith did require of him previous to his Departure to give a Collateral Security for the Payment of the said Ten Thousand Pagodas and that the said Juggapatty Rauze did intreat the said Paucala Rungasoy Naich Deceased to Execute a Bond to the said Samuel Johnson and Charles Smith for the Sum of Ten Thousand Madras Pagodas And That the said Paucala Rungasoy naich did in Consequence of such intreaty wait upon the said Samuel Johnson and Charles Smith and that they did inform the said Paucala Rungasoy naich if he would Execute the said Bond they Could never call him to a Reckoning or Account thereof and further he did Depose that they did assure him the said Paucala Rungasoy Naich that the said Juggapatty Rauze would Execute his Bond to him the said Paucala Rungasoy Naich that they would recommend the Chief and Council of Masulipatam to see the same paid and the said Vencata Ramanjalo Naich did further depose that the said Paucala Rungasoy Naich did thereupon agree to Execute the said Bond and that the same was Executed in the

the name of the said John Douglas and your Petitioner Sheweth that on the said Bond lodged in the hands of the Examiner of the said Mayors Court being Shewn unto the said Vencata Ramanjaloo Naick he did further Depose that the said Bond so Shewn to him was the same which was Executed by the said Paucala Rungasoy Naick in his lifetime for and on Account of the Sum of Ten thousand Pagodas for which the said Juggaputty Rauze as aforesaid had Executed his Bond unto the said Samuel Johnson and Charles Smith and that the said Bond was Executed by the said Paucala Rungasoy Naick for the Interest and benefit of the said Samuel Johnson and Charles Smith and that the same appeared in the name of the said John Douglas in Order to Conceal the names of the said Charles Smith and Samuel Johnson who were at the time of the Execution of the said Bond Members of Government and who received the same as a Bribe on the part of the said Juggaputty Rauze and that the said Venatata Ramanjaloo Naick did further depose that he was present when the said Bond was Executed by the said Paucala Rungasoy Naick and that the said Paucala Rungasoy naick did not receive any monies or other Consideration on Account thereof Either from the said Samuel Johnson or Charles Smith or from the said John Douglas or Juggaputty Rauze and that at the time the said Juggaputty Rauze and the said Paucala Rungasoy Naick Executed the said Several

Bonds

Bonds to which the said Vencata Ramanjaloo had been Interrogated and Examined and had deposed to as aforesaid the said Samuel Johnson and Charles Smith were members of Government of Fort St George and the said Juggaputty Rauze was Sameder of Padaporam and your Petitioner humbly shewes unto this Honourable Court that the said Vencata Ramanjaloo naick as far as his Evidence tends to the granting of a Bond or Obligation for Ten thousand Pagodas unto the said Samuel Johnson and Charles Smith by the said Juggaputty Rauze hath deposed only from what he had heard for he hath said that he had heard the said Juggaputty Rauze did agree to give unto the said Samuel Johnson and Charles Smith the sum of Ten thousand Pagodas and that he had heard also that the said Juggaputty Rauze did Execute his Bond for the Same and his Deposition therefore in as much as it regards the Execution of the said Bond Can only be received as Hearsay Evidence which in like Cases ought not to have been entitled to any Credit of the said Mayors Court as your Petitioner Sheweth unto this Honourable Court that the remainder of the Deposition of the said Vencata Ramanjaloo Naick is in pursuit of the said unfounded Premises and was therefore to be regarded as in reference thereto and your Petitioner sheweth that in answer to the third

Interrogatory

Interrogatory the said Vencatah Ramanjaloo hath Deposed that the said Juggaputty Rauze after the said agreement which the Deponent in his answer to the preceding Interrogatory had said to had only heard of did prepare to proceed to the Northward and that the said Samuel Johnson and Charles Smith did require the said Juggaputty Rauze to give a Collateral Security for the Payment of the said Sum of Ten thousand Pagodas for which said Sum of Ten thousand Pagodas the Deponent in the answer of the second Interrogatory had Deposed that he had heard only that Juggaputty Rauze had Executed his Bond and your Petitioner sheweth unto this Honourable Court that the whole of the Deposition of the said Vencata Ramanjaloo Naicks turns on the uncertain Premises with which it sets out for the said Disposition is offered to Shew that the said Paucala Rangasay Naick Executed his Bond to Samuel Johnson and Charles Smith as aforesaid for and in Consideration of a prior Bond Executed by Juggaputty Rauze and to relieve the said Juggaputty Rauze of such his Obligation but the said vencata Ramanjaloo hath not proved that the said Juggaputty Rauze Ever Executed a Bond at all and if he did not Execute his Bond to the said Samuel Johnson and Charles Smith and it is no where in Proof from Vencata Ramanjaloos Deposition that he did it is not to be presumed that the said Paucala Rungasay naick could have Executed his Bond for the Consideration Deposed to by the said Venkata Ramanjaloo either as a Collateral Security for the Bond of Juggaputty Rauze or as a relief from his Obligation such Bond or Obligation not being in proof and your Petitioner Sheweth if the said vencata Ramanjaloo Could have deposed or could be Understood to have Deposed from his own knowledge that the said Paucala Rungasay Naick had actually Executed his Bond for the Bond of Juggaputty Rauze he must then be understood to have known that the said Juggaputty Rauze absolutely granted his Bond to Samuel Johnson and Charles Smith to which he was first Interrogated But he has Deposed that he had only heard that Juggaputty Rauze Executed a Bond and therefore the said vencata Ramanjaloo Could not of his own knowledge have Deposed that the said Paucala Rungasay Naick Executed his Bond for and on Account of the Bond of the said Juggaputty Rauze the fact of the said Juggaputty Rauze having Executed a Bond to the said Samuel Johnson and Charles Smith being but a matter of Hearsay and your Petitioner further Sheweth if the said vencata Ramanjaloo should have positively Deposed to a Subsequent Fact Deponent Entirely

Entirely on a former Transaction of which former Transaction he hath Professid that he had no knowledge of himself the Conclusion is fair that he did not Speak to the Subsequent Fact from his Personal knowledge and therefore that his Deposition to the Depend: Transaction must to also Estimated as mere matter of Hearsay and as such was and is not to be received as Evidence and your Petitioner further sheweth that the said Veneata Ramanjalos in Deposing to the fourth Interrogatory hath said that he was present when the Bond in Question was Executed by Rungasay Naicks and that Rungasay naicks did not receive any monies or other Consideration on Account thereof Either from Samuel Johnson Charles Smith John Douglas or Juggapathy Rauze and that in answer to the fifth Interrogatory he hath Deposed on a represe: sentation from the said Rungasay Naicks that he Could not procure himself Payment from Juggapathy Rauze of the said Sum of Ten thousand Pagodas pretended to have been paid by him the said Rungasay naicks to the said Samuel Johnson and Charles Smith tho in Fact paid unto your Petitioners Testator that the said Samuel Johnson and Charles Smith promised that they would use their Influence and Interest to Recover the money for which the said Juggapathy Rauze had Executed his Bond to the said Rungasay naicks and your Petitioner humbly

Observeth

observeth that the said Veneata Ramanjalos in his answer to the said fifth Interrogatory hath Contradicted what he had advanced in the precedent Interrogatory in as much as in the first Interrogatory he had Denied that the said Rungasay Naicks ever received any monies or Other Consideration for Execu: ting his said Bond whereas in the last she confessed the Consideration given for the said Bond by deposing not only that the said Juggapathy Rauze granted his Bond to the said Rungasay Naicks but the money Secured on the same that the said Samuel Johnson and Charles Smith did Promise that they would exert their Interest to Recover and your Petitioner Sheweth that as Witness giving a Contrary Testimony of one and the same materials fact and in the same Deposition Cannot be entitled to belief as to any matter to which he Deposes and your Petitioner Sheweth of this Honourable Court be not Satisfied of the Prevarication and Inconsistency of the said Veneata Ramanjalos in the Different Parts of his Deposition to which your Petitioner has hereinbefore Ade: that the mode in which the said Veneata Ramanjalos has Accounted for the Bond of the said Pacala Rungasay Naicks being Executed in the name of your Petitioners Testator is Suffi: cient to mark the Character of his Testimony for he hath Sworn that the Bond was granted in the name of the said John Douglas in Order to

Conceal

Conceal the names of the said Samuel Johnson and Charles Smith who were at that time members of Government and who received the same as a Bribe on the part of the said Jugga petty Rauze and your Petitioner Sheweth not only from the respectability of the names of the Persons implicated in this pretended Transaction that such a Transaction could never be Supposed to have taken Place but such Persons if they had been Engaged in a Clandestine matter like that charged against the said Samuel Johnson and Charles Smith must not have been Conceived to have been so totally Destitute of mind as well as Principle that in doing an act which they wished to be Concealed they would have called in the said Venkata Ramanjaloo and Tickany Sawmy Naick who hath also Deposed to the same point and the two Subscribing Witnesses whose names appear at the foot of the Bond to have borne Testimony how desirous they were that the Transaction should remain a profound Secret But your Petitioner Sheweth that although the said Deponent hath Deposed that the Sum Conditioned on the said Bond was given as a Bribe to the said Samuel Johnson and Charles Smith yet he does not say or insinuate for what the same was intended as a Bribe and which ought to have been shewn if any thing was meant to be

Argued

argued from the Testimony of the said Venkata Ramanjaloo and the said Tickany Sawmy for if either of the said Witnesses could have Sworn to the said Sum having been meant and offered and received as a Bribe he must have been acquainted on what account it was offered and received or what it was given to Effect for from the Deponent being in Possession of such fact your Petitioner Sheweth he could alone have formed his knowledge of the Circumstance Deposed to as it could have been no Crime for the said Samuel Johnson and Charles Smith to have received money for a legal purpose and your Petitioner Sheweth that the illegality of the purpose for which money is received Constitutes the Receipt of it a Bribe and the Deponent Saying it was as a Bribe ought to have Sworn for what particular illegal purpose it was given that the said Mayors Court might have Judged of the same But your Petitioner observeth to this Honorable Court that the said Venkata Ramanjaloos Testimony in this Respect is too futile and of Shadow to Warrant any further Comment and your Petitioner further sheweth that Tickany Sawmy naick produced

also

also as a Witness on the part and behalf of the said Defendant was Examined to prove the Principal and leading Facts deposed to by the said Venkatta Ramanjaloo naick and your Petitioner humbly Contendeth that the Deposition of the said Tickany Swamy is as Deficient in point of Evidence as the Deposition of the said Venkata Ramanjaloo and to which your Petitioner hath previously requested the attention of this Honourable Court and your Petitioner Sheweth that the said Tickany Saumy in Answering the Second Interrogatory hath Deposed that he understood that Juggapetty Rauze Came to Madras during the Government of Sir Thomas Rumbold for the purpose of Settling the Zamabundy of his Country and he knew that at the time of his being at Madras that Juggapetty Rauze did agree to give unto Samuel Johnson and Charles Smith the sum of Ten thousand Pagodas and that he did Execute his Bond for the amount and your Petitioner Sheweth that nothing can be inferred as far as the said part of the said Deposition goes to Shew that the said Sum of Ten thousand Pagodas agreed to be given by the said Juggapetty Rauze to

The

the said Samuel Johnson and Charles Smith and for which he is said to have Executed his Bond was agreed to be given and to be Received for an illegal Consideration for it is not at all said for what Consideration it was proffered and received and it is fair to presume and so it should have been presumed by the said Mayors Court that the same was given and received if it was Considered to have been given or received at all for a Just and Legal Consideration for nothing Could Justify the Nathaning the said Bond to have been Executed Turpi Causa But its having been proven to have been so Executed which doth not appear from the said Deposition and your Petitioner Sheweth that the Presumption Evidently intended to be Created by the answer to the third Interrogatory that that the Bond of Ruingasay Naick was Executed for an illegal Consideration is altogether without Ground or foundation for the said Tickany Saumy hath Deposed that a Collateral Security was required of the said Juggapetty Rauze by the said Samuel Johnson and Charles Smith for the said Bond Executed as it was pretended by the said Juggapetty Rauze to them the said Samuel Johnson and Charles Smith before they would permit him to leave Madras

that

that he entreated the said Rungasoy Naick to Execute this Bond and that in Consequence of the Entreaty of the said Iggaputty Rauze he the said Rungasoy Naick did wait upon the said Samuel Johnson and Charles Smith and that he did afterwards Execute his Bond But your Petitioner Sheweth that the said Tickany Sawmy in Deposing to what is Supposed to have passed between the said Rungasoy naick and the said Samuel Johnson and Charles Smith at the time when the said Rungasoy naick is said to have waited on the said Samuel Johnson and Charles Smith hath Spoken merely from hearsay and which did not amount to Evidence nor ought it therefore to have had any Influence on the said Mayors Court which it Appears that it had in their Judgement in the Premises for the said Tickany Sawmy did Depose that he had heard that the said Samuel Johnson and Charles Smith did inform him the said Rungasoy Naick that if he would Execute the said Bond that they would never Call him to any Reckoning on Account thereof and he had heard that the said Samuel Johnson and Charles Smith did further inform the said Rungasoy Naick that if the said Iggapultty Rauze would Execute his Bond also at the same time to the said Rungasoy Naick that they would Exert their Influence with the Board of Masulipatam to procure the same to be Discharged and your Petitioner Sheweth that the said Testimony of the said Tickany Sawmy is not only Exceptionable as being grounded on mere hearsay but it wants the necessary Certainty which Evidence of every Denomination ought to have it does not state even from whom the Defendants had heard what he hath Deposed to and from what appears in his Deposition he might as well have heard what he had related from the Defendant himself as from any one of the Parties said to be Concerned in the pretended Transaction and your Petitioner further Sheweth that although the said Tickany Sawmy hath Spoken in Direct and positive Terms to the Execution of the Bond by the said Rungasoy Naick as required by the said Samuel Johnson and Charles Smith and that it was Executed by the said Rungasoy Naick in the name of John Douglas and that it was Executed although it appeared in the name

of

of John Douglas for the Interest and benefit of the said Samuel Johnson and the said Charles Smith yet from what he had before sworn in the Outset of his answer to the Third Interrogatory it is Clear that he could not Depose from any internal or Personal knowledge either that the Bond Executed by Rungasoy naick was Executed as required by the said Samuel Johnson and Charles Smith for ere what he hath Declared to have passed previously to the Execution of the said Bond he hath Deposed only from what he had been told and therefore he Could not know whether the said Bond was the same as Required by the said Samuel Johnson and Charles Smith nor Could he know for the same Cause that the same was Executed for the Interest and benefit of the said Samuel Johnson and Charles Smith for in Deposing to that Particular he hath said that it was Executed for their Interest for the reasons to which he had been Interrogated in the said third Interrogatory and which said Reasons were founded as he hath Deposed Solely on what he had heard so that your Petitioner Sheweth unto this Honourable Court that all which the said Tichany Sawmy hath Deposed to in his said answer to the third Interrogatory is that the

the said Rungasoy naick waited on the said Samuel Johnson and Charles Smith and that he Executed the Bond in Question for the Sum of Ten thousand Pagodas and which Circumstance Cannot in any sort impeach or invalidate your Petitioners Right of action against the said Defendant in and by virtue of the said Bond or obligation and your Petitioner further sheweth that so much of the Depositions of the said Venkata Ramanyalo and Tichany Sawmy and of Adabaly Sawmy naick who was also Examined on the part of the said Defendant as are offered to prove the pretended Demand of the redelivery of the Bond to the said Rungasoy Naick and the Promise made by the said John Douglas to the said Rungasoy Naick that he would redeliver the same Cannot be entitled to the slightest Credit if it be Sufficiently Shewn to this Honourable Court that the Testimony of the said Venkata Ramanyalo and the said Tichany Sawmy Naick did not go to Establish the illegal Consideration which the said Defendant by the said Witnesses had Endeavoured to set up in avoidance of the said Bond for in that Case the Inducement to the said Promise of the redelivery

of

of the said Obligation Could not exist and your Petitioner further Sheweth unto this Honourable Court that the said Venceta Ramanjaloo in deposing to the last Interrogatory with intent to shew the Insolvency of the Estate of the said Rungasay naicken at the time of his the said Rungasay Naickens Decease hath instead of Directly proving the said fact drawn an argument or Inference from a Circumstance which doth in no wise Warrant the Conclusion which the said Venceta Ramanjaloo hath Deduced therefrom for he hath Sworn that he knew the said Rungasay naicken did Depart this Life Insolvent and that he Derived his knowledge thereof by knowing that the said Rungasay naicken had borrowed the Sum of Ten thousand Pagodas But the borrowing the Sum of Ten thousand Pagodas your Petitioner humbly Conceives is so far from being a proof of Insolvency is a Presumption of the Credit and Consequence of the Person who could Borrow such a sum and otherwise for Reasons too obvious Could not be Considered as Evidence of Bankruptt Circumstances and your Petitioner Sheweth that the Deposition of the said Venceta

Venceta Ramanjaloo Naicken as far as it respects the Payment of the whole of the Assets of the said Estate by the said Defendant in Discharge of the said Rungasay Naickens Debts could weigh nothing as against the Debt due to your Petitioner for though the said Defendant should bonafide have paid the whole of the Assets arising out of the said Estate in Satisfaction of the Deceased Debts yet if any of such Debts were of inferior nature to that of your Petitioner such Circumstance would not avail him any thing in Opposition or resistance of your Petitioners Demand But the said Deponent hath not Shewn Either what kind of Debts had been Discharged or the Amount of the same and your Petitioner Sheweth that the said Tichany Sawmy Naicken in Deposing to the last mentioned Point with the said Venceta Ramanjaloo hath been equally as distant from the Proof of the same for he hath said that he Derived his knowledge of the Insolvency of the Estate from the Deceaseds Creditors pressing and importuning his son the said Defendant which might have happened as well from the said Defendants Obstinately withholding and not Disposing as he ought of the Assets and Effects in his hands to the Discharge

of the Debts of the said Estate as his not being in Possession of any present Monies or Dues Belonging to the same and your Petitioner further Sheweth that Nellatomby Moodally was Lastly Examined on the part and behalf of the said Defendant and who hath Deposed that the said Defendant did Subsequently to the Death of the said John Douglas represent the Transaction regarding the said Bond to Alexander Davidson Esquire of Fort Saint George the acting Executor in India of the said John Douglas who did thereupon Promise to Deliver the said Bond into the hands of the said Defendant to be Cancelled But your Petitioner humbly Contendeth that it is apparent from the Situation of the said Alexander Davidson as being Executor in trust of a Deceased Persons Estate that he could not make such Promise or he must be Considered in Listening to the Tale of an Interested Party to have betrayed the Interests of an Estate which he was bound by Oath as well as Conscience to administer faithfully and truly and your Petitioner further sheweth on the Pleadings had and Enumerated the Cause was set down for hearing and that the same Came on to be heard accordingly on Tuesday the second day of June when the said Mayors Court

Court was pleased to Order and Decree that your Petitioners Bill of Complaint should Stand Dismissed and that each Party should Pay his own Costs as will morefully and at large Appear by the Original of the said Decree filed herewith for the Inspection of this Honourable Court and to which your Petitioner Craves leave to refer —

By which said Decree your Petitioner doth Conceive himself much aggrieved and doth therefore appeal therefrom to this Honourable Court for the following amongst other Reasons —

First — Because your Petitioners Cause of action arising out of a Bond or Writing Obligatory was Confessed by the Defendants answer in as much as the said Defendant had admitted therein the Execution of the said Writing Obligatory by the said Intestate and what is admitted by a Party Defendant is always taken and Considered as full and legal Evidence —

Secondly — Because it was in Proof that the Defendants said Intestate had paid and Discharged Ten thousand Star Pagodas as parcel of the sum of Ten thousand Madras Pagodas Conditioned in and by the said Bond

Bond or Writing Obligatory and which said Payment your Petitioner humbly Contends was a Complete and Solemn allowance of the validity of the said Bond by the said Intestate in his Lifetime and who it must be presumed as he best knew the relative Particulars as Connected with the same would Consequently have availed himself thereof if the said Intestate had Possessed any knowledge of the Circumstances set up by the said Defendant against your Petitioners Demand —

Thirdly — Because the matters and things set forth and insisted on in the Pleadings of the said Defendant even had they been fully proven by the said Defendant or admitted by your Petitioner which they have not yet the same could not in any wise have impeached or invalidated the Bond Executed by the Defendants said Intestate unto the said John Douglas For though it should have appeared as the Defendant hath alledged and charged in his said Plea and answer that the said Intestate Executed his Bond to your Petitioners Testator for the said amount of Ten thousand Madras Pagodas for and in Consideration of a Bond pretended to have been previously Executed by the said Juggaputty Rauze to the said Samuel Johnson and Charles Smith and though it might have appeared; which it hath not that the said Juggaputty Rauze did not receive a Consideration of the said Samuel Johnson and Charles Smith for the said Bond yet the Transaction as referring to the said Rungasoy Naich would have been fair and Unimpeachable For in the Case as made out by the said Defendant a new Consideration would have been Created to the Second Bond altogether foreign and remote from the first and which Consideration would have Consisted in the forbearance and foregoing of the Debt to Juggaputty Rauze Secured to the said Samuel Johnson and Charles Smith in and by virtue of the said first Bond or Obligation and the foregoing or forbearance of a Demand or Debt to a third Person Constitutes a good and legal Consideration as to the Person undertaking and binding himself in his Room or Stead But in the Case of the said Rungasoy Naich the said Defendant did produce Evidence to shew that a new Obligation was Executed unto the said Rungasoy Naich by the said Juggaputty Rauze for the same amount for which the said Rungasoy Naich had Executed his

his Bond in the Room of the said Juggajutty Rauze unto the said John Douglas So that the said Intestate would have had the additional Consideration of the matters alliged and attempted to be shewn had been proven by the said Defendant in the Bond of the said Juggajutty Rauze Executed anew to the said Rungasay Naick instead of the Bond pretended at first to have been Executed to the said Samuel Johnson and Charles Smith and the sum Condetioned on the said Second Bond for any thing that appears to the Contrary might actually have been paid to the said Rungasay Naick in his lifetime or to the Defendant since his Decease but whether it had been paid or not the said Bond or Obligation would have acted as a good legal and valuable Consideration for the said Bond Executed by the said Rungasay Naick unto the said John Douglas your Petitioners said Testator—

Fourthly— Because the Plea of want of Assets as relied on by the said Defendant could not have acted in Bar of your Petitioners Bill even had the same been sufficiently and Certainly impleaded which your Petitioner is advised it hath not For a Plea

of

of want of Assets though it may go to the Delay of the Payment of a Demand yet it Cannot prevent and preclude a Creditor from putting himself into a Situation where he may have the benefit of Assets quands aunderent howsoever and whensoever they may arise But the said Defendant in his said Plea hath not Shewn any thing which should have induced the said Mayors Court to have Concluded on a want of Assets in the hands of the Defendant for he had merely setforth that his Intestate died Insolvent and that he the Defendant mortgaged and otherwise Disposed of his Intestates Estate in the Discharge of Specialty Claims But the Defendant did not state that he had mortgaged the Estate to the full amount of what it was worth and the fact of the mortgage would of itself Contradict the Idea that the Estate Received the full worth of the Property so Mortgaged if it had appeared that the same had been mortgaged at all for a mortgagee must reasonably be Supposed to have more than a bare Security for the Principle Sum which he advances to the Mortgagor and the Witnesses Examined to Substantiate the fact of the Want of Assetts as pleaded by the said Defendant

your

your Petitioner trusts he hath hereinbefore Shewn have wholly failed in the Proof Endeavoured to be obtained of them and your Petitioner therefore Contends that the said Plea neither having been certainly impleaded by the said Defendant nor Sufficiently Supported by Evidence ought not to have weighed any thing with the said Mayors Court in making their said Order and Decree —

Lastly .... Because the Want of Consideration for the former Bond or Obligation pretended to have been Executed by the said Juggapursty Pauze to Samuel Johnson and Charles Smith if the said Defendant could have been admitted to avail himself of such a Plea in avoidance of the Bond Executed by his Intestate which your Petitioner in the reasons hereinbefore assigned hath Contended that he Could not yet the shewing of the said want of Consideration was on the Shoulders of the said Defendant and your Petitioner humbly insists that the Defendant hath no where shewn the same and your Petitioner trusts that he hath made this appear in his Remarks on the Depositions produced by the said Defendant in Order to establish the merits of the Defendants Plea —

For

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

(Signed) Emanuel Samuel

Solicitor for Appellant —

Mayors

Mayors Court at Madraspatnam

Tuesday the 2nd day of June Anno Domini 1795

Present

Benjamin Roebuck Esqr Mayor
James Call William Webb
Andrew Ross James Daly
William Abbott Alexander Cockburn &
Joseph Greenhill Aldermen

Between Richard Parks of Madras Merchant the only Executor in India of John Douglas late of Fort St. George Free Merchant Deceased Complainant and Paucala Ramanjalo Naick Administrator to the Estate and Effects of Paucala Rungasay Naick Defendant —

This Cause Coming onto be Heard and Debated this day in the presence of the Attornies on both sides on Reading the Complainants Bill with Copy of an Account Current annexed The Defendants Plea and Answer The Replication The Rejoinder The Interrogatories and Depositions on the part of the Defendant with an Exhibit marked A annexed On Hearing the pleadings made use of by the Attornies and on due Consideration had thereon This Court doth therefore think fit to Order and Decree and doth Accordingly Order and Decree that the Complainants Bill do stand Dismissed and It is further Ordered and Decreed that each party do pay their own Costs —

Pr Curr (Signed) G. E. Ashton Dy Reg

Mayors Court

SL

To

To the Right Honourable Robert Lord Hobart

President in Council &c.

Fort St George

In the Court of Appeals.

Between Richard Parkes the only Executor in India of John Douglas deceased Appellant and Pavala Ramanjalo Naicko administrator of Pavala Rungasay Naicko deceased Defendant—

The Answer of the above named Respondent to the Petition and appeal of the above named appellant—

Filed in my office the 11th July 1795
J Webbe Clk

This Respondent admits that the appellant as the only Executor in India of John Douglas late of Fort Saint George Deceased did Exhibit and file his Bill of Complaint in the Mayors Court of Madraspatnam against this Respondent as administrator as aforesaid at the time and for the Relief as in and by the appellants said Petition of appeal the same is setforth and this Respondents admits that the appellant in and by his said Bill of Complaint did state the several matters and

and things as in his said Petition of appeal the same is recited and admits that to the appellants said Bill of Complaint he this Respondent did Exhibit and file his Plea and answer and did therein and thereby setforth the several matters and things as in and by the appellants said Petition of appeal the same is for that purpose mentioned and this Respondent admits that to his said Plea and answer the appellant did reply and that thereto this Respondent did Rejoin and that the appellant in and by his said Petition of Appeal has truly Recited the several matters and things in the said Replication and Rejoinder contained and this Respondent admits that upon the pleadings had issue did Join and rules did pass for the Examination of Witnesses and that Witnesses were Accordingly Examined on the part of this Respondent and says that notwithstanding the Construction by the appellant Endeavoured to be wrested from the Depositions given on the Interrogatories Exhibited to the said Witnesses their Testimony doth fully and sufficiently support and Establish the Defence by this Respondent setup to the appellants action and that

the

the manner in which the said Witnesses have deposed doth Evince the purest and upright motives by which they were Governed and this Respondent says that Vancata Ramanjaloo not having been actually present at the time when Juggapetty Rauze did agree to give unto Charles Smith and Samuel Johnson the sum of Ten thousand Madras Pagodas and did Execute his Bond for the same as in this Respondents said answer to the appellants said Bill of Complaint the same is particularly set forth he the said Vencata Ramanjaloo Deposes thereto in such manner as the same had Come to his knowledge and that although he Deposes as to matter of hearsay regarding the Execution of the said Bond yet this Respondent humbly submits to this Honourable Court that it appears by the subsequent part of his Deposition he was present when the said Juggapetty Rauze did acknowledge the same and that therefore he was Enabled and fully Competent to Depose positively that the said Juggapetty Rauze did after the said Agreement prepare to proceed to the Northward and that the said Charles Smith and Samuel Johnson did require him to

to give a Collateral Security for the payment of the said Sum of Ten thousand Pagodas and thereupon this Respondent further humbly submit to this Honourable Court that the said Deposition of the said Vancata Ramanjaloo does not as the appellant would infer turn upon uncertain premisses and this Respondent says that the appellant admits that the said Vancata Ramanjaloo had Deposed positively to all facts subsequent to the Execution of the said Bond and agreement Every other matter or thing Dependant thereon and Deposed to by the said Vancata Ramanjaloo is not to be received in Evidence but this Respondent humbly submits to this Honourable Court that the subsequent part of the said Deposition of the said Vancata Ramanjaloo is fully Explanatory of the fact touching the Existence of the said agreement and Bond and of his knowledge thereof and of the manner by which such knowledge was acquired and this Respondent is advised that if an Obligor doth acknowledge the Execution of a Bond to a Witness it is as well as if he Executed the same in his presence although such Witness in that Case cannot speak

Of

of his own personal Knowledge thereto and this Respondent humbly submits to this Honourable Court that notwithstanding the suggestion of the Appellant to the Contrary there is nothing Contradictory in the Deposition of the said Vancata Ramanjalo to the fourth and fifth Interrogatory for that the said vancata Ramanjalo to the fourth Interrogatory shews that he was present when this Respondents Intestate did Execute the Bond in question and that he did not Receive any monies or other Consideration on Account thereof Either from the said Charles Smith and Samuel Johnson or the appellants Testator or from the said Iugga: petty Rauze for this Respondent says he is advised that no Bond is not as applied to the Circumstances of the present Case a Consideration for another Bond and therefore this Respondent submits to this Honourable Court that if the said Venceta Ramanjalo had absolutely seen the said Iuggapetty Rauze Execute unto this Respondents Intestate his Bond for ten thousand Madras Pagodas he might have Deposed that no Canisideration was given for the Bond Executed by this Respondents Intestate.

Intestate for a like Sum of Ten thousand Pagodas but the said Vancata Ramanjalo has shewn that he did not see the said Iugga Petty Rauze Execute such Bond to this Respondents Intestate and when in his Deposition to the fifth Interrogatory he speaks thereof he relates only what he heard the said Charles Smith and Samuel Johnson say and Regarding which after shewing that this Respondents Intestate subsequent to the Bond by him Executed and subsequent to the payment of the sum of two thousand star Pagodas on Account thereof to the Appellants Testator did represent to the said Charles Smith and Samuel Johnson his total inability to procure himself paid from the said Iuggapetty Rauze the said Sum of Money or any part thereof he the said Venceta Ramanjalo says that the said Charles Smith and Samuel Johnson promised that they would use their interest and influence to Recover the money for which the said Iuggapetty Rauze had Executed his Bond to this Respondents Intestate and thereupon this Respondent humbly submits to this Honourable Court that notwithstanding the Suggestion of the appellant to the Contrary the said

Venceta

Vancata Ramanjalo is Entitled to belief and Credit and that he has not prevaricated nor shewn any inconsistency and this Respondent says. that the reasoning of the appellant in Order to make an improbability appear touching the Execution of the said Bond by this Respondents Intestate in the presence of the said Vancata Ramanjalo and Tickany Saumy when it is Disposed that the transaction was intended to be Concealed Cannot this Respondent humbly submits be placed in Competition with Depositions upon Oath and this Respondent says that it appears in the Evidence adduced on the part of this Respondent that the said Transaction might have Remained for Ever Concealed had it not been for the avarice of the Appellants Intestate who although directed by the said Charles Smith and Samuel Johnson to Deliver up the said Bond to this Respondents Intestate upon his having paid on Account thereof the sum of Two thousand Star Pagodas did withhold the said Bond because this Respondents Intestate would not give to him the Complainants Testator the sum of Two hundred Pagodas by him

Required

required as a Consideration for giving up the same and this Respondent humbly Submits to this Honourable Court that it was by no means necessary for the Witnesses when speaking to the said Sum of Ten thousand Pagodas as having been given as a Bribe to specify the purposes intended to have been promoted or Occured on account thereof and this Respondent further submits to this Honourable Court that there would be no End to pleadings if Witnesses were to be interrogated to the length proposed by the appellant and further submits to this Honourable Court that it was not in the nature of things that the said Sum of Ten thousand Pagodas could have been given to or Received by the said Charles Smith and Samuel Johnson for any legal purpose when the Circumstances and manner under which the same was given and the situation of the parties be considered and that therefore it was unnecessary to setforth any particular illegal purpose in Order that the said Mayors Court should have Judged thereof as suggested by the appellant in and by his said Petition of appeal and this Respondent in answer to the Arguments brought

forward

forward by the Appellant touching the Evidence of Tichany Sawmy another Witness produced on the part of this Respondent says that he has already shewen that the said Sum of Ten Thousand Pagodas Could not have been given to or Received by the said Charles Smith and Samuel Johnson for any legal purpose and this Respondent is advised that the Mayors Court having as they had before them the particular Circumstances of the Case could not have presumed that the same might have been given or Received for a Just and legal Consideration and this Respondent humbly submits to this Honourable Court that notwithstanding the suggestion of the Appellant to the Contrary it is proved by the Deposition of Tichany Sawmy to the third Interrogatory that the Bond Executed by this Respondents Intestate was so Executed for an illegal Consideration insomuch as that the said Bond did arise out of the Bond Executed by the said Juggapetty Rauze which as already shewn was Executed for an illegal consideration and this Respondent is advised that Collateral matters Cannot Cure an agreement Originally Corrupt

and

and this Respondent says that although the said Tichany Sawmy has in his said Deposition deposed to some points upon hearsay yet that those points are not very material to the principal matter in issue and that such points so Deposed to as Corroborating the positive Evidence of Venata Ramanjalo the preceeding Witness on the same issue becomes good Evidence and this Respondent submits to this Honourable Court that if as the Appellant has Asserted the said Deposition be Exceptionable Either for want of Certainty or as being mere hearsay he ought to have taken Exceptions thereto on publication passing in the Cause but as he did not then avail himself of the advantage the Law allows of and as he Consented to the Reading of the said Depositions at the Hearing he Cannot at this time take Exceptions thereto and his Endeavours to that End are as this Respondent is advised irregular and unprecedented and this Respondent submits to this Honourable Court that he has Already shewn notwithstanding the suggestions of the Appellant to the Contrary that the said Deposition of the said Tichany

Sawmy

Sawmy is in no wise Exceptionable but on the Contrary that the same is Certain sufficient and Legal Evidence and this Respondent further answering says that the said Tickany Sawmy having Deposed positively to the Execution of the Bond in question that it was so Executed for the Interest and benefit of the said Charles Smith and samuel Johnson and that the name of the appellants Testator was used therein merely to Conceal such interest and benefit from the Knowledge of the World shews his intimate personal knowledge of the said facts and this Respondents humbly submits to this Honourable Court that such part of the said Depositions of the said Tickany Sawmy is to be Considered and taken as it really stands separate and apart from his Deposition Regarding matters of hearsay and that if the said Tickany Sawmy had not been an honest man and Careful to Depose the truth in manner and form as the same had Come to his knowledge he would have spoken positively to Every fact and not stated any part thereof as facts that he had heard from others

and

and this Respondent says that the said Tickany Sawmy has Deposed positively to the Execution of the said Bond by this Respondents Intestate as hereinbefore shewn and as he speaks of the requisitions and promises made by the said Charles Smith and Samuel Johnson at the time it is Evident that the said Bond was Executed in his presence and therefore he was Competent to Depose when the said Bond was shewn to him at the time of his Examination that it was the same Bond that was Executed by this Respondents Intestate for the Interest and benefit of the said Charles Smith and Samuel Johnson as hereinbefore is more particularly set forth and this Respondent saith that the said Tickany Sawmy in his answer to the Second Interrogatory says that he does know that the said Juggapully Rauze did agree to give to Charles Smith and Samuel Johnson the sum of Ten thousand Pagodas and that he Executed his Bond for the same and therefore when in his Deposition to the Third Interrogatory he Deposes that the said

Bond

Bond Executed by this Respondents Intestate was for and on Account of the sum of two thousand Pagodas for which the said Juggapetty Rauze had as before interrogated unto Executed his Bond to the said Charles Smith and Samuel Johnson and that it was so Executed for the Interest and Benefit of the said Charles Smith and Samuel Johnson as hereinbefore interrogated unto he has Reference to his Deposition given to the said Second Interrogatory and to the first part of his Deposition to the third Interrogatory wherein he says he doth Know that the said Juggapetty Rauze did [illegible] to the northward soon after the said agreement alluding to the agreement Deposed to in the second Interrogatory and had received permission from Government for that purpose and this Deponent saith that the said Charles Smith and Samuel Johnson did require the said Juggapetty Rauze to give Collateral Security for the said Sum of two thousand Pagodas before they would permit him to leave Madras and this Deponent says that he doth Know that the said Juggapetty Rauze was thereby very much Distressed

and

and that he did Entreat Rangasay Naick to Execute his Bond to the said Charles Smith and Samuel Johnson for the Sum of Ten thousands Madras Pagodas and that the said Rangasay naick did upon such Requisition wait upon the said Charles Smith and Samuel Johnston and thereupon this Respondent humbly Submits to this Honourable Court that notwithstanding the Suggestion of the Appellant to the Contrary the said Tickery Sawmy was fully Enabled to depose to his own Knowledge and that his Reference in and by his Deposition to the said third Interrogatory was not to that part thereof wherein he speaks from what he heard but from what he personally Knew to be the fact and that the said Reference Embraced also apart of his Deposition to the Second Interrogatory hereinbefore setforth and this Respondent further submits to this Honourable Court that the Depositions of the said Vancata Ramanjalao and Tickery Sawmy do Effectually Destroy the action of the Appellant in so much as that the said depositions

do

to fully prove that the ground of the said action did grow out of a Corrupt and illegal Contract and in answer to that part of the appellants Petition of Appeal wherein he says that the Evidence offered by this Respondent to prove a Demand of a Redelivery of the said Bond by this Respondents Intestate and the promise made by the said Appellants Testator to this Respondents Intestate that he would Deliver the same Cannot be Entitled to the slightest Credit this Respondent says that the said Tickeny Saumy Deposing to the Ninth Interrogatory after shewing that this Respondents Intestate did pay to the said Charles Smith and Samuel Johnson the Sum of Ten Thousand Star Pagodas on account of the said Bond says that the said Charles Smith and Samuel Johnson did Desire the said John Douglas to Deliver up the said Bond to the said Rangasay Naick to be Cancelled saying that the Interest and Ballo should be given up in Consideration of the Commission promised to the said Rangasay naick and

and that the said John Douglas promised so to do and this Deponent says that the said Rangasay naick did often Demand the Delivery of the said Bond from the said John Douglas the Complainants Testator who promised to deliver the same and which Deposition of the said Tickeny Saumy is Corroborated by the Deposition of the said Vancata Ramanjalos Deposing to the same Interrogatory and the said Vancata Ramanjalos Deposing to the Sixth Interrogatory says that the said John Douglas did promise to Deliver up the said Bond to be Cancelled provided the said Rangasay naick would make him a present of Two hundred Pagodas to which the said Rangasay naick did Reply that he had Encountered great Difficulty in raising the ten thousand Pagodas he had already paid and requested to be Excused from paying any further Sum and which depo. sition of the said Vancata Ramanjalos is Corroborated by the Deposition of the said Tickeny Saumy to the same Interrogatory - and this Respondent

thereupon

thereupon submits to this Honourable Court that as the said Testimony of the said Vancata Ramanjalao and Tickeny Sawmy is positive clear and Consistent it is Entitled to notwithstanding the suggestion of the appellant to the Contrary to Every Degree of Credit and this Respondent further submits to this Honourable Court that Even although this Respondent had not shewn by the Testimony of the Witnesses produced on his behalf any illegal Consideration yet the proof that the said Charles Smith and Samuel Johnson were satisfied with the said Sum of two thousand Pags by this Respondents Intestate paid to them on account of the said Bond Executed for their Interest and benefit as aforesaid and that in Consequence thereof they Directed the appellants Testator to Excuse the difference of Exchange and the Interest thereon and Deliver up the said Bond to be Cancelled and that the appellants Testator did promise so to do would be sufficient to shew that the said Bond had been unjustifiably Detained and

and that the same ought to have been Delivered up to be Cancelled but this Respondent is advised that he has repeatedly shewn by a regular Course of Correct Evidence that notwithstanding the Suggestion of the appellant to the Contrary the Consideration for which the said Bond was given was illegal and Corrupt and this Respondent further answering says that the said Vancata Ramanjalao Deposing to the tenth Interrogatory Regarding the Insolvency of this Respondents Intestate shews that he Derived his Knowledge thereof by Knowing that this Respondents Intestate borrowed the said Sum of Two thousand Pagodas from sundry persons and this Respondent humbly submits notwithstanding the allegation of the appellant to the Contrary in his said Petition of appeal Contained that the inference of the said Vancata Ramanjalao touching the said insolvency of this Respondents Intestate is Drawn from a Circumstance that warrants the Conclusion for he immediately afterwards says that he Knows that this Respondent hath Disposed of the whole of the Estate of this Respondents Intestate in discharging

Discharging the Debts Contracted by him in his
lifetime meaning as this Respondent humbly
submits the said Sum of Ten Thousand Pagodas which
he this Respondents Intestate had borrowed from
several persons and which as he never Obtained
Repayment thereof produced the insolvency alluded
to by the said Vencata Ramanjalo and this
Respondent says that the said Tetheny Sawmy
to the same Interrogatory Deposes also to the insolvency
of this Respondents Intestate and says that he
derived a Knowledge thereof by reason of his Creditors
pressing and importuning this Respondent and
says that this Respondent has since the decease
of his Intestate paid off Debts due from the Estate
to the full Value of the said Estate and this Respon-
dent says that he has in his said Plea shewn
that the Debts which he had Discharged so far
as the assets that had Come to his hands would
Enable him to do were Bond Debts and which
was all the Discovery this Respondent could make
on Account thereof and more than the Appellant

Required

Required in and by his said Bill of Complaint and
this Respondent thereupon humbly submits that the
appellant should have Remained satisfied therewith and
not have urged as he has done in and by his said Petition
and Appeal that although this Respondent should have
bonafide paid the whole of the Assets arising out of the
said Estate in satisfaction of the Deceaseds debts yet
if any such Debts were of inferior nature to that of the
appellant such Circumstance would not avail this
Respondent in resisting his the appellants demand
that this Respondent had not shewn the amount
of the Debts Discharged for the appellant doth well
know that this Respondent in and by his said
Plea did say that he had advanced Considerable sums
out of his own proper Monies over and above the
produce of the said Estate of his said Intestate in
liquidation of the bonafide Claims thereon and that he
did so in Justice to the Memory of his Intestate who
was his this Respondent father and this Respondent
says that the observations made by the appellant on the

Disposition

Deposition of Nellatomby are as he is advised frivalous and an Endeavour to opppose surmuses to positive Evidence and this Respondent further says that alexander Davidson in the pleadings named as one of the Executors of the appellants Testator did on application to them for that purpose promise to Deliver up the said Bond to this Respondent as appears from the Deposition of the said Nellatomby and this Respondent says that he the said Alexander Davidson did so promise as well from his own personal knowledge of the Transaction Regarding the said Bond as from the Representation of this Respondent and this Respondent says that adabala Baumy another Witness on the part of this Respondent did after the Death of his Intestate apply himself to the appellants and Testator to Deliver up the said Bond and that the appellants said Testator did promise so to do which shews a Continuation of a Chain of applications to the appellants Testator for the Delivery of the said Bond in order that the same might be Cancelled and his Repeated promises to Comply therewith first by this Respondents Intestate and after his Decease by this Respondent and after the Decease of the appellants Testator Now to his Representative the said Alexander Davidson and which Evinces that the appellants Testator did not in his Life time find it safe to do that which the appellant has done since his Decease that is to say to put the said Bond in suit and this Respondent further answering says that he admits that the said Cause did Come on to be heard before the said Majors Court on Friday the Second Day of June now last past when the said Majors Court was pleased to Order and Decree and did Accordingly Order and Decree that the appellants said Bill should stand Dismissed and that each party should pay his own Cost But this Respondent doth not admit that the Appellant is in any wise aggrieved thereby or that he hath any manner of Cause of appeal therefrom and this Respondent in answer to the Reasons by the appellant setforth as Cause of appeal says —

To the first Reason that although the fact is as the appellant has stated it to be that the Admission of a Defendant is always taken as full and legal Evidence yet this Respondent says that in admitting the Execution of

of the Bond in question he did not admit that the same was Executed upon a fair and bonafide transaction or for a Just and legal Consideration but on the Contrary did setforth in his said Answer to the Appellants said Bill of Complaint that the said Bond had grown out of a Corrupt and inequitious bargain and that the whole of the transaction was illegal and unjust and thereupon this Respondent humbly submits to this Honourable Court that as the appellant Cannot Derive any manner of Benefit or advantage in aid of his action by the bare admission by this Respondent of the Execution of the said Bond his the Appellants said first Reason or Cause of appeal is unfounded-

To the Second Reason this Respondent says that although a person under the pressure of Circumstances and occasion and when beeyed up with hopes arising from promises and Assurances should injure his fortune it is not from thence to be inferred that he is bound to proceed therein to his certain Ruin nor that because a person situated as this Respondents Intestate was had paid a Sum of Money upon an

an illegal and unjust Contract that such payment amounted to a solemn Allowance of the Validity of such Contract and Even if that Could have been the Case still this Respondent says the Contract by means thereof Could not have become legal or Valed for this Respondent says he is advised that that which was once illegal and therefore invaled must always remain so and Cannot be Changed or Altered either by time or Circumstance and this Respondent says he is advised that the payment of a Sum of Money upon an usurious Contract so far from being Considered as a solemn Allowance of the Validity thereof is the only Condition upon which the party paying it is Allowed to bring his action for the recovery of Double the amount for the party receiving it and this Respondent says that Although the fact may be as stated by the Appellant that his this Respondents Intestate had a better or Rather a more accurate Knowledge of the Relative particulars Connected with the said Bond yet the Conclusion Drawn from that fact is not warranted thereby for this Respondent says that his Intestate was not placed in a situation of

necessity

necessity to avail himself of such Knowledge as the said Bond was never put in suit against him but on the Contrary was by the said Charles Smith and Samuel Johnson. the only persons interested therein Directed to be Delivered up to him to be Cancelled and which the Appellants Testator did frequently promise to comply with and therefore this Respondents Intestate naturally Concluded that Every thing regarding the said Bond was finally settled so far as regarded himself and that by remaining quiet he might receive the promised Assistance of the said Charles Smith and Samuel Johnston to recover from the said Juggapitty Rauze the said Sum of Two thousand Pagodas by him this Respondents Intestate paid to the said Charles Smith and Samuel Johnston on Account of the said Bond and on the other hand that it would be in Vain to Contend with those in power whose protection he stood in need of and whose Displeasure he Dreaded and this Respondent humbly submits to this Honourable Court that any forbearance on the part of his this Respondents Intestate Regarding the Bond in question Cannot give any validity thereto nor operate so as to

Prevent

prevent this Respondent from those advantages allowed to him as he is advised by the Law by an impeachment thereof in Order thereby to Enable him to do Justice to the Estate Confided to his Charge and to the numerous Creditors who have Claims thereon —

To the third Reason this Respondent says that notwithstanding the Assertion of the Appellant to the Contrary if the matters and things setforth and insisted on in the pleadings be fully proven and which this Respondent doth humbly submit is the fact the Bond Executed by his this Respondents Intestate in the name of the Appellants Testator is invalidated and become null and Void and this Respondent submits as he has hereinbefore humbly submitted to this Honourable Court that where a Contract is Corrupt Every Collateral matter arising therefrom or Connected therewith must also be Corrupt and as to the suggestion of the Appellant in his said third Reason Contained whereby he would Endeavour to shew that although this Respondents Intestate should have Executed his Bond on Account of the said Bond of the said Juggapitty Rauze to the said Charles Smith

and

and Samuel Johnson and that the said Juggapetty Rauze did not receive any Consideration on account thereof. yet the transaction as Referring to this Respondents Intestate would have been fair and unimpeachable this Respondent says the same is altogether Erroneous and further says that no new Consideration as alledged by the appellant Could have been Created to the Bond Executed by this Respondents Intestate foreign and remote from the Bond Executed by the said Juggapetty Rauze nor Could such Consideration have arisen in the forbearance and forgiving of the Debt to Juggapetty Rauze secured to the said Charles Smith and Samuel Johnston in and by Virtue of the said Bond or Obligation of the said Juggapetty Rauze This Respondent admits that under certain Circumstances the forgoing or forbearance of a Debt to a third person Constitutes a good and legal Consideration as to the person so undertaking and binding himself in his Room or stead but that Case does not at all apply where the Original Contract is Corrupt and illegal as in the present Case —

To

1

To the fourth Reason this Respondent says he is advised that the plea of plene Administravit is a good Plea in Bar to a Bill brought by a Creditor against an Executor or Administrator and this Respondent says that his said Plea doth Amount thereto for that in and by his said Plea he has shewn that he has not only paid debts as far as he had Assetts but that he has also Shewn that the whole of such Assets were not sufficient to Discharge the Claims on the Estate of his Intestate and that in Discharge thereof he this Respondent had paid Considerable sums out of his own proper Monies and which fact will this Respondent humbly trusts be so Considered as a sufficient answer to that part of the Appellants fourth Reason regarding the mortgage by this Respondent formerly made of a part of the Estate of his Intestate and this Respondent submits to this Honourable Court that he has fully Established his said Plea by the Testimony of the Witnesses by him produced for that purpose and further says that if he had not done so the appellant Could only have recourse to an Execution in Order to seize

any

any property he might be Enabled to Discover as belonging to the Estate of this Respondents Intestate —

To the last Reason this Respondent humbly submits to this Honourable Court that he has fully shewn by the unimpeached Testimony of Witnesses produced on his part that no Consideration whatever was given to the said Juggapetty Rauze by the said Charles Smith and Samuel Johnson for and on Account of the said Bond for this Respondent by the said Witnesses did prove that the same was Executed as a Bribe to the said Charles Smith and Samuel Johnson and which was all that was necessary to be shewn on the part of this Respondent to invalidate the Bond arising therefrom and Executed by this Respondents Intestate but this Respondent says he did also go into Collateral proof touching the premises in Order to give a Connected Chain of Evidence of the whole transaction and this Respondent submits to this Honourable Court that he has amongst other things proved that the said Juggapetty Rauze did Execute a Bond for Ten Thousand Madras Pagodas to Charles Smith and Samuel

Samuel Johnson then Members of the Government of Madras as a Bribe that the said Charles Smith and Samuel Johnston not Satisfied with such Security did Demand some Other and did Refuse to allow the said Juggapetty Rauze to proceed to the northward until he had given the same that thereupon this Respondents Intestate did Execute the Bond in question as Security for the said Sum of Ten thousand Pagodas and for and on Account of the said Juggapetty Rauze but to and for the Interest and Benefit of the said Charles Smith and Samuel Johnston and that the Reason for Executing the said Bond in the name of the Appellants Testator instead of the name of the said Charles Smith and Samuel Johnston was that the Interest of the said Charles Smith and Samuel Johnston therein might be Concealed and this Respondent has also proved that upon Executing the said Bond the said Charles Smith and Samuel Johnson did promise that they would Exert themselves in securing this Respondent Intestate on Account thereof but that they did fail therein and this Respondent has further

proved

proved that the said Charles Smith and Samuel Johnson on Receiving from this Respondents Intestate the sum of Ten thousand Star Pagodas on Account of this said Bond by him Executed for and on account of the said Bond Executed by the said Juggapetty Rauze as aforesaid did say that they would not require the Interest nor the Difference of Exchange but that the same should go to this Respondents Intestate in lieu of Commission and did Direct the Appellants Testator to Deliver up the said Bond to the Intestate of this Respondent to be Cancelled and did again promise to Exert their Influence to secure to this Respondents Intestate from the said Juggapetty Rauze the said Sum of two thousand Star Pagodas but that they did again neglect so to do and this Respondent has also proved that the said John Douglas did repeatedly promise to Deliver up the said Bond to be Cancelled agreeably to the Order and Directions of the said Charles Smith and Samuel Johnston and that he did withhold the same merely in the hopes of Extorting from this Respondents Intestate the sum of

Two

Two hundred Pagodas —

For all which Reasons and such Others as may be Offered at the Hearing this Respondent most humbly prays that the said Decree of the said Mayors Court may be affirmed that the appellants Petition of Appeal may be dismissed with Costs and that this Respondent may have such further and other Relief in the premises as to this Honourable Court shall seem meet —

(Signed) J. Stuart Hall

Solicitor for Respondent —

Court,

Court of Appeals
at
Madraspatnam

Friday the 6th day of October
Anno Domini 1797

Between Richard Parks of Madras Merchant the only Executor in India of John Douglas late of Fort St George Free Merchant Deceased Appellant and Pancala Ramanjaloo Naick Administrator to the Estate and Effects of Pancala Runga Soy Naick Deceased Respondent —

This Cause coming on this day to be heard and debated before this Court by the Attornies on both sides upon hearing the Petition of Appeal and Answer and the several Exhibits of the Honble the Mayors Court together with the Decree of the said Court given in this Cause on Tuesday the 2nd day of June Anno Domini 1795 Upon due consideration had of the Matters therein severally contained and of the Pleadings and Arguments used by the Attornies on both sides This Court doth think fit to Order and Decree and doth accordingly order and Decree that the said Decree of the Honble the Mayors Court do stand Affirmed and that each party do pay their own Costs in this Court —

By Cur

T. Lo

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

In the Hontble the
Court of Appeals

Between Nimmah Moodoo Sawmy Eyer of Madras Inhabitant by his Attorney Mathew Marks of the same place Inhabitant Complainant and Caurjeepooram Verdapah Chitty of the same place Inhabitant Defendant —

The Humble Petetion and appeal of the above named Defendant —

Sheweth

That on the Sixth Day of August one thousand Seven hundred and Ninety one the said Complainant by his Attorney above named did file his Bill of Complaint in the Honourable the Mayors Court of Madraspatnam against your Petitioner thereby pretending to shew that your Petitioner stood indebted to the said Complainant in the Sum of one hundred and Thirty one Star Pagodas and forty three fanams Current Money of Madras as he the said Complainant by his said Attorney further pretended would more fully appear by the

Filed in my Office the 13th June 1795
J. Webbe Cch

Copy

Copy of the Translation of an agreement or Obligation and Account Current together with an Assignment to his said Bill of Complaint annexed and did thereupon pray that your Petitioner might be Decreed to pay the said Sum of One hundred and Thirty one Star Pagodas and forty three fanams together with all Interest due or to become due thereon And your Petitioner sheweth unto this Honourable Court that upon the Complainants said Bill of Complaint a Summons did Issue requiring your Petitioner to Appear thereto and your Petitioner did thereupon Appear to the Complainants said Bill of Complaint and did Plead in Bar thereof and also answer to the same and for Plea in Bar of the said Bill of Complaint your Petitioner did say that the said Complainant ought not to have or recover the sum of One hundred and Twenty five Star Pagodas which was the principal Sum mentioned in the said agreement or Obligation nor any part thereof because the said Agreement being a Chose in Action and an undertaking to pay the Debt of another Person upon a Contingency is not Assignable or Transfera-ble either in Law or in Equity so as to enable the said

Mathew

Mathew Marks as the Assignee thereof either in his own name or Otherwise to Prosecute your Petitioner in the said Court for the recovery of the Monies in the said agreement and Assignment thereof mentioned All which matters your Petitioners did aver and Plead in Bar of the Complainants said Bill and of the Complainants pretended Demand for which he sought to be Relieved by his said Bill and prayed the Judgment of the said Court whether he should be Compelled to make any further or Other answer to so much and such part of the said Bill as was therein and thereby Pleaded unto as aforesaid and your Petitioner not waiving his Plea but wholy relying and insisting thereon for Answer to the Residue of the Complainants said Bill not therein before pleaded unto did say that although he had Signed the agreement for the Recovery of the amount thereof the said Complai-nant by his said Attorney Mathew Marks Exhibited his Bill of Complaint against your Petitioner in the said Court yet that your Petitioner for Reasons in his said Plea mentioned and thereafter in his said answer to be Mentioned was not Justly and truly indebted unto the said Com-plainant in the Sum of One hundred and Twenty five

Star

Star Pagodas or in any Sum of Money whatever and your Petitioner did say that he never had receivid from the said Complainant or from any person whomsoever upon his account any consideration whatever for intering into the agreement in the Complainants said Bill of Complaint munthioned And your Petitioner did say that the said Nimmah Mooloo Sawmy Eyer was a Person to your Petitioner totally unknown with whom your Petitioner had never had any Transactions or Dealing whatever and whose name was made use of in the said agreement merely for the purpose of Covering the fraudulent Transaction therein after mentioned Relating to the said agreement and which &c. agreement had been Drawn by Moodoocoor Appaen of Madras Inhabitant and who was in truth the Person really interested as Complainant in the event of the said Suit And your Petitioner further answering said that having had Occasion to pay a sum of Two hundred and fifty star Pagodas he your Petitioner did Collect the same and on the fifteenth Day of February in the said year One Thousand Seven hundred and Ninety one your Petitioner had Deposited for safe keeping in the hands of Veeringeepooram Appoo Chitty and Mutthoo Puttaby Ramyer of Madras Shroffs and Bankers the said Sum of Two hundred and fifty Star Pagodas and your Petitioner did

did say that after two Days had elapsed he your Petitioner Called upon the said Veeringeepooram Appoo Chetty and Mutthoo Puttaby Ramiah for the said Sum of Two hundred and fifty Star Pagodas but that the said Veeringeepooram Appoo Chetty and Mutthoo Puttaby ramiah thereupon informed your Petitioner that they having been indebted to Moodoocoor Appaen theretofore in your Petitioners answer named in a considerable Sum of Money he the said Moodoocoor Appaen had Called upon them for payment and that they the said Veeringeepooram Appoo Chitty and Mutthoo Putaby Ramiah Endeavored to post pone the payment of the monies so by them owing to the said Moodoocoor Appaen but that the said Moodoocoor Appaen having perceived the said Sum of Two hundred and fifty Star Pagodas seized the same and Carried it forcibly away and your Petitioner further said that upon Receiving such Information from the said Veeranjeepooram Appoo Chitty and Mutthoo Putaby Ramiah of the said Moodoocoor Appaen having so Carried off the said sum of Two hundred and fifty

Star

Star Pagodas he your Petitioner had immediately resorted to the said Moodoocoor Appiah requiring him to Deliver the said Two hundred and fifty Star Pagodas to your Petitioner and that thereupon the said Moodoocoor Appiah acknowledged that he had so possessed himself of the said sum of Two hundred and fifty Star Pagodas not knowing it to be the property of your Petitioner And your Petitioner saith that he having represented to the said Moodoocoor Appiah the illegality and injustice of the act he had so Committed and having required him to return the said Two hundred and fifty Pagodas to your Petitioner to whom they belonged the said Moodoocoor Appiah at length Consented to Return the said Two hundred and fifty Pagodas upon this Defendants entering into an agreement to pay him the said Moodoocoor Appiah the sum of One hundred and Twenty five Pagodas in case the said Veeringeepooram Appoo Chitty should not of himself pay the same and which One hundred and Twenty five Pagodas the said Moodoocoor Appiah alledged was part of a Balance then due and owing to him by the said Veeringee pooram Appoo Chitty And your Petitioner did say that thereupon inorder to

to regain the possession of the said Sum of Two hundred and fifty Star Pagodas he Signed the agreement upon which the said Complainant by his Attorney the said Mathew Marsh had Commenced his Suit against your Petitioner and which agreement was Drawn by the said Moodoocoor Appiah and by him taken in the name of the said Nimmah Mootoo Sawmy Eyer to Answer the fraudulent scheme which had been theretofore concerted Between the said Moodoocoor Appiah and Nimmah Mootoo Sawmy Eyer respecting the said agreement and the Monies therein mentioned - And your Petitioner further answering did say that in some short time after he had so signed the said Agreement he your Petitioner knowing that the said Moodoocoor Appiah had obtained the same by imposition and Extortion applied to the said Moodoocoor Appiah and required him to Cancel and return the said agreement to your Petitioner which the said Moodoocoor Appiah from a Conviction as your Petitioner did verily believe of the unjust means by which he had obtained the said written agreement promised to do provided your Petitioner would prevail

upon

upon the said Veeringeepooram Appoo Chetty and Muttum Pattaby Ramiah to pass their Joint and Several Bond for the Sum of One hundred and fifty Pagodas and your Petitioner did further say that he accordingly prevailed upon the said Veeringeepooram Appoo Chetty and Muttum Pattaby ramiah to Execute unto the said Nimmiah Mootoo Sawmy Eyer their Joint and Several Bond for the sum of One hundred and fifty Pagodas and which Bond was also Drawn by the said Moodoocoor Appoan and by him made to bear equal date with the said agreement a true and faithfull Copy of the Translation of which said Original Bond was to your Petitioners said answer annexed the Original thereof being as your Petitioner did believe in the possession of the Complainant or of the said Moodoocoor Appoan to which said Moodoocoor Appoan your Petitioner Delivered the same and who upon Receipt thereof faithfully promised to Cancel and return unto your Petitioner the agreement now in Question And your Petitioner in his said answer did further say that he was adviced and did believe and did humbly submit to the said Court that the said agreement was by the said

Bond

Bond which was so granted by the said Veeringeepooram Appoo Chetty and Muttum Pattaby ramiah in lieu thereof absolutely extinguished in Law And your Petitioner further answering did say that in some short time after he had signed the said written agreement for One hundred and Twenty five Pagodas to wit on or about the Day of in the year One Thousand Seven hundred and Ninety your Petitioner received a Letter from Mr Peter Walker Attorney at Law Demanding payment thereof and that immediately on receipt of such Letter he your Petitioner enquired for and found out Nimmah Mootoo Sawmy Eyer and Desired that he would not put the said agreement in suit against your Petitioner but that he the said Nimmah Mootoo Sawmy Eyer would refer his Claim thereon to the decision of Certain arbitrators to be Chosen by each party to which the said Nimmah Mootoo Sawmy Eyer then agreed And your Petitioner further answering did say that the said Arbitrators accordingly in the presence of your Petitioner and of the said Nimmah Mootoo Sawmy Eyer Examined into and investigated the merits of the said Nimmah Mootoo Sawmy Eyer said Demand and your

Petitioner

Petitioner did further say that the said Nimma Mootoo Sawmy Eyer upon such Examination acknowledged that he had never any Dealings or transactions whatever with your Petitioner. and that he had not paid nor given your Petitioner any Consideration for the said agreement but that he the said Nimmah Mootoo Sawmy Eyer had purchased the same from the said Moodeecoor Appuan and that thereupon the said Arbitrators Desired the said Nimmah Mootoo Sawmy Eyer to enter into arbitration Bonds and that they would finally Determine the matter respecting the said agreement which the said Nimmah Mootoo Sawmy Eyer there promised and agreed to And your Petitioner further answering did say that the said Nimmah Mootoo Sawmy Eyer having neglected to enter into the said Arbitration Bonds and to appear again Before the said Arbitrators they Summoned the said Nimmah Mootoo Sawmy Eyer for that purpose but that the said Nimmah Mootoo Sawmy Eyer never again ventured to appears before the said Arbitrators or to prosecute his said pretended Demand further until at length by his said Attorney he Commenced his Suit first against your Petitioner

And

And your Petitioner further answering did say that he did verily believe that if the said Nimmah Mootoo Sawmy Eyer had immagined or believed that his said Claim was well founded he would have submitted the same to the amiable Decesion of the said Arbitrators instead of pursuing the Adverse Measures which he had adopted of harrassing and persecuting your Petitioner with a Vexatious Suit And your Petitioner further answering did say that shortly after the said suit had been Commenced one Nayaloo Chitty of Madras Merchant come to your Petitioner and informed him that the said Moodeecoor Appuan had authorised him the said Nayaloo Chitty to propose on the part of the said Nimmah Mootoo Sawmy Eyer to submit the matter now in Contest to the final Determination and decision of Arbitrators and that the said Moodeecoor Appuan would enter into a penalty or Arbitration Bond provided your Petitioner would do the same And your Petitioner further answering did say that he immediately acquiesced to the Accommodation which was so proposed by the said Moodeecoor Appuan thro the said Nayaloo Chitty and that on the succeeding day the said Nayaloo

Chitty

Chetty Called again upon your Petitioner and produced a Penalty or Arbitration Bond which he informed your Petitioner was Executed by the said Moodoocoor Appian whereby he agreed to submit the matter in dispute respecting the said agreement to arbitration and your Petitioner further answering did say that he your Petitioner thereupon Executed and Delivered to the said Nayaloo Chitty another arbitration Bond to the like Effect with that which had been so produced to him by the said Nayaloo Chitty and that both the said Bonds were as your Petitioner did verily Believe then in the possession of the said Nayaloo Chitty yet that notwithstanding the said Submission and notwithstanding your Petitioners having embraced and solicited every amicable mode of Accommodation the said Nimmah Mootoo Saumy Eyer either of himself or at the instigation of the said Moodoocoor Appian had Declined proceeding upon the said Arbitration And your Petitioner sheweth unto this Honourable Court that to such the answer of your Petitioner the Complainant did Exhibit and file his Replication in the said Honourable the Mayors Court and did therein and thereby say That your Petitioner did stand

Justly

Justly and truly endebted to him the Repliant in the Sum of one hundred and Thirty one Pagodas and forty Three fanams as stated in the said Repliants Bill of Complaint and the Account Current thereunto annexed and the said Repliant did further say that the Plea set up by your Petitioner was altogether misconceived and Contrary to the practise of that Honourable Court meaning the said Mayors Court and that therefore the same was irregular and Consequently of no force or validity whatever For the said Repliant did say that altho the Bond upon which he the Repliant had brought his suit against your Petitioner and whereof a Copy was Annexed to the said Repliants Bill was a Chose in Action yet that the same was properly assignable agreable to precedents laid down in the Books and According to the Course of that Honourable Court meaning the said Mayors Court and did further say that the assignment whereof a Copy was to the Repliants said Bill annexed was drawn According to the forms prescribed by Law and thereby and by reason thereof the said Repliant did say there was no legal Bar to his said suit. And the said Repliant for further Replication did say that

your

your Petitioner in attempting to set aside his said Bond by such frivolous pretences as in his said Plea and answer were as he the Respliant did pretend setforth did act Contrary to Equity and good Consceince and further the said Respliant did say that your Petitioner after having Admitted the Execution of the said Bond and that the same had been so Executed without any violence or Compulsion on the part of the Respliant he your Petitioner Could not have any Just Recourse to legal Objection in order to make void the same and so wade the payment of the amount thereof And the said Respliant did say that he knew nothing of nor had any thing to do with the Transaction Between your Petitioner and Mooloocoor Appoian as the same was stated in your Petitioners said Plea and answer and further did say that the same was impertinent and irrelevant and that the introduction thereof was highly irregular and the said Respliant did say that if your Petitioner had really sustained any injury the parties with whom it had originated were liable to be called to an account for the same but that he the Respliant had nothing to so therewith and did say that all that was

was necessary for him the Respliant to state was as he the Respliant was advised that the said Mooloocoor Appoian stood indebted to him the Respliant in a Certain sum of Money and not being able to pay and Discharge the same the Defendant became bound to him the Respliant to pay the Amount thereof And the said Respliant for further Replication did say that he did admit that the Bond whereof a Copy was to your Petitioners said Plea and answer annexed had been Executed by the Parties whose names were mentioned to have been thereunto set and subscribed But he the Respliant did deny that it had been so Executed subsequent to or for the purpose of Cancelling the Bond upon which the said Suit was Brought against your Petitioner On the Contrary the said Respliant did say that the Bond so annexed to your Petitioners Plea and answer as aforesaid had been Executed to him the Respliant in the Morning of the Day therein mentioned and setforth and that the one annexed to the Respliants said Bill of Complaint had been Executed in the Evening of the said Day for the said Respliants did say that he did not conceive Mutturen Pattaty Pramiah and Veeringeporam Appoo

Chetty

Chetty the Obligors who Appeared to have Executed the Bond to your Petitioners said Plea and Answer annexed to be persons of sufficient responsibility and therefore he insisted that he the said Moodoocoor Appian should Either pay to him the Repliant the amount of his Demand or give him some better security on Account thereof and the said Repliant did say that thereupon and in consequence thereof the said Moodoocoor Appian promised to him the Repliant other security and Accordingly in the Evening of the Day aforesaid Delivered to him the Repliant the Bond to this the Repliants said Bill annexed for the sum of One hundred and Twenty five Pagodas and paid unto him the Repliant the sum of Twenty five Pagodas the Balance remaining due in Difference thereon in ready Cash and the said Repliant did say that he then delivered up to the said Moodoocoor Appian the Bond to your Petitioner answer Annexed as aforesaid and the Repliant did further say that some short time after he had by means of an attorney at Law Demanded payment of the said Sum of One hundred and Twenty five Pagodas from your Petitioner and also after the Commencement of the said action your Petitioner Applied to him the Repliant through-

through the means of one Nayaloo Chetty to enter into an Arbitration relative to the Bond in Question which he the Repliant refused to do for that as your Petitioner had Executed a Bond to him for the payment of a certain sum of money he the Repliant Conceived it absurd to enter into an arbitration therein because that the Bond was equal to any award that Could be given in his favor and therefore that the Business of an arbitration Could answer no other End than the one proposed by your Petitioner to answer his own purposes to wit a Delay of payment and which the said Repliant did pretend must be evident upon the face of the Business and needed not any further explanation on the part of him the Repliant and the said Repliant did say he knew nothing nor had he been informed of any arbitration proposed by the said Moodoocoor Appian as in your Petitioners said Plea and answer the same was set forth and that the introduction of a mention of such negociation was impertinent and irrelevant and the Repliant did in Conclusion say that any other matter or thing in your Petitioners said answer Contained and not in and by the Replication of him

the

the said Repliant replied unto was either untrue or inde-
vant And your Petitioner sheweth unto this Honourable
Court that he did Rejoin to the Complainants said Repli-
cation and in and by his said Rejoinder did say that the
said Complainant had not as in his Replication was alledged
brought his said Suit against your Petitioner upon your
Petitioners Bond for your Petitioner did say that upon an
Inspection of the pretended agreement annexed to the
said Complainants said Bill of Complaint it would appear
that the said pretended agreement so far from being a Bond
did not import to be more than a Security for the payment
by Veeringeepooram Appoo Chetty in the said agreement
named to the said Hinmah Mootoo Sawmy Eyer of the
Sum of One hundred and Twenty five Pagodas therein
mentioned upon Condition that the said Veeringeepooram
Appoo Chetty should not himself Discharge the same though
the said Complainant had by his said Replication given
the said Conditional agreement the appellation of a Bond
thereby attempting to Discharge the nature of the said Security
and to make it appear as if the same was merely a Simple
matter between the Obligor and the Obligee of a Bond without
a third person namely the said Veeringeepooram Appoo

Chetty

Chetty being implicated or Connected therein and which
said Hinmah Mootoo Sawmy Eyers name your Petitioner
did say had been made use of and introduced into the
said pretended agreement for the fraudulent purpose in
this Defendants answer and therein after mentioned and
your Petitioner did say that notwithstanding the said
Complainants pretended ignorance of the said Moodocoor
Appian and of the undue means by which the said Moodocoor
Appian had extorted the said Pretended agreement from
your Petitioner as was particularly setforth in your Petitioners
said answer your Petitioner submitted to that Honourable
Court meaning the Mayors Court that the same having
been Drawn by the said Moodocoor Appian did even
upon the face of the said pretended agreement shew that
the said Moodocoor Appian was in some degree concerned
therein but your Petitioner did say that he would in due time
prove to the satisfaction of that Court meaning the Mayors
Court that the said Moodocoor Appian had been and there
was more Deeply interested in the said Paper writing than
merely as the Drawer thereof for your Petitioner did say
that the cause which gave rise to the said pretended agree-
ment namely to regain from the said Moodocoor Appian as

Sum

Sum of Two hundred and fifty Pagodas the property of your Petitioner whereof the said Moodooscoor Appiah had possessed himself in the manner setforth in your Petitioners said Answer had originated with the said Moodooscoor Appiah who thereupon drew out the said Paper Writing and which he took in the name of the said Nimmah Mootoo Sawmy Eyer for the purpose in your Petitioners said answer mentioned namely to Embarrass the said Transaction and thereby to make it the more Difficult to come at the truth thereof and therefore your Petitioner did say that any thing in his said answer Contained which tended to Disclose the fraud and Covin that had been Concerted Between the said Moodooscoor Appiah and the Complainant the said Nimmah Mootoo Sawmy Eyer respecting the matter now in Question was neither impertinent or irrelevant for that every illegal measure by which the said Written Instrument had been obtained from your Petitioner as in your Petitioners said answer was particularly setforth did still attach thereto and was open to the investigation of that Honourable Court meaning the Mayors Court and your Petitioner did say that he knew not whether the said Moodooscoor Appiah

Appiah stood or stood not indebted unto the said Complainant but your Petitioner positively did say that if any Monies had ever been owing from the said Moodooscoor Appiah to the said Complainant your Petitioner never had become bound to the said Complainant to pay such Monies or any part thereof and your Petitioner did say that the assertion in that respect in the Complainant said Repliation Contained was unfounded in truth and did not even Correspond with the said pretended agreement and your Petitioner did say that the Bond a Copy whereof is to your Petitioners said Plea and Answer annexed was Executed subsequent to the time of the Execution of the said pretended agrument Copy of the Translation whereof is to the Complainants said Bill of Complaint annexed and which Bond so Executed by the said Puttaly Ramier and Veerenjeeperaram Appoo Chetty was accepted by the said Moodooscoor Appiah in extinguishment of the agreement which had been so taken by the said Moodooscoor Appiah in the name of the said Nimmah Mootoo Sawmy Eyer and upon which the said Complainant in Confederacy with the

said

said Moodoocoor Appiah had brought his said Suit and your Petitioner did say that he knew not whether the said Complainant did or did not Looke upon the said Puttaby Ramier and Veeringee pooram Appoo Chetty who had Executed the said Bond to be sufficient Security for the amount thereof being One hundred and fifty Pagodas nor whether the said Complainant had therefore at all insisted upon the said Moodoocoor Appiah paying or securing to the said Complainant the amount of that which the said Complainant calls his demand upon the said Moodoocoor Appiah But your Petitioner did say that the said Complainant having in and by his said Replication admitted that it was from the said Moodoocoor Appiah that he received the said Agreement which had been so taken in the name of the said Complainant for a Sum of Money thereby pretended to be due from Veeringeepooram Appoo Chetty therein named to the said Complainant it did therefrom Appear of the Complainants own shewing that the said Complainants name had been made use of therein by the said Moodoocoor Appiah merely to Cloak the said Transaction and that there had not been any debt actually due to the said Complainant

from

from the said Veeringeepooram Appoo Chetty in the said agreement named and your Petitioner did say he did verily believe the truth to be that no Debt whatever had been or then was due or owing from the said Moodoocoor Appiah to the said Complainant and that the whole of the assertions in that respect in the Complainants said Replication Contained and of the said Moodoocoor Appiah having given the said Complainant a Sum of Twenty five Pagodas together with the said agreement to make up the full Sum of One hundred and fifty Pagodas had been fabricated and Concerted between the said Complainant and the said Moodoocoor Appiah thereby to Endeavour to support the present suit and your Petitioner did say that the said Moodoocoor Appiah had until the said Bill of Complaint was filed acted as the principals in the said matter and your Petitioner did say that the said Moodoocoor Appiah was even then so in reality and was looked upon by the said Complainant as such and in further evidence thereof your Petitioner did say that the said Moodoocoor Appiah had recently to wit on or about the Twenty Ninth Day of September then last past upon the Complaint of Veeringeepooram

Appoo

said Moodooscoor Appiah had brought this said Suit and your Petitioner did say that he knew not whether the said Complainant did or did not look upon the said Perttaby Ramier and Veerinjeepooram Appoo Chetty who had Executed the said Bond to be sufficient Security for the amount thereof being One hundred and fifty Pagodas nor whether the said Complainant had therefore at all insisted upon the said Moodooscoor Appiah paying or securing to the said Complainant the amount of that which the said Complainant calls his demand upon the said Moodooscoor Appiah But your Petitioner did say that the said Complainant having in and by his said Replication admitted that it was from the said Moodooscoor Appiah that he received the said Agreement which had been so taken in the name of the said Complainant for a Sum of Money thereby pretended to be due from Veerinjeepooram Appoo Chetty therein named to the said Complainant it did therefrom Appear of the Complainants own shewing that the said Complainants name had been made use of therein by the said Moodooscoor Appiah merely to Cloak the said Transaction and that there had not been any debt actually due to the said Complainant

from

from the said Veerinjeepooram Appoo Chetty in the said agreement named and your Petitioner did say he did verily believe the truth to be that no Debt whatever had been or then was due or owing from the said Moodooscoor Appiah to the said Complainant and that the whole of the assertions in that respect in the Complainants said Replication Contained and of the said Moodooscoor Appiah having given the said Complainant a Sum of Twenty five Pagodas together with the said agreement to make up the full Sum of One hundred and fifty Pagodas had been fabricated and Concerted between the said Complainant and the said Moodooscoor Appiah thereby to Endeavour to support the present suit and your Petitioner did say that the said Moodooscoor Appiah had until the said Bill of Complaint was filed acted as the principal in the said matter and your Petitioner did say that the said Moodooscoor Appiah was even then so in reality and was looked upon by the said Complainant as such and in further evidence thereof your Petitioner did say that the said Moodooscoor Appiah had recently to wit on or about the Twenty Ninth Day of September then last past upon the Complaint of Veerinjeepooram

Appoo

Appoo Chitty whose name is mentioned in the said pretended agreement submitted the said Moodoocoor Appians Claim thereon to Arbitration which your Petitioner did say would manifully by the Translation of a Copy of an original arbitration Bond which had been duly Executed and Delivered by the said Veerinjeepooram Appoo Chitty and the said Moodoocoor Appian the Original whereof was then or had recently been in the possession of John Haddleston Esquire the Monthly Justice for the time to the Copy and the Translation thereof which was to your Petitioners said Rejoinder annexed your Petitioner humbly Craved leave to refer and prayed that the same might be admitted and received as part of his said Rejoinder — And your Petitioner did say that if any money had been or then was actually due from the said Moodoocoor Appuan to the Complainant the said Nimmah Mootoo Sawmy Eyer your Petitioner did humbly trust that that Honourable Court meaning the Mayors Court would leave the said Complainant to pursue such legal measures as he might be advised for the Recovery thereof but that that Honourable Court meaning the Mayors Court would not sanction the undue means to which the said Nimmah Mootoo Sawmy Eyer had openly of himself and Secretly in Confederacy with the said Moodoocoor Appuan resorted to by instituting the said Suit against your Petitioner knowing as the said Complaint must have done the unjust grounds upon which he had Commenced the said Suit — And your Petitioner further did say that the persons who were named as being Witnesses to the Execution of the said agreement had not nor had any of them been present at the time when your Petitioner so Signed the same And your Petitioner did say that Tristnyer who did appear to have subscribed his name to the said agreement was the father in Law of the said Moodoocoor Appuan who had Drawn the same And your Petitioner did say that the said Tristnyer was not present when your Petitioner signed the said Agreement but that his name had been since affixed thereto for the purpose as your Petitioner did verily believe of introducing the Testimony of the said Tristnyer in this Cause at a future period And your Petitioner Sheweth unto this Honourable Court that thereupon Issue' did Joind and Rules did Pass for the Examination of Witnesses and Witnesses

were

Were Examined on both Sides and the said Complainant did Examine One Witness the aforesaid Moodoocoor Appaw who did Depose that some time in the year of Christ One thousand Seven Hundred and Ninety one He stood indebted to the Complainant in the Sum of One hundred and fifty Pagodas or thereabouts and that upon the Complainants Demanding Payment from him the Deponent of the said Sum He did not Discharge the Same that one Veerenjee Pooraw Appaw Chitty and one Mattah Pattauby Ramiah stood indebted unto him the Deponent in the Sum of One hundred and fifty Pagodas or thereabouts for which said Sum he did request the said Veerenjeepooraw Appaw Chitty and Mattah Pattaby Ramiah to Execute a joint Agreement to the Complainant which said Agreement he the Deponent did offer to the Complainant as a Security for his the Deponents Debt to the Complainant and the said Agreement was not accepted by the Complainant who were objected to receive the same because they the said Veerenjeepooraw Appaw Chitty and mattah Pattaby Ramiah were not Deemed substantial People and because

in

in the said Agreement it was Specified that the Amount Covenanted to be paid by them was Onehundred and fifty Pagodas or thereabouts and not the Specific Sum of One hundred and fifty Pagodas and that the Complainant required substantial Security for his the Deponents Debt and the Sum of Twenty Pagodas in ready Money and the said Deponent did further Depose that he did in the Evening of the same day the Offered the Bond aforesaid tender a Bond to the Complainant Executed by the Defendant meaning your Petitioner that such Bond was Executed by your Petitioner as a Security for the Payment of the said Deponents Demand against the said Veerenjeepooraw Appaw Chitty before mentioned for the amount of One hundred and Twenty five Pagodas and that the amount of such Bond was less by the Sum of Twenty five Pagodas than the Balance due by the said Deponent to the Complainant in part of which your Petitioner paid to the said Complainant this the said Deponents means the Sum of Twenty five Pagodas and the said Deponent did further Depose that previous to his requiring the before mentioned Veerenjeepooraw Appaw Chitty and Mattah Pattauby Ramiah

to

to Execute the Joint agreement to the Complainant he
the said Deponent did in Order to Secure the Payment
of the Money due by them to him the said Deponent
Native from them a Purse Containing Two hundred and
Sixty Two Pagodas and add which said Purse was after
wards given to your Petitioner by the said Deponent
on his Executing the Security Bond before mentioned to
the Complainant at the instance of the said Veerenjee-
pooram Appoo Chitty and matah Patauley Ramiah
And the said Complainant did Examine one other
Witness named Matah Patauley Ramiah who did depose
That he did Some time in the year of Christ one thousand
Seven hundred and Ninety one in Conjunction with one
Veerinjeepooram Appoo Chitty Execute unto the Complaind
an agreement in the name of the Complainant for the sum
of one hundred and fifty Pagodas and that such agreement
was Executed by them at the instance of one Moodoocoor
Appaiar for the purpose of satisfying Moodoocoor Appaiar
for Balance due to him from the said Deponent
and the before mentioned Veerenjeepooram Appoo
Chitty And the said Deponent further did depose that
the

the said agreement was tendered to the Complainant
by him the said Deponent and Veerinjeepooram Appoo
Chitty but that it was not accepted by the Complainant
and the said Complainant did Examine one Other Witness
named Kistnian who did Depose that he the Deponent
had Looked at the paper Writing then produced and
shewn to him at the time of his Examination purporting
to be a Bond from your Petitioner and did say
that the same was Executed in his presence to the
Complainant and that his the said Deponents
name Set Subscribed thereto attesting the Execution thereof
is of his the said Deponents proper hand writing
and further that he did set and Subscribed his name
as a Witness thereto at the instance and Request of
your Petitioner and your Petitioner sheweth unto this
Honourable Court that he did Examine one Witness
named Moonapah Chitty who did Depose that he
Knew Veerinjeepooram Appoo Chitty late of Madras
Shroff and that he died about four Months ago and that
your Petitioner did to his Knowledge about fifteen
Months ago Deposit a Certain Sum of Money with
the

the said Veeringjeporam Appoo Chitty and that the amount thereof was two hundred and Fifty Pagodas and was so Deposited for the purpose of being paid to a Captain of a Country Ships for Goods Purchased from him by your Petitioner and some others and this Deponent did say that your Petitioner did in the presence of the said Deponent about three days after the said Money was so Deposited require the said Veeringje pooram Appoo Chitty to return the said Money but that the said Veeringe: pooram appoo Chitty did not return the same but informed him your Petitioner that the said Money had been taken or Carried away by one Moodoocoory Appian and the said Deponent did say that your Petitioner about two Days after the said sum of Two hundred and Fifty Pagodas had been so taken away from the said Veeringje: pooram Appoo Chetty required the said Moodoocoory Appian to return the same same to him your Petitioner and the said Deponent did say that the said Moodoo: coory Appian promised to return the Money so Demanded from him by your Petitioner upon your Petitioners entering into a written agreement or Bond to pay him the said Moodoocoory Appian a Sum

of

of one hundred and twenty five Pagodas in case the said Veeringepooram Appoo Chitty did not pay the same and the said Deponent did say that he had looked at the Paper writing then Produced and shewn to him at the time of his Examination marked with the letter A and says that he was present at the time of the Execution thereof and that the same was Executed in the middle of the Night of the Sixteenth of February one thousand Seven hundred and Ninety one on Account of the said Moodoo: coory Appoian promising to Return to the Defendant the two hundred and Fifty Pagodas beforementioned and that the same was Entered into at the instance of the said Moodoocoory Appian and the said Deponent did say that the said agreement was Delivered to the said Moodoocoory Appian after the Execution thereof and that he the Deponent did believe the said Moodoocoory &c. Appian was the Person actually interested therein and in the monies therein Mentioned and the said &c. Deponent did say that he did Known Thistnian whose name is subscribed as a Witness to the said Paper writing and that he was the father inlaw of the said Moodoocoory Appian and that the said Thistnian

was

was not present when the said written Instrument was Signed by your Petitioner and the said Deponent did further Depose that your Petitioner did in the said Deponents presence about two days after the date of the said agreement marked with the Letter A requires the said Moodoocoory Appian to Deliver up the said agreement to your Petitioner to be Cancelled and that the said Moodoocoory Appian promised to do so upon the said Defendants procuring the beforementioned Verinjeepooram Appoo Chitty and matah Patauty Ramiah to Execute unto the Complainant Nimmah Mootoo Sawmy Eyer a Bond for the Sum of One hundred and Fifty Pagodas and the said Deponent did further depose that he had looked at the paper writing or agreement then produced and shewn to them at the time of his Examination marked with the Letter B and that the same was not an original agreement but a transcript of the Original and the said Deponent did say that he had Seen the original of the said agreement and that he was present at the time of the Execution of the said Original agreement and that the same was Executed in the Evening of the Seventeenth of February

February one thousand Seven hundred and Ninety One the said Deponent did say that the said agreement was Entered into and was to be given to the said Moodoocoory Appian for the purpose of prevailing on him to Deliver the aforesaid sum of Two hundred and Fifty Pagodas to the beforementioned Verinjeepooram Appoo Chitty and also to Deliver up to your Petitioner the agreement entered into by him your Petitioner as had been before asforth and that the said Original of the said agreement marked B was then in the Custody of the aforesaid moodoocoory Appian and your Petitioner did Examine a Second witness Named Vengyer Who did Depose that he Knew Verinjeepooram Appoo Chitty late of Madras Shroff and that he the said Verinjeepooram Appoo Chitty died about Six Months before and that to his the Deponents Knowledge your Petitioner had about fifteen Months before Lodged and deposited a Certain Sum of Money with the said Verinjeepooram Appoo Chitty the amount of which was about two hundred and Fifty Pagodas for the Purpose of Strengthening the same and to keep it in his hands till it was Called for by your Petitioner the said sum of Two hundred and Fifty Pagodas being the Property of a Captain of a Country

Country Ship for Goods belonging to him Purchased by your Petitioner and some others and the said Deponent did say that your Petitioner three days after the said Sum of Money was so Deposited in the hands of the said Veringeepooram Appoo Chitty requested him to return the same to your Petitioner but that the said Veringeepooram Appoo Chitty did not return the said Sum of Money but said that the said Sum of Money had been taken or Carried away by one Moodoocoory Appien who sent his farther in law named Kistnatiah and his Servant named Ramiah for that Purpose and the said Deponent further did Depose that your Petitioner required and demanded of the above named Moodoo: coory Appien to return him your Petitioner the aforesaid Sum of Two hundred and Fifty Pagodas and that the said Moodoocoory Appien promised to return the same upon your Petitioners Entering into a written agreement or Bond to pay him the said Moodoocoory Appien a Sum of one hundred and Twenty five Pagodas in case the beforementioned Veeringeepooram Appoo Chitty did not pay the same and the said Deponent did Depose that he had looked at the paper writing then

then produced and shewn to him at the time of his Examination marked with the Letter A and that he was present at the Execution thereof and that the same was Executed about Eight o'Clock in the Morning of the Sixteenth February one Thousand Seven hundred and Ninety one on Account of the said Moodoocoory Appien Delivering the aforesaid Sum of two hundred and Fifty Pagodas to your Petitioner and that at the instance of the said Moodoocoory Appien the same was Delivered into the hands of Ekwaramiah and Kaumiah two People belonging to Moodoocoory Appien and the said Deponent did say that he Believed Moodoocoory Appien was the Person actually interested in the said Bond and in the Monies mentioned therein that his reasons for such belief were that the said Moodoocoory Appian lent a Certain Sum of Money to the beforementioned Veeringee: pooram Appoo Chitty and one Pattaveramiah as a Collateral Security for the payment of which Sum of Money he the said Moodoocoory Appien Requested your Petitioner to Execute the Bond above mentioned in the name of his Brotherinlaw Hiriniah Mootoo Sawmy

Eyer

Eyer the Complainant and the said Deponent did say that he knew Kistnian whose name was Subscribed as a Witness to the said Bond and that he was the father in Law of the said Moodoo:coory Appian and the said Deponent did say that he the said Kistnian was not present when the said written Instrument was Signed by the Defendant And your Petitioner did Examine a third Witness named Vineatarama Chetty who did Depose that your Petitioner Demanded from Moodoocoory Appien in the presence of this Deponent to return to your Petitioner the sum of Two hundred and fifty Pagodas and that the said Moodoocoor Ap:: peah promise to return the Monies which were so Demanded of him upon your Petitioner Entering into written agreement or Bond to pay him the said Moodoocoor Appian a Sum of one hundred and Twenty five Pagodas in Case one Veeringeporam Appoo Chetty should not pay the same and the said Deponent did say that he had Looked at the Paper writing then produced

produced and shewn to him at the time of his Examination marked with the Letter A and that he was not present at the Execution thereof And your Petitioner did Examine a fourth Witness named Venatta Verdapah Chetty who did Depose that he the Deponent had been appointed to act as an Arbitrator with Chingam Naich Shastiah and Cdunda Ramiah in settling a Certain Dispute and Difference Between Nimmah Mootoo Sawmy Eyer and your Petitioner respecting a Demand made by the said Nimmah Mootoo Sawmy Eyer upon your Petitioner and the said Deponent did say that he together with the aforenamed Chengam Naich Sastia and Cdundaramiah Examined the said Nimmah Mootoo Sawmy Eyer respecting his said Demand and that the said Demand arose from a Security Bond Executed by your Petitioner in the name of the Complainant for a Certain Sum of Money said to be due to one Moodoocoor Appian by one Veeringeporam Appoo Chetty and that the said Nimmah Mootoo Sawmy Eyer produced the said Security Bond in support of his Demand and

and the said Deponent did say that he did not Recollect the Date of such Instrument but that the import of it was that incase the aforementioned Veeringeeporam Appoo Chitty did not pay the amount of his Bond to the Complainant your Petitioner was to Cause the said Veeringeeporam Appoo Chitty to Discharge the same - And the said Deponent did say that he enquired of the said Nimmah Mootoo Sawmy Eyer whether he had given any Consideration to your Petitioner for his having Signed the said Written Instrument and how he became possessed thereof and that the result of such examination and enquiry was that the said Nimmah Mootoo Sawmy Eyer Confessed that he had paid no Consideration for the said Bond or written Instrument and that he became possessed thereof by having purchased it and the said Deponent did say that he and the other Arbitrators settled that the Complainant should either take his oath that he had paid a valuable Consideration for the said Bond or written obligation or return it to your Petitioner And the said Deponent did say that he

did

did know of a Complaint having been made by one Veeringeeporam Appoo Chitty against one Moodocoor Appian to the Justice of the Month of September One Thousand Seven hundred and Ninety one and that the Cause of such Complaint was that the Beforementioned Moodocoor Appian had refused to return to your Petitioner the Security Bond Executed by him in the name of the Complainant as well as two other Bonds notwithstanding the money for which the said Security Bond was granted had been Discharged and the said Deponent did say that he did not recollect the name of the Justice to whom the said Complaint was made and the said Deponent did say that the said Justice summoned the said Moodocoor Appian to Answer the said Complaint and that the said Moodocoor Appian did attend the said Justice And the said Deponent did say that the said Justice Desired the said Parties to settle their Dispute by Arbitration And the said Deponent did say that the said Veeringeeporam Appoo Chitty and Moodocoor Appian nominated Narrain Chitty and him the said Deponent Sawmy Naick and a Brahmin whose name he the Deponent

did

did not recollect to act as Arbitrators therein the two former on the part of Veeringjeepooram Appoo Chetty and the other two on the part of Moodoocoore Appian And the said Deponent did say that when the matter in Dispute Between the said Veeringjeepooram Appoo Chetty and Moodoocoore Appian was referred to him the said Deponent and the other arbitrators hereinbefore mentioned they the said Arbitrators required the said Moodoocoor Appian to produce two Bonds Executed by Veeringjeepooram Appoo Chetty and also the Security Bond Executed by your Petitioner which he the said Moodoocoore Appian promised to do provided the said Veeringjeepooram Appoo Chetty gave bail for the Discharge of the Balance if any there were due to him from the said Veeringjeepooram Appoo Chetty who Accordingly gave an agreement for that purpose and the said Moodoocoor Appian Likewise entered into an agreement that he would produce the two Bonds and Security Bond beforementioned which agreement he did not perform And your Petitioner did Examine affith Witness named

Vadorcavaury

Vadorcavaury Narrain Chetty who did Depose that he did know of a Complaint being made by one Veeringjeepooram Appoo Chetty against one Moodoocoore Appian to the Justice for the Month of September One Thousand Seven hundred and Ninety one and that the Cause of such Complaint was in Consequence of the said Moodoocoore Appians having Detained one Bond and two agreements and that the said Complaint was made to John Huddleston Esquire the Justice of the Month and that the said Justice summoned the said Moodoocoore Appian to Answer such Complaint and that he did attend the said Justice who thereupon Desired the said Parties to settle the said dispute by Arbitration and the said Deponent did say that the said Veeringjeepooram Appoo Chetty and Moodoocoore Appian nominated and appointed four Persons to act as their Arbitrators Respectively therein namely Venkatavardapah Chetty and him the said Deponent on the part of Veeringjeepooram Appoo Chetty and Canacapetty Sawmy Naick and Nalamauravy Venatarayer on the part of Moodoocoor Appian

Appoien and the said Deponent did say that after the matters in Dispute between Veeringeepooram Appoo Chetty and Moodoocoor Appuian had been referred to him the said Deponent and the other Arbitrators herein Before mentioned they the said Arbitrators took Penalty Bonds for the purpose of binding them the said Parties to abide by the award of the said Arbitrators and that the arbitrators at the same time required the said Moodoocoor Appuian to produce them a security Bond Executed by your Petitioner and also a Bond and agreement Executed by Veeringeepooram Appoo Chetty in the name of Nimmah Mootoo Sawmy the Complainant and that thereupon he the said Moodoocoor Appuian Desired the said Veeringeepooram Appoo Chetty to give security for the Money which he said was due to him the said Moodoocoor Appuian from the said Veeringeepooram Appoo Chetty with which the said Veeringeepooram Appoo Chetty Complied but the said Moodoocoor Appuian did not produce the before mentioned Bond and Agreement - And your Petitioner did Examine a Sixth and last Witness named Patchyappen who did depose that he the said

said Deponent had looked at the paper writing there produced and shewn to him at the time of his Examination marked with the Letter C and that the same was in the hand writing of his the said Deponents Brother Chinna Patchyappa and that his said Brother was Employed by order of Mr Huddleston on the Twenty Ninth September One Thousand Seven hundred and Ninety one to Draw the Original of the said Writing marked C and that his Brother drew and prepared the Original of the said produced Paper writing and that the same was then in the Custody or possession of him the said Deponent and the said Deponent did say that he had Compared the said now produced Exhibit C with the said original thereof and that the same was a true Copy of the said Original And the said Deponent did say that the several Bonds mentioned and excepted in the body of the said Exhibit C had not been produced to them by any Person or Persons but he did believe that they were produced to his Brother the beforementioned Patchyappen at the time he Drew the Original of the said Exhibit marked with the Letter C - And your Petitioner sheweth unto this

this Honourable Court that thereupon Publication did pass and the said Complainant did take Exceptions to Certain of the Interrogatories Exhibited on the part of your Petitioner and to the Evidence thereon and your Petitioner in like manner did take Exceptions to Certain of the Interrogatories Exhibited on the part of the said Complainant and to the Evidence given on the same to which Exceptions answers were filed by each party respectively and the said Cause did Come on to be heard before the said Mayors Court on the fifth Day of June Instant - And your Petitioner sheweth unto this Honourable Court that the said Mayors Court did think fit to Order and Decree and did Accordingly Order and Decree that your Petitioner should pay unto the Complainant the full and Just sum of One hundred and Thirty one Star Pagodas and forty three fanams together with all such Interest as then was or should thereafter become due thereon until full payment should be made together also with the Costs of that Suit as by the said Decree of the said Mayors Court a Copy whereof is hereunto annexed for the Inspection of this Honourable Court will appear to which Copy your Petitioner begs leave to refer

refer and prays that the same may be taken as a part of this his Petition and Appeal - And your Petitioner sheweth unto this Honourable Court that Andrew Ross Esquire one of the Aldermen of the said Mayors Court and present at the making of the said Decree did dissent therefrom for that he was of Opinion that the instrument upon which the action was founded being Expressly called an agreement Could not be Considered as a Bond and being therefore in its own nature merely a Chose in action which was not assignable in Law and therefore that the Bill of Complaint should be Dismissed as will appear to this Honourable Court by the Copy of a true and authentick Extract from the Minutes of the said Mayors Court hereunto annexed for the inspection of this Honourable Court to which your Petitioner humbly prays leave to refer and that the same may be taken as a part of this his Petition and Appeal - By which said Order and Decree of the said Mayors Court your Petitioner does conceive himself much aggrieved and doth therefore Appeal therefrom to this Honourable Court for the following amongst other Reasons -

First... Because the said Mayors Court have in making the said

said Decree Exceeded their Jurisdiction and Acted Contrary to the manifest intent of the Charter Constituting the said Mayors Court for your Petitioner saith that by a special Clause Contained in the said Charter suits and actions Between the Indian Natives of Madrastpatnam only are Expressly excepted from amongst the Suits actions and pleas whereof Cognizance is thereby given to the said Mayors Court and it is by the said Charter Willed that the suits of such Natives be Determined among themselves unless both parties shall by Consent submit the same to the Determination of the said Mayors Court and your Petitioner sheweth unto this Honourable Court that the said action did and doth actually lie Between the Native Inhabitants of Madrastpatnam only for your Petitioner is advised that the pretended assignment to the said Matthew Mark of the agreement whereon the said action was instituted against your Petitioner is a mere Evasion of the said Charter and that the interv: vention of the said Matthew Mark in the said action as the pretended Attorney of the Complainant doth not in Law affect the nature of the said action but that the same did and doth notwithstanding still

Liebetween

Liebetween the said Complainant and your Petitioner and thereupon your Petitioner is further advised that it did behave the said Mayors Court to take notice of its own Jurisdiction in the premisis and that it was by no means incumbent upon your Petitioner to set forth the same —

Secondly — Because as is Stated in the Dipsent of the said Andrew Ross the Instrument upon which the said action is founded is an agreement and so Expressly Called which being a Chose in Action is not assignable in law —

Thirdly — Because the Complainant hath no interest whatever in the Demand Set up by him against your Petitioner —

Fourthly — Because your Petitioner having Established by Evidence that he had Received no Consideration whatever for his undertaking in the said agreement and that he your Petitioner had been prevailed upon by the fraudulent and unlawful Contrivance of Moodoocoor Appian the person actually interested in the said agreement to assume without any Consideration the Debt of a third person he your Petitioner is advised that the

was

was not nor is liable for the Monies mentioned in the said Agreement

Fifthly. Because your Petitioner although as he is advised he was in no wise bound by the said agreement yet upon the Conditional promise of the said Moodascoor Appiaw that he would Deliver up the same if your Petitioner would procure a Bond for One hundred and fifty Pags from Veerenjeepooram Appoo Chitty and mattaw Pattaby Ramayah the real Debtor of the said Moodascoor Appiaw he actually procured such a Bond from them the said Veerenjeepooram Appoo Chitty and mattaw Pattaby Ramiah whereby your Petitioner humbly Sheweth unto this Honourable Court the said agreement if it hadever been of any validity became thenceforth void and Extinguished both at Law and in Equity and therefore and for other Reason deducible from the Pleadings your Petitioner Submit that the said Mayors Court ought not to have Decreed as aforesaid —

For all which Reasons and Such others as may be offered at the Hearing your Petitioner prays that this Honble Court will be pleased to reverse the said Decree of the said Mayors Court and grant unto your Petr Such further and other Relief in the premisses as to the Wisdom of this Honble Court shall seem most Meet —

(Signed) John Wilkinson
Attorney for Petr —

Mayors

12

Mayors Court at Madraspatnam

Friday the 5th day of June Anno Domini 1795.

L S

Mayors Court

Present

Benjamin Roebuck Esqr Mayor
Andrew Ross and John Mitford
Aldermen

Between Nimmah Mootoo Sawmy Eyer by his Attorney Mathew Maclw of Madras Inhabitant Complainant and Caunjeepooram Vurdaspah Chitty also of the same place Inhabitant Defendant

This Cause Coming on to be Heard and Debated this Day in the presence of the Attornies on both Sides on Reading the Complainants Bill with Copies of the Translate of an Agreement or Obligation on Account Current and an Assignment annexed the Defendants Plea and Answer the Amended Replication the Amended Rejoinder with Copy of a Penalty Bond annexed the Interrogatories and Depositions on the part of the Complainant the Interrogatories and Depositions on the part of the Defendant

Defendant with three Exhibits annexed on Hearing the Pleadings made use of by the Attorneis and 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 thirty one Star Pagodas and forty three fanams / Star Pags 131.. 43" 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—

Pour

(Signed) J. E. Ashton
Dy Regr

Extract

Extract from the Minutes of a Court Held at the Town Hall on Friday the 5th day of June Anno Domini 1795

Present

Benjamin Roebuck Esqr Mayor
Andrew Ross and John Stafford
Aldermen

Nimmah Mootoo Sawmy Eyar by his Attorney Matthew Marks

VERSUS

Cunjeeporam Vurdapah Chetty

Mr Alderman Ross Dissents to the Resolution of the Court being of Opinion that the Instrument upon which the action is founded being Expressly called an Agreement cannot be Considered as a Bond and being therefore in its own nature merely a Chose in Action which is not assignable in Law and therefore that the Bill of Complaint should be dismissed—

A True Extract

(Sig) J. E. Ashton Dy Regr

Court

Court of Appeals }
Madraspatnam }

Friday the 6th day of October
Anno Domini 1797

Between Conjeepooram Vurdapa Chitty of Madras Inhabitant Appellant and Nimmala Mootoo Sawmy Eyer by his Attorney Mathews Marks of the same place Inhabitant Respondent —

This Cause coming on this day to be heard and debated before this Court and upon due Consideration of the Petition of Appeal together with the Decree of the Honourable the Mayors Court given in this Cause on Friday the 5th day of June Anno Domini 1795 and it appearing to the Court that the matter in dispute is Between two Natives and that the Plaintiff in the said Mayors Court has made use of the name of Mathew Marks as his Assignee only for the Purpose of evading the Charter This Court doth therefore fit to Order and Decree and doth Accordingly Order and Decree that the said Decree of the Honourable the Mayors Court given in this Cause on Friday the 5th day of June Anno Domini 1795 be Reversed and that each party do pay their own Costs in both Courts —

Clerk

To

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

In the Honble the }
Court of Appeals }

Between Gouldoss Administrator to the Estate and Effects of Vetteldoss Deceased as Prochein Amie to Govierdendoss Son and Heir of the said Vetteladoss Complainant and Narrain Doss Jagajevana Doss Gangajee Defendant

The Humble Petition and appeal of the above named Defendant —

Sheweth

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

That the Complainant above named did some time on or about the thirteenth day of February in the present year of Christ one thousand Seven hundred and Ninety Six Exhibit and file his Bill of Complaint in the Honourable the Mayors Court at Madraspatnam against your Petitioner and did therein and thereby amongst other things state that your Petitioner stood Justly and truly Indebted unto him the Complainant in the sum of Four thousand Seven hundred and thirty

Seven

Seven Star Pagodas fourteen fanams and Seventy Cash as by an Account unto his said Bill of Complaint annexed for the Inspection of the said Mayors Court to which the Complainant did Crave Reference and Pray that the same might be taken as part of and in aid of his Bill of Complaint to Charge your Petitioner the said Complainant did say would Appear and the Complainant did state that the said Debt so accrued and became due to the Complainants said Intestate by his having Sold to your Petitioner the Several Jewels stated on the Debit side of the said annexed Account and that your Petitioner had Credit given him as in the said Account was Set forth for the various Sums of Money there Appearing and by him paid on Account leaving the aforesaid Balance undischarged to the Complainants said Intestate at the time of his Decease and which Balance the said Complainant did Charge was then unsatisfied to the Complainant and the said Complainant did in and by his said Bill of Complaint Pray that the said Mayors Court would be pleased to grant unto the Complainant a general relief and that he your Petitioner might be Decreed to pay unto the said Complainant

the

the said Sum of Four thousand Seven hundred and thirty Seven Star Pagodas fourteen fanams and Seventy Cash together with all Costs of Suit—

And your Petitioner further Sheweth unto this Honourable Court that being Served with a Summons to Appear and answer the said Bill of Complaint he did Accordingly by his Attorney Appear to the same and did Exhibit and file his Plea to the said Bill of Complaint of the said Complainant and did in and by his said Plea State that there was no matter or thing in the said Bill contained good and Sufficient in Law or Equity to Call him your Petitioner in Question in the said Honourable the Mayors Court for the same but that there was good Cause of Plea thereunto and for Plea your Petitioner did say that the Complainants said Bill in case the allegations therein Contained were true which your Petitioner did in no sort admit did not contain any matter whereon the said Mayors Court could ground any Decree or give the Complainant any relief or Assistance as against him your Petitioner for that the said Complainant by his own shewing had Claimed and pretended title to the Cause of action in the said

Bill

Bill Setforth as administrator of all and Singular the Estate and Effects of Vetuladoss Deceased who your Petitioner did say, was a natives of India and your Petitioner did say that he was also an Indian native and that he was advised that the said Vetuladoss Deceased by the Operation of a Charter Granted to the united Company of Merchants of England trading to the East Indies by his late Majesty and bearing date the Sixth day of January in the year of Christ one thousand Seven hundred and fifty Two and by a Saving Clause in the said Charter Could not have Holden or maintained Suit or Action in the said Mayors Court as against your Petitioner unless your Petitioner by Consent had submitted such Cause of suit or action unto the Determination of the said Mayors Court which your Petitioner did state he had not at any time done and the said Complainant who your Petitioner said was also an Indian native of Madraspatnam Could not as your Petitioner did say he was advised by virtue of Letters of administration to him granted Derive any right or Power therefrom and by reason of such Letters of administration to institute any suit or action in the said Mayors Court

Court as administrator of the said Vetuladoss Deceased which did not exist in his lifetime in the Complainants said Intistate unless your Petitioner by Consent had Submitted the said Complainants Cause of action if he had any to the Determination of the said Mayors Court and which the said Complainant in his said Bill had not alleged or Charged and which your Petitioner in truth and fact said that he had not at any time done For in the said Charter of his said Majesty it is amongst other things ordained Directed and appointed and in the Words following to wit "That the "Mayor and Alderman for the time being of Madraspatnam "shall for ever hereafter be and they are hereby Constituted a Court "of Record by the name of Mayors Court at Madraspatnam "and that they or any three or more of them whereof the Mayor "or the Senior Alderman for the time being then residing there to be "one may and they are hereby authorized to try hear and "Determine all Civil Suits actions and Pleas between Party "and Party that shall or may arise and happen or that have "already arisen or happened within the Jurisdictions of the "Factories Subordinate unto Fort St George aforesaid or to the Governor "or President and Council of Fort St George aforesaid Except such Suits

Suits or Actions shall be Between the India Natives of Madraspatnam only in which Case We will that the same be Determined among themselves unless both parties shall by Consent Submit the same to the Determination of the said Mayors Court" and your Petitioner did Plead the said Charter in abatement of the Complainants said Bill of Complaint and did Demand the Judgement of the said Mayors Court whether he your Petitioner should be Compelled to make any answer thereunto Otherwise then as therein before stated —

And your Petitioner further Sheweth unto this Honourable Court that to the said Plea of your Petitioner hereinbefore set forth the said Com: plainant did Exhibit and file his Replication and did therein and thereby state that in and by the Charter pleaded by your Petitioner in abatement of the said action His late Majesty King George the Second did for himself his Heirs and Successors give and grant to the East India Company and their Successors and did ordain Establish and appoint in substance that where any Person there being in this instance no Exception or limitation should die intestate within the Town of Madraspatnam

Madraspatnam or Fort St George or the limits thereof or of any of the Factories Subordinate thereto or within certain other Towns and Jurisdictions also mentioned the Mayors Court within the Jurisdiction thereof such person should happen to die should and was thereby Empowered to grant Letters of Administration to such Discription of Persons and upon such Security as was therein Specifyed and his said Majesty did by the said Charter Declare it to be his Royal will and pleasure that such person or Persons to whom administration should be so granted should and might act in all Respects as administrator and administrators touching the Debts Effects and Estate of the Deceased in so far as the same should be or arise or within the limits of Trade granted to the said Company and the Complainant did further state that the said Mayors Court being the Sole Court established by Law in Madraspatnam or its Dependancies for the hearing of Causes in the first Instance that unless with the Power of Granting administration it Possessed also that aiding administrators in the Exercise of their Office the benevolent intent of the Charter in as far as regards the Estates of Natives and the Creditors and Legaters of such Estates must have been intirely frustrated and the

Royal

Royal Grant must so far have proved futile and Nugatory
But the Complainant did say that in the Exposition of Deeds
it was the Rule of Law that the same should be Expounded
ut res Magis Valeat quam pereat so as that the Deed might
rather prevail than perish To which Rule and even to Common
sense it was repugnant that so important a part of his Majestys
gracious Dispensation as that which provided for the safety
of the Estates of natives should perish by force of an Exception
which had no reference thereto nor Connection therewith
and therefore the said Complainant did say that the said
Mayors Court with the Power of Conferring upon Individuals
the Rights of administrators must have and actually had the
Accessary and Consequential power of Supporting and inforcing
the Rights which it was so Empowered to Confer—

And your Petitioner Sheweth unto this
Honourable Court that upon the Pleadings aforesaid being
had in the said Cause Issue did Join in the said Matter of
Plea so impleaded by your Petitioner and the same came
on to be argued in the said Mayors Court before a Probation
Court Summoned for that amongst other purposes on
Tuesday the Twenty first Day of June in the present year
of Christ one thousand Seven hundred and Ninety Six
when

when the said Court was of Opinion that the said Plea
of your Petitioner was good and Sufficient and did
therefore order that the Bill of the said Complainant
should stand Dismissed with Costs as by a Copy of an
Extract from the Minutes of the said Mayors Court
hereunto annexed for the Inspection of this Honourable
Court and which your Petitioner humbly begs may be
taken as part of this his Petition and Appeal may appear
And your Petitioner Sheweth unto this Honorable Court
That the Complainant pretending himself to be aggrieved
by the said order and Decree of the said Mayors Court
did on the Twenty Eighth Day of June last past file a
Petition and Pray a rehearing of the said order of the said
Mayors Court which your Petitioner sheweth the said Court
having been pleased to grant the said Cause did accordingly
Come on to be Reheard before a full Court on the Sixth Day of
December when the said Court was pleased to Order
that the said Plea of your Petitioner should be over
ruled and that your Petitioner should file an answer
to the said Bill of Complaint of the said Complainant
as by a Copy of an Extract from the Minutes of the said
Mayors Court hereunto annexed for the Inspection of
this

this Honourable Court and which your Petitioner humbly begs may be taken as a further part of this his Petition and appeal may appear—

By which said Order and Decree of the said Mayors Court your Petitioner did think himself much aggrieved and did therefore appeal therefrom unto this Honourable Court for the following and amongst other Reasons—

First.... Because the Clause of the said Royal Charter of his late Majesty as impleaded by your Petitioner having been Correctly stated and recited and being Clearly operative in disability of the Person of the said Complainant the said Mayors Court should and ought in respect of the same to have allowed the Plea of your Petitioner For your Petitioner humbly sheweth that by the said Clause of the said Charter the natives of India are precluded from holding and maintaining suits against each other in the said Mayors Court Except in the Case of Mutual Consent and your Petitioner further sheweth that as nothing in the said Bill of the said Complainant or in any other pleading Exhibited on his behalf is set forth or is admitted by your Petitioner whereby to shew that the Consent of your Petitioner had ever been had in the said Cause But your Petitioner saith that in his said Plea he did aver that he had not at any time given or Signified his Consent that the said Complainant might Institute a Suit against him touching the Premises in the said Mayors Court and the said Mayors Court having no Jurisdiction over any Cause of action as subsisting between Native and native but on the previous assent of both parties thereto and your Petitioner having shewn that he was and is an Indian Native and that he had not assented to the said action of the said Complainant it was Clear and Manifest by the Express words of the said Charter that the said Mayors Court had not any Jurisdiction over the said action but that the same was as Coram non Judice and therefore that the said Plea of your Petitioner should have been regarded and the said Bill of the said Complainant Dismissed with Costs—

Secondly Because although it might have been true that the said Complainant had administered to the said Estate of his Intestate as alleged by him but admitting the same such Circumstance or Fact could not as your Pet[itioner] is advised

is advised take the Case out of the Exception of the said Clause of the said Charter For your Petitioner sheweth that the said Complainant was as much an Indian native when possessed of the said administration as previously and therefore Liable to the restriction of the said Charter the said Restriction being General as against Indian natives and your Petitioner sheweth that although the said Complainant so far as regarded the said Estate of this Intestate might have submitted himself to the Jurisdiction of the said Mayors Court yet such Submission could not in the mind of your Petitioner Determine the will or Consent of any other person and more especially of your Petitioner and your Petitioner hath shewn in his said first Reason without the Consent of both Parties the said Mayors Court were not authorised to hold Suit as in the Case of the said Complainant against your Petitioner he the said Complainant and your Petitioner being both Indian Natives —

Lastly --- Because the Interpretation or Construction of the said Clause in the said Charter as Contended for in the Replication of the said Complainant is forced and strained and does not and Cannot serve to bring the said Complainants Cause of Action within the meaning of the said Charter For if the reason of the said Clause in the said Charter Contained did Extend to and include no further within its Scope than the Indian Natives of Madraspatnam and such only no other Discription of Indian Natives being mentioned in the said Charter the said Charter left all other Indian natives of Consequence to the restraint and Controul of their own Laws whatsoever they might have been —

Wherefore and For all which reasons and Such Others as may be Offered at the hearing your Petitioner humbly Pray that the said Order of the said Mayors Court may be reversed and that this Honourable Court will be pleased to grant unto your Petitioner such Other Relief in the Premises as in their Wisdom May seem Meet —

/ 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 June Anno Domini 1796

Present

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

Gouldoss Administrator of the Estate and Effects of Vituladoss Deceased as prochein Amie to Goverdindoss Son and Heir of the said Vitulas Doss

Narrain Doss Jagajeeana Doss Gangajee

Bill with Copy of an Account annexed Read
Affidavit of the Complainant Read
Plea Read
Replication Read

The Defendants Plea to the Complainants Bill of Complaint and the Replication coming on to be Argued and Determined this Day in the presence of the Attornies on both sides On Hearing the Arguments made use of by the Attornies and on due Consideration had thereon the Court are of Opinion that the Pleas is good and Sufficient It is therefore Ordered that the Complainants Bill do stand Dismissed with Costs

A true Extract

A True Copy
/Signed/ Emanuel Samuel
Solicitor for Appellant

/Signed/ George Taylor Esqr

Extract

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 6th day of December Anno Domini 1796

Present

James Daly Esqr Mayor

Andrew Ross and Alexr Cockburn

Aldermen

Mr Alderman Webb takes his Seat upon the Bench

Mr Alderman Dring takes his Seat upon the Bench

Messrs Aldermen Call Mitford Roebuck Abbott & Chase

take their Seats upon the Bench —

Gouldoss Administrator of Veitaladoss Deceased.

VERS

Narrain Dass & Jegavandass Gangajee

Petition of the Complainant praying a Rehearing of the Order of this Court of the 21st June last Read —

Plea of the Defendant Read —

Replication thereto Read —

The Defendants Plea to the Complainants Bill and the Replication thereto Coming on to be Re argued and Determined in the presence of the Attornies on both Sides

Sides On hearing the pleadings and Arguments made use of by the Attornies and on due Consideration had thereon This Court doth think fit to Order and doth Accordingly Order that the said Order of this Court of the 21st June last be reversed that the Defendants plea be over ruled with Costs and that the Defendant be put upon his Answer —

A True Extract —

/ Signed / George Taylor Regr

A True Copy

/ Signed / Emanuel Samuel

Solicitor for Appellant —

In

In the Honourable the Court of
Appeals at Madraspatnam

Between Gooldass Administrator
to the Estate and Effects of Vetuladass
deceased as procheim amie to Gavordandass
Son and heir of the said Vetuladass &c
Complainant and Narrandass Jaga-
:jeevanadass Ganganjee Defendant—

The Answer of the above named Complainant To the Petition
and appeal of the above named Defendant—

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

This Respondent answering admits
that on or About the thirteenth day of February in the year of
Christ One thousand seven hundred and ninety six he
this Respondent did Exhibit and file his Bill of Complaint
in the Honourable the Mayors Court at Madraspatnam
against the Petitioner and to the Effect by the said Petitioner
in his said Petition of Appeal setforth and this Respon-
:dent doth further admit that the Petitioner being served
with a Summons to appear and answer the said Bill
of Complaint he did Accordingly by his attorney appear
to the same and did Exhibit and file his plea to the
said

said Bill of Complaint whereby he did state that there
was no matter or thing in the said Bill Contained good
and sufficient in Law or Equity to Call him the Petitioner
in question in the said Honourable the Mayors Court
for the same but that there was good Cause of Plea
thereunto and for Plea did say that this Respondents
said Bill in case the allegations therein Contained were
true (which the Petitioner did in no sort admit) did not
Contain any matter whereon the said Mayors Court could
Ground any Decree or give this Respondent any relief or
Assistance as against him the Petitioner For that this Respondent
by his own shewing had Claimed and pretended Title
to the Cause of action in the said Bill setforth as admi-
:nistrator of all and singular the Estate and Effects of
Vetuladass Deceased who the Petitioner did say was a
native of India and the Petitioner did say that he
was also an Indian Native and that he was advised
that the said Vetuladass Deceased by the Operation
of a Charter granted to the united Company of Merchants
of England trading to the East Indies by His late Majesty
and bearing date the sixth Day of January one thousand
seven hundred and fifty two and by a saving Clause in
the

the said Charter could not have holden or maintained Suit or Action in the said Mayors Court as against the Petitioner unless the Petitioner by Consent had submitted such Cause of suit or action to the Determination of the said Mayors Court which the Petitioner did state he had not at any time done and the Petitioner did further say that this Respondent was also an Indian Native and could not therefore as he the Petitioner did say he was advised by virtue of Letters of administration to him this Respondent granted derive any right or power therefrom and by reason of such letters of administration to institute any suit or action in the said Mayors Court as Administrator of the said Vitzladeff deceased which did not Exist in the lifetime of this Respondents said Intestate unless the Petitioner by Consent had submitted this Respondents Cause of action if he had any to the Determination of the said Mayors Court and which this Respondent in his said Bill had not alledged or Charged and which the Petitioner in truth and fact said that he had not at any time done For that in the said Charter of his said Majesty it is amongst other things ordained directed and appointed and

and in the words following to wit "That the Mayor and Aldermen for the time being of Madraspatnam shall forever hereafter be and they are hereby Constituted a Court of Record by the name of Mayors Court at Madraspatnam and that they or any three or more of them whereof the Mayor or the Senior Alderman for the time being then residing thereat may and they are hereby authorized to try hear and Determine all Civil Suits actions and Pleas Between party and party that shall or may arise and happen or that have already arisen or happened within the Jurisdiction of the Factories subordinate unto Fort St George aforesaid Except such suits or actions shall be between the Indian Natives of Madraspatnam only in which case we will that the same be Determined among themselves unless both parties shall by Consent submit the same to the Determination of the said Mayors Court" and the Petitioner did plead the said Charter in abatement of this Respondents said Bill of Complaint and did Demand the Judgment of the said Mayors Court whether he the Petitioner should be Compelled to make any answer thereunto Otherwise than as therein before stated – and this Respondent admits That to the said

Plea

Plea of the Petitioner herein before set forth he this Respondent did Exhibit and file his Replication and did therein and thereby state that in and by the Charter pleaded by the Petitioner in abatement of the said action His late Majesty King George the second did for himself his heirs and successors Give and Grant to the East India Company and their successors and did ordain establish and appoint in substance that where any person there being in this instance no Exception or limitation should die intestate within the town of Madraspatnam or Fort St George or the limits thereof or of any of the Factories subordinate thereto or within Certain other Towns and Jurisdictions also mentioned the Mayors Court if within the Jurisdiction thereof such person should happen to die should and was thereby Empowered to grant letters of administration to such description of persons and upon such security as therein specified and His said Majesty did by the said Charter declare it to be His Royal Will and pleasure that such person or persons to whom administration should be so granted should and might act in all respects as administrator and administrators touching the Debts Effects and Estate

Estate of the deceased inso far as the same should be or arise within the limits of trade granted to the said Company and this Respondent did further state that the said Mayors Court being the sole Court established by Law in Madraspatnam or its Dependencies for the hearing of Causes in the first instance unless with the power of granting administration it possessed also that of aiding administrators in the Exercise of their office the benevolent intent of the Charter in as far as regards the Estates of Natives and the Creditors and Legatees of such Estates must have been entirely frustrated and the Royal Grant must so far have proved futile and nugatory But this Respondent did say that in the Exposition of Deeds it was the Rule of Law that the same should be Expounded utres magis valeat quam pereat so as that the Deed might rather prevail than perish to which Rule and even to Common sense it was Repugnant that so important a part of His Majestys gracious Dispensation as that which provided for the safety of the Estates of Natives should perish by force of an Exception which had no Reference thereto nor Connection therewith and therefore this Respondent did say that the said Mayors Court

Court with the power of Conferring upon Individuals the rights of Administrators must have and Actually had the Accessory and Consequential power of supporting and enforcing the rights which it was so Empowered to confer and this Respondent admits that upon the pleadings aforesaid being had in the said Cause Issue did Join in the said matter of plea so impleaded by the Petitioner and that the same came onto be argued in the said Mayors Court before a Rotation Court summoned for that amongst other purposes on Tuesday the Twenty first Day of June in the year of Christ one thousand seven hundred and Ninety Six when the said Court was of opinion that the said Plea of the Petitioner was good and sufficient and did therefore order that the Bill of this Respondent should stand Dismissed with Costs as by a Copy of an Extract from the Minutes of the said Mayors Court annexed to the said Petition and Appeal for the inspection of this Honourable Court and which the Petitioner prayed might be taken as part of his Petition and Appeal might appear and This Respondent admits that he being aggrieved by the said Order and Decree of the said Mayors Court did on the Twenty eighth day of June last past One thousand Seven hundred and Ninety six file a Petition and pray a rehearing of the said Order of the Mayors Court which the said Court having been pleased to grant the said Cause did Accordingly Come onto be reheard Before a full Court on the Seventh day of December then following when the said Court was pleased to Order that the said Plea of the Petitioner should be overruled and that the Petitioner should file an Answer to the said Bill of Complaint of this Respondent as by a Copy of an Extract from the Minutes of the said Mayors Court annexed to the said Petition and Appeal for the inspection of this Honourable Court and which the Petitioner prayed might be taken as a further part of his Petition and Appeal might appear By which said Order and Decree of the said Mayors Court the Petitioner has pretended himself much aggrieved and has appealed therefrom unto this Honourable Court for Certain pretended reasons set forth in the said Petition and Appeal and to which this Respondent begs leave to submit to this Honourable Court the following answers

To the first Reason of Appeal this Respondent doth Oppose the Obvious meaning of the very Phrase of the Charter

Charter on which the Appellants Objection to the said Decree of the said Mayors Court infavour of this Respondent is professedly grounded for the said words or Passage do as this Respondent humbly submits Directly Determine the sole intended operation namly "to prohibit without previous Consent had the Mayors Court at Madraspatnam from holding suit or Plea Between the Madras Indian Natives" And to Bar this Respondents pretension in this behalf it would as he humbly submits have been of the Essence of the appellants Plea to have shewn that this Respondents Testator or at least that he the Appellant himself were one or both of them an Indian Native or Natives of Madras otherwise the said Charter Could not intend or include them and this Respondent shewith from the said plea Corresponding with the fact that the Appellant Could not in that way avail himself for the said Plea Expressly recognizes the said parties simply as Natives of India without the addition of Madraspatnam for the truth is that they nor Either of them were of or Belonging to Madras and Consequently no way Comprehended

by

by the said Charter but open to the General course of Justice as by the same is Otherwise provided for the said Mayors Court is Constituted to try hear and determine all Civil suits actions and pleas Between party and party that have arisen or may arise within the Town of Madraspatnam or within any of the Factories subject or subordinate to Fort St George with the only proviso which the Appellant has idly presumed upon "Except that such suits or actions shall be between the Indian Natives of Madras patnam only in which Case the Charter leaves those Reputedly reserved Natives of India to their own Customs unless the parties shall submit themselves to the Jurisdiction of the said Mayors Court And this Respondent in order to shew to this Honourable Court a probable Ground wherefore the said Exception hath obtained Admission in the said Charter doth refer to a Certain petition of the Inhabitants of Madraspatnam to the Government of Fort St George under date sometime in the year One thousand seven hundred and

Thirty

thirty five praying as it purports in the name of the whole of the Indian Natives of Madraspatnam to be recommended to the Court of Directors for such Exemption from the Jurisdiction of the said Mayors Court and as the said Charter hath accorded And this Relation if true is an unanswerable argument as this Respondent Conceives agt. any other meaning than as aforesaid being annexed to the said passage of the said Charter for an Exception from its very import is to be Strictly Construed —

To the Second Objections this Respondent doth oppose the spirit and Clear intent of the same Charter which provides in all cases and without Exception that where any person should die intistate within the Towns Madraspatnam and the limits thereof or any of the factories subordinate to Fort St George that the said Mayors Court should and was thereby Empowered to grant Letters of administration to such Description of persons and upon such security as is therein spesified and that such person or persons to whom Administration should be so granted should and might act in all respects as Administrator touching the Debts Effects and Estate of the Deceased from whence this Respondent doth humbly say it is Certain that where an administration agreably to the said Charter is granted that the person whomsoever he be acquires all the rights of an Administrator and Consequently may sue or be sued in so far as regards his trust and the interest he has by the Law in his Intestates Estate For were it otherwise to what intent is the said Power in the said Charter granted to the said Mayors Court can it be urged that the Legislature were not at the time of making it aware of the extensiveness of their grant and that it included all descriptions of men and Estates to be represented within the limited Jurisdiction To argue otherwise would not only be to oppose mere opinions to the Clear words of the Charter but militates also against the rule for its exposition in the following words" And We do for us our heirs and "Successors Grant and Declare that these our Letters "Patent or the inrollment thereof shall be in and by "all things valid and Effectual in the Law according "to the true intent and meaning of the same "and shall be taken construed and adjudged in the most

"most favourable and beneficial sense for the best
"advantage of the said Company as well in our Courts
"of Record as elsewhere Notwithstanding any non recital
"misrecital Defects Incertainty or Imperfection in these our
"Letters Patent"

For all which reasons and such others as may be offered in answer to the Appellants said Petition and Appeal at the hearing thereof this Respondent humbly prays that the said Order of the Mayors Court may be Confirmed with Costs and that this Honourable Court will be pleased to grant this Respondent such other Relief in the premises as in their wisdom may seem Meet—

(Signed) Wilkinson & Sutherland
Solicitors for Respondent—

Court

Court of Appeals at Madraspatnam } Friday the 6th day of October Anno Domini 1797.

Between Narrain Dos Jagajeevan Dos Gangajee of Madras Merchant Appellant and Gouldos Administrator of Veetala Dos Deceased Respondent—

This Cause coming on this day to be heard and Debated before this Court by the attornies on both sides upon hearing the Petition of Appeal and answer and the several Exhibits of the Honorable the Mayors Court together with the Order of the said Court given in this Cause on Tuesday the 6th day of December Anno Domini 1796. upon due consideration had of the matters therein severally contained and of the Pleadings and arguments used by the attornies on both sides. This Court doth think fit to Order and Decree and doth accordingly Order and Decree that the said Order of the Honorable the Mayors Court dated the 6th day of Dember Anno Domini 1796. be Reversed and that each party do pay their own Costs in this Court—

Your

To

To the Right Honourable Lord Hobart

Governor and Precedent in Council

In the Honourable the Court of Appeals } Fort St George

In the Matter wherein Chitray Pillay Executor of the last Will and Testament of Paiany Aye Widow and Relict of Patchiapah Moodeliar Deceased was Proponent and Pony Narrain Pillay One of the Executors of the said Patchiapah Moodeliar Deceased was Apponent —

The humble Petition of the above named Chitray Pillay —

Sheweth

That on or about the thirteenth Day of May which was in the year of Christ One thousand Seven hundred and ninety from the above named Pony Narrain Pillay did Exhibit and prove in the Mayors Court at Madraspatnam in their Ecclesiastical Capacity a Paper Writing purporting to be the last Will and Testament of the above named Patchiapah Moodelly and the above named Paiany Aye did thereupon file

Filed in my Office the 25th December 1795
J Webbe Clk

file a Caveat That in Consequence thereof Allegations were filed by the said Paiany Aye and an Answer thereto by the said Pouny Narrain Pillay and Issue did thereupon Join and rules did pass for the Examination of Witnesses and Witnesses were Examined Accordingly and publication did pass and the said matter was Ordered to be propounded before the said Mayors Court in their said Ecclesiastical Capacity but that before the same was so propounded the said Paiany aye did Depart this life having first duly made and published her last Will and Testament in Writing and therein appointed your Petitioner Executor thereof and your Petitioner having proved the same and taken out probate thereof the above named Pouny Narrain Pillay did pray that Probate might pass the seals to him of the said last Will and Testament of the said Patchiapah Moodeliar that thereupon your Petitioner did file a Caveat and the said Mayors Court in their Ecclesiastical Capacity did Determine that the merits of your Petitioners said Caveat should come on to be Determined on the matter then in Contest and the same did Accordingly Come on to be Determined by

by

To the Right Honourable Lord Hobart

Governor and Precedent in Council

Fort St George

In the Honourable the
Court of Appeals

In the Matter wherein Chitray Pillay Executor of the last Will and Testament of Paiany Aye Widow and Relict of Patcheapah Moodeliar Deceased was Proponent and Pony Narrain Pillay One of the Executors of the said Patcheapah Moodeliar Deceased was Opponent —

The humble Petition of the above named Chitray Pillay —

Sheweth

That on or about the thirteenth Day of May which was in the year of Christ One thousand Seven hundred and ninety from the above named Pony Narrain Pillay did Exhibit and prove in the Mayors Court at Madraspatnam in their Ecclesiastical Capacity a Paper Writing purporting to be the last Will and Testament of the above named Patcheapah Moodelly and the above named Paiany Aye did thereupon file

Filed in my Office the 22d December 1795
J Webbe Clk

file a Caveat That in Consequence thereof Allegations were filed by the said Paiany Aye and an Answer thereto by the said Pouney Narrain Pillay and Issue did thereupon Join and rules did pass for the Examination of Witnesses and Witnesses were Examined Accordingly and publication did pass and the said matter was Ordered to be propounded before the said Mayors Court in their said Ecclesiastical Capacity but that before the same was so propounded the said Paiany aye did Depart this life having first duly made and published her last Will and Testament in Writing and therein appointed your Petitioner Executor thereof and your Petitioner having proved the same and taken out probate thereof the above named Pouny Narrain Pillay did pray that Probate might pass the seals to him of the said last Will and Testament of the said Patcheapah Moodeliar that thereupon your Petitioner did file a Caveat and the said Mayors Court in their Ecclesiastical Capacity did Determine that the merits of your Petitioners said Caveat should come on to be Determined on the matter then in Contest and the same did Accordingly Come on to be Determined by

by and before the said Mayors Court in their Eccles:
-astical Capacity on the Twenty Ninth day of May
now last past when the said Mayors Court in their
Ecclesiastical Capacity did thinks fit to pronounce and
did Accordingly pronounce that the said allegations
feled by your Petitioners said Testratrix should be
thrown out that your Petitioner said Caveat should
be taken off the file that Probate of the said Will of the
said Patchiapah Moodelly should pass the Seals to
the said Pouney Narrain Pillay and that your
Petitioner should pay all the Costs—

And your Petitioner sheweth
unto this Honourable Court that the said Pouney
Narrain Pillay did Obtain from the said Mayors
Court in their Ecclesiastical Capacity two Several
Precepts to issue against your Petitioner for payment
of the said Costs so awarded as aforesaid against
your Petitioner as will morefully appear by Copies
of the Extracts of the proceedings of the said Mayors
Court in their Ecclesiastical Capacity marked A
B and C hereunto annexed for the inspection of this

Honble

Honourable Court to which your Petitioner prays a
Reference and your Petitioner Sheweth that on the
Twenty fifth Day of August now last past the said
Pouney Narrain Pillay did by his Proctor Mr John White
Acquaint the said Mayors Court in their Ecclesiastical
Capacity that two Precepts had issued against your
Petitioner for Costs awarded against him by the said
Mayors Court in their Ecclesiastical Capacity that the
said Costs were not yet satisfied as by the Return of the
said Precepts would appear and therefore prayed
that a Warrant of Execution or a Warrant of attachment
might issue forth the temporal Court against your
Petitioner for the said Costs in aid of the said Precepts
and your Petitioner Sheweth unto this Honourable
Court that the said Mayors Court in their Eccles-
-iastical Capacity did refer the Decision thereof to a
full Court as by Extract of the proceedings of the said
Mayors Court in their Ecclesiastical Capacity Copy
whereof is hereunto annexed Reference being thereunto
had may appear— and your Petitioner Sheweth
unto this Honourable Court that the said
motion of the said Pouney Narrain coming on

before

before the said Mayors Court in its Temporal Capacity on the Tenth day of November now last past your Petitioner by his Proctor did Object thereto as Contrary to practice and to Law and the said Mayors Court taking the same into Consideration and declaring that it Appeared that two Precepts had issued for the Costs in question to which no Objection had been made did order that an Attachment should issue against your Petitioner in the Words following that is to say Ordered that a Warrant of Attachment do issue for the Contempt of this Court as by an Extract of the Minutes of the said Mayors Court a Copy whereof is hereunto annexed for the inspection of this Honourable Court to which your Petitioner prays Reference may morefully and at large appear and your Petitioner sheweth unto this Honourable Court that on the Twenty fourth Day of the said Month of November your Petitioner did offer to the said Mayors Court a Petition praying a Rehearing of the said Order of the said Tenth Day of November and on the Twenty fourth Day of the present Month of December the said Petition was read and filed by Order of the said Mayors

Court

Court and your Petitioner sheweth unto this Honourable Court that in and by his said Petition your Petitioner amongst other things did say that he did Conceive himself much Aggrieved by the said Order of the said tenth day of November because your Petitioner did say that he was not in Contempt of the said Mayors Court by refusing Obedience to any process that had issued out of the said Mayors Court and that so it would Appear by the records thereof and your Petitioner did therefore pray that the said Mayors Court would Vouchsafe to grant a Rehearing of the said order your Petitioner submitting to pay such Costs as the said Mayors Court should be pleased to Award in the Event of his said prayer being found groundless and your Petitioner sheweth unto this Honourable Court that on the fifteenth Day of the present Month of December the said Mayors Court having premised that your Petitioner was in Contempt of Court did think fit to Order and did Accordingly Order that the prayer of your Petitioners said Petition should be Over ruled as by an Extract of the minutes of the said Mayors Court hereunto annexed for the inspection of this Honourable

Court

Court to which your Petitioner begs leave to refer and prays the same may be taken as part of this his Petition of Appeal the Original being ready to be produced when Required may appear— and your Petitioner further sheweth unto this Honourable Court that the said Mayors Court did on the said fifteenth day of the present Month of December also Order that the sum of Twenty Pagodas Deposited by your Petitioner in Court should be paid to the Attorney of the said Pouney Narrain Pellay as by the said Order Copy whereof is hereunto annexed Reference being thereunto had may appear— By which said Orders of the said Mayors Court your Petitioner doth Conceive himself aggrieved and doth therefore appeal therefrom to this Honourable Court for the following amongst other Reasons —

First... Because the said Orders of the said Mayors Court were Declaredly made upon the Assumption of the fact that your Petitioner was in Contempt of Court and your Petitioner is advised that if he had actually been in Contempt of the said Mayors Court and that by reason thereof your Petitioner According to the practice of

of the said Mayors Court Could not have been heard therein the said Mayors Court ought not to have received nor read nor Ordered to be filed your Petitioners said Petition and that having Received read and Ordered to be filed your Petitioners said Petition the same became apart of the records of the said Mayors Court and they were bound to have given their Decision thereon According to the merits setforth therein and ought not to have Over ruled the same on Account of any retrospective Consideration of Contempt and which your Petitioner is advised was done away if it Ever had Existed by the act of the Mayors Court in allowing your Petitioner to be a suits before them on record —

Secondly Because the Merits of your Petitioners said Petition did rest on the Records of the said Mayors Court and therefore your Petitioner is Advised that upon a bare suggestion that a Warrant of Attachment had irregularly issued and was in the professsion of the Sheriff to be Enforced against your Petitioner Contrary to the practice of the said Mayors Court and to the Law and that the same so Appeared by their own records the said Mayors Court on being satisfied

satisfied thereof ought Ex Officio to have superceded the same and were it otherwise your Petitioner is advised and humbly Submits the same to this Honourable Court that the intentions of Justice might be Destroyed and the liberty of the Subject be trifled with and your Petitioner also submits to this Honourable Court that when it was regularly pointed out to the said Mayors Court by your Petitioner said Petition that the said Attachment against your Petitioner had been obtained upon false pretences and that it would Appear by their own records that your Petitioner had not at any time been in Contempt of the said Mayors Court they ought not to have persisted in urging that your Petitioner was in Contempt and thereupon refuse the prayer of his said Petition nor ought they to have Refused to hear him upon the Ground that he must first submit to Appear in the Custody of the Sheriff to cure the said alledged Contempt —

Thirdly Because your Petitioner is advised that by the Charter the Mayors Court act in two Separate

separate and totally distinct Capacities — In the one they act according to the practice of his Majesty's Court of Chancery and Common Law Courts and in the other they Confine themselves to the practice of the Ecclesiastical Courts in England Consequently and so the fact is their process and their offices are Different in the two Different Courts and your Petitioner is advised that it is usual and Customary in the said Mayors Court to grant Attachments for fees upon two Precepts having been first served and returned not satisfied but that they never do grant an Attachment in their Ecclesiastical Capacity and your Petitioner submits to this Honourable Court that the two Precepts upon which the Attachment in question was granted issued out of the Ecclesiastical side of the said Mayors Court and although it should have appeared by the return of the said Precepts that the same had not been satisfied and that your Petitioner had incurred a Contempt yet such Contempt was of the said Ecclesiastical Court and your Petitioner liable only to Ecclesiastical Censure and your Petitioner never Could have been in Contempt of the said Mayors Court as he had never Disobeyed any

process

process thereof insomuch as that no process of the said Mayors Court aforesaid Ever issued to your Petitioner and the said Mayors Court therefore ought not and as your Petitioner is advised Could not legally issue an Attachment against your Petitioner for a Contempt thereof —

Fourthly Because by the Practice of the said Mayors Court a party who files a Petition for a Rehearing is first to Deposit the sum of Twenty Pagodas with the Registar and which is to be paid to the Adverse party if upon such Rehearing the Prayer of the Petitioning Party should be found Groundless as by an Extract of the Book of Instructions of the said Mayors Court hereunto annexed Reference being thereunto had may Appear and your Petitioner submits to this Honourable Court that on filing his said Petition for Rehearing of the said Order of the said Mayors Court of the tenth day of November your Petitioner did Deposit with the Registar of the said Mayors Court the Sum of Twenty Pagodas and that the said Mayors Court on refusing the Prayer of your Petitioners said Petition did order the said Sum of Twenty Pagodas to be paid Over to the adverse party and the same was paid Over to them Accordingly which your Petitioner is advised the said Mayors Court ought not to have done. because they had by their own act put it out of the power of your Petitioner to prove that his said Petition was well founded and because your Petitioner had a right to Appeal from the said Order of the said Mayors Court to this Honourable Court —

For all which Reasons and such Others as may be Offered at the Hearing your Petitioner most humbly prays that the said Order of the said fifteenth day of December may be Over ruled that your Petitioner may be Allowed a Rehearing and that this Honourable Court the Premises Considered will grant such further Relief as to this Honourable Court shall seem Meet —

/ Signed / J. Stuart Hall.
Solicitor for Appellant —

A

A

Extract from the Proceedings of the Kings Ordinary Held at the Town Hall on Tuesday the 28th Day of July Anno Domini 1795

Present

Benjamin Roebuck Esqr Mayor

William Webb Andrew Ross and

Joseph Greenhill Aldermen

In the Matter wherein Paiany aie Deceased was Proponent and Pouney Narrain Pillay is Opponent relative to the Last Will and Testament of Pakthapah Moodelliar Deceased and which was received by Settarcah Pillay as Executors named in the Last Will and Testament of the said Paiany aie Deceased—

Affidavit of Henry Davison one of the Serjeants of this Court of the 29th of June upon the above named Settarcah Pillay Sworn to in Court read and filed Precept against Settarcah Pillay for the Costs attending this Matter Prayed for and Granted—

A true Copy

(Signed) J. Stuart Hall.

Solicitor for Appellant

A true Extract

(Signed) George Taylor Regr

B

Extract from the Proceedings of the Kings Ordinary Held at the Town Hall on Tuesday the 4th Day of August Anno Domini 1795

Present

Benjamin Roebuck Esqr Mayor

Andrew Ross and Alexr Cockburn

Aldermen

Precept against Chittary Pillay for Costs due to Pouney Narrain Pillay returned Endorsed Contempt not Satisfied—

A true Copy

(Signed) J. Stuart Hall.

A true Extract

(Signed) George Taylor Regr

C

Extract from the Proceedings of the Kings Ordinary Held at the Town Hall on Tuesday the 11th Day of August Anno Domini 1795

Present

Benjamin Roebuck Esqr Mayor

Andrew Ross and John Milford

Aldermen

In the Matter wherein Settarcah Pillay Executor of Paiance aie was Proponent and Pouney Narrain Pillah Executor of Pakthapa Moodeliar was Opponent relative to the Will of the said Pakthapah Moodeliar Deceased

Precept

Precept against the Proprietor for Costs adjudged by this Court Returned Endorsed Contempt not Satisfied—

a true Copy

/Signed/ J. Stuart Hall
Solicitor for appellant.

A true Extract

/Signed/ George Taylor Regr

Extract from the Proceedings of the Kings Ordinary Held at the Town Hall on Tuesday the 25th day of August Anno Domini 1795

Present

Benjamin Roebuck Esqr Mayor
William Webb Andrew Ross and
Joseph Greenhill Aldermen

Mr John White Attorney for Cowney Narrain Pillay Executor of the Last Will and Testament of Cau Patchiappah Modelly Deceased acquaints the Court that two Precepts have issued against Chittary Pillay the Executor of Paina Aya Deceased for the Costs awarded against him by this Honble Court in its Ecclesiastical Capacity and that the said Costs are not yet Satisfied as by the Return on the said Precepts doth appear the said Attorney therefore prays that an Execution or Warrant of attachment may issue forth of the Temporal Court against the said Chittary Pillay for the said Costs in and of the said Precepts The Mayor takes notice that this same matter was brought forward last Court Day that the Opinion of the Register was taken as to the Practice of the Court that there was much discussion on the Matter and that he understood the Opinion of the Members was taken on the Question he now finds that the matter was not made a matter of Record He therefore requests that the Opinion of a full Court may be taken on this matter — Mr Alderman Ross who was then also upon the Bench Desires it may be mentioned on the Records that it did not appear to him necessary that what passed upon this matter last Court Day should have been Entered upon the records as the Attorney did not Desire it at the same that he has no Objections to the motion being brought before a full Court Ordered that a full Court be Summoned to attend on Tuesday next at ten o'Clock in the forenoon to take this Matter into Consideration and that Extract from the Minutes of this Day with Extracts of any decisions that may have passed on the Subject of attachments in Ecclesiastical Matters

matters be Sent in Circulations —

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

a true Extract
(Signed) George Taylor Regt

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 10th day of November Anno Domini 1795

Present

Benjamin Roebuck Esqr Mayor
William Webb and Andrew Ross
Aldermen

Messrs Alderman Call Mitford Abbott Cockburn
Greenhill and Chase take their Seats upon the Bench

Mr Alderman Mitford being interested goes of the Bench

Mr. John White Attorney for Pevny Namaina Pillay Executor of the Last Will and Testament of Caw Palchapah Moodelly deceased prays that a Warrant of Execution may issue forth of the Temporal Court against Sittany Pillay Executor of Paiany Aie for the Costs awarded against him by this Honourable Court to which Mr Hall the Opposite Proctor Objects as contrary to practice and to the Law. Extracts from the Minutes

Minutes of this Court of the 25th August read — Extract from the proceeding of the King's Ordinary of 29th May 1792 read — The Court having taken the same into Consideration and it appearing that two Precepts have been issued for the Costs in question to which no Objections have been made Ordered that a Warrant of Attachment do issue for the Contempt of this Court —

a true Extract
(Signed) J. E. Lyon Dy Regt

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

Extract

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

Present

Benjamin Roebuck Esqr Mayor

Andrew Ross Joseph Greenhill and

Richard Chase Aldermen —

Messrs Aldermen Call Webb Milford Daly Abbott and Cockburn take their Seats upon the Bench —

Petition of Chittray Pillay Executor of Paiany aie the Widow and Relict of Patchepah Moodelly deceased which was Offered to the Court on the 24th Ultimo Read Ordered that the same be filed Extract from the Minutes of the 24th Ultimo Read — It Appearing that the said Chittary Pillay is in Contempt of Court Ordered that the Prayer of the Petition be over ruled —

Mr John White Proctor for Pawney Narrain Pillah prays that the 20 Pags Deposited in Court may be paid to him to which Mr James Stuart Hall Proctor for Chittary Pillay Objects because he is allowed 14 Days for an appeal. Ordered that the

the 20 Pagodas Deposited in Court be paid to Mr John White —

A true Extract

(Signed) J. E. Affrin Dy Regr

A true Copy

(Signed) J Stuart Hall

Solicitor for Appellant

Extract from the Book of Instructions —

The Court &c. may in Case either Party thinks himself Aggrieved by their Orders or Decrees Rehear the Matter without Obliging such Party to Appeal to the President and Council but a Rehearing after a Decree should not be granted but upon Petition signed by the Partys Clerks that he thinks the Cause Ought to be Reheard and not then neither without Depositing with the Register Twenty Pagodas to be paid back to the Petitioner if he prevails if not to the Adverse Party for that unnecessary trouble —

A true Extract

(Signed) J. E. Affrin

Dy Regr

A true Copy

(Signed) J Stuart Hall

Solicitor for Appellant —

To

To the Right Honorable Lord Hobart

President and Governor in Council &c.

Fort Saint George

In the Honourable the Court of Appeals

Between Chittray Pillay Executor of the last Will and Testament of Paiany aye Widow and Relict of Patcheapah Moodeliar deceased Appellant and Pouney Narrain Pillay one of the Executors of the said Patcheapah Moodeliar deceased Respondent—

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

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

This Respondent admits that two Precepts did ifsue forth of the said Mayors Court against the said Appellant for Costs awarded against him to be paid to this Respondent and that the said Precepts having been duly Returned by the Sheriff and the said Costs not being in any wise satisfied This Respondent did on the Twenty fifth day of August One Thousand seven hundred and ninty five by his Attorney at Law pray that an Execution a Warrant of Attachment

Attachment might ifsue against the said Appellant for the said Costs in aid of the said Precepts And this Respondent admits that afterwards on the tenth day of November in the said year One thousand seven hundred and ninety five the said Mayors Court upon hearing this Respondents prayer of the said Twenty fifth day of August and the Appellants Objection thereto into Consideration and it then appearing that the said Precepts had ifsued for the said Costs and no Objection made thereto on behalf of the said Chittray Pillay now Appellant the said Mayors Court in full Court was pleased to Order that a Warrant of Attachment should ifsue against the said Appellant This Respondent saith that the said Warrant of Attachment did Accordingly ifsue and that the same not having been Executed This Respondent did on the Seventeenth day of the said Month of November pray a further time of one Week for the return thereof which the said Mayors Court was pleased to Order And this Respondent saith that the said Week having Expired the said Mayors Court was in like manner on the Twenty fourth day of November aforesaid pleased to Order a further time of one Weeks for the return of the said Warriant of Attachment without

without any Objection having been made or Offered thereto by the said Appellant as by two Extracts from the Minutes of the said Court and hereunto annexed marked with the Letters E' and E to which this Respondent humbly refers and prays the same may be taken and received as part of this his Answer relation being thereunto had will more fully appear—

This Respondent saith that if the said Appellant had as he now pretends Conceived himself aggrieved by the said Order of the tenth day of November aforesaid the door was then open to him for Redress but the said Appellant having allowed the time limited by the Charter for appealing from the said Order of the Mayors Court to run out and Expire without making any Appeal therefrom the said Order hath by the Appellants own act become absolute and this Honourable Court is as this Respondent humbly submits thereby precluded from Entering into the Merits thereof or revising the same—

This Respondent admits that the appellant did on the Twenty fourth Day of November one Thousand seven hundred and ninety five offer his Petition to the said Mayors Court praying a Rehearing of the said Order of the tenth day of November to which this Respondent did by his Attorney at Law Object as will more particularly appear by an Extract from the Minutes of the said Mayors Court hereunto annexed and marked with the Letter G

And this Respondent saith that the said Mayors Court did afterwards on the fifteenth day of December now last past Order that the said Petition for a Rehearing should be Over ruled This Respondent saith he is advised that a Rehearing in the Court below is not in any case Demandable of Right but is merely Discretionary in that Court whether to grant such Rehearing or not And the Appellant having thought proper to forego his right of Appeal from the said Order of the tenth day of November one thousand seven hundred and ninety five is thereby foreclosed And furthermore this Respondent saith that as the said Appellants Petition and Appeal doth solely relate to Costs He is advised and humbly submits to this Honorable Court that an Appeal will not lie merely for Costs—

This Respondent therefore humbly prays that the Appellants said Petition and Appeal may be dismissed with such Costs as to this Honourable Court shall seem meet—

(Signed) John White Solicitor for the Respondent

Extract

E

Extract from the Minutes of a Court held at the Town Hall on Tuesday the 17th day of November Anno Domini 1795 —

Present

Benjamin Roebuck Esqr. Mayor

Andrew Ross and Richard Chase

Aldermen

Mr White Attorney for Powney Narrain Pillah prays a further time of one Week for the return of the Warrant of Attachment issued against the Body of Chellava Pillay for a Contempt of the Courts Ordered Accordingly —

A true Extract

(Signed) G. E. Afhem
Dy Regr

A true Copy

(Signed) John White Solicitor
for the Respondent —

Mr White

E

Mr White Attorney for Powney Narrain Pillay prays a further time of one Week for the return of the Warrant of Attachment issued against the Body of Chellay Pillay for a Contempt of the Court Ordered Accordingly

A True Extract

/Sig/ G. E. Afhem
Dy Regr

a true Copy.

/Signed/ John White Solicitor for the Respondent

Extract from the Minutes of a Court held at the Town Hall on Tuesday the 24th Day of November Anno Domini 1795 —

Present

Benjamin Roebuck Esqr Mayor

Andrew Ross John Mitford & Jos Greenhill ... Aldermen

Mr James Stuart Hall Attorney for Chitary Pillah Executor of Paiany Aie the Widow and Relict of Patchapah Moodelly deceased offers to the Court a Petition praying a Rehearing of the Order of Court of the 10th Instant to which Mr John White on the part of Powney Narrain Pillay Objects and for Cause of objection shews that the said Chitary Pillah being in Contempt of the Court and that a Warrant of attachment against

against him is in the hands of the Sheriff the said Chitavy Pillah Cannot be heard by his Attorney untill he clears his Contempt and furthermore that the terme of 14 Days for Appealing from or Applying for a Rehearing of the Order of the 10th Instant has run out and Expired whereby the Order has became absolute Petition read Ordered that the same be sent in Circulation for the perusal of the Several Members and that it do Come on to be Determined before the first full Court—

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

A true Copy
/Signed/ John White
Solicitor for the Respondent

Court

Court of Appeals at Madraspatnam } Friday the 6th day of October Anno Domini 1797

Between Chitavy Pillay Executor of Pairey Aie the widow and relict of Patchaiyah Moodelly Deceased Appellant and Pawney Nanrain One of the Executors of the said Patchaiyah Moodelly Deceased Respondent—

This Cause coming on this day to be heard and Debated before this Court by the Attornies on both sides upon hearing the Petition of appeal and Answer and the Petition of the Honourable the Mayors Court together with the Order of the said Court given in this Cause on Tuesday the 15th day of December 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 doth Accordingly Order that the said order of the Honourable the Mayors Court given in this Cause on Tuesday the 15th day of December Anno Domini 1796 be set aside and that the appellants prayer for a Rehearing of the Order of the 10th November in this Cause be granted and that each party do pay their own Costs in this Court—

Per Cur

To

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

In the Court of Appeals

In the Cause wherein Pooney Narrain Pillay and Iyah Pillay Executors of Law patchiapah Deceased are Complainants and Chetra Pillay is Defendant—

Filed in my Office the 21st December 1795
J. Webbe Secty

Sheweth The humble Petition of the above named Defendant That the Above named Complainants did some time on or about the first Day of September now last past Exhibit and file their Bill of Complaint in the Mayors Court of Madrespatnam against your Petitioner and thereon and thereby did pretend that your Petitioner did stand Justly and truly indebted unto them as Executors as aforesaid in the full sum of four hundred and fifty Eight Pagodas and nine fanams being the amount principal and Interest of a Bond by your Petitioner Executed to their Testator in his lifetime and your Petitioner sheweth unto this honourable Court that to the Complainants said Bill of Complaint he did Exhibit and file a general Answer thereto and thereby denying to stand indebted unto the Complainants in manner and form as in and by their Bill was

was setforth to which said General answer the Complainants did file a general Replication and thereto your Petitioner did file a general Rejoinder and your Petitioner sheweth unto this honourable Court that on the Eighth day of the present Month of December the Complainants did by their Attorney pray that Issue might Join on the said Cause and that a rule might pass for the Examination of Witnesses to which your Petitioner did by his Attorney in Court object and pray a time of one Week in order to file an amended Answer for that the Complainants in another Cause had obtained an attachment against your Petitioner and that he had not therefore been able to swear to it and your Petitioner sheweth unto this honourable Court that the said Mayors Court taking the same into Consideration did think proper to Order and did Accordingly Order that Issue should Join and that a rule should pass for the Examination of Witnesses and Issue did Join and a rule for the Examination of Witnesses did thereon pass as such more fully and at large Appear by an Extract of the minutes of the said Mayors Court a Copy whereof is hereunto annexed for the inspection of this honourable Court to which your Petitioner begs leave to refer and your Petitioner sheweth unto this honourable

Court

Court that by the said Order of the said Mayors Court your Petitioner doth Conceive himself much Aggrieved and doth therefore Appeal therefrom to this honourable Court for the following amongst other Reasons —

Because the Complainants had by their own acts deprived your Petitioner of the means of attending to this said Cause in so much as that they had procured an attachment to issue out of the said Mayors Court and therefore your Petitioner was liable to be arrested and thrown into Jail upon his quitting his house and because the Complainants having Sworn to the Justness of their debt your Petitioner had given bail and therefore no injury would have arisen to them by the indulgence prayed for by your Petitioner who if not permitted to file his amended answer may sustain an irreparable injury in the premises your Petitioner having a Just foundation to Defend the said suit upon the most Equitable principles —

Your Petitioner therefore most humbly prays that this Honourable Court will be pleased to reverse the said Order of the said Mayors Court and to allow your Petitioner time to file his amended answer and that the Complainants may be Ordered to pay the Costs of this your Petitr Appeal and your Petitioner shall ever pray —

Signed J. Stuart Hall
Solicitor for Appellant —

Extract

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 8th Day of December Anno Domini 1795

Present

Benjamin Roebuck Esqr Mayor
James Call Andrew Ross and
James Daly Aldermen

Powney Narrain Pilla and Iyia Pilla Executors &c Cau Patchiappah Moodelly Deceased —

vers

Chitra Pilla

The Attorney for the Complainants pray that Issue may Join in this Cause and a Rule pass for the Examination of Witnesses to which the Attorney for the Defendant Objects and prays a time of one Week in Order to file an amended answer for the Complainant in another matter has obtained an Attachment against the Defendant and he has not therefore been able to swear to it The Court having taken the same into Consideration it is Ordered that Issue be Joined and a Rule pass for the Examination of Witnesses Issue Joined —

Day is given the Parties till the 15th Instant to Examine Witnesses

a true Copy
Signed J. Stuart Hall
Solicitor for Appellant

a true Extract
Signed G. E. Ashton Dy Regr

To

To the Right Honourable Lord Hobart

President and Governor in Council &c
Fort Saint George

In the Honourable the Court of Appeals

Between Chetray Pillay Appellant and
Powney Narrain Pillay and Iyah Pillah
Executors of Cau Patchiappah deceased Respondent

The Answer of the Abovenamed Respondents to the Petition and appeal of the Abovenamed Appellant

These Respondents admit that they did as Executors aforesaid on or about the first Day of September one thousand seven hundred and ninety five Exhibit their Bill of Complaint in the Mayors Court at Madraspatnam against the said

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

Appellant for the purpose in his said Petition and Appeal mentioned These Respondents say that the said Appellant having on the Twentieth day of October last filed his answer to the said Bill of Complaint they on the Twenty seventh day of the said Month of October replied thereto and on the third day of November then following a Peremptory rule of two Weeks for the Appellant to Rejoin to the said Replication passed and which having Expired on the seventeen day of November aforesaid was Extended to the Twenty fourth of the same Month and from thence

thence to the first Day of December last when the said Appellant at Length filed his Rejoinder to these Respondents said Replication and issue did thereupon Join in the said Cause and rules passed for the Examination of Witnesses as by Extracts from the Minutes of the said Mayors Court of the aforesaid Proceedings Copies whereof are hereunto annexed and to which these Respondents humbly Prefer doth appear

These Respondents say that the appeal made by the said Appellant to this Honourable Court is a mere Dilatory and solely Calculated for Delay for that if the Appellant had thought any other Answer but that already filed by him necessary he had from the Eighth day of September last the day on which he appeared to these Respondents said Bill of Complaint till the Twentieth day of October following to file such Answer which as these Respondents humbly submit to this Honourable Court was an ample latitude for that purpose And these Respondents say that by applying to file another Answer the Appellant seeks eventually to set aside all the Proceedings which have been had in the said Cause from the Twentieth Day of October to the said fifteenth day of December for that in case the Appellant should prevail herein the said Proceedings must be had De novo and without answering any purpose but that of procrastination —

These Respondent therefore humbly pray that this Honorable will be pleased to affirm the said Order of the said Mayors Court and that the Appellants said Petition and Appeal may be Dismissed with such Costs as to this Honourable Court may seem meet —

(Signed) John White Solicitor for the Respondents —

Extract

Extract from the Minutes of a Court held at the Town Hall on Tuesday the 27th day of October Anno Domini 1795

Present

Benjamin Roebuck Esqr Mayor

Andrew Ross and Jos. Greenhill

Aldermen

Mr Alderman Milford takes his Seat upon the Bench

Powney Narrain Pillay and Iyah Pillah Executors of Cau Patcheapah Moodelly Deceased

vers

Chittavy Pillay

General Replication filed this day

A true Extract

| Signed | J. E. Atkins Dy Regr

a true Copy

| Dy | J White Solicitor for the Respondents

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

Present

Benjamin Roebuck Esqr Mayor

Andrew Ross and Wm Abbott

Aldermen

Mr Alderman Call takes his Seat upon the Bench

Powney Narrain Pillay and Iyah Pillay Executors of Cau Patcheapah Moodelly deceasd

vers

Chittavy Pillay

Day is given the Defendant untill the 17th Instant to Rejoin indefault of which Issue will be Joined in this Cause

A true Extract

a true Copy

| Signed | J. E. Atkins D Regr

J White Solr for the Respondents

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

Present

Benjamin Roebuck Esqr Mayor

Andrew Ross and Richard Chase

Aldermin

Powney Narrain Pillay and Iyah Pillay Executors of Cau Patcheapah Moodelly Deceasd

vers

Chittavy Pillay

Further

Further Day is given the Defendant till the 24th Instant to Rejoin indefault of which Issue will be Joined in this Cause —

A true Extract

| Signed | G E Aylwin Dy Regr

a true Copy

| Signed | J White Solr for the Respondents

Extract from the Minutes of a Court held at the Town Hall on Tuesday the 24th day of November Anno Domini 1795

Present

Benjamin Roebuck Esqr Mayor
Andrew Ross John Mitford
and Jos, Greenhill Aldermen

Pouney Narrain Pillay and Iyah Pillah Executors of Caw Calcheapah Deceased

vers

Chittary Pillay.

Further Day is given the Defendant till the 1st December next to Rejoin indefault of which Issue will be Joined in this Cause —

A true Extract

| Signed | J.E. Aylwin Dy Regr

a true Copy

| Signed | J White
Solicitor for the Respts

Extract

Extract from the Minutes of a Court held at the Town Hall on Tuesday the 1st day of December Anno Domini 1795

Present

Benjamin Roebuck Esqr Mayor
Andrew Ross William Abbott and
Alexander Cockburn Aldermen

Pouney Narrain Pillah and Iyah Pillay Executors of Caw Patcheapah Deceased

Chettary Pillah

General Rejoinder filed this day

A true Extract

| Signed | J. E. Aylwin Dy Regr

a true Copy

| Signed | John White Solr for the Respts

Court

Court of Appeals
Madraspatnam

Friday the 6th day of October
Anno Domini 1797

Between Chitra Pillay of Madras
Inhabitant Appellant and Pouney
Narrain Pilla and Iyah Pilla Executors
of Caunjeveram Patchiapah Moodelly
Deceased Respondents.

This Cause coming on this Day to be heard
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 Honourable the Mayors Court
together with the Order of the said Court given in this
Cause on Tuesday the 8th day of December 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

Accordingly Order and Decree that the said
Order of the Honourable the Mayors Court dated
the 8th day of December Anno Domini 1796
be Reversed and that each party do pay their own
Costs in this Court—

H Lee

To

To the Right Honourable Robert Lord Hobart President
and the Council of Fort St George.

In the Honable the Court of Appeals
at Madraspatnam....

In the matter wherein Franks Day Executor
of William Balfour Deceased and Oliver
Colt by his Attornies Oliver Colt Charles
Bather and Franks Day are Complainants
and Tombee Chetty Condapah Chetty and
Chellapah Chetty together with Benjamin
Roebuck Tyapah Moodelly Coolapah Chetty
and Venkatarayloo Brominy the Latter
as Executors of Nagapah Chetty deceased
are Defendants

The humble Petition and Appeal of Tombee Chetty one of the above
named Defendants —

Sheweth

That sometime over about the Twenty Sixth day of November which
was in the English year One Thousand seven hundred and
Ninety five The above named Complainants did file their Bill of
Complaint in the Honourable the Mayors Court at Madraspatnam
against your Petitioner and two of the above named Defendants Viz.t
Condapah Chetty and Chellapah Chetty By their
said Bill Charging that your Petitioner together with the
said Described other Parties had by their certain Bond
or writing Obligatory bearing Date the first day of
September which was the year One Thousand seven hundred
and Ninety two Acknowledged themselves together with
one Nagapah Chetty since Deceased to be Jointly and
Severally held and firmly bound unto William Balfour in
the Title of the Cause Described as Deceased and to the
said Oliver Colt party to the said Bill in the Penal sum of
twenty Eight Thousand and Sixty one Pagodas and
Eighteen fanams Conditioned for the payment of the sum
of thirty nine Thousand and thirty Pagodas thirty one
fanams and forty Cash with Interest after the first day of
November then next Ensuing the date of the said Bond at
the rate of Twelve per centum per annum as by the said Bond or
Obligation Copy whereof the said Complainants did say
they had annexed to their said Bill of Complaint and
as in reference thereto they did say would avail Appear a
true Copy whereof your Petitioner hath also hereunto
annexed marked A for the inspection of this
Honourable

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

Honourable Court and prayed to be taken as part of
this his Petition and in aid of the Reasons herein after
setforth and your Petitioner Sheweth that the said
Complainants did by their said Bill of Complaint further
say that after giving Just Credit for the Respective
payments made for and on Account of the said Bond so
by them Declared on that there did then remain Justly
and truely due to the said Frank Day as Executor of
the said William Balfour and unto Oliver Colt Charles
Baker and Frank Day as Attornies of the said Oliver
Colt from your Petitioner the said Candapah Chitty
and Chellapah Chitty the sum of Twelve thousand
and seventy Eight Pagodas and thirty Eight Fanams
Current Money of Madras making into Sterling
Money of Great Britain at the rate of Eight Shillings
for Every Pagoda the sum of Four thousand Eight
hundred and thirty one Pounds and ten Shillings or
thereabouts as the said Complainants did say would
more fully and at Large appear by an Account Current
a true Copy whereof the said Complainants did say
was annexed to their said Bill and to which they did

Accordingly

Accordingly pray to Refer a true Copy of which
Account your Petitioner hath also hereunto Annexed
marked B as needful in future Reference to the
matter of this your Petitioners Appeal and Petition
and which he also prays may be taken as part thereof
and your Petitioner sheweth that he did Demur to
such the said Complainants Bill and for Cause of
Demurrer did say that it appeared by the said
Bill that one Nagapah Chetty deceased was a Co-
Obligor of the said Bond setforth and that the
said Nagapah Chetty had made and Published
his last Will and Testament and had Appointed
Executors who had duly proved the same and
obtained Probate thereof but which Executors namely
Benjamin Rasbuth Tyapah Moodeliar Coolapa Chetty
and Veneatarayaloo Braminy were not made parties
thereto as your Petitioner did say they ought to have
been and your Petitioner sheweth that the said
Complainants did thereupon amend their said
Bill of Complaint to wit on the fifteenth Day of
December in the aforesaid said year by inserting in

All

all requisite places wherein the names of the said Several Executors as appears by a recite in the margin of the said Bill written by the Register of the said Honourable the Mayors Court in the words and figures following Benjamin Raebuck Tyagapah Moodilly Coolapah Chetty and Vencatareyaloo Braminey Executors of Nagapah Chetty deceased were made parties to this Bill by Order of Court of the fifteenth December one thousand seven hundred and ninety five J. Taylor Register" And your Petitioner doth shew unto this Honourable Court that such amendment on the part of the said Complainants was Voluntarily made as if the same shall be now Disputed will appear from a passage Extracted from the said Complainants after pleading in the Cause to wit his Replication to a Second Demurrer Complied with an answer put into the said Bill by your Petitioner in which pleading the said Complainants Commenting on your Petitioners said second Demurrer did say that the first meaning your Petitioners first Demurrer being for want of Parties which these Respiants agreed to Obviate by adding those whom he meaning your Petitioner Considered necessary to wit the Executors of Nagapah Chetty one of the Obligors in the said Bond named as by the said Bill and Demurrer relation being thereunto had will more fully and at Large Appear And your Petitioner sheweth that the Pleadings in the Cause between your Petitioner and the Complainants having Come down to an Issue that Witnesses were Examined on both sides and Publication did pass thereon whereupon they the Complainants did Contrary as your Petitioner doth Charge to Law and Reason to wit on or about the Sixth day of this present Month of December one thousand Seven hundred and ninety Six pray the said Honourable the Mayors Court that the Cause as between them and your Petitioner be set Down for hearing which was Accordingly Granted By the said Mayors Court notwithstanding that your Petitioner did by his attorney in Court on the instant Object thereto for the Several Assigned Causes and reasons Set forth in the Exhibit C or order of the said Mayors Court hereunto annexed and prayed to be taken as further part of this your Petitioners Petition and Appeal from the same whereby the said Court did set down the said Cause for hearing And your Petitioner sheweth that the said Honourable the Mayors

Mayors Court did in further pursuance of their said Order in the said Exhibit C Contained on the next following Court day being the thirteenth Day of the same month of December at the like instance of the said Complainants by their Attorney in Court further Order that the said Cause so set down for hearing Between your Petitioner and the said Complainants should Come on to be heard on the following Court day or Twentieth Day of the same Month of December Who your Petitioners Attorney aforesaid in Court did Object to such hearing on the Grounds of his former Objection for setting Down the Cause as will appear to this Honourable Court on Reference to the further Exhibit marked D hereunto annexed and prayed to be taken as further part of your Petitioners Appeal against the Effect intended by the said two Several orders of the said Honourable the Mayors Court which Greatly aggrieve your Petitioner in as much as their tendency doth immediately go to Depriave him of his right to a Joint and Entire Defence against the Complainants Demand as setforth by their Bill of Complaint against your Petitioner and Others aforesaid who have setup several Defences against the same Grounded on their several

knowledge

knowledge in the premises wherefore your Petitioner doth now appeal from the same orders of the said Honourable the Mayors Court to the Equity and Consideration of this Honourable Court for the reasons Generally setforth in the said Several Exhibits C. and D and more particularly as your Petitioners Objections in the same Contained are Supported and detailed by the following reasons in Appeal Grounded and on the preceeding Exhibits A and B and the further Exhibit E hereinafter Referred to —

First... Because that tho the Bond produced doth seem to intend a Several as well as a Joint Obligation yet that the Condition which guides the Equity and Opperation of the same Doth not recognize this right in suit but doth on the Contrary Expressly limit the payment of the same By the supposed Obligors or their representatives without any several Reference and your Petitioner doth therefrom infer that the Bond and Condition being one whole and Entire Deed that it is manifest your Petitioner is Entitled to the Benefit and Equity of an Entire Defence But admitting for a moment that this

Your

your Petitioners Objection to the said Orders of the said Mayors Court was not Conclusive yet your Petitioner doth shew that the Issue that might be therein taken would not aid the said Orders for it is manifest from what your Petitioner hath herein before shewn that Conceiving himself well Entitled to the benefit of such Entire Defence that he did in the first instance Demur to the Complainants said Bill for want of Parties to wit the Executor of one of the deceased Supposed Obligors to the Bond and which parties the Complainants voluntarily added on act it must be presumed they would not have done at your Petitioners said instance unless his right were recognized so to Call and Consequently to have the aid which might be Contributed but your Petitioner further Sheweth that the Complainants Action as originally but did Charge other supposed Obligors as well as your Petitioner to wit The said Condapah Chitty and Chellapah Chitty who together with your Petitioner are Debetted Jointly in an Account Current annexed to the Bill and in like manner Credetted in the said Account from whence it is further Obvious that the Defence ought to be an whole and Entire defence to be heard and decided at one and the sametime but which Condapah Chetty and Chellapah Chetty are not even to this day before the said Mayors Court nor doth it appear that any deligence hath been used to procure such their appearance —

Secondly — Because your Petitioner doth shew that by the said Orders of the said Honourable the Mayors Court if Carried into Effect and that your Petitioners separate Defence were first to be heard and Determined as by the said Court the same hath been Ordered to be done it might so be that your Petitioner should be adjudged By the said Honourable the Mayors Court to pay and Satisfy in his own person the Entire amount Demanded by the Complainants said Bill tho' there are other Issues depending in the Cause and which if a Debt did Ever Exist for ought your Petitioner knows to the Contrary may Cancel the same in part or in the Entire and so the Complainants receive a Double Satisfaction an injustice not to be Endured being a manifest foreclosure of your Petitioners rights as stated in his foregoing Objection and Contrary to the Law as well as to the Equity of the Case as will be apparent to this Honourable Court from the following instances Selected

Selected from the Pleadings as well of your Petitioner as of the other Defendants in the Cause to the same Bill and Demand and which instances together with the admissions therein of the Complainants in their 5th amended Pleadings your Petitioner will in order to avoid Confusion Bring forward under a further head of Objections against the Carrying into Effect the said orders of the said Honourable the Mayors Court being as follows—

Thirdly For that Tyapah Moodelly Coolapah Chitty and Venkatarayloo Brameny three of the Executors of the said Nagapah Chitty as aforesaid added at your Petitioners Instance as parties the suit and Defence having pleaded in Bar to the same and also answered your Petitioner sheweth that they did for such answer say That they are Executors named in the will of the said Nagapah Chitty and that they admit that their said Testator might with several others obligors to the same have Executed the Bond or writing Obligatory in question but these Defendants do not admit that they are indebted as Executors of the said Nagapah Chitty with others the Defendants to the Complainants

Complainants said Bill or otherwise in the sum sued for by the said Complainants if the same had been rightly prosecuted and sued for But these Defendants say that if a true Credit and Interest on such sums of Money as had been paid by these Defendants said Testator in his life time on the said Bond or writing obligatory had been allowed in the Account Current annexed to the Complainants said Bill that these Defendants as Executors as aforesaid so far from appearing to be indebted unto the said Complainants in the Balance of Twelve thousand and Seventy Eight Pagodas and Thirty Eight fanams as insisted by the Complainants in and by their said Bill that they would appear and would actually be indebted in a very small and inconsiderable sum and these Defendants further answering say that in Examining the Papers of their said Testator they have Discovered two Receipts Given by the said Francis Day in the names of Robt Barker and Company for two Distinct and Separate Sums paid on account of the said Bond by their said Testator which are not mentioned or Credited in the said account Current annexed to the Complainants said Bill nor

any

any Interest allowed therefore the one bearing Date the Twenty ninth Day of April which was in the year of Christ one Thousand seven hundred and Ninety four for the sum of Two Thousand Star Pagodas and the other on the third day of October in the said last mentioned year for the sum of Five Thousand star Pagodas and these Defen: dants say that if due Credit for and on Account of the said several sums so paid as aforesaid by their these Defendants said Testator were Given by the Complainants and to which they are Entitled in the said Account Current with an Interest from the dates of the respective payments of the same at and after the rate of Interest mentioned in the said Bond as also for the other sums Accredited to these Defendants by the Complainants in the Debit side of the said Account Current to wit for the sum of three thousand star Pagodas of the date of the fourth day of February one thousand seven hundred and ninety four and of the sum of four thousand Six hundred and Eighty three Pagodas Twenty Eight fanams and Twenty seven Cash of the date of the Seventh day of December of the said year with a like interest as aforesaid Correspondent with the

Interest

Interest Charged on the said Bond and if the Interest on the said Bond was Calculated in one Entire Computation w^ch to the date of the said Account to wit the thirteenth Day of November One thousand Seven hundred and ninety five not at Broken periods as reckoned and Calculated by the said Complainants in the debet side of the Account Current annexed to the said Bill and which these Defendants are advised is not the usual mode of Computation of Interest as prevalent in this Honourable Court or as Customary amongst Merchants that then and in that Case these Defendants so far as they have been able to ascertain the sums Discharged by their said Testator on Account of the said Bond say that they would appear to stand indebted to the said Complainants in the sum of Two thousand Eight hundred and sixty four Pagodas thirty fanams and fifty two Cash and not in the large Balance as Claimed by the Complainants of Twelve thousand and Seventy Eight Pagodas and thirty Eight fanams as these Defendants say will appear by Reference to an Account Current hereunto annexed and which these Defendants pray may be taken as part of this

their

their answer the Original being in the possession of these Defendants and ready to be produced when required and these Defendants further answering say that their said Testator did in his life time Carry on very large and Extensive dealings in Different parts of the world and by reason of such his large and Extensive dealings the Books of Accounts and papers Relative to his commercial Transactions are many various and intricate and these Defendants further say that they have not been able since their having taken upon themselves the Burthen of the Execution of the Will of the said Nagapah Chitty to Examine all the Books of Accounts of their said Testator whereby they might ascertain the precise amount of the Credit to which their said Testator may be Entitled on Account of the several payments made by him in his life time on the said Bond or writing Obligatory and therefore these Defendants do submit to this Honourable Court in Consideration of the premises how far the said Complainants may be Entitled to a Decree against these Defendants until a true Examination may be had of their Testators Books and papers as it is fairly presumable from the discovery of the several Receipts herein above

above referred to by these Defendants and which are wholly omitted in the Credit side of the Complainants said Account Current that there may be other Receipts amongst the Papers of their said Testator which though not now Apparent may hereafter be forth Coming and Operate as an Entire Discharge and liquidation of the said Bond or writing obligatory And your Petitioner doth herewith annex a true Copy of such Account Current referred to in the said Plea and Answer of the said Executors of the said Nagapah Chetty which Exhibit marked E your Petitioner prays may be taken as further part of this his Petition and Appeal to the intent aforesaid and your Petitioner doth now proceed to Select as appears material to the Issue at present Before this Honourable Court from the Plea and answer of Benjamin Roebuck the other named Executor of the said nagapah Chetty for your Petitioner doth shew that the said Executors did think it advisable to Defend separately in like manner as your Petitioner Hath done each resting on the Separate Ground of his and their own Knowledge thereby holding forth an additional reason wherefore the Defence of the whole should be ripe and Complete Before that the said

said Honourable the Mayors Court shall take upon themselves as they have done to Decide upon the Case solely as regarding your Petitioners Interest therein and the said Benjamin Roebuck after affirming his reliance on the Goodness of his Plea in Bar did say and admit That he is one of the Executors of the said Nagapah Chetty and that he hath perused Carefully the Translate of the answer of the said Registry Tyapah Moodelliar Coolapah Chetty and Noopalore Vencatarooloo the other Executors of the said Nagapah Chetty filed and Exhibited in this Cause and that According to his Knowledge and belief the matters and things therein Contained are Just and true as stated by the said Registry Tyapah Moodelliar Coolapah Chetty and Noopalore Vencatarooloo save and Except this Defendant Cannot undertake to say of his own knowledge that the Receipt for five thousand Star Pagodas under Date the third of October in the year of Our Lord one thousand seven hundred and Ninety four was given by the said Frank Day in the name of the said Call Baber and Company on Account of a payment made by these Defendants Testator on the said Bond or writing Obligatory on which the said Bill is Brought and to which the said Registry Tyapah Moodelly Coolapah Chetty and Noopalore Vencatarooloo have Jointly and Severally answered but this Defendant saith that this Defendant and the said other Defendants Registry Tyapah Moodelliar Coolapah Chetty and Noopalore Vencatarooloo have Discovered and now have in their possession a receipt from the said Frank Day granted to this Defendants said Testator for the said sum of Five Thousand Star Pagodas and of the day and Date mentioned in the answer and which possibly might have been paid though this Defendant hath not any knowledge thereof on Account of the said Bond or writing Obligatory And your Petitioner doth shew that the said Complainants in Reply to the said in part Recited answer of the said Tyapah Moodelly Coolapah Chetty and Vencatarooloo Brahmin did say as follows "That the two Receipts set forth and alluded to by the Defendants Tyapah Moodelliar Coolapah Chetty and Vencatarooloo Brahmin were Granted by the Repliant Frank Day as one of the partners of the firm of Call Baber and Company and that the Receipt for two Thousand Pagodas was a Specific payment on account of

of Interest due on the said Bond although from a Clerical Omission it had not been brought to the Credit thereof from the Books whereof the Entry was regularly made in the words and figures following 1794 April 29th To James Tate his Account sales of Rice to ship Phenix Received of Nagapah Chetty in further part of one years Interest on his and other native Rice Merchants Bond to Balfour and Colt Dated 1st October 1792 ₱ Pags 39030, 31.40 - 2000 - But in regard to the Receipt for five thousand Pags these Repliants say that it had no Connection with that particular Bond but was granted to the said Nagapah Chetty on a General Account which he had with these Repliants for native Merchants and from whom he collected the said sum of five thousand Pagodas as for Goods sold thro' him in his Capacity of Dubash as appears by the following Entry 1794 October 2ds To Nagapah Chetty on account of Goods sold Received of him as per Receipt 5000 and these Repliants further say that although the other Defendants Tyapah Moodelliar Coolapah Chetty and Vancatarayto Brahmin have taken upon themselves to swear positively to

to the fact of the said Sum of Five thousand Pagodas having been Expressly paid on Account of the said Bond yet the Defendant Benjamin Roebuck in his Separate answer doth not attempt to insist on that fact and yet his sources of information must be better than that of the other Defendants Being in the Active and immediate management of the Estate of the said Nagapah Chetty and these Repliants further say that the Account Current Annexed to and Exhibitted with their Bill of Complaint unless as Regards the Receipt for two thousand Pagodas omitted to have been passed to the Credit of the said Bond is in every Respect Correctly stated" And your Petitioner doth lastly shew that in the Complainants amended Replication to your Petitioners aforesaid Demurrer and answer that they did admit and say as follows" That they have lately Discovered from the Answer of the Executors of Nagapah Chetty that the sum of Two thousand Pagodas paid as part of one years Interest on Account of the said Bond has been omitted to be Credited which Omission these Repliants are ready and willing to Rectify and do hereby submit to

have

have the same Deducted from the Amount for which they have brought their action but as regards another Receipt for the sum of Five thousand Pagodas and for which the said Executors have also sought Credit in their answer these Respiants say that the monies paid thereon had no Connection with the Bond in question —

For all which several Causes and reasons and such others as shall be Offered at the hearing your Petitioner doth as aforesaid Appeal from the said several Orders of the said Honourable the Mayors Court under date the Sixth and Thirteenth Days of the said Month of Dec^r One thousand seven hundred and ninety six and doth pray this Honourable Court to Order and Direct that the several orders so appealed against by your Petitioner may be rescinded that your Petitioner may be Decreed his Costs and Charges in this behalf most wrongfully sustained and Receive such further and other Relief in the premises as to the Equity of this Honble Court shall seem meet —

And your Petitioner shall pray &c

Signed J Wilkinson and Sutherland

Solicitors for Appellant

Know

A

Know all Men by these Presents that We Tomboo Chetty Nagapa Chetty Condapah Chetty and Chellapah Chetty of Fort Saint George Merchants are Jointly and Severally held and firmly bound unto Mess^rs William Balfour and Oliver Colt of the same place in the Penal Sum of Seventy Eight Thousand and Sixty one Star Pagodas and Eighteen fanams to the payment whereof well and truly to be made to the said Mess^rs William Balfour and Oliver Colt their Heirs Executors administrators or assigns We do hereby bind ourselves our heirs Executors and administrators firmly by these Present In Witness whereof We have hereunto Set our hands and Seals in Fort Saint George this first day of September in the year one Thousand Seven hundred and Ninety Two — Whereas the above bound Tomboo Chetty Nagapah Chetty Condapiah Chetty and Chellapah Chetty have borrowed and Received of the above named Mess^rs William Balfour and Oliver Colt the full and Just Sum of Thirty Nine Thousand and Thirty Star Pagodas thirty one fanams and forty Cash

One

One half the amount thereof to be paid in Gold and the Remaining one half in Companys Arcot Rupies at the Exchange of 365 ℔ 100 Pagodas to run at Interest at the rate of Twelve per Cent per annum and payable on the 1st November next without Interest and after that period Interest to Commence at the rate of Twelve per Cent per Annum until this Bond be fully Discharged —

Now the Condition of this Obligation is such that if the above Bound Tombee Chitty Nagapah Chitty Condapah Chetty and Chillapah Chitty their Heirs Executors Administrators or Assigns shall well and truely pay or Cause to be paid unto Messrs William Balfour and Oliver Colt their Heirs Executors Administrators or Assigns the full and just Sum of Thirty Nine Thousand and Thirty Star Pagodas Thirty one fanams and forty Cash together with such Interest as shall or may became due thereupon then this obligation to be void and of no Effect otherwise to Continue in full force and Vertue —

Signed Sealed and Delivered where no Stamped Paper is to be had In the presence of

/Signed/ Permalle

Tombee Chitty ..... LS
Nagapah Chitty ..... LS
[illegible] LS
[illegible] LS

Fort

Star Pags 3000 —

Fort St George 5th February 1794 Received of Nagapah Chitty the sum of Three Thousand Star Pagodas being part of one years Interest due on within Bond —

/Signed/ Colt Baker and Co

Star Pags 10000 —

Fort St George 1st December 1794 Received of Nagapah Chitty the Sum of Ten Thousand Star Pagodas being part of within Bond —

/Signed/ Colt Baker & Co

Star Pags 4683. 28. 77

Fort St George 6th December 1794 Received of Nagapah Chitty the Sum of Four Thousand Six hundred and Eighty three Star Pags Twenty Eight fanams and Seventy Seven Cash being one years Interest due on within Bond up to 1st Novr 1794

Fort St. George 6th December 1794 Received of Nagapah Chitty the Sum of Five Thousand three hundred and Sixteen Star Pagodas thirteen fanams and three Cash /5316. 13. 3/ being part of within Bond —

Star Pags 6000 —

Fort St George 16th January 1795 Received of Nagapah Chetty the Sum of Six Thousand Star Pags being part of within Bond —

Star Pags 9000 —

Fort St George 3d February 1795 Received of Nagapah Chitty the Sum of Nine Thousand Star Pags /9000/ being part of within Bond

A true Copy /Signed/ George Chalmer Attorney for Compts

A true Copy /Signed/ Wilkinson & Sutherland Solicitor for Appellant

11

B

Dr Tomboo Chetty Condapah Chetty and Chellapah Chetty and Brammy Executor of Nagapah Chetty Deceased on and Colt Baker and Company Attornies to Oliver Colt—

1792					
Sept.	1st	To the Amount of your Joint and Several Bond of this date Payable on the 1st Novr following to Wm Balfour and Oliver Colt			39030 31 40
1794					
Febry	6th	To Interest on Principal amount of Bond from 1st Novr 92 to this day at 12 ₱ Cent ₱ a.	5941 4 60		
		Deduct what received at this date in part payment of Interest as endorsed on Bond	3000 " "		
Decr	6	To Interest on Principal Amount of Bond from 6th February last to this Day at Do	2941 4 60		
			3888 5 30		
		Deduct what received at this date in part payment of Interest as endorsed on Bond	6829 10 10		
1795			4683 28 77		
Novemr	13th	To Interest on Principal Amount of Bond from 6th December 1794 to this Day at Do	2145 23 13		
			4388 24 30	6534 5 43	
		Star Pagodas		45564 37 3	

A True Copy

/ Signed / Wilkinson & Sutherland

Solicitor for Appellant

Benjamin Roebuck Tyapah Moodelly Coolapah Chetty & Vencatarayaloo Account Current with Frank Day Executor of William Balfour Deceased. &c.

1794					
Decemr	1	By Cash Received this Day			10000 " "
1795	6th	By Do Received this Day			5316 13 3
January	16	By Do Received this Day			6000 " "
Febry	3d	By Do Received this Day			9000 " "
					30316 13 3
Novr	13th	By Interest on the Above Sums from their Respective Dates to this Day at 12 ₱ Cent ₱ Annum as follows—			
		On Pagodas 10000	347	1140 34 40	
		5316 13 3	342	597 30 30	
		6000	301	593 31 50	
		9000	283	837 15 40	
					3169 28 "
					33485 41 3
		By Balance due this day			12078 38 "
		Star Pagodas			45564 37 3

Fort St George
13th November 1795

E. E. ₱ Signed / Colt Baker & Coy

A true Copy signed George Chalmer

Attorney for Complainant

Extract

D C

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 6th Day of December Anno Domini 1796 –

Present

James Daly Esqr Mayor

William Webb Andrew Ross &

Alexander Cockburn

Aldermen.

Frank Day Executor of William Balfour Deceased and Oliver Colt by his Attornies Oliver Colt Charles Baber & Frank Day –

vers

Tombee Chetty Candapah Chetty and Chellapah Chetty and Benjamin Roebuck & Tyapiah Moodelly Calapah Chetty and Vencatarayalee Brahmin Executors of Nagapah Chetty Deceased –

The Attorney for the Complainants prays that the Cause between the Complainants and Tombee Chetty may be set down for hearing to which the Opposite Attorneys Objects because that the action is on a Joint and Several Bond and it is not known by Tombee Chetty what Certain debt may remain due as it already Appears from the seperate Defence of the Executors of Nagapah Chetty that a Considerable sum of

Money

D

Money is Charged and by the Plaintiffs admitted to have been paid on Account and for which no Credit is given in the Complainants Bill and as it further by such pleadings Appears that a sum of 5000 Pagodas and upwards is further alledged to have been paid and which tho Denied by the Plaintiffs is yet a fact in Issue and finally in as much as in a Joint and Several Defence the Defendants are severally Entitled to the benefit of the Entire Defence from which Tombee Chetty would be precluded should his Several defence be prematurely Decided as the Plaintiffs of such his defence should not be Considered Complete to his protection would thereby have Executions against him seperately and as if it suited their purpose Cease their prosecution against the Co-Defendants and hence would ensue that the Complainant might have a Double Satisfaction of his Debt as Tombee Chetty could not sett off the 5000 Pagodas already in Issue besides what further may be put in Issue to his benefit The Court having taken the same into Consideration it is Ordered that the Cause Between the Complainant and Tombee Chetty be set down for hearing –

A true Extract

A true Copy

Signed / Geo. Taylor Regr

Sd / Wilkinson & Sutherland

Solicitor for Appellant

Extract

D

Extract from the Minutes of a Court held at the Town Hall on Tuesday the 13th Day of December Anno Domini 1796

Present

James Daly Esqr Mayor

Andrew Ross and Benjn. Roebuck

Aldermen

Mr Alderman Roebuck being interested goes off the Bench and Mr Alderman Mitford takes his Seat upon the Bench

Frank Day Executor of William Balfour Deceased and Oliver Coltt by his Attorneis Oliver Coltt Charles Bather and Frank Day

vers

Benjamin Roebuck Tayapah Moodelliar and others Executors of Nagapah Chitty Deceased Tomboo Chitty Chellapah Chitty and Condapah Chitty—

The Attorney for the Complainants prays that the Cause Between the Complainants and Defendant Tomboo Chitty may Come on to be heard on Tuesday next To which the Attorney for the Defendant Tomboo Chitty objects for the Reasons Assigned by him last Court day The Court taking the same into Consideration It is Ordered that the Cause Between the Complainants and Defendant Tombee Chitty do Come on to be heard on Tuesday next—

A true Extract

/Signed/ G. E. Ayhen

Dy Regr

A true Copy

/Signed/ Wilkinson and Sutherland

Solicitors for Appellant—

E

D^r The Executors of Nagapatn Chetty deceased in Batson and Oliver Colt by his Attorneys Colt Baker and

To Amount of Bond		39030	31 44
To Interest on Ditto from 1st November 1792 to 13th November 1795 is 3 Yrs 12 Ds at 12 ₰ Cent ₰ Annum		14204	2 30
		53234	33 74

Star Pagodas 53234. 33 74

A true translation as near as can be from the Malabar Language

(Signed) Ranganaudum, Interpreter

Account Current with Franks Day Executor of William Day — Cr

1794						
February	6th	By Cash Received		3000	..	..
April	29	By Do	Do	2000	..	..
October	3	By Do	Do	5000	..	..
December	1st	By Do	Do	10,000	..	..
	6	By Do	Do	4683	28	77
1795		By Do	Do	5316	13	3
January	16	By Do	Do	6000	..	..
February	3	By Do	Do	9000	..	..
Novr	13th	By Interest on the following Sums from their Respective Dates to this day at 12 ₰ Cent ₰ annum —				

On Pags	3000	..	..	for	Y 1	ds 280	636 .. 6. 72
	2000	..	..		1	192	370 .. 8 .. 4
	5000	..	..		1	41	667 .. 16 54
	10,000	..	..			347	1140 .. 34. 41
	4683	28	77			342	526 .. 26. 18
	5316	13	3			342	597 .. 31. 60
	6000	..	..			301	593 .. 31. 51
	9000	..	..			283	837 .. 15. 42
							5370 .. 3. 22
							50.370 3 22
By Balance							2864 30 52
Star Pagodas							53234 33 74

Fort St George 13th November 1795

E.E. Signed Emanuel Samuel Att^y for Defendant

A true Copy

(Signed) Wilkenson and Sutherland

Solicitor for Appellant

To

To the Right Honble Robert Lord Hobart

President and the Council of Fort Saint George

In the Honourable the Court ..
of Appeals at Madraspatnam

In the matter wherein Frank. Day Executor of William Balfour Deceased and Oliver Coltby his attornie Oliver Colt Charles Baber and Frank. Day are Complainants and Tombee Chetty Condapah Chetty and Chellapah Chetty together with Benjamin Roebuck Tyapah Moodelly Coolapah Chetty and Veneatarayloo Braminy the Latter as Executors of Nagapah Chetty Deceased are Defendants

The Answer of the above named Complainants to the Seperate Petition and Appeal of Tombee Chetty one of the above named Defendants

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

These Respondents for answer to the said Petition and Appeal or unto so much thereof as is Necessary to make answer unto answer and say they admit that on or About the Twenty Sixth Day of November which was in the year of Christ one thousand seven hundred and Ninety five these Respondents did file and Exhibit their Bill of Complaint in the Honourable the Mayors Court at Madraspatnam against the Appellant and also against Condapah Chetty and Chellapah Chetty in the said Bill named which Bill being fully recited and setforth in the said Appellants Petition and Appeal these Respondents Crave leave to Refer thereunto and pray they may have the full benefit and advantage thereof And these Respondents further answering Shew that process having issued on the said Bill of Complaint the said Appellant did appear thereto and filed a Demurrer and as Cause of Demurrer did alledge that the Executors of one Nagapah Chetty one of the obligors in the said Bond named had not been made parties to the suit which they ought to have been and these Respondents admit that they did not Join Demurrer but did agree that the Executor of the said Nagapah Chetty To wit Benjamin Roebuck Tyapah Moodely Coolapah Chetty and Veneatarayloo Braminy should be made parties to the Bill and which was accordingly done on the fifteenth Day of June which was in the year one thousand Seven hundred and Ninety five And these Respondents do not pretend to Deny on the Contrary they redily admit that

that the amendment of the Bill by adding parties thereto was a voluntary act But as the Appellant has endeavoured to deduce from thence arguments favorable to the Appeal which he has made these Respondents pray leave to Observe that they did not Consent to the amendment from any Apprehension which they entertained of the Demurrer being well founded or that they should on argument have been Compelled to make them parties on the Contrary these Respondents are fully persuaded that if they had Joined in Demurrer That it must have been overruled no one point of Law as they are advised being better Established than this That in ajoint and Several Bond the Obligee may sue the Obligors either Jointly or Severally But the real Object these Respondents had in view by making the said Executors parties to the Bill was to prevent the Appellant from procrastinating the issue of the suit by an interlocutory Appeal and which line of Conduct these Respondents plainly saw it was his object to pursue For these Reasons o.. therefore did these Respondents Consent to amend their Bill by adding the parties Required And these Respondents further say that the Object of the Appellant having been attained It might have been Expected that he would have

fairly

fairly met the question and that if he Conceived that he was not indebted in the Sum for which the action had been brought that he would have stated his Objections But avoiding a Discussion of the merits the said Appellant Demurred to the authority under which these Respondents Oliver Colt was Represented and for Cause shewed that the Bill of Complaint was preferred against the Appellant and the Other Defendants therein named by this Respondent Frank Day as only Executor in India of the last Will and Testament of William Balfour deceased and the said Oliver Colt late of Madras Merchant but now of the City of London by his attornies Oliver Colt thereby intending himself the Constituent and these Respondents Charles Baker and Frank Day under the firm of Colt Baker and Company, The said Colt Baker and Company acting in this behalf under and by virtue of a Certain Power of Attorney from the said Oliver Colt of which power an authentic Copy was by the said Attornies produced to the Honourable Mayors Court and was lodged in the Registry thereof therefore the Appellant did Demurr for that the said Appellant ought not nor could act in the premisses as his own Attorney inasmuch

as

as the authority Derived or pretended to be derived to him from the said Power of Attorney was Emerged and lost in his Superior Title of Constituent and the Appellant further alledged that the said Appellant being thus precluded that there did not Remain unto these Respondent Charles Bather and Frank. Day any power to maintain the present action For that the authority granted by the said Oliver Coll ought in Law to be Strictly pursued and the same being granted to these Attorneis Could not otherwise be Executed than by such three Attornies in Conjunction But the Appellant alledged he had shewn that the said authority Could not be Executed Strictly and therefore that the same Could not be Executed at all and thereupon the appellant did Demand the Judgment of the said Mayors Court whether he should be Compelled to make any further answer to the Bill of Complaint of these Respondents and the Appellant not waving his said Demurrer but wholly insisting and relying thereon for answer to these Respondents Bill or unto so much thereof as the Appellant said he was advised was material or necessary for him to make answer unto answered and sayd that he did not stand indebted to these Respondents as was stated by them in and by their said Bill of Complaint And these Respon. dents further say that to the said Demurrer and answer they filed a Replication Setting forth that the Power of Attorney granted by the said Oliver Coll to the House of Coll Bather and Company an attested Copy whereof was delivered into the said Court was not insufficient but Contained a full and Clear authority to bring and Support the present action in the manner in which it had been instituted And these Respondents did Submit to the said Honble Mayors Court that the reasons upon which the Appellant had grounded his Demurrer were Absurd and unjust inasmuch as if they were admitted it would tend to precludes a person Engaged in a Partnership Connection from Appointing as his agents during any period of his absence the very persons in whom he would Chuse to Repose a Confidence Contrary to every principle of Reason and of Justice These Respondents further said that the Power of Attorney Excepted to was given to the firm of Coll Bather and Company by the said Oliver Coll to enable them to manage and transact during his Absence from this Country those matters wherein he was interested that were Distinct from his Partnership Concern Hence as

as far as Related to the said Power of Attorney and the Subject matter of the suit the said Oliver Colt was as any other indifferent person who Chose to Employ the said House of Colt Baker and Company as his agents and thereupon Executed a Power of Attorney In such Cases the Authority is not given Jointly or Severally that being Superfluous and Unnecessary the act of one of the said partners signing for the firm being the act of the whole wherefore these Respondents did humbly insist that the said authority from the said Oliver Colt to these Respondents from the firm of Colt Baker and Company was well pursued and the Exception Exhibited that the said Exceptions to the Power of Attorney brought forward most irregularly in the Shape of a Demurrer might be over ruled with Costs more particularly so as the Object of the Appellant seemed to be to procrastinate and delay the payment of his Bond by every Species of Delay and Cavil and these Respondents further say that on the Seventeenth Day of May last past the Appellant did file and Exhibit his Rejoinder Setting forth That Concerning the Instruction of litigiousness and irregularity made against him by these Respondents as the most material part of the said Replication and

and Viewing the Reasoning of these Respondents against the Substance of the Demurrer as Comparatively of small importance Hee the Appellant would under the indulgence of the said Mayors Court proceed Contrary to the method of these Respondents and first discuss the latter part thereof That with respect to what these Respondents had urged about the propriety of bringing the Objection forward in the form of Exceptions instead of a Demurrer It was a mode for which he the Appellant had in vain Endeavoured to discover any Specious Grounds Submitting himself However to the wisdom of the said Court and ready to mould his Opinion to the Superior Knowledge of these Respondents which Court should be shewn But the Appellant said he had ever understood a Demurrer to be the only Regular form of Objection to a Bill of Complaint and the Reason thereof the Appellant understood to be was that while all the other pleadings had in their Ultimate Reference to the Bill and in their intermediate Reference to each Other a fixed Standard and Criterion whereby their Sufficiency or insufficiency Relevancy or irrelevancy might be Determined the Bill alone had no Proteity by the whereunto it might be Compared The only standard by which it could be tried was the Law of the Land and the practice

of

of Courts and Objections arising on either of those Grounds could not be Denied to be purely and properly matter of Demurrer But that these Respondents apparentlly forgetting the tendency of their Reasoning Just noticed were Content to Call the Demurrer in Question the Second Demurrer in Order from thence to argue a disposition in the Appellant to procrastination and Cavil That surely was arguing About words For on the principles of these Respondents the said Demurrer was in substance an Exception and if it had been so in form also the same Delay would have followed there Remained then sought but a name to Support the insinuation The Appellant avowed that the Demurrer in question was the Second Demurrer but Contended that no inference Could thence be Drawn to its prejudice the Justness and propriety of the first was unequivocally Recognised by the unmediate Amend. : ment of the Bill which Circumstance if it could at all affect the present Demurrer must do so by affording a Presumption in its favor on the Ground that his the Appellants former Objection was well founded The Appellant then Recurring to the reasons urged by these Respondents against the Substance of the Demurrer said that by his said Bill of Complaint he the appellant did Rather

point

point out a Vicious Redundancy in the Power of Attorney Alluded to than any want he did not say nor intend that the tenor of the said Power was not Strictly pursued with Effect on the Contrary he admitted that all the absurdity of the power was faithfully preserved in the Bill but he Contended that it was equally fatal in both And the Appellant further said that he Could not with these Respondents perceive the incon. : viniences that would result from admitting the tendency of the Demurrer in its full extent For in the instance before the Court without supposing in the Constituent any knowledge of the nature and Effect of a power of Attorney or even any acquaintance with the familiar forms of Business the mere light of Reason aided by the most Common Attention would have suggested to him To empower the residing partners of his firm omitting himself whose assistance in India he could not expect whilst he remained in Europe and the said Appellant by his Replication alledged that the next arguments offered by these Respondents Consisted of two Mem. : bers which as far as the appellant Could perceive were dis. : tructive of each other Hee the appellant would therefore Content himself to range them in such order as might best shew their opposition and so leave them to Combat each other The latter

member

member asserted that the act of one partner signing for the firm was the act of the whole which if it meant any thing in the present question must mean that one partner Could also sue for the whole and in substance that the firm was a Corporation The former member Viewed the Constituent in the said Power of Attorney as an indifferent person wholly unconnected with the house from which the Appellant Could forsee no Other effect but this That by such Supposition the said Constituent was precluded from all benefit of that Corporate power which the Other Member of the said argument supposed to Exist in the Firm And the Appellant further said that to the whole train of the argument adduced by these Respondent there was one general answer equally simple and Conclusive To wit that as in the present Case the law was positive and its sense Clear Reasons of Expediency however cogent Could have no place and Deductions adabsurdum however plausible must be falacious and these Respondents further say that as Regarded the merits of the action the Appellant in his Rejoinder only alledged that he was well Convinced that even if these Respondents had Sufficient power to sue they Could Establish no Claim whatever against him the Appellant and these Respondents further say that it having Come to their knowledge at that period that Nagapah Chetty Deceased one of the Obligors and who was their Dubash had sometimes taken Bonds in his transaction for the house without Requiring a Subscribing Witness to be immediately present and having made enquiries Respecting the Bond in question they found that Permaub the subscribing Witness thereto was not present but that the said Nagapah Chetty brought the Bond to be Witnessed after the Several parties had Executed it and having therefore reason to believe that the said Appellant meant to avail himself of that Circumstance to exonerate himself they deemed it necessary to have Recourse to other proof In Order to shew that the appellant was a party to the Bond Accordingly these Respondents with the permission of the said Mayors Court filed an amended Replication Setting forth as Regarded the merits of the action That as the said Tambee Chetty had so Cautiously Avoided entering into the merits of the suit that it was necessary for these Respondents to state the Consideration for which the Bond was granted as well as other Circumstances attending the transaction And thereupon these Respondents prayed leave to state that Nagapah Chetty one of the Obligors in the said

said Bond named was Dubash to William Balfour and oliver Coll under the firm of Balfour and Coll as he also was to the preceding and Subsequent firm of the said House That a Considerable Share of Confidence was placed in him being intrusted with the Disposal of their Consignments and in general with the purchase and Sale of their Goods and merchandizes and further Setting forth that on or about the first day of September which was in the year one thousand Seven hundred and ninety two the Ship Phoenix having Arrived with a large Cargo of rice Consigned to the said Balfour and Coll the said Nagapah Chetty was Directed to look out for purchasers for the same which he Accordingly did and soon afterwards acquainted his employers that himself Chellapah Chetty Candapah Chetty and the Appellant Tomboo Chetty had agreed to purchase the whole That ready money was not paid on Account of the said Rice But in lieu thereof the Bond upon which the present suit is brought was granted and Delivered by the said Nagapah Chetty to his employers the said Balfour and Coll with which Security they were perfectly Satisfied as the different obligors were all Considered as men in opulent Circumstances, & best particularly the Appellant Tomboo Chetty That Considerable Sums were paid on Account of the said Bond by

by the said Nagapah Chetty in his lifetime who being Dubash of the House Collected from the other obligors their Respective shares That after his death an Account was made up and payment of the balance Demanded from the said Defendant Tomboo Chetty but no attention being paid thereto the Bond was placed in the hands of these Respondents Attorney at Law with instructions to recover the Amount by legal measures In Consequence whereof the said Appellant Came to the office of their said Attorney and did there alledge that he was exonerated from the said Bond by Reasons of an agreement given him by Nagapah Chetty who for a Certain Consideration therein Expressed had taken his Share on himself upon which their said Attorney observed to the said Appellant That the private agreements which Existed Between him and the said Nagapah Chetty Could not defeat or release his obligation to Balfour and Coll which would be binding upon him until the said Bond was Discharged That upon making further enquires into this matter they Discovered that the said Tomboo Chetty soon after the death of the said Nagapah Chetty sent for one of his near Relations who was in the Service of these Respondents and with the view of the

Circumstance

Circumstance being Communicated to these Respondents he stated that the said Nagapah Chetty had given an agreement bearing equal Date with the said Bond &c. whereby the said Tambee Chetty was Exonerated from all Responsibility The said Nagapah Chetty having undertaken to be answerable for his particular quota or Share That upon the said personpashing the said Tambee Chetty if the alledged agreement was in his posseßion he Replied it was and afterwards Delivered him a Copy of it above translation whereof these Respondents did by their said amended Replication annex - And these Respondents further sayd that all these Circumstances were well known to the said Appellant which rendered his Conduct highly unaccountable in denying the Debt in general terms when in his own mind he was Conscious that he was one of the Parties engaged in purchasing the said rice and that having Executed his Bond for the same he was Jointly and seperately answerable with the other obligors until the whole was paid off and discharged notwithstanding his agreement with the said Nagapah Chetty And these Respondents further said that they had lately discovered from the answer of the Executor of Nagapah Chetty That the sum of Two Thousand Pagodas paid as

as part of one years Interest on Account of the said Bond had been omitted to be Credited which Omission these Respondents were ready and willing to Rectify and did thereupon submit to have the same deducted from the amount for which they had brought their action But as Regarded another receipt for the Sum of five thousand Pagodas and for which the said Executor had also sought Credit in their said answer these Respondents said that the Monies paid thereon had no Connection with the Bond in question and these Respondents further said that to these Allegations the said Appellant did not Rejoin But Cautiously Avoiding the merits He observed that what these Respondents had setforth was no longer argumentative but purely historical Containing a pretended Narrative of transactions which these Respondents affected to think the Appellant should have Setforth in his answer But the Appellant said that he Conceived no more to be incumbent on him in answering the Bill of Complaint of the Respondents than to Controvert the substantive Charges and answer the interrogatory parts thereof If he had done less these Respondents had their Remedy by Exception But the Appellant is far from thinking it necessary in his answer to enter into any such details as were Contained

in

in the said Replication did not even now see how those details if they were Correct bore upon the question at issue neither did he the Appellant perceive in the elaborate narrative of these Respondents ought but a foreign and impertinent Superfluity liable on the best of Grounds to be excepted to by the Appellant and which he forbore to do partly from a wish not to Clog the Cause by multiplicity of pleadings and partly in order to merit from these Respondents a retraction of that insinuation of their about Cavil and Delay with which as with a multitude of other terms Expressive of that opprobrium and reproach they had most unmercifully loaded the Appellant and these Respondents further say that issue did afterwards Join and rules passed for the Examination of Witnesses and Accordingly one Pennacil Chetty was Examined on the part of the Appellant who to the Second Interrogatory Deposed that he had looked at the Exhibit produced and shewn to him at the time of his Examination purporting to be a Bond from Tomboo Chetty Nagapah Chetty Bondapah Chetty and Chellapah Chetty of Fort Saint George Merchant to Messrs William Balfour and Oliver Colt of the same place and at the name Tomboo Chetty thereunto Appearing as one of the obligors and at the name of Pennaub thereunto also Appearing in the Malabar language as being the name of one Witnessing the Execution of the said Bond and said that the name Pennaub so Appearing to the said Bond in the malabar language as aforesaid was the name and proper hand writing of the said Deponent but that he the said Deponent was not present nor did he see the said Tomboo Chetty Sign Seal and Deliver the said Bond as the attestation doth import But that he signed his name as a witness to the said Bond at the request of the late Nagapah Chetty deceased to whom he was Cash Keeper at that time And these Respondents further say that Sauny Chetty George Chalmer and Anna Pillay were produced and Examined on their part And to the second Interrogatory the said Sauny Chetty deposed That he had looked at the paper writing produced and Shewn to him at the time of his Examination purporting to be a Bond or written obligation from Nagapah Chetty deceased and Tomboo Chetty and Others to William Balfour and Oliver Colt That the said Tomboo Chetty died about fifteen or Twenty days after the death of the said Nagapah Chetty speak to him about a Certain agreement given on account of the said Bond by the said Nagapah Chetty

and

and did inform him that he had taken an Agreement from the said Nagapiah Chetty purporting that the said Tomboo Chetty had nothing to do with the Bond above mentioned That a Copy of the said agreement was Delivered to him by the said Tomboo Chetty That he had looked at the paper writing produced and shewn to him at the time of his Examination and Declared it was the same which was Delivered to him by the said Tomboo Chetty And these Respondents further said that it also appeared from the Testimony of the said George Chalmer and Anna Pillah That although the witness Pennaud was not present when the Bond was Executed by the said Tomboo Chetty yet he did Prove the fact Clearly shewn and that the said Tomboo Chetty Relyed upon the Circumstance of the Witness not having been present to be Examined Conceiving that proof of the Execution could not be had And these Respondents further say that Publication having passed the said Cause was set down for hearing and ordered to be heard on the Twentieth Day of December last past But these Respondents deny that the Appellant is aggrieved by the Order of the said Mayors

Court

Court or that he has any Just Cause or Reason to Appeal therefrom And for answer to the first Reason or Cause of Appeal These Respondents say that as the Bond upon which the present action is founded doth Expressly State that the Appellant together with the other obligors are Jointly and Severally bound that it would be Superfluous and unnecessary in these Respondents to Reply to the Extraordinary assertions in the said first Reason Contained The Bond itself being the Criterion from whence the intention of the parties must appear and which Cannot be shewn by extrinsic and unsupported averments And these Respondents admit that when the Appellant did demur in the first Instance For that the Executors of Nagapiah the deceased were not made parties to the suit they voluntarily Consented to an amendment of the Bill and to the said Executors being made parties thereto yet these Respondents have shewn That their motive for meeting the apparent wishes of the appellant was to prevent unnecessary delay in bringing the suit to a Conclusion and not from any apprehension which they entertained of the Demurrer being held good had it been argued For these Respondents Submit that if the doctrine attempted to be established by

the

the appellant were admitted there would be no difference betwixt a Joint Bond and one Joint and Several In cases of this nature It is presumed that a Creditor lends his Money upon terms to have a Security upon which he may sue the obligors Severally if he thinks proper and if it were otherwise that which was intended to Strengthen the Security It is evident would lent it extremely and these Respondents further say that these Principles are laid down and established in the Case of Collins Vers Griffiths Reported in Pierre Williams Vol. 2d Page 312 There only one of the obligors was sued and he Demurred to the Bill Because the other obligors were not made parties to the suit But upon the principles aforestated it was over ruled with great Clearness And these Respondents further say that if the appellant had Conceived the Defence of the other parties to be material that he ought to have proceeded in a very Different manner That is to say he ought to have Entered into the merits of the question as they have done But this issue he has avoided and has gone upon one very Different That is to say upon the Power of Attorney from Oliver Colt and which the appellant Contends was not Sufficient authority to maintain the action

As

As it therefore does not appear from any part of the pleadings on the part of the appellant that he Considered the defence of the other parties in any wise essential It is highly unbecoming and litigious in him at this Juncture to urge such Circumstances as a Cause of grievance more particularly when in his amended Rejoinder which is the last paper filed in the Cause he studiously avoids a Discussion of the merits Declaring that it was not necessary for him to Rejoin to any matter in these Respondents Replication Contained For admitting the statement to be Correct The Appellant said he did not see how it Could bear upon the question at issue And in order further to shew that the issue upon which the appellant has proceeded is altogether unconnected with the Defence of the other parties Defendants These Respondents pray leave to State the Witness Permaul having been Examined by the appellant he did on the Fifteenth Day of November last past move the Honourable Mayors Court that Publication should pass in the Cause To which these Respondents objected and prayed one Week to Examine Witnesses which was granted That during the Week the examination having been Completed These Respondents agreed that Publication

should

should pass but the object which the Appellant had in
View being defeated he objected to Publication passing
The said Mayors Court however Considering it an Extraordinary
Circumstance that a party should one Court day move for Publi-
-cation passing and object to it on the next without any
Cause being shewn in Justification of the inconsistency directed
Publication to pass and in proof of these facts which become
material as tending to shew the litigious Disposition of the
Appellant These Respondents have hereunto annexed Copies
of the Extracts Certified by the Register and which these
Respondents pray may be taken as part and parcel of this
their answer —

And for Answer to the Second Reason these
Respondents Say they have already shewn that upon a Joint
and Several Bond the Obligee may sue the whole of the obligors
Jointly or Severally and this being an Obligation which the
law imposes hardships Cannot be presumed more particularly
as the Appellant if he prays the Debt may Compell the other
obligors or their Representator to Contribute their Respective
shares And these Respondents further say that if this
Honourable Court were to Comply with the prayer of the
Appellant and Direct that the defences of the Several

Obligors

Obligors should be heard at one and the same time every
great hardship would be thereby imposed on these Res-
-pondents Inasmuch as the hearing of the Cause might be
protracted by Interlocutory Appeals by one party and by
abatement in Consequence of the deaths of other parties to a
very Distant period so that the object of a Joint and Several
obligation would be utterly defeated And these Respondents
pray Leave to State That it is not unusual for the Mayors Court
to Suspend their Judgment on Suits which are Ordered for
hearing when by a due Consideration of the merits It Appears
that the Object of Justice could be better attained and if the
Appellants Defence should appear to merit that distinction
he Can have no Reason to Suppose but that the same
Justice will be afforded him which has been rendered others
These Respondents however Submit that it is the peculiar
Province of the Mayors Court to Determine whether the
suit as regards the Appellant is ripe for their decision and
if they should proceed and that by the Judgment which is
pronounced the Appellant should fell himself aggrieved
then is the time for him to Appeal therefrom —

For all which Reasons and such
Others as may be adduced at the
hearing

hearing these Respondents humbly pray this Honourable Court will be pleased to affirm the orders of the said Honourable the Mayors Court and that the Appellants Petition and Appeal may be Dismissed with Costs to be paid by the said Appellant—

Signed George Chalmer
Solicitor for Respondent—

Extract

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

Present

James Daly Esquire Mayor
Andrew Ross and John Mitford
Aldermen

Frank Day Executor of William Balfour Deceased Oliver Coll Charles Baker Frank Day and John Spalding by their Attornies Charles Baker and Frank Day—

Benjamin Roebuck and Others Executors of Nagapah Chetty, Deceased

The Attorney for the Defendant Tombaa Chetty prays that Publication may pass in this Cause to which the opposite attorney objects and prays a further time of one Week to Examine Witnesses ordered that a further time of one Week be granted Further Day is given the Parties Complainants and the Defendant Tombaa Chetty till the 22d Instant to Examine Witnesses indefault of which Publication will pass in this Cause

A True Extract
Signed J. E. Atkins
Dy Regr

True Copy
Signed George Chalmer
Solicitor for Respondent—

Extract

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 22d day of November Anno Domini 1796

Present

James Daly Esquire Mayor

Andrew Ross Benjamin Roebuck and

William Abbott Aldermen

Mr Alderman Roebuck being Interested goes of the Bench

Frank Day Executor of William Balfour Deceased Oliver Coll Charles Baker Frank Day and John Spalding by their attornies Charles Baker and Frank Day —

VERS

Benjamin Roebuck and Others Executors of Nagapah Chetty Deceased

The Attorney for the Complainant prays that Publication may pass in this Cause between the Complainant and Defendant Tomboo Chetty to which the Attorney for the Defendant Tomboo Chetty objects Ordered that Publication do pass —

Publication is prayed in this Cause

A True Extract

Signed / G. E. Aitken
Dy Regr

true Copy

/ Signed / George Chalmer
Solicitor for Respondent

Court

Court of Appeals
at
Madraspatnam

Friday the 6th day of October
Anno Domini 1797

Between Tomboo Chetty of Madras Inhabitant Appellant and Frank Day Executor of William Balfour Deceased and Oliver Coll by his attornies Oliver Coll Charles Baker and Frank Day of Fort St George Merchants Respondents —

This Cause coming on this day to be heard and debated before this Court by the attornies on both sides upon hearing the Petition of Appeal and Answer together with the Orders of the Honourable the Mayors Court given in this Cause on Tuesday the 6th 13th and 15th days of December 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 Orders of the Honourable the Mayors Court do stand Affirmed and that the Appellants Petition be hence dismissed with Costs —

Decr

To

To the Kings Most Excellent Majesty
in Council

In the Matter wherein Frank Day
Executor of William Balfour deceased and
Oliver Calt by his attornies Charles Baker and
Frank Day are Complainants and Tombee
Chitty Condapah Chetty and Chellapah Chetty
together with Benjamin Reuben Tyapah Moodely
Coolapah Chetty and Vencatarayloo Brameny
the Latter as Executors of Nagapah Chetty deceased
are Defendants —

The humble Petition and Appeal of Tombee
Chitty one of the above named Defendants —

Sheweth,

May it please your Most Excellent Majesty in
Council That sometime on or about the Twenty sixth day of
September which was in the year of our Lord One thousand
seven hundred and Ninety five the above named Complai-
nants did file their Bill of Complaint in the Honourable
the Mayors Court at Madraspatnam against your
Petitioner and two of the above named Defendants Viz.t
Condapah Chitty and Chellapah Chitty by their said Bill

Filed in my office
the 19.th October 1795
Thomas Oakes
Clk

Charging

Charging that your Petitioner together with the said
Described other parties had by their Certain Bond or writing
Obligatory bearing Date the first day of September which
was in the year one thousand seven hundred and ninety two
Acknowledged themselves together with one Nagapah Chetty
since deceased to be Jointly and severally held and firmly
bound unto William Balfour in the Title of the Cause
Described as deceased and to the said Oliver Calt a party to
the said Bill in the penal sum of seventy Eight thousand
and sixty one Pagodas and Eighteen fanams Conditioned
for the payment of the sum of Thirty nine thousand and
thirty Pagodas thirty one fanams and forty Cash with interest
after the first Day of November then next ensuing the
Date of the said Bond at the rate of Twelve per centum
per annum as by the said Bond or Obligation Copy whereof
the said Complainants did say they had annexed to
their said Bill of Complaint marked A would appear
and your Petitioner sheweth may it please your Most
Excellent Majesty in Council that the said Complainants
did by their said Bill of Complaint further say that after
giving Just Credit for the respective payments made
for and on Account of the said Bond so by them declared on

that

That there did remain Justly and truly due to the said Franks Day as Executor of the said William Balfour and unto Oliver Colt and Charles Baker and Franks Day as attornies of the said Oliver Colt from your Petitioner the said Candapah Chetty and Chellapah Chetty the sum of Twelve thousand and seventy Eight Pagodas and thirty Eight fanams Current Money of Madras making into sterling money of Great Britain at the rate of Eight shillings for every Pagoda the sum of four thousand Eight hundred and thirty one pounds and ten shillings or thereabouts as the said Complainants did further say would more fully and at large Appear by your Petitioners Bill of Complaint to which they did pray leave to refer when produced and a true Copy whereof the said Complainants did say they had annexed to their said Bill of Complaint Marked **B** and to which they did pray to refer and your Petitioner may it please your most Excellent Majesty in Council sheweth that he did Demur to such the said Complainants Bill of Complaint and for Cause of Demurrer did say that it appeared by the said Bill that one Nagapah Chitty deceased was at the Allegation of the Bond setforth and that the said Nagapah Chetty had made and published his last Will and Testament and had appointed Executors who had duly proved the same

same and Obtained Probate thereof but which Executors namely Benjamin Roebuck Tyapah Moodelly Coolapah Chetty and Venkatarayaloo Brahmin were not made parties thereto as your Petitioner did say they ought to have been And your Petitioner sheweth May it please your Most Excellent Majesty in Council that the said Complainants did thereupon amend their said Bill of Complaint to wit on or About the fifteenth Day of December in the aforesaid year One thousand seven hundred and Ninety five by inserting in all requisite places in the said Bill the names of the said several Executors of the said Nagapah Chetty and by reference to the said Bill and a Note in the Margin thereof written by the Register of the said Honourable the Mayors Court in the words and figures following Doth appear Benjamin Roebuck Tyapah Moodelly Coolapah Chetty and Vanatarayloo Brahmin Executors of Nagapah Chetty Deceased were made parties to this Bill by Order of Court of the fifteenth of December one thousand seven hundred and Ninety five G. Taylor Regr. may appear and your Petitioner May it please your Most Excellent Majesty in Council to be informed doth shew that such

amendment

amendment on the part of the said Complainants of this said Bill was voluntarily made as May it please your Most Excellent Majesty in Council may Appear from a passage Extracted from the said Complainants after pleading in the Cause namely his Repliation to a suand Demurrer Corrupted with an answer in which pleading the said Complainants Commenting on your Petitioners said second Demurrer did say that the first meaning your Petitioners first Demurrer being for want of parties which these Repliants agreed to obviate by adding whom he meaning your Petitioner Considered meaning to wit the Executors of Nagapah Chetty one of the obligors in the said Bond named as by the said Bill and Demurrer relation being thereunto had will more fully and at large Appear and your Petitioner May it please your Most Excellent Majesty in Council to be informed sheweth that the pleadings in the Cause Between your Petitioner and the Complainants having Come down to an Issue that witnesses were Examined on both sides and publication did pass therein whereupon the Complainants did Contrary to Law and Reason as your Petitioner May it please your Most Excellent Majesty in Council Lath Charge to wit on or about the sixth day of December One Thousand seven hundred and ninety six pray the said Honourable the Majors Court that the Cause as between them the Complainants and your Petitioner should be set down for hearing and which prayer was accorded by the said Honourable the said Majors Court notwithstanding that your Petitioner did by his Attorney in Court on the instant object thereto and did Cause to be minuted on the Record such objection purporting that the action being brought against all the Obligors named in the Bond and as it was not known by your Petitioner what certain Debt might remain due for that it appeared from the separate Defence of the said Executors of the said Nagapah Chetty that a considerable sum of Money was by them Charged to have been paid on Account thereof over and above what was Credited by the Plaintiffs and which payment the Plaintiffs had admitted that therefore and as it did further Appear by such the said Executors pleadings that they did allledge to have paid a further sum of Five thousand Pagodas on the like account but which payment Remained in Issue that therefore the Obligors were Entitled to the benefit of a Joint Defence and Account from which your Petitioner May it please your Most Excellent Majesty

Majesty in Council did say the said order of the said Mayors Court would if Carried into Effect Excludes him And your Petitioner May it please your Most Excellent Majesty in Council sheweth that the said Mayors Court having thus set down the said Issue as Between your Petitioner and the said Plaintiffs for hearing that the said Court was moved on the following Thirteenth Day of the said Month of December One thousand seven hundred and ninety six to Appoint the same for hearing for the Twentieth Day of the same month which Motion was by the said Honourable the Mayors Court granted notwithstanding that your Petitioners aforesaid rights were again urged and Opposed to the obtaining of such order And your Petitioner being additionally aggrieved by such last obtained order humbly sheweth unto your Most Excellent Majesty in Council that he did appeal from such order of the said Mayors Court agreeably to the Charter in such case provided to the President in Council for the time being of Fort Saint George in which Appeal after reciting generally the premises herein setforth your Petitioner did say that though the Bond produced did seem to intend a several as well as a Joint Obligation yet that the Condition which guided the Equity and Operation of the same did not recognise this right in suit but did on the Contrary Expressly limit

limit the payment of the same by the supposed Obligors or their Representatives without any several Reference whence your Petitioner did infer that the Bond and Condition being one whole and entire Deed that it was thence manifest that your Petitioner was Entitled to the benefit and Equity of an entire defence but that admitting for a moment that such your Petitioners objection to the said Orders of the said Mayors Court was not Conclusive yet your Petitioner did say that the issue that might be thereon taken would not aid the said Orders for that it was manifest from what your Petitioner had before urged that Conceiving himself well entitled to the benefit of an entire Defence that he did in the first instance Demur to the Complainants Bill for want of parties namely the Executors of one of the Deceased Obligors which parties the Complainant had of his own Accord added as act your Petitioner did say it must be presumed he would not have done at your Petitioners said instance by Demurrer unless he were satisfied of the right of your Petitioner so to call upon him for the parties in order to the procuring of an Entire Account and Defence to the suit And your Petitioner most humbly sheweth unto your most Excellent Majesty in

Council

Council that he did further in his said Appeal to the said Governor and Council of Fort St George shew that the Complainants said suit as originally brought in the said Mayors Court did Charge other Obligors as well as your Petitioner to wit Condapah Chetty and Chillapah Chetty as being Jointly Debited and credited with your Petitioner in an Account Current annexed to the said Complainants Bill whence your Petitioner did observe that it became further obvious from the partys own admission that the Defence ought to be an whole and Entire Defence of all the parties Charged by the suit as Obligors or Representatives of such whereas it did not appear that the Complainant had at all sought after the said Condapah Chetty and Chillapah Chetty as neither of them were or since have been brought before the said Mayors Court and your Petitioner further humbly sheweth unto your Most Excellent Majesty in Council that he did in his said Appeal to the said Government of Forth St George represent that by operation of the said orders of the said Honourable the Mayors Court if Carried into effect and that your Petitioners seperate Defence were first to be heard and Determined it might so be that your Petitioner would be adjuged by the said Honourable the Mayors Court to pay

and

and satisfy in his own person the entire amount Demanded by the Plaintiff Bill the other issues were Depending in the Cause and which your Petitioner did say if a debt did ever exist for aught your Petitioner knew to the Contrary might cancel the same in part or in the entire and so give the Complainant a Double satisfaction of his Claim an Injustice your Petitioner did observe not to be endured as being a manifest foreclosure of your Petitioners rights as before stated and Contrary both to the Law as well as to the Equity of the Case as your Petitioner did say would be apparent from Certain selections from the pleadings as well of your Petitioner in the Cause as from those of other Defendants thereon for your Petitioner did shew to the said Court of Appeals that Tyapah Moodelly Coalapah Chetty and Venkatarayloo Brahmy three of the Executors named in the Bill of the Obligor Nagapah Chetty in their answer to the said Bill did admit it might be true that their said Testator had in Conjunction with other obligors Executed the Bond or writing obligatory in question but that they did not admit to be indebted as Executors of the said Nagapah Chetty with others the Defendants in the said Plaintiffs suit in the sum sued for but say that if a true Credit and interest on such sums of Money

as

as had been paid by their Testator Nagapah Chetty in his
lifetime on the said Bond or writing Obligatory had been
allowed in the Account Current annexed to the Complainants
said Bill That then the said Defendants as Executors aforesaid
so far from appearing to be indebted unto the said Complainant
in the Balance of Twelve Thousand and seventy Eight Pagodas
and thirty eight fanams as insisted on by the Complainant in
and by his said Bill that they would appear and be actually
indebted in only a very small sum and the said Defendants
further answering did say that on Examining the papers of their
said Testator that they had Discovered two receipts given by Franks
Day one of the said Described Plaintiffs Attorneys in the
names of Colt Baker and Company for two Distinct and
separate sums of Money paid on account of the said Bond
by their said Testator Nagapah Chetty and which were
not mentioned or Credited in the account annexed to the
Plaintiffs said Bill nor Consequently interest allowed
the one of these payments having been made as appeared
by receipt aforesaid on the Twenty ninth day of April in
the year one thousand seven hundred and Ninety four
for the sum of Two Thousand Star Pagodas and the other
Dated the third Day of October in the same year for

Star

Star Pagodas Five Thousand and the said Defendants did
by their said answer further say that if due Credit for and
on account of the said several sums so paid by their said
Testator on Account of the said Bond were brought to Account
and to which they did say they were as Executors Entitled
that with a Corresponding interest from the respective
dates of payment that then and and in such Case
including the accredited sums in the Account Annexed
to the Complainants Bill namely the sum of Three Thousand
Star Pagodas from the fourth Day of February one thousand
seven hundred and ninety four The sum of Four Thousand
Six hundred and Eighty three Pagodas Twenty Eight fanams
and seventy seven Cash on the sixth Day of December of
the same year and that if the interest on the Bond were
Calculated in one Entire Computation up to the date given to
the said Account Current annexed to the Bill namely
to the thirteenth day of November One thousand seven hundred
and ninety five and not made up as it evidently was at
broken periods as in the Debit side of the Account Contrary
Contrary to the equity of the Case and the Custom of
Merchants that then the said Executors for so far as
they had been able to Discover into the truth of the

Account

Account would not appear to stand indebted in any further sum than that which would Appear in an Account which they annexed to their said answer and made up on the then present Appearance of the Demand amounting to Star Pagodas Two thousand Eight hundred and sixty four Thirty fanams and fifty two Cash so very Distantly Removed from the Claim made of Twelve thousand and seventy eight Pagodas and thirty eight fanams and your Petitioner Sheweth that the said Executors did pray that their said annexed account should be Deemed apart of their said answer to the said Complainants Bill and did further say that their said Testator did in his lifetime Carry on very large and extensive dealings in Different parts of the world and that by reason of such his Extensive Dealings that his Books of account were various and intricate and that they had not been able since their having taken upon themselves the burthen of the Executors of the will of the said Nagapah Chitty to Examine all the Books of Account of their said Testator whereby they might ascertain the precise amount of the Credit to which their said Testator might be entitled on account of the several payments made by them in his lifetime in the said Bond or writing obligatory and therefore the said Defendants did say and submit

submit to the said Honourable the Mayors Court in Consideration of such premises how far the said Complainants might be entitled to a Decree until a true Examination should be had of their said Testators Books and papers as they did say it was fairly presumable from the Discovery of the several Receipts to which they had referred and which were wholly omitted in the Credit side of the Complainants said account Current that there might be other Receipts amongst the papers of their said Testator which though not then discovered might yet be forthcoming and operate as an entire Discharge and liquidation of the said bond or writing obligatory and your Petitioner sheweth unto your Most Excellent Majesty in Council that he did annex to such his said Petition as true Copy of the said account Current referred to in the said answer of the said Executors of Nagapah Chitty which your Petitioner did pray might be taken as a further part of his said Petition and Appeal and your Petitioner did in his said appeal select and insert therein apart of the account of Benjamin Roebuck another of the said Executors of the deceased Nagapah Chitty to the said Complainants Bill the said Executors having Defended separately wherein the said Benjamin Roebuck did say that he was one of the Executors of the said Nagapah Chitty and that he had carefully perused the translate of the

answer

answer of the said other Executors of the said Nagapah Chitty and that according to his knowledge and belief the matters and things therein Contained were just and true as by them stated save and Except that he the said Benjamin Roebuck Could not of his own knowledge Take upon himself to say that the Receipt for Five thousand Pagodas under date the third day of October one thousand seven hundred and ninety four was given by the said Frank Day in the name of Call Baker and Company on Account of a payment made by the said Nagapah Chitty on the said Bond or writing obligatory on which the Plaintiffs had founded their Bill and to which the said other Executors his associates had Jointly and severally answered but the said Benjamin Roebuck did say that he and the said other Executors had discovered and then had in their possession a Receipt from the said Frank Day and by him granted to the said Nagapah for the said sum of five thousand Pagodas and of the day and date mentioned in the said answer and which the said Benjamin Roebuck did say might possibly have been paid on account of the said Bond or writing in suit though he the said Benjamin Roebuck was unacquainted with the transaction - and your Petitioner doth shew May it please your Most Excellent Majesty in Council that he did further state in and by his said appeal that the said Complainants

had

had in their Replication to the said answer of the said Tygapah Moodelly Coolapah Chitty and Venkataroylee Brahmin admitted that the two Receipts setforth and alluded to by the said Defendants Tyapah Moodelly Coolapah Chitty and Venkataroylee Brahmin were granted by the Respondent Frank Day as one of the partners of the Firm of Call Baker and Company and that the Receipt for Two thousand Pagodas was a specific payment on account of interest due on the said Bond altho from a Clerical omission it had not been brought to the Credit thereof from the Books where the entry was regularly made in the words and figures following One thousand seven hundred and Ninety four 1794 April 29th to James Tate his Account Sales of Rice to ship Chance Received of Nagapah Chetty in further part of one years interest on his and other Native Rice Merchants Bond to Balfour and Call dated the first day of October One thousand Seven hundred and ninety two 1st October 1792 Pags 30.30. 31.40 2000 Ps Bad in regard to the Receipt for five thousand Pagodas the said Respondents did say that it had no Connection with that particular Bond but was granted by the said Nagapah Chitty on a general Account which he had with Respondents for native Merchants and from whom he collected the said sum of five thousand Pagodas as for goods sold

through

through him in his Capacity of Dubash as Repliants did say would appear by the following entry 1794 October 2d To Nagapah Chetty on Account of Goods sold received of him as per Receipt 5000 Ps and the said Repliants did further say that although the other Defendants Tyapah Moodelly Coalapah Chetty and Vemataroyloo Brammy had taken upon themselves to swear positively to the fact of the said sum of Five thousand Pagodas having been Expressly paid on account of the said Bond yet that the Defendant Benjamin Roebuck in his separate answer did not attempt to insist on that fact though his sources the said Repliant did say must be better than that of the other Defendants the said Benjamin Roebuck being as they did say in the active and immediate management of the estate of the said Nagapah Chetty and the said Repliants did further say that the account Current annexed to and Exhibited with their Bill of Complaint unless as regards the receipt for Two Thousand Pagodas omitted to have been praped to the Credit of the said Bond was in every respect Correctly stated And May it please your most Excellent Majesty in Council your Petitioner sheweth that he did further by his said Petition in appeal shew that in the said Complainants amended Replication to your Majestys Petitioners aforesaid Demurrer and answer that they did admit

and

and say that they had lately Discovered from the said account of the said Executors of Nagapah Chetty that the sum of Two thousand Pagodas paid as part of one years interest on account of the said Bond had been omitted to be credited which omission the said Repliants did then say they were willing to rectify and did thereby submit to have the same Deducted from the amount for which they had brought their said action but that as regarded another Receipt for the sum of Five thousand Pagodas and for which the said Nagapah Chetty said Executor had also sought to have Credit the said Repliants did say that the Monies paid thereon had no Connection with the Bond in question and your Petitioner most humbly sheweth May it please your Most Excellent Majesty in Council that he did in support of such several alledged reasons in maintenance of his said Appeal annex thereto five Exhibits marked A B C D and E Copies whereof respectively are hereunto annexed for the satisfaction in the premises of your Most Excellent Majesty in Council and to which Exhibited your Majestys Petitioner doth now pray leave to refer and that the same may be taken as part and parts of this your Petitioners Petition and appeal to your Most Excellent Majesty in Council and your Petitioner did pray the said Court of Appeals on such the said several

Grounds

grounds and documents and as the same should be aided by further arguments to be advanced at the hearing that the said several orders of the said Honourable the Mayors Court dated the sixth and thirteenth Days of December One thousand seven hundred and ninety six Exhibits C and D should be rescinded and that your Petitioner should be Decreed his Costs and Charges in such behalf wrongfully sustained and that he might receive such further and relief in the premises as to the Equity of the said Honourable Court of Appeals should seem meet —

And your Petitioner doth shew unto your Most Excellent Majesty in Council that to such your Petrs appeal the said Complainants did duly file their answer in the said Honourable the Court of Appeals at Madraspatam and thereby did say that for answer to such your Petitioners appeal or unto so much thereof as they did deem necessary to make answer unto that they did admit that on or about the Twenty sixth Day of November which was in the year of Christ one thousand seven hundred and Ninety five they the Respondents did file and Exhibit their Bill of Complaint in the Honourable the Mayors Court at Madraspatnam against your Petitioner and also against Condapah Chitty and Chellapah Chitty in the said Bill named which Bill being fully recited and setforth in your Petitioners Petition and appeal the Respondents did Crave leave to refer thereunto and pray to have the full benefit and advantage thereof and the said Respondents further answering did shew that process having issued on the said Bill of Complaint your Petitioner did appear thereto and filed a Demurrer and a Cause of Demurrer did alledge that the Executors of one Nagapah Chetty Deceased one of the Obligors in the said Bond named had not been made parties to the suit which they ought to have been and the said Respondents did admit that they did not Join in Demurrer but did agree that the Executor of the said Nagapah Chetty to wit Benjamin Kolendien Nyapah Moodelly Boolapah Chetty and Venatarayloo Brammy should be made parties to the Bill and which was accordingly done on the fifteenth day of June which was in the year onethousand seven hundred and ninety five And the said Respondents did say that they did not pretend to Deny but on the Contrary that they did readily admit that the amendment of the Bill by adding parties thereto was a voluntary act but that as your Petitioner had endeavoured to deduce from thence arguments favourable to the Appeal which he had made therefore the said Respondents did pray leave to observe that they did not consent to the Amendment

amendment from any apprehension which they Entertained of the Demurrer being well founded or that they should on argument have been Compelled to make them parties in the Contrary the said Respondents did say that they were fully persuaded that if they had Joined in Demurrer it must have been overruled no one point of Law as they did say they were advised being better established than this that in a Joint and several Bond the Obligee may sue the Obligors either Jointly or severally but the real object the said Respondents did say they had in view by making the said Executors parties to the Bill was to prevent your Petitioner from procrastinating the issue of the suit by an interlocutory appeal and which line of conduct the said Respondents did say they plainly saw it was his object to pursue For which reasons therefore the said Respondent did say they did consent to amend their Bill by adding the parties required and the said Respondents did further say that the object of your Petitioner having been attained it might have been Expected that he would have fairly met the question and that if he Conceived that he was not indebted in the sum for which the action had been brought that he would have stated his objections but that avoiding a Discussion of the merits your Petitioner had Demurred to the authority under which the said Respondent Oliver

Cott

Cott was represented and for Cause shewed that the Bill of Complaint was preferred against your Petitioner and the other Defendants therein named by the said Respondent Frank Day as only Executor in India of the last will and Testament of William Balfour Deceased and the said Oliver Cott late of Madras Merchant but then of the said City of London by his attorneis Oliver Cott thereby intending himself the Constituent and the Respondents Charles Baker and Frank Day under the firm of Cott Baker and Company the said Cott Baker and Company acting in such behalf under and by virtue of a Certain power of attorney from the said Oliver Cott of which power an authentic Copy was by the said attorneis produced to the Honourable the Mayors Court and was lodged in the Registry thereof Wherefore that your Petitioner did Demur for that the said Oliver Cott ought not nor Could act in the premises as his own attorney inasmuch as the authority Derived or pretended to be Derived to them from the said Power of attorney was merged and Lost in his superior Title of Constituent and that your Petitioner further alledged that he your Petitioner being thus precluded that there did not remain unto the Respondents Charles Baker and Frank Day any power to maintain the present action for that the authority granted by the said Oliver Cott ought in Law

strictly

strictly to be pursued and the same being granted to those attornies could not otherwise be Executed than by the said three attornies in Conjunction but that your Petitioner alledged he had shewen that the said authority could not be Executed strictly and therefore that the same could not be Executed at all and that thereupon your Petitioner did Demand the Judgment of the said Mayors Court whether he should be Compelled to make any further answer to the Bill of Complaint of the said Respondents and that your Petitioner not waiving the said Demurrer but wholly insisting and relying thereon for answer to the Respondents Bill or unto so much thereof as your Petitioner did say he was advised was material or necessary for him to make answer unto answered and said that he your Petitioner did not stand indebted to the said Respondents as was stated by them in and by their said Bill of Complaint and the said Respondents did further say that to the said Demurrer and answer they filed a Replication setting forth that the Power of attorney Granted by the said Oliver Coltt to the house of Coltt Baker and Company an attested Copy whereof was Delivered into the said Court was not insufficient but Contained a full and Clear authority to bring and support the present action in the manner in which it had been instituted and the said

Respondents

Respondents did submit to the said Honourable Mayors Court that the reasons upon which your Petitioners had grounded his Demurrer were absurd and unjust in as much as if they were admitted it would tend to precludе a person engaged in a partnership Connection from Appointing as his agents During any period of his absence the very persons in whom he would chuse to repose a Confidence Contrary to Every principle of reason and of Justice and the said Respondents further said that the Power of attorney excepted to was given to the firm of Coltt Baker and Company by the said Oliver Coltt to enable them to manage and transact during his absence from this Country those matters wherein he was interested that were Destinct from his partnership Concern and that hence as far as related to the said Power of attorney and the subject matter of the suit the said Oliver Coltt was as any other independent person who Chose to Employ the said house of Coltt Baker and Company as his agents and thereupon Executed a Power of attorney for the Respondents did say that in such cases the authority is not given Jointly and severally that being superfluous and unnecessary the act of one of the said Partners signing for the firm being the act of the whole wherefore the said Respondents did humbly insist that the said authority from the said Oliver Coltt to the said Respondents from the firm of Coltt Baker and Company was well pursued

and

and they thereupon prayed that the said Exceptions to the Power of Attorney brought forward most irregularly in the shape of a Demurrer might be Overruled with Costs more particularly so as the object of your Petitioner the said Respondent did say seemed to be to procrastinate and Delay the Payment of his Bond by every species of Delay and Cavil and the said Respondent did further say that on the seventeenth day of May last past your Petitioner did file and Exhibit his Rejoinder setting forth that Conceiving the Charge of litigiousness and irregularity made against him by the said Respondents as the most material part of the said Replication and viewing the reasoning of the said Respondents against the substance of the Demurrer as Comparatively of small importance that therefore your Petitioner would under the indulgence of the said Mayors Court proceed Contrary to the method of the said Respondents and in the first place Discuss the latter part of the said Respondents Replication and that with respect to what the said Respondents had urged about the propriety of Bringing the objection forward in the form of Exceptions instead of a Demurrer It was a mode for which he your Petitioner had in vain endeavoured to Discover any specious grounds submitting himself however to the wisdom of the said Court and ready to would

his

his opinion to the superior knowledge of the said Respondents when Cause should be shewn but that your Petitioner said he had ever understood a Demurrer to be the regular form of Objections to a Bill of Complaint and the reason thereof your Petitioner said he understood was that while all the other pleadings had in their ultimate Reference to the Bill and in their intermediate Reference to each other a fixed standard Criterian whereby their sufficiency or insufficiency Relevancy or irrelevancy might be Determined for that the Bill alone had no prototype where with it might be Compared and that the only standard by which it Could be tried was the Law of the Land and the practice of Courts and objections arising on either of those grounds could not be Denied to be purely and properly matter of Demurrer But that the said Respondents apparently forgetting the tendency of their Reasoning Just noticed were Content to call the Demurrer in question the second Demurrer in order from thence to argue a Disposition in your Petitioner to procrastination and Cavil which was surely arguing about words for that on the principles of the said Respondents the said Demurrer was in substance an Exception and if it had been so in form also the same delay would have followed and that there remained then sought but a

name

name to support the insinuation That your Petitioner avowed that the Demurrer in question was the second Demurrer but Contended that no inference could thence be drawn to its prejudice the Justness and propriety of the first was unequivocally recognized by the immediate amendment of the Bill which Circumstance of it could at all affect the present Demurrer must do so by affording a presumption in its favor on the ground that his your Petitioners former objection was well founded That your Petitioner then recurring to the reasons urged by the said Respondents against the substance of the Demurrer said that by his said Bill of Complaint he your Petitioner did rather point out a various Redundancy in the power of attorney alluded to then any want he did not say nor intend that the tenor of the said Power was not strictly pursued in the Bill of Complaint but argued that it could not be pursued with Effect He admitted that all the absurdity of the power was faithfully preserved in the Bill but he Contended that it was equally fatal in both and your Petitioner further said that he Could not with the said Respondents perceive the inconveniences that would result from admitting the tendency of the Demurrer in its full Extent for that in the instance before the Court without supposing in the Constituent any knowledge of the nature

and

and Effect of a Power of Attorney or even any acquaintance with the familiar forms of Business the mere light of reason aided by the most Common attention would have suggested to them to Empower the residing partners of his firm omitting himself whose assistance in India he could not Expect whilst he remained in Europe and that your Petitioner by his Replication alledged that the next arguments offered by the said Respondents Consisted of two Members which as far as your Petitioner Could perceive were Destructive of each other and that your Petitioner would therefore confine himself to range them in such Order as might best shew their opposition and so leave them to Combat each other the latter member asserted that the act of one partner signing for the firm was the act of the whole which if it meant any thing in the present question must mean that one partner Could also sue for the whole and in substance that the firm was a Corporation That the former member received the Constituent in the said Power of attorney as an indifferent person wholly unconnected with the house from which your Petitioner Could foresee no other Effect but this That by such supposition the said

Constituent

Constituent was precluded from all benefit of that Corporate
power which the other number of the said argument suppo-
sed to Exist in the ferm and that your Petitioner further
said that to the whole train of the argument adduced
by the said Respondents there was one general answer
equally simple and Conclusive To wit. That as in the present
Case the law was positive and its sense Clear reasons
of Expediency however Cogent would have no place
and Deductions ad absurdum however plausible
must be fallacious and the said Respondents did
further say that as regarded the merits of the action
your Petitioner in his Rejoinder only alledged that
he was well Convinced that even if the said Respondents
had sufficient power to sue they could Establish no
Claim whatever against him your Petitioner and the
said Respondents did further say that it having come
to their knowledge at that period that Nagapah Chetty
Deceased one of the Obligors and who was their Dubash
had sometimes taken bonds in his Transactions for the
house without requiring a subscribing witness to be immediately
present and having made enquiries respecting the Bond in

Question

question they found that Permaul the subscribing Witness
thereto was not present but that the said Nagapah Chetty
Brought the Bond to be witnessed after the several parties
had Executed it and having therefore reason to believe that
your Petitioner meant to avail himself of that Circumstance
to exonerate himself they deemed it necessary to have recourse
to Other proof In order to shew that your Petitioner was a
party to the Bond Accordingly the said Respondents
with the permission of the said Mayors Court filed
an amended Replication setting forth as regarded the
merits of the action That as the said Tomboo Chetty had
so Cautiously avoided entering into the merits of the
suit that it was necessary for these Respondents to state
the Consideration for which the Bond was granted
as well as other Circumstances attending the transaction
and thereupon the said Respondents prayed leave
to state that Nagapah Chetty one of the obligor in the
said Bond named was Dubash to William Balfour
and Oliver Colt under the ferm of Balfour and Colt
as he also was to the preceding and subsequent ferm
of the said house that a Considerable share of confidence

was

was placed in him being entrusted with the Disposal of their Consignments and in general with the purchase and sale of their goods and Merchandizes and further setting forth that on or about the first Day of September which was in the year one thousand seven hundred and ninety two the Ship Phanix having arrived with a large Cargo of rice Consigned to the said Balfour and Colt the said Nagapah Chetty was Directed to look out for purchasors for the same which he accordingly did and soon afterwards acquainted his employers that himself Chellapah Chetty Condapah Chetty and your Petitioner had agreed to purchase the whole that ready Money was not paid on account of the said Rice but in lieu thereof the Bond upon which the present suit is brought was granted and Delivered by the said Nagapah Chetty to his employers the said Balfour and Colt with which security they were perfectly satisfied as the Different obligors were all Considered as men in opulent Circumstances but particularly your Petitioner That considerable sums were paid on account of the said Bond by the said Nagapah Chetty in his Lifetime who being Dubash of the house collected from the other obligors their respective shares that after his Death on Account was made up and payment of the balance demanded from your Petitioner but no attention being paid thereto that the Bond was placed in the hands of the said Respondents Attorney at Law with instructions to recover the Amount by legal measures In Consequence whereof your Petitioner Came to the Office of their said attorney and did there Alledge that he was exonerated from the said Bond by reason of an Agreement given him by the said Nagapah Chetty who for a certain Consideration therein Expressed had taken his share on himself upon which their said attorney observed to your Petitioner That the private agreements which Existed Between him and the said Nagapah Chetty Could not defeat or release his Obligation to Balfour and Colt which would be binding upon him till the said Bond was discharged That upon making further enquires into this matter they Discovered that your Petitioner soon after the Death of the said Nagapah Chetty sent for one of his near Relations who was in the service of the said Respondents and with the view of the Circumstance being Communicated to the said Respondents stated that the said Nagapah Chetty had given an agreement bearing Equal Date with the said Bond whereby your Petitioner was

Exonerated

Exonerated from all Responsibility the said Nagapah Chetty having undertaken to be answerable for his particular quota or share That upon the said person offering your Petitioner if the alledged agreement was in his possession he replied it was and afterwards Delivered him a Copy of it a true Translation whereof the said Respondents did annex to their said amended Replication and the said Respondents did further say that all these Circumstances were well known to your Petitioner which rendered his Conduct highly unaccountable in Denying the Debt in general terms when in his own mind he was Conscious that he was one of the parties engaged in purchasing the said Rice and that having Executed his Bond for the same he was Jointly and separately answerable with the other obligors untels the whole was paid off and Discharged Notwithstanding his agreement with the said Nagapah Chetty and the said Respondent did further say that they had lately Discovered from the Answer of the Executor of Nagapah Chetty that the Sum of Two Thousand Pags paid as part of one years interest on Account of the said Bond had been ommitted to be Credited which

Omission

omission these Respondents were ready and willing to rectify and did thereupon submit to have the same Deducted from the amount for which they had brought their action But as regarded another Receipt for the sum of five thousand Pagodas and for which the said Executors had also sought Credit. in their said answer the said Respondents said that the monies paid thereon had no Connection with the Bond in question and the said Respondents further said that to these allegations your Petitioner did not reguire but Cautiously avoiding the merits had observed that what the said Respondents had setforth was no longer argumentative but purely historical Containing a pretended narrative of Transactions which the said Respondents affected to think your Petitioner should have setforth in his answer But your Petitioner said that he Conceived no more to be incumbent on him in answering the Bill of Complaint of the said Respondents than to Controvert the substa Charges and answer the interrogatory parts thereof and that if he had done less the said Respondents had their remedy by exception but that your Petitioner so far from thinking it necessary in his answer to enter into any such Details as were Contained in the said Replication

did

did not even see how these Details if they were Correct bore upon the question at issue neither did your Petitioner perceive in the elaborate narrative of the said Respondents ought but a foreign and impertinent superfluity liable on the best of Grounds to be excepted to by your Petitioner and which he forbore to do partly from a wish not to log the cause by multiplicity of pleadings and partly in order to merit from the said Respondents a retraction of that insinuation of theirs about cavil and Delay with which as with a multitude of other terms Expressive of that opprobrium and reproach they had most unmeritedly loaded your Petitioner and the said Respondents did further say that Issue did afterwards Join and rules passed for the Examination of Witnesses and accordingly one Permaul Chitty was Examined on the part of your Petitioner who to the second Interrogatory Deposed that he had looked at the Exhibit produced and shewn to him at the time of his Examination purporting to be a Bond from your Petitioner Nagapah Chetty Condapah Chetty and Chellapah Chetty of Fort Saint George Merchants to Messrs William Balfour and Oliver Colt of the same place and at the name Tombo Chetty thereunto appearing as one of the Obligors and

and at the name of Permaul thereunto also Appearing in the Malabar Language as being the name of one witnessing the Execution of the said Bond and said that the name Permaul so appearing to the said Bond in the Malabar Language as aforesaid was the name and proper handwriting of the said Deponent but that he the said Deponent was not present nor did he see the said Tomboo Chitty Sign seal and Deliver the said Bond as the attestation doth import but that he signed his name as a Witness to the said Bond at the request of the late Nagapah Chetty deceased to whom he was Cashkeeper at that time and these Respondents further say that Sawmy Chitty George Chalmer and anna Pillay were produced and Examined on their part and to the Second Interrogatory the said Sawmy Chetty Deposed that he had looked at the paper writing produced and shewn to him at the time of his examination purporting to be a Bond or written obligation from Nagapah Chetty deceased your Petitioner and others to William Balfour and Oliver Colt and that your Petitioner did about fifteen or Twenty days after the death of the said Nagapah Chetty speak to him the witness about a Certain agreement given on account of the said

Bond

Bond by the said Nagapah Chetty and did inform him that he had taken an agreement from the said Nagapah Chetty purporting that your Petitioner had nothing to do with the Bond above mentioned that a Copy of the said agreement was Delivered to him by your Petitioner that he had looked at the paper writing produced and shewn to him at the time of his Examination and Declared it was the same which was Delivered to him by your Petitioner and the said Respondents further said that it also appeared from the Testimony of the said George Chalmer and anna Pillah that altho the witness Ommand was not present when the Bond was Executed by your Petitioner yet that he did Execute it was a fact clearly shewn and that your Petitioner relied upon the Circumstance of the witness not having been present to be Examined Conceiving that proof of the Execution could not be had and the said Respondents did further say that publication having passed the said Cause was set down for hearing and Ordered to be heard on the Twentieth day of December last past But the said Respondents did deny that your Petitioner was aggrieved by the order of the said Mayors Court or that he had any Just Cause or reason to appeal therefrom —

and

and for answer to the first Reason or Cause of your Petitioners said appeal the said Respondents did say that as the Bond upon which the present action was founded doth expressly state that your Petitioner together with the Other obligors are Jointly and severally bound that it would be superfluous and unnecessary in the said Respondents to reply to the Extraordinary assertions in the said first reason Contained The Bond itself being the Criterion from whence the intention of the parties must appear and which could not be shewn by extrinsic and unsupported averments and the said Respondents did admit that when your Petitioner did Demur in the first instance for that the Executors of Nagapah Chetty Deceased were not made parties to the suit they voluntarily Consented to an amendment of the Bill and to the said Executors being made parties thereto yet the said Respondents did say that they had shewn that their motives for meeting the apparent wishes of your Petitioner was to prevent unnecessary Delay in bringing the suit to a Conclusion and not from any apprehension which they entertained of the

Demurrer

Demurrer being held good had it been argued for the said Respondents did submit that if the Doctrine attempted to be established by your Petitioner were admitted there would be no Difference between a Joint Bond and one Joint and several for that in Cases of this nature it is presumed that a Creditor lends his money upon terms to have a security upon which he may sue the obligors severally if he thinks proper and if it were otherwise that which was intended to Strengthen the security it is evident would limit it Extremely and the said Respondents did further say that these principles are laid Down and established in the Case of Collins vers Griffiths Reported in Peere Williams Vol. 2. Page 312 where only one of the obligors was sued and he Demurred to the Bill because the other obligors were not also made parties to the suit and that upon the principles aforestated it was overruled with great Clearness and the said Respondents did further say that if your Petitioner had Conceived the Defence of the other parties to be material that he ought to have produced in a very Different manner That is to say he ought to have entered into the merits of the question as they have done But this Issue he has avoided and has gone upon one very Different that is to say upon the Power of Attorney from Oliver Coll which the Respondents say your Petitioner did Contend was not sufficient authority to maintain the action and the said Respondent did therefore say that as it did not appear from any part of the pleadings on the part of your Petitioner that he Considered the Defence of the other parties in any wise essential it therefore became highly unbecoming and litigious in him at this Juncture to urge such Circumstances as a Cause of Grievance more particularly when in his amended Rejoinder which the Respondent did say was the last paper filed in the Cause he your Petr studiously avoids a Discussion of the merits Declaring that it was not necessary for him to Rejoin to any matter in the said Respondents Replication Contained for admitting the Statement to be Correct your Petitioner said he did not see how it could bear upon the question at Issue and the said Respondent did urge that in order further to shew that the Issue upon which your Petitioner had proceeded is altogether unconnected with the Defence of the other parties Defendants the said Respondents did pray leave to state

state this witness Permauls having been examined by your Petitioner When after the Petitioner had on the fifteenth day of November then last past moved the Honourable Mayors Court that publication should pass in the Cause to which the said Respondents objected and prayed one Week to examine Witnesses which was granted That during the week the Examination having been Completed the said Respondents agreed that publication should pass but the Object which your Petitioner had in view being defeated that he objected to publication passing when the said Mayors Court however Considering it an Extraordinary Circumstance that a party should one day move for publication passing and object to it on the next — without any Cause being shewn in Justification of the inconsistency Directed publication to pass and the said Respondent did offer in proof of such facts which they did say became material as tending to shew the litigious Disposition of your Petitioner the said Respondents had to their said answer annexed Copies of the Extracts Certified by the Register and which the said Respondents did pray might be taken as part and parcel of their said answer —

And

And for answer to the second Reason of your Petitioners said Appeal the said Respondents did say that they had already shewn that upon a Joint and Several Bond the Obligee may sue the whole of the Obligors Jointly or severally and that this being an Obligation which the Law imposes hardship Cannot be presumed more particularly as your Petitioner if he should pay the debt might Compel the other Obligors or their Representators to Contribute their Respective shares and these Respondents did further say that the said Honourable Court were to Comply with the prayer of the said Petitioner and Direct that the Defence of the several Obligors should be heard at one and the same time every great hardship would be thereby imposed on the said Respondents inasmuch as the hearing of the Cause might be protracted by interlocutory Appeals by one party and by abatement in Consequence of the death of other parties to a very Distant period so that the object of a Joint and several Obligation would be utterly Defeated and the said Respondents did pray leave to state that

it

it was not usual for the Mayors Court to suspend their Judgment on suits which were Ordered for hearing when by a due Consideration of the Merits it appeared that the ajects of Justice Could be better attained and that if your Petitioners Defence should appear to merit that Distinction he Could have no reason to suppose but that the same Justice would be Afforded him which had been rendered to others The said Respondents did however submit that it was the peculiar province of the Mayors Court to Determine whether the suit as regarded your Petitioner was ripe for their Decision and that if they should proceed and that if by the Judgment which should be pronounced your Petitioner should fal himself aggrieved that then would be the time for him to appeal therefrom —

For all which reasons and such others as the said Respondents did say might be adduced at the hearing the said Respondents did humbly pray the said Honourable Court of appeals would be pleased to affirm the orders of the said

Honourable

Honourable the Mayors Court and that your Petitioner Petition and appeal should be Dismissed with Costs to be paid by your Petitioner

And your Petitioner Sheweth unto your Most Excellent Majesty in Council that your Petitioners said Petition and appeal and the said Complainants Answer thereto Coming on to be heard and Determined before the said Court of appeals on the Sixth Day of October in the present year One Thousand Seven hundred and Ninety Seven that the said Court of appeals was pleased to Order and Decree and did Accordingly Order and Decree that the said Orders of the said Honourable the Mayors Court of the Sixth and thirteenth days of December one thousand Seven hundred and Ninety Six Copies whereof were with the said Respondents answer Exhibitted to the said Court of appeals marked C and D and as are hereunto annexed should stand affirmed and that your Petitioners said Petition and appeal should be thence Dismissed with Costs as by the Copy of the said Order and Decree of the said Court of appeals hereunto annexed marked G. for the inspection of your most Excellent Majesty in Council to which your Petitioner humbly Craves leave to Refer and prays the same may be taken as part of and

in

in aid of this your Petitioners Petition and appeal to your Most Excellent Majesty in Council may mayfully and at large appear —

By which said Orders of the said Honourable the Mayors Court of the said Sixth and Thirteenth Days of December in the said year One Thousand Seven hundred and Ninety Six and the Affirmation of the same by the said Honourable the Court of appeals your Petitioner doth humbly Conceive himself very materially injured and agrieved and doth therefore Appeal therefrom Respectively to your most Excellent Majesty in Council as well for the several foregoing Reasons herein setforth and as Exhibitted by your Petitioner in appeal to the said Court of Appeals in Madras as for the further Observations on the Case now submitted to your most Excellent Majesty in Council —

And firstly Because the Case of Maddox Vers Jackson Reported 3d Atkins Page 406 Recognizes the following General Rule of Equity That where a Debt is Joint and Several the Plaintiff must bring each of the Debtors before the Court because they are Entitled to the Assistance of each other in taking the Account For that the Debtors

Debtors are Entitled to a Contribution where one Pays more than his share of the Debt and for that If there are Different funds as where there is a Specialty and he might at Law Sue either the Heir or Executor for Satisfaction he must make both parties as he may Come in the last place upon the Real Assets Now your Petitioner Submits unto your Most Excellent Majesty in Council that as the Complainants did not only bring there Bill in a Court whose proceedings are in the nature of your most Excellent Majestys Court of Chancery in Great Britain against your Petitioner but did also join with him as Defendants thereto two Others of the Obligors in the alledged Bond named namely Condapah Chitty and Chellapah Chitty neither of whom are ever the less otherwise brought before the Court as your Petitioner hath herein before shewn nor any attempt made on the part of the Complainants so to bring them and as on your Petitioners aforesaid Demurrer to the said Bill for want of further Parties the said Complainants did agree to Add and did actually add the same namely the Executors of a deceased Obligor therefore your Petitioner most humbly insists that as a Defendant named in the said Suit he has more especially a full and established right and title to the benefit of the Exposed Rule

in

in all its reason and Extent first as to Joint Assistance in taking the Account Secondly as regarded Contribution should his Case Demand it and Lastly and under like requisition in Order to Charge the Deceased Obligors Real Estate in defect of Personal Assets But your Petitioner doth shew unto your most Excellent Majesty in Council that it is manifest that his Case Differs totally from that of Collins & Griffeths as relied on by the Complainants where there was a Demurrer by the Executors of one Obligor because that the other Obligors were not made Parties to the Suit whereas your Petitioner Sheweth to your most Excellent Majesty in Council that other Parties were not only made in the Original state of the suit in which is involved but again that further Parties were added thereto as the Complainants themselves admit and Voluntarily so on your Petitioners said Demurrer and therefore your Petitioner doth say that the question Cannot now be whether your Petitioner was or was not on the merits of such Demurrer Entitled to the addition of the Parties made and doth humbly Contend as well from that Circumstance as because that there are as sheum other Defendants to the suit that he may not now

beforced

beforced on to a hearing of a partical issue and During the pendency of those other issues in the Cause the hard ships of such an attempt in the said Complainants being manifest bearing in mind that the said Executors of Nagapah Chitty have in their answer as herein before sheewn Sworn not only to a further Considerable payment than what the Plaintiffs have in their account Credittted but still further that had they but the requisite time to Seach in to the State of there Testators numerous Books Accounts and Concerns that they have Reason to Believe no balance whatever would be found to Depue on the said Bond in Suit against them and the other Obligors therein named—

Secondly For that in as much as the said Complainants have advanced that the said Honourable the Mayors Court were alone Competent to Judge when an Issue therein Depending was ripe for hearing your Petitioner doth therefore shew that your most Excellent Majesty in Council will perceive from the Charter of Justice under which the said Honourable the Mayors Court is Constituted that the said Complainants would by so grass a misrepresentation pervert the Obvious

Meaning

meaning of the said Charter thereby to Oust the Subject of that right of Appeal to your most Excellent Majesty in Council which that Charter hath so graciously Assured to him a Conduct in the said Complainants which your Petitioner most humbly Submits doth merit your most Excellent Majesty in Councils severest Reprehension as aiming not only to Destroy that right most valued of the Previledges of the Subject but also to Choke the Source of your most Excellent Majestys bounty towards him —

And lastly because your Petitioner Sheweth unto your Most Excellent Majesty in Council that the Issue by your Petitioner in Appeal before the said Honourable the Court of Appeals at Madras patnam had no further or other Object in View than to stay and Restrain the said Mayors Court from proceeding to a partial hearing of the Complainants Bill as against your Petitioner only yet that the said Complainants answer to such Appeal not confining itself as it ought to have done to a refutation of the same were possible of the grievance by your

Petitioner

Petitioner Complained against did in the Contrary Enter on the particular merits of your Petitioners Defence and did recite the Evidence at Large in the Cause with the Several other proceedings thereon had which your Petitioner doth shew unto your most Excellent Majesty in Council were wholly unconnected with and utterley irrelevant of the thing proposed for the investigation and Judgment of the said Court of Appeals by which procedure of the said Complainants it was indubitably intended to impress and did impress as your Petitioner doth verily believe on the mind of the said Court an unjustifiable bias against your Petitioners Defence to the said Suit with which merits even if Correctly Stated the said Court of Appeals had no Concern nor Cognizance over but were limitted as your Petitioner doth say and now humbly Submits to your Most Excellent Majesty in Council to the Simple Consideration following whether your Petitioner being a Joint Defendant with other Obligors was or was not entitled to the benefit of an intire defence by a Joint Assistance in making up the Account and the like assistance in Contribution of what if any thing should at the ultimate Decision and hearing

Appear

appear to be due to the Complainants and that this was the
Sole question then before the said Court of Appeals and
now before your most Excellent Majesty in Council must
as your Petitioner believes and Submits to your most
Excellent Majesty be obvious to Common understanding
for were it otherwise and that the said Mayors Court
Could Really proceed to a partial hearing of the partic-
ular Issue Set up by your Petitioner and admitting
for a moment that the Decree to be given therein
were Conclusive against your Petitioner what would
follow but that Execution would be awarded against
your Petitioner on his Effects a person to satisfy the
Judgment as the Complainants would in such case
have it in their option to stay or Dismiss there Proceedings
against the other Defendants whom they had never
thereby made parties to the suit and so your Petitioner
though amused in the outset with the Mockery of a
Joint Defence would be left totally unaided and
unprotected an Injury and in Justice your Petitioner
doth most humbly Submit to the Consideration of
your most Excellent Majesty in Council which the

Law

Law will not permit to be done and against which
Attempt of the said Complainants your Petitioner doth
by this his Petition and Appeal to your most Excellent
Majesty in Council Complain and Seek to be Redress
and against the said unjust and unlawful Orders
of the said Mayors Court and Court of Appeals in
Madraspatnam Respectively And your Petitioner
doth in conclusion most humbly Crave leave to Call
the pointed Attention of your Most Excellent Majesty
in Council to the Indorsements of payment on the
Bond whence it is obvious that the same were indi-
vidually made by the Deceased Obligor Nagapah Chetty
and from thence that your most Excellent Majesty
in Council will be pleased to pass to the Account
marked C as being Annexed to the Executors of the said
Nagapah Chettys answer to the said Complainants
Suit and to the Ballance struck thereon by which
it Clearly Appears that Sum of Star Pagodas Two
thousand Eight hundred and Sixty four thirty fanams
and fifty two Cash only Could remain due on the
said Bond in stead of the Sum Sued for namely
Star Pagodas Twelve thousand and Seventy Eight and

Thirty

thirty Eight fanams as per the said Complainants annexed account to their Bill marked B. And your Petitioner prays leave to Remark to your most Excellent Majesty in Council that as well the payments on the Bond as aforesaid Endorsed as those of the further payments stated in the the said Negapah Chetty's Executors answer were all made by the said Negapah Chetty and none of them either by your Petitioner or the said other Obligors on the Bond named from whence your Petitioner doth most humbly Submit unto your most Excellent Majesty in Council that it is surely but reasonable to Conclude that the said Negapah Chetty was the Person Solely interested in the granting or liquidation of the said Bond and which Conjecture appears still further founded when it is Considered that his said Executors do themselves press forward in the Defence Rejecting not only a very material part of the Debt claimed but still further Contending that a Reasonable time only is wanting for them to be Enabled as they do believe to Shew that no balance whatever did remain due on the bond in Suit—

For all which Reasons and such others as may be Offered at the hearing your Petitioner most humbly prays your most Excellent Majesty in Council will be pleased to Reverse the said several Orders of the said Mayors Court of the Sixth and thirteenth Days of December One thousand Seven hundred and Ninety Six together with the Affirmative Order of the same by the said Honorable the Court of Appeals and that your most Excellent Majesty in Council will be pleased to grant your Petitioner Such further and other Relief in the Premises together with his Costs and Charges in this behalf most wrongfully sustained as to your Majestys wisdom in Council shall seem Meet—

/Signed/ Wilkinson and Sutherland

Solicitors for Appellant—

Know

A

Know all Men by these presents that we Tomboo Chetty Nagapah Chetty Condapah Chetty and Chillapah Chetty of Fort St George Merchants are Jointly and severally held and firmly bound unto Messrs William Balfour and Oliver Colt of the same place in the penal Sum of Twenty Eight Thousand and Sixty one star Pagodas and Eighteen fanams to the payment whereof well and truely to be made to the said Messrs William Balfour and Oliver Colt their Heirs Executors administrators or Assigns We do hereby bind our selves our heirs Executors and administrators firmly by these Presents In Witness whereof we have hereunto set our hands and seals in Fort St George this first Day of September in the year one thousand Seven hundred and ninety three

Whereas the above bound Tomboo Chetty Nagapah Chetty Condapah Chetty and Chillapah Chetty have borrowed and received of the above named Messrs William Balfour and Oliver Colt the full and Just sum of Thirty nine Thousand and thirty Star Pagodas thirty one fanams and forty Cash one half the amount thereof to be paid in Gold and the remaining one half in Companys Arcot Rupees at the Exchange of 365 ℔ ℅ Pags to run at Interest at the rate of Twelve per Cent per annum and payable on the 1st November next without Interest and after that period Interest to Commence at the rate of Twelve per Cent per Annum until this Bond be fully Discharged—

Now the Condition of this obligation is such that if the above bound Tomboo Chetty Nagapah Chetty Condapah Chetty and Chillapah Chetty their heirs Executors administrators or Assigns shall well and truly pay or Cause to be paid unto Messrs William Balfour and Oliver Colt their heirs Executors administrators or Assigns the full and Just Sum of thirty nine Thousand and Thirty Star Pagodas thirty one fanams and forty Cash together with such Interest as shall or may become due thereupon Then this Obligation to be void and of no Effect otherwise to Continue in full force and Virtue—

Signed Sealed and Delivered where no stamped Paper is to be had In the presence of .....

Tomboo Chetty ..... (L8)
Nagapah Chetty ..... (L8)
[illegible] ..... (L8)
[illegible] (L8)

Signed Permall

Fort St George

Fort St George 5th February 1794 Received of Nagapah Chitty the Sum of Star Pagodas 3000 Three thousand Star Pagodas being Amount of one years Interest due on within Bond —

(Signed) Colt Baker and Co

Fort St George 1st December 1794 Received of Nagapah Chitty the sum of Ten thousand Star Pagodas being Amount of within Bonds —

(Signed) Colt Baker and Co

Fort St George 6th December 1794 Received of Nagapah Chitty the sum of four thousand six hundred and Eighty three Star Pagodas 28. 77

Twenty Eight Fanams and Seventy Seven Cash being one years Interest due on within Bond wh bears date 1st November 1793

Fort St George 8th December 1794 Received by Nagapah Chitty the sum of three thousand three hundred and sixteen Star Pagodas 13. 3. being Amount of within Bonds Discount 5316. 13. 3. being Amount of the within Bonds —

Fort St George 1st January 1795 Received by Nagapah Chitty the sum of Six thousand Star Pagodas 6000 being Amount of within Bonds —

Fort St George 3d February 1795 Received by Nagapah Chitty the sum of Nine thousand Star Pagodas 9000 being Amount of within Bonds —

True Copys of the Accounts annexed to the Petitioners Bill

(Signed) Wilkinson & Sutherland Solrs for Appellant

B

Dr Tamboo Chetty Condapa Chetty and Chellapa Chetty and Benjamin Roebuck Iyapah Moodelly and Vencatarayloo Brahmin Executors of Nagapah Chetty Deceased in Account Current with Franks Day Executor of William Balfour Deceased and Colt Baker and Company Attorneys to Oliver Colt ..... **Cr**

1792						1794							
September	1st	To the amount of your Joint and Several Bond of this Date payable on the 1st November following to Wm Balfour and O. Colt	39030	31	40	December	1st	By Cash Received this Day	10000	..	..
1794						1795	6th	By Do Received this Day	5316	13	3
February	6th	To Interest on principal Amount of Bond from 1st November 92 to this day at 12 p Cent p annum	5941. 4. 60			January	16th	By Do Received this Day	6000	..	..
		Deduct what Received at the date in part of payment of Interest as endorsed on Bond	3000			February	3d	By Do Received this Day	9000	..	..
			2941. 4. 60				13	By Interest on the above Sums their Respective dates to this Day at 12 p Cent p annum as follows	30316	13	3
December	6th	To Interest on principal Amount of Bond from 6th February last to this Day at Do	3888. 5. 30					On Pagl 10000 ..... 347 ..... 1140. 34. 40			
			6829. 10. 10					5316. 13. 3 ..... 342 ..... 597. 30. 30			
1795								6000 .. .. 301 ..... 593. 31. 50			
November		Deduct what received at this date in part of Interest as Endorsed on Bond	4683. 28. 77					9000 .. .. 283 ..... 837. 15. 40			
			2145. 23. 13						3169	28	..
	13th	To Interest on principal Amount of Bond from 6th December 94 to this Day @ Do	4388. 24. 30						33485	41	3
				6534	5	43		Balance Due this Day	12078	38	..
		Star Pagodas		45564	37	3		Star Pagodas	45564	37	3

Fort St George 13th November 1795 E. E. P. Signed Colt Baker and Co

A true Copy of the Account Current by the Petrs annexed to their Bill —

(Signed) Wilkinson and Sutherland Solicitors for Appellant

Extract

C

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 6th Day of December Anno Domini 1796 —

Present:

James Daly Esq^r Mayor

William Webb Andrew Ross

& Alexander Cockburn Aldermen

Frank Day Executor of William Balfour Deceased and Oliver Coll by their Attornies Oliver Coll Charles Baker and Frank Day —

VERS

Tamboo Chetty Condapah Chitty and Chillapah Chitty and Benjamin Rochuch Tyapah Moodelly Coolapah Chitty and Venkatarayloo Bramany Executors of Nagapah Chitty Deceased —

The Attorney for the Complainants prays that the Cause between the Complainant and Tamboo Chitty may be set down for hearing to which the opposite attorney Objects because that the action is on a Joint and several Bond and it is not known by Tamboo Chitty what certain Debt may Remain due as it Already Appears from the Separate Defence of the Executors of Nagapah Chitty that a Considerable sum of Money is Charged and by the Plaintiffs admitted to have been paid on account

and

and for which no Credit is given in the Complainants Bill and as it further by such pleadings appears that a sum of 5000 Pagodas and upwards is further Alledged to have been paid and which the Denied by the Plaintiffs is yet a fact in Issue and finally in as much as in a Joint and Several Defence the Defendants are severally entitled to the Benefit of the Entire defence from which Tamboo Chetty would be precluded should his several Defence be prematurely decided as the Plaintiffs if such his Defence should not be Consi-dered Complete to his protection would thereby have Exe-cution against them Separately and so if it suited their purpose cause their prosecution against the Co Defendants and hence would insue That the Complainants might have a Double Satisfaction of this Debt as Tamboo Chitty Could not sett off the 5000 Pagodas already in Issue besides what further may be put in Issue to his Benefit The Court having taken the same into Consideration it is Ordered That the Cause between the Complainant and Tamboo Chitty be set down for hearing —

A True Extract

A true Copy

/ Signed / Wilkinson and Sutherland

Solicitors for Appellant

/ Sig^d / George Taylor Dep^y

Extract

D

Extract from the Minutes of a Court held at the Town Hall on Tuesday the 13th day of December Anno Domini 1796 —

Present

James Daly Esqr. Mayor

Andrew Ross and Benjn Roebuck

Aldermen

Mr Aldermen Roebuck being interested goes of the Bench and Mr Alderman Milford takes his seat upon the Bench —

Frank Day Executor of William Balfour Deceased and Oliver Coll by his Attorneys Oliver Coll Charles Baker and Frank Day —

vers

Benjamin Roebuck Tyagapah Moodelliar and others Executors of Nagapah Chitty Deceased Tomboo Chitty Chillapah Chitty and Condapah Chitty —

The Attorney for the Complainants prays that the Cause between the Complainants and Defendants Tombo Chitty may come on to be heard on Tuesday next to which the attorney for the Defendant Tombo Chitty objects for the Reasons assigned by him last Court day the Court taking the same into Consideration it is Ordered that the Cause between the Complainants and Defendants Tombo Chitty do come on to be heard on Tuesday next —

A true Copy
Signed Wilkinson & Sattenland
Solicitors for Appellants —

A True Extract
Signed J. C. Affleck Dy Regr

To

L

| | | |

Extract from the Minutes of a Court held at the Town Hall on Tuesday the 15th day of November Anno Domini 1796

Present

James Daly Esqr Mayor

Andrew Ross and John Milford

Aldermen

Frank Day Executor of William Balfour Deceased Oliver Charles Baker Frank Day and John Spalding by their attornies Charles Baker and Frank Day —

vers

Benjamin Roebuck and others Executors of Nagapah Chitty Deceased

The Attorney for the Defendant Tomboo Chitty prays that Publication may pass in this Cause to which the Opposite Attorney Objects and prays a further time of one Week to Examine Witnesses ordered that a further time of one Week be granted —

Further day is given the Parties Complainants and the Defendant Tomboo Chitty till the 22nd Instant to Examine Witnesses indefault of which Publication will pass in this Cause —

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

A true Copy
(Signed) George Chalmer
Solicitor for Respondent

A true Copy
(Signed) Wilkinson & Sutherland
Solicitors for Appellant

Extract

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 22nd day of November Anno Domini 1796 —

Present

James Daly Esqr Mayor

Andrew Ross Dpty Roebuck

and William Abbott Aldermen

Mr Alderman Roebuck being Interested goes off the Bench

Frank Day Executor of William Balfour Deceased Oliver Capt. Charles Baker Frank Day and John Spalding by their Attornies Charles Baker and Frank Day —

vers

Benjamin Roebuck and others Executors of Nagapah Chitty Deceased

The Attorney for the Complainant prays that Publication may pass in the Cause between the Complainant and Defendant Tomboo Chitty to which the Attorney for the Defendant Tomboo Chitty objects Ordered that Publication do pass —

Publication is passed in this Cause

A True Extracts
(Signed) J. E. Afshim
Dy Regr

A true Copy
(Signed) George Chalmer
Solicitor for Respondents

A true Copy
Signed Wilkinson & Sutherland
Solicitors for Appellant

A True Copy
(Signed) J Webbe Clerk

Z

Court of Appeals
at
Madraspatnam

Friday the 6th day of October Anno Domini 1797 —

Between Tombee Chitty of Madras Inhabitant Appellant and Frank Day Executor of William Balfour Deceased and Oliver Coltt by his attornies Oliver Coltt Charles Baker and Frank Day of Fort St George Merchants Respondents —

This Cause coming on this day to be heard and debated before this Court by the attornies on both sides upon hearing the Petition of Appeal and answer together with the orders of the Honourable the Mayors Court given in this Cause on Tuesday the 6th and 13th day of December Anno Domini 1796 upon due Consideration had of the matters therein severally Contained and of the pleadings and arguments used by the Attornies of both Sides This Court doth think fit to Order and Decree and doth Accordingly Order and Decree that the said Orders of the Honourable the Mayors Court do stand affirmed and that the Appellants Petition be hence Dismissed with Costs —

A true Copy of the Order of the Court of Appeals

Pt Curr (Signed) T. Oakes Clerk

(Signed) Wilkinson and Sutherland
Solicitors for Appellant —

To

To the Kings Most Exellent Majesty in Council

In the matter wherein Frank Day Executor of William Balfour deceased and Oliver Coltt by his Attornies Charles Baker and Frank Day are Complainants and Tombee Chetty Condapah Chitty and Chellapah Chitty together with Benjn Raebuck Tyapah Moodelly Coolapah Chitty and Venkatarayloo Brameny the latter as Executor of Nagapah Chitty deceased are Defendants —

The Answer

of the above named Complainant to the Petition and Appeal of Tombee Chitty one of the above named Defendants —

Filed in my Office
the 8th Decr 1797
Chas Baker Clk

These Respondents for Answer to the Appellants Petition observe that the Object of this Appeal to your Most Exellent Majesty in Council is to shew that by the Cause being set down for hearing Seperately as against him he is much Aggrieved Inasmuch as that the action being brought on a Joint and Several Obligation it ought to be heard against the whole of the parties Collectively and not against either of them Seperately and that his right to have the Cause heard

heard in this manner is further Confirmed by the acts of these Respondents in agreeing that the Executors of Nagapah Chetty should be made parties to the suit when a Demurrer was in the first Instance filed on these objections these Respondents Observe that nothing is more clearly established as well in Equity as it is in Law than that on a Joint and Several Bond a Suit may be brought and Sustained against all the obligors Jointly or either of them Seperately That although it is true that these Respondents upon the Demurrer being put in by the Appellant for want of parties did add the Executors of Nagapah Chetty to the Bill yet these Respondents have in their answer to the Reason or Cause of Appeal Explained their motives for doing so not from any Apprehension which they entertained of the Demurrer being held good on argument but whith the View of preventing unnecessary delay in bringing the Suit to a hearing as Respected the appellant For these Respondents plainly perceived that if the Demurrer had been over Ruled as it undoubtedly must have been had it been argued That the Appellant would have appealed for delay in order to prevent the Suit being brought to a hearing as Regarded him and therefore and on that account alone did these Respondents

Respondents add the parties Required And these Respondents here Submit to your most Excellent Majesty in Council That having attained the Desired object the Appellant if he had expected to Derive any Benefit from the Defence of the other parties ought to have proceeded hand in hand with them But instead of Doing so or Entering into a Discussion of the merits of the action He put in a Second Demurrer on the Ground of want of due Authority from Oliver Colt and as Respected the merits of the action instead of Admitting or denying the Execution of the Bond or saying he was or was not indebted in the balance for which the action was brought he barely said that he was not indebted in manner Charged by the Bill and these Respondents further observe that to this Demurrer they put in a Replication to which the Appellant Rejoined and although with the View of inducing the Appellant to Enter into the merits they filed an amended Replication yet the Appellant always Avoided Doing so and Joined Issue in the Cause without once alluding to the matters Setforth by the other Defendants That upon Issue Joining the Appellant proceeded to Examine Witnesses on his own behalf and upon the usual Rules Expiring fixed by the Practice of the Court he proceeded

that

that Publication might pass as Regarded himself which these Respondents Objected to at that time not having Completed their Examination But the whole being finished by the following Court day Publication was moved from behalf of these Respondents which was Objected to on the part of the Appellant But the Court Considering it a very Extraordinary Circumstance that a party should one day move for Publication passing and on the following Court day Object to it without Assigning any Reason Directed Publication to pass And these Respondents further say that the Evidence having been Published as between these Respondents and the appellant and the Cause being ripe for hearing as Regarded him It was prayed that the Cause might be Set down for hearing But to this the Appellant did Enter Certain Objection as is stated in the Exhibit marked C to his said Petition and Appeal annexed which Objections upon due Consideration were over Ruled by the said Mayors Court and the Cause Ordered to be Set down for hearing as Regarded these Respondents and the appellant and on the Next Court day a further prayer was made by these Respondents that the Cause should come on to be heard

On

on the following Tuesday which was Accordingly Ordered But to prevent this taking place the said Appellant Tarribo Chetty did file and Exhibit an Appeal to the Board of Appeals at Madras and for the Reasons therein assigned did pray that the Order of the Mayors Court directing the said Cause to be heard Should be Reversed To which said Appeal these Respondents put in their answer as is stated by the Appellant and the same Coming on to be Determined by and before the said Court of Appeals on the Sixth day of October in the present year One thousand Seven hundred and ninety Seven The said Court were pleased to Affirm the Order of the Mayors Court and to Dismiss the Appellants Petition with Costs as by the said Order of the said Court of Appeals Copy whereof is unto the Appellants Appeal to your most Excellent Majesty in Council annexed Relation being thereunto had will more fully appear And these Respondents further Observe unto your most Excellent Majesty in Council that had the Executor of Nagapah Chetty been made Originally parties to the Suit and that the Appellant had defended the Action in the manner which he has done there could have been no good Reason urged why the hearing should be postponed as regarded him since the matter stated in

Defence

Defence and the issues thereupon taken were altogether distinct and different The waving of the Demurrer then and agreeing to make the Executors parties doth in no wise alter the Case or Shew that these Respondent are now in alls Degree Entitled to have the Cause Seperately heard as against the appellant than they would have been in the former Case For these Respondents Submit to your most Excellent Majesty in Council that if such a Doctrine were allowed to Obtain as the appellant has insisted on the hearing of a Cause by the Concerted delay of parties might be kept off for an endless period of time and Create all those wils so forcibly painted out in the said Case of Collins VERS Griffiths The Principles of which these Respondents Submit are Strictly applicable to the present question notwithstanding the assertions of the Appellant to the Contrary and as Regards the Case of Maddox VERS Jackson These Respondents observe that the same is not applicable for although it is laid down that Debtors of that discription are entitled to the assistance of each other in taking the account yet from the manner in which the Defence has been Conducted on the part of the Appellant It appears that so far from Soliciting that assistance that he has Disclaimed it And to the last reason Adduced by the Appellant as Cause of Appeal wherein it is said that these Respondents acted irrelevantly in stating to the

Court

Court of Appeals the several proceedings which had passed in the Mayors Court in Regard to him These Respondents Say that although the Charge of irrelevancy may be Justly imputed to the appellant in Reciting the Pleadings of these Parties whom he has not once Referred to in the Mayors Court yet as Regards these Respondents the Observation is improper and unjust Inasmuch as the Subject matter of Appeal was whether the Cause as Regarded the Appellant and these Respondents was ready for hearing and in what manner Could this be shewn but by Submitting the pleadings and Evidence to the Reviewers of the said Court of Appeals and by which the said Court was enabled to Judge fairly under all Circumstances Submitted to them whether or not it was and these Respondents humbly Observe to your most Excellent Majesty in Council that by the Examination of Dermall on the part of the Appellant and the Circumstance of his preparing publication upon that person having Completed his Testimony that it was his Object to have brought the Cause to a hearing as Regarded himself while he yet thought it Could be done with Advantage and therefore no Excuse can be Offered for this Appeal which from the pleadings that have been filed in the Mayors Court must appear highly litigious in its nature the appellant having no where sought to Derive any benefit from a Discovery on the part of the other Obligors —

For

For all which Reasons and such others as may be Offered at the hearing these Respondents humbly Pray that your most Excellent Majesty in Council will take into Consideration the whole of the Pleadings which have passed in the Mayors Court as Regards the Appellant and these Respondents and as no new matter can be introduced if the Proceedings should be Returned upon this Interlocutory Appeal That your most Excellent majesty in Council will therefore proceed to give Judgment in the Suit and Direct the Appellant to pay all Costs of this Appeal or that such other Relief in the Premises may be given to these Respondents as to your most Excellent Majesty in Council may Seem meet—

(Signed) George Chalmer
Solicitor for Respondent—

To

329

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

In the Honble the
Court of Appeals

Between John Bannerman a Captain in the Military Service of the United Company of Merchants of England trading to the East Indies under their Presidency of Fort St. George Complainant and Charles Smart a Major in the said Service of the United Company of Merchants of England trading to the East Indies one of the Defendants named in the said Complainants Bill of Complaint Defendant.

The humble Petition and Appeal of the above-named Defendant—

Sheweth,

That John Bannerman the abovenamed Complainant did on or about the thirteenth day of March which was in the year of Christ One thousand Seven hundred and Ninety three Exhibit and file his Bill of Complaint against your Petitioner And other the Defendants in the said Bill Named in the Honble the Mayors Court at Madraspatnam thereby Setting forth that it has been and as an Established Custom in the Army of the said United Company

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

Company when in the Field to Appoint agents for the purposes of taking Charge of all Captured property and to Superintend And protect the Interest of the Said Army with respect to all Manner of benefits arising therefrom or connected therewith And also to Receive and take Charge of all Monies which the Army might become entitled unto by reason of Any donation or gratuity given and granted in Lieu of prize Money or as might be conferred in Testimony of and as a reward for distinguished Services And that the Mode Adopted by the Army in Appointing their agents as aforesaid is by a Majority of Votes and that the parties so Appointed are by the Adjutant Genl Signified to the Commander in Chief for his Approval and Confirmation and that the Army by way of Compensation for the Trust thereby created do allow a Commission of five per Cent upon all receipts and disbursements And which was understood to be the Joint property of the agents Share and Share alike And that during the late War with Tippoo Sultain the Army then under the Command of Major General William Medows died on the Tenth day of June One thousand Seven hundred and Ninety proceed to Appoint and Accordingly on or about the Eighteenth day of the Said Month of June and year aforesaid Nominated and Appointed your Petitioner And the Said Martin Hunter Alexander Dirom and the Said

Complainant to be their agents And that the Said Major Genl William Medows as Commander in Chief did Cause the following General Order to be Published — Camp at Carore 18th June 1790 In Compliance with the Order of the 10th Instant the Adjutant General Reports that the Votes for the Prize agents are in favor of the following Officers from the Kings Troops in favor of Captains Hunter and Dirom from the Companys Troops in favor of Captains Hunter and Dirom from the Companys Troops in favor of Major Smart and Captain Bannerman the Commander in Chief is pleased to Appoint the above Mentioned Officers to be Joint prize agents for the Army And that the Complainant in Consequence of Such his Appointment as one of the agents of the Army did Enter upon the duties of his office and did deligently attend to the faithful discharge thereof and did Arrange and Settle the Accounts of the Prize fund And did do and perform all other Acts and things requisite And Necessary to be done and performed in the premises And that Some time after Such Appointment and Confirmation thereof by the Commander in Chief a detachment of Troops belonging to the Bengal Establishment did Join the Army And that the Said detachment as aforesaid did in Order that they might be Equally represented with the other part of the Army on or About the Tenth day of March One thousand Seven hundred And Ninety one Nominate And Appoint Lieutenant James McCockill And that the then Commander in Chief did in Confirmation of Such Appointment Cause the

following

following General Order to be published Camp before Bangalore 10th March 1791 the Majority of Votes in the Bengal Troops for a prize Agent being in favor of Lieut. Mc Cochill and approved by the Commander in Chief. Mr Mc Cochill is appointed One of the Joint Agents for prize Money with the Army and that according to the usage and Customs of the said Service the said United Company are Entitled to a Certain Moiety of a Certain description of property captured from the Enemy and that the said United Company by their agents the Governor and Council of Fort St George did for the better Security of their Interest Nominate and appoint the said Martin Hunter Alexander Diram James Mc Cochill and the said Complainant and your Petitioner their agents as appeared from the following General Order dated Fort St George 12th December 1791 the Governor in Council has been pleased to appoint the Gentlemen who now act as prize agents on behalf of the army to be agents also on the part of the Honble Company, for the Moiety of the Captured Stores and provisions which they have reserved for themselves And the Complainant by his said Bill further stated that Same time after his appointment of Joint agent for the army with the said Martin Hunter Alexr Diram your Petitioner And the said James Mc Cochill the said Complainant did Join a detachment

of

of Troops Serving in Coimbatore district and that on or about the Month of January in the year of Our Lord One thousand Seven hundred and Ninety Two the said Complainant was by the said Detachment proposed as their agent for the purposes for which he had as aforesaid been appointed an agent by the army and that the same having been Referred to the Governor and Council of Fort St George the said Governor and Council did Object to such Nomination and Appointment of the Complainant by the said detachment alledging that the Complainant was already a Prize agent on the part of the army and of the said United Company and further stating that some short time after the appointment of the said James Mc Cochill as a Joint agent he the said James Cochill did make some Representations in Writing to the said Alexander Diram Martin Hunter and to your Petitioner against the Complainant purporting that the Complainant being then below the Ghauts was not entitled to any proportion or Share of any prize Money or other benefits or advantages that might arise on account of the Joint agency and did therefore propose that the Complainant should be considered as excluded therefrom But that the said Martin Hunter Alexander Diram and your Petitioner did reject the same and that in Consequence of such rejection the said James Mc Cochill with drew the said Representations by him so made in Writing against the Complainant and the Complainant further

stated

Stated that as one of the Joint Agents as aforesaid he Continued to participate in all the benefits arising from the Office of Agent under the Appointment aforesaid Without any — interruption or Molestation Whatever until Some time in the Month of March One thousand Seven hundred and Ninety two and that in the Month of Febreuary in the said year the Preliminaries of Peace were Settled between the Confederate Powers and Tippoo Sultaun and that thereupon the Commander in Chief did Express his intention of making a donation to the Army and that Such donation was to be distributed to the Army in the proportion of Prize Money And that the Commander in Chief did Cause to be published the following General Order to Wit Head Quarters Camp before Seringapatnam Thursday 23d. Febreuary 1792. Lord Cornwallis has great pleasure in Announcing to the army that Preliminaries of Peace have been Settled between the Confederate Powers and Tippoo Sultaun Containing Conditions highly honourable And advantageous to the Company and the British Nation And in Consideration of the uncommon Valor And firmness that has been uniformly Manifested by the Officers and the Soldiers of the King's And Company's Troops during the Whole course of the war it is his Lordships intention to take upon himself to Order a handsome gratuity to be distributed to them in the Same proportion as prize Money from the Sum Tippoo has bound himself by One of the Articles to pay to the Company And the Complainant further Stated that the

Commander

Commander in Chief did on the Twenty fourth day of april then next ensuing publish the following General Order to Wit "Lord — Cornwallis informs the army that Six Months Batta will be issued to the Troops on descending the Gauts as the Gratuity intimate to be discharged from the Money paid to the Company "by Tippoo Sultaun and issued by the prize agents and the pay Master and the said Complainant further charged that the said Commander in Chief did hold the Prize agents in general and not the said Martin Hunter Alexander or Diram Charles Smart. James M'Cochell and your Petitioner in particular responsible for any Errors in the accounts for that the said Commander in Chief did on the first of May in the said year One thousand seven hundred and ninety two publish the following General orders "to wit" when the whole of the or gratuity has been issued the general amount thereof accompanied by the Original abstract delivered by the Officers is to be transmitted to the auditor General for his Examination and audit The Prize agents who make up the General account will be held responsible to Government for any Errors or inaccuracies that may appear between the general amount and the seperate abstracts as well as for the Correctness of the calculations" and the Complainant charged that thereby he became Jointly responsible with the said Martin Hunter Alexandr Diram or James mc Cochell and your Petitioner to Government for any Errors or inaccuracies in the accounts and for the Correctness of the Calculation regarding the said donation or gratuity and that he the Complainant by reason of the premises or became Entitled unto a share or proportion of any Emolument or advantage that might arise to the prize agents for or by reason of the issuing to the army the said

donation

donation or gratuity and averred that every considerable emolument and advantages had arisen to the prize agents and that the same have been received by the said Martin Hunter alexander Dirom James mc Cochell and your Petitioner and that the Complainant being so Entitled did apply to the said Martin Hunter Alexander Dirom James mc Cochell and your Petitioner to account with him the Complainant for any Emolument or advantage which had arisen to and been received by them upon and by reason of the said donation or Gratuity and of the issuing thereof

But that so it was that the said Martin Hunter Alexander Dirom James mc Cochell and your Petitioner refused to pay unto the Complainant his alleged share or proportion of the Emoluments and advantages that hend arisen and been received by them by reason of the said donation or to come to any reckoning with the Complainant on account thereof pretending that the Complainant had no right to any account whatever for that at the time the said donation was made to the army the Complainant was not in the spot nor acting in Conjunction with or assisting as one of the prize agents of the army but was

was serving with a detachment of the said army at a Considerable distance therefrom and that therefore the Complainant could not be considered as one of the prize agents and consequently was not Entitled to any share of Emoluments and advantages that had arisen and been received by the prize agents upon account or by reason of the distribution of the said donation Whereas the Complainant charged that notwithstanding he was serving upon detachment at the time the said donation was distributed to the army he was nevertheless Entitled to a share of the Emoluments and advantages which had arisen to and been received by the said Martin Hunter alexander Dirom James mc Cochell and your Petitioner as prize agents in the distribution of the said donation or gratuity that the absence of the Complainant from the army could not affect his claims in as much as the Complainant was continued by the army as one of their prize agents and always Considered as such and that as he was appointed by the army as one of their agents and Continued as such it was not in the power of the said Martin Hunter Alexander Dirom James mc Cochell and your Petitioner who were the Complainants Co-agents and appointed by the same authority to annul

his

his said appointment as Prize agent or to Exclude him from any Emoluments or advantages arising therefrom And that two Officers with the army &c did respectively tender their services to them the said Martin Hunter & Alexander Dirom James mc Cochill and your Petitioner on the part of the Complainant to be in his place and stead during his &c absence and assist them in arranging the accounts and in other acts connected with the Business of prize agents But which assistance they the said Martin Hunter Alexander Dirom James mc Cochell and your Petitioner or one of them declined and alleged that he the &c Complainant was not Entitled to any share or proportion of any &c Emolument or advantage on account of the distribution of the said donation but that Complainant was only entitled as one of the Prize agents of the army to a share of a Commission on property Captured from the Enemy and denominated prize money and that as the donation granted by the Commander in Chief aforesaid &c did not come under the discription of prize money but was gratuitous on the part of the said united Company's the distribution thereof was a seperate and distinct thing and in which the Complainant had not any manner of right to interfere in as much as he was not specially nominated and appointed thereto nor considered by the Commander in Chief as in any wise concerned therein whereas the Complainant charged that the said donation and the destribution thereof was not a distinct thing nor was it ever considered as a distinct thing from the prize money and that it did not require any special nomination and appointment to give the Complainant a right to interfere therein for that the Commander in Chief on ascertaining the quantum of the said donation and Publishing the same to the army and signifying by whom the same was to be destributed did not nominate the said Martin Hunter & Alexander Dirom James mc Cochell and your Petitioner to make such distribution but did inform the army that the same should be issued by the Prize agents and by the Pay Master And the said Complainant further charged that they the said Martin Hunter Alexander Dirom James mc Cochell and your Petitioner received upon account of the Emoluments of the said office of Prize agency a very considerable sum of Money by reason of the issuing of the said Donation or Greatuity and that the money by them so received had arizen chiefly by means of the Exchange in which the said Donation or Gratuity was paid and by the mode of Payment thereof and that the said Martin Hunter Alexander Dirom James mc Cochell and your Petitioner have appropriated the same to their own seperate Benefit and advantages and

haves.

have excluded the Complainant from his share thereof and of every part thereof-
The said Complainant by his said Bill of Complaint therefore prayed that
the said Martin Hunter alexander Dirom James imr. Cochell might
be decreed to pay unto the Complainant one fifth part of the whole of the
Benefits advantages and money by them had and received upon and
on account of the distribution to the army of the said donation or Gratu
-ity given and granted by the Commanderin Chief on the part and
behalf of the said united Company of Merchants as aforesaid or in any
wise connected therewith And your Petitioner Sheweth unto this Honble Court
that he did on or about the eleventh day of June One thousand seven hundred
and ninety three file his Separate answer to the said Bill of Complaint
and your Petitioner for himself said that it was customary in the army of the
united Company when in the Field against an Enemy to nominate and
appoint agents for the purpose of taking Charge and arranging and
otherwise managing all Captured property and to superentend the
Interest of the army with respect to all benefit arising therefrom but
your Petitioner denied it to be the Custom for the army to appoint
agents to take charge of all monies which the army may become
entitled unto by reason of any donation or Gratuity given in

lieu

lieu of prize money or as might be conferred as a reward for distinguished
services because the existence of a donation or Gratuity is in itself of too
uncertain a nature to create the necessity of a Custom to regulate its
receipt or distribution and Because a donation or Gratuity is not subject
in respect of the Conditions or manner of its distribution to the will autho
-rity or controul of the Donee-

Your Petitioner would have admitted had the case
been so that persons who should be appointed as agents by the army being
previously authorized to elect agents for executing such duties to
receive for and on their account any donation or gratuity given and
granted in the proportion of prize money would in like manner become
responsible for the amount or value of what they might jointly or indivi
dually receive but as the case was not so your Petitioner conceived that the
supposition thereof cannot by any the most distant inference be admitted
to supply the defect of the Complainants pretended demand on your
Petitioner. The Complainant having been appointed by the army
to act as their prize agent for securing captured property and to
execute no other duty whatever and your Petitioner admitted
that the army under the Command of Major General Medows

in

on the late War did on or about the Eighteenth day of June One thousand seven hundred and Ninety appoint your Petitioner the other Defendants Martin Hunter Alexander Dirom and the Complainant their prize agents and that the said appointment was on the same day confirmed in general orders But that the Complainant did not nor could he act in that capacity after the twentieth day of December One thousand seven hundred and Ninety on which day of the Complainant left the Army and did not thereafter join thereto And your Petitioner further said that some time on or about the month of July one thousand seven hundred and ninety one the said James Mr Cochell as joint agent as aforesaid did make some representation in writing to the said alexander Dirom Martin Hunter And your Petitioner purporting that the Complainant was not entitled to any joint agency by reason of his not being at that time with the army and therefore he could not act as a prize agent or incurr any responsibility as such and that he and the said alexander Dirom Martin Hunter And your Petitioner did urge some matters towards the said James Mr Cochell upon the Ground of their Knowledge and pursonal acquaintance with the Complainant and their wishes to be servicable to him and the said James Mr Cochell did therefrom give up the point which he before insisted on of the Complainant not being entitled to share of prize

agency

agency with them But the Complainant did not continue to participate in the said Joint agency until march One thousand seven hundred and Ninety two but only until July one thousand seven hundred and Ninety one about which time the said representations were made by the said James Mr Cochell upon whose relinquishment thereof the said Complainant was by the liberal disposition of the said other prize agents admitted to an equal Share or devision with them and that the Complainant did esteem the said admission of him to a participation of the profits of agency up to the period of the thirty first July one thousand seven hundred and ninety one as proceeding not from any right which he had thereto but solely as a matter of favor as the same in fact was because the Complainant had neither trouble nor responsibility as an agent and could not therefore be entitled to agency as trouble and responsibility were the sole conditions on which it was agreed to be given and the Complainant was so far sensible that he was not entitled to share in the said prize agency up to the thirty first July One thousand seven hundred and ninety one and that he owed the same solely to the favorable sentiments which your Petitioner and the said Alexander Dirom and Martin Hunter had towards him and which they impressed the said James

Mr Cochell

mr Cockell with that he the Complainant under the nineteenth day of september One thousand seven hundred and ninety one did write a Letter to the sd said Alexander Dirom warmly acknawledging the obligations he felt himself under to them and wherein he further declared that he considered his sharing in the late agency as a matter of favor from the other agents more than as a matter of right and that it would be unreasonable in him to hope for a continuance of that indulgence particularly should the division of prize money on a future Occasion prove considerable as will more sd particularly appear by Copy of an Original Letter in the Complai -nants hand writing and hereunto annexed And your Petitioner sd admitted that the then Commander in Chief Lord Cornvallis did express his intention of making a donation to the army in manner by the sd Complainant set forth and that the said Commander in Chief did Publish such his intentions in general Orders on the Twenty Eighth day of February one thousand seven hundred and Ninety two to take upon himself to order a handsome Gratuity to be distributed to the army and that on the Twenty fourth day of april the said sd Commander in Chief did publish a general Order whereby he informed the army that six months Batta would be issued to the Troops on discending the

the Coasts as the Gratuity intimated and that the same would be sd issued by the prize agents and the Paymaster jointly But your Petitioner did not admit that the said Commander in Chief did or could hold the prize agents including the said Complainant responsible to Govern -ment for any inaccuracies in the accounts of the Distribution of the said Gratuity or Donation but only those to whom it was issued and by consequence those by whom it was destributed as appears by the Copy of the General Order annexed to the Complainants Bill wherein the said Commander in Chief declares that when the whole of the sd Gratuity has been issued the General amount thereof accompanied by the Original abstract delivered by the Officers is to be deposited with the sd auditor General for his Examination and audit and that the prize agents who make up the abstract will be held responsible by Government for any Errors or inaccuracies that may appear between the General account sd and the Separate abstracts as well as for the Correctness of the Calcula -tions and your Petitioner therefore denied the following part of the Complai -nants Bill to be even possible And your Orator further Sheweth that sd thereby and by reason thereof he became jointly responsible with the said Alexander Dirom martin Hunter James mr Cockell and this sd

Defendant

Defendant to Government Because your Petitioner said that the said Complainant was not at the time with the army or associated with the other prize agents then present so as to be capable of incurring responsibility for Errors or inaccuracies in the General account and the separate abstracts or for incorrectness of the Calculations and was not therefore even upon the Grounds of his own pretensions entitled unto any share or proportion of any Emolument benefit or advantage that might arise to those to whom the issues of the Gratuity were made and consequently by whom it was distributed and that the said Complainant did decline making his demand in the said mayors Court until the said Alexander Deroin and martin Hunter were gone to Europe and until after the said James mr Cockell had gone to Bengal where the said James mr Cockell died and your Petitioner said that altho he did refuse to allow the said Complainant any part of the share or proportion of the emoluments and benefits which he your Petitioner had individually received upon or by reason of the distribution of the said Gratuity or distribution that he did not do so from any view of depriving the Complainant of any right he had therein but because he did not think him upon any principle of Law or Equity entitled thereto and that he did from his said refusal upon the grounds that at the time that the said Gratuity or donation was made to the army the said Complainant was not on the spot or acting in conjunction with or aiding and assisting your Petitioner and other Defendants as prize agents but serving with a detachment at a considerable distance from the army and your Petitioner maintained that such the Complainant absence did and must in the nature of things affect his Claims as one of the prize agents upon the Ground and foundation of his own Bill wherein the Complainant set forth That in consequence of his said appointment as one of the agents as aforesaid he did enter upon the duties of his office and did diligently attend to the faithful discharge and did arrange and settle the accounts of the prize Fund and did so perform all other acts and things requisite and necessary to be done and performed therein which duties if any at all were performed could not extend beyond the Twentieth day of December One thousand seven hundred and ninety a space of about five months and the Complainant did regard his admission to any participation as an act of favor and not as an act Compulsory on the other prize agents and it is not reasonable that the Complainant should allege that

that his right continued notwithstanding his absence because his appointment was not especifically revoked your Petitioner having shewn and the nature of the Office indeed implies that the right was given upon Condition of a duty to be performed which duty the Complainant having failed in or not being able to perform it by absence whether Compulsory or by choice doth in no degree alter the Case as other persons must have been employed not only to do the duty but likewise to bear the responsibility of the Office and altho the appointment of the said Complainant was not set aside by a General revo=cation of the army never the less the same was virtually revoked by his removal from the army not for a temporary purpose but to a permanent station and did not join the Grand army during the time that it was under the Command of Earl now Marquis Cornwallis who was in fact the Donor of the Gratuity so far as the taking upon himself to make it at the risk of appro=bation of the Company

And your Petitioner said that the Complai=nant was fully sensible on the ninth day of september One thousand

thousand Seven hundred and Ninety one that trouble and responsibi=lity were necessary to constitute a right to share in the emoluments of prize agency and that by not having incurred either at that time he acknowledged that the allowance of a Share therein by the agents who had incurred the whole was rather an act of favor than of right and it is not a legal nor an equitable consequence that your Petitioner and the other Defendants having acted liberally towards the Complai=nant in one instance have thereby rendered themselves bound to admit the Complainant to a participation of every advantage that might derive to them under the name or Title of prize agents however foreign such advantages might be to those which they were otherwise entitled unto For this Defendant saith that the advantage which they derived from the destribution of the Donation or Gratu=ity was of a nature foreign from those which they derived from Captured property because the advantages or emoluments derived from Captured property was at the rate of Five per Cent whereas in the instance of the distribution of the donation the Commander in Chief refused to allow of a Charge of Five per Cent to be made upon the Company or that the army should be charged with it

it but the said Commander in Chief did at the Sollicitation of your Petitioner and the other Defendants on their own behalfs allow them on account of Personal trouble and responsibility to share with the Paymaster such emoluments only as might arise on the distribution of the said Gratuity or donation from the saving to be made by issuing the money conformably to the Buzar Exchange while the accounts were directed to be made up conformably to the Companys Stated regulations That the Paymaster George Moore kept the accounts of the said difference of Exchange and paid to your Petitioner as his share or proportion derived from such difference of Exchange the sum of Three thousand seven hundred and seven Pagodas or thereabouts and that he paid a like Sum to each of the other Defendants as your Petitioner belives and retained the like sum himself That your Petitioner had no account of the said advantage derived from the said difference of Exchange the same having been kept by the &c Paymaster and his Servants and that he received the said sum of Three thousand seven hundred and seven Pagodas as confidently relying on the same being his one fifth share of the whole of the emoluments and advantages gained by the difference of Exchange as aforesaid your Petitioner therefore said that he did not conceive that the said

advantages

advantages were derived to him from the nomination of the army but by the favor and indulgence of the Commander in Chief who on account of certain reasons and after some delay permitted your Petitioner with the other Defendants to participate in that emolument with the Paymaster expressly and avowedly in order to reward them for the trouble which they had personally in making up the abstracts and accounts and in order to make them responsible for the Justice and accuracy of the said accounts

And your Petitioner said that he did not recollect any tender made by two officers of the army to act in any respect in behalf of the Complainant in the premises nor did he think it material whether such tender was or was not made as it was not in the option of the acting Prize agents to accept of the services of substitutes or assistants such power being vested in the Commander in Chief in respect of the donation or Gratuity and in the majority of the ~~donation or Gratuity and in the majority of the~~ Officers of the army in respect of Captured property and no officers or other persons were admitted by the said Commander in Chief to share in the said Gratuity or donation who were

not

not above the Grants at the time that it was granted consequently the &c
Complainant was not allowed to share therein he the said Complainant
not having at any time previous to the first February one thousand
seven hundred and Ninety two ascended the Grants with the said &c
Army but was entirely separated therefrom and acting under a nother
Command

And your Petitioner upon the Grounds of the foregoing
premises said that he denied that the Complainant had sustained
any wrong or injury and your Petitioner said he did not admit that
the Governor and Council at Fort Saint George on behalf of the said &c
united Company did appoint your Petitioner and alexander Dirom
Martin Hunter and James mc Cockell their joint prize agents &c
but not the Complainant jointly with them Because the General
Order of the said Governor and Council did only extend to such persons
as then acted as prize agents for the army which the Complainant
by reason of his absence could not do and your Petitioner said that the
said Commander in Chief did afterwards ascertain the amount of the
said donation or gratuity but your Petitioner denied that he did in
general orders direct that the said donation should be issued by the prize

agents

Generally but by the Paymaster and prize Agents

agents and that he did not regard the Complainant to have been included
in the said General order either by the Letter or the meaning of his appoint
=ment as a prize agent altho the same was not annulled by the &c
army and that the said Commander in Chief did by his general order of
the first day of May one thousand seven hundred and Ninety two or &c
otherwise hold the Complainant as one of the prize agents responsi=
=ble to Government jointly with your Petitioner and the other &c
Defendants for any errors or in accurancies that might appear &c
between the general account and the separate abstract as well as
for the correctness of the Calculation because the said General order
particularly specifies and marks those prize agents who were so
to be held responsible to Government namely The prize agents
who should make up the General account and the Complainant
is not therefore by reason of these premises entitled to a share and
proportion of the emoluments benefits and advantages that have arisen
by the issuing to the army the said Donation nor did your Petitioner
admit that he was entitled to any upon any Captured property
for the reason herein before set forth altho the Complainant hath as
matter of favour been admitted to a participation of the prize agency

upon captured

captured property in equal degree with your Petitioner and the other Defendants and as far as they or either of them have shared and received and your Petitioner said that the benefits and advantages upon and by reason of the distribution of the said donation did arise solely from the saveing made by issuing the same according to the Bazar Exchange and the Exchange conformably to the Companys stated regulations and of course that it did solely arise from the exchange of the money or mode of issuing the said donation by the Paymaster your Petitioner and the other Defendants That the said Paymaster and his servants kept the accounts of the said difference of Exchange That your Petitioner did not keep nor had he any account whatever of the said difference of Exchange That he received from the said Paymaster the sum of Three thousand seven hundred and Seven Pagodas as his share or proportion derived from the said difference of Exchange and not any more That he believes the said Alexander Dirom martin Hunter and James M.c Lochill did each severally receive the like sum of Three thousand seven hundred and seven Pagodas as their respective shares or proportions that the said George Hoare the Paymaster did retain to himself the like sum of Three thousand

Seven

Seven hundred and Seven Pagodas as his share or proportion of the said difference of Exchange making in the whole five shares But that the Complainants said Bill was entirely unwarrantable upon any Grounds of Law or Equity and that his claims to a participation in the emoluments derived from the distribution of the said donation is as has been shewn not justified by any fair title or pretention and that the distribution of the donation did depend entirely upon the authority of the Commander in Chief and not under the authority of the army and was distributed accordingly that the Honble Company having been pleased to approve thereof and Moreover to add a further donation of an equal value and of a similar nature to wit Six months Batta the mode of the distribution thereof has in like manner been prescribed as your Petitioner had been informed by the Governor General at Bengal not that the accounts and issues thereof should be kept and made by the prize agents neither had he directed that they should be kept and made by the Paymaster but that the accounts and issues had been directed to be made and kept by the military auditor General and Lastly your

Petitioner

Petitioner said that the Complainants prayer that your Petitioner and the said Alexander Dirom Martin Hunter and James Anstruther might be decreed to deliver and pay unto him a one fifth of the whole of the Benefits &c. to them had and received upon the account of the distribution to the army of the said donation or gratuity given by the Commander in Chief on the part of the said United Company did in it self shew that the said action was not maintainable because it was a fair proposition to state that if your Petitioner and the other Defendants were entitled to the whole of the advantages consequent to the said distribution by virtue of their appointment as prize agents for the army they would have become entitled as of course to draw five per Cent on the amount thereof and the army could not have disputed the allowance of that Commission but the army did not regard that this donation did come under the discription of that property which they meant and intended that the prize agents should have the charge and destribution of because the donation was made to them in the form of that part of their Extra pay called Batta for the payment of which there was already an Officer appointed to the army by Government this Officer was not

not therefore associated to your Petitioner and the other Defendants as a joint prize agents but your Petitioner and the other three Defendants were associated to him and thereby became joint Pay Masters of the donation upon which they did not share the commission of prize agents but the emolument of the Exchange with the Paymaster The said appointment therefore of your Petitioner and the other Defendants to make the distribution jointly with the Paymaster was to all intents and purposes a new appointment in which they acted separately from the Complainant and also shared equally with the Paymaster and the Complainant was constrained to admit of this by the manner he brought his Bill wherein he has evaded making the Paymaster George Hoare a party altho he received One fifth of the emoluments which emoluments the Complainant contended he had a right to share in But as the Complainant hath declined making the said George Hoare a party he has thereby acknowledged his right to retain a fifth part of the said emoluments and if one fifth of this emolument is well retained the whole must of consequence be well retained and the Complainants action is therefore by a fair deduction from its own principles shewn to be groundless.

Dear Dirom

Dear Dirom—

By letters which have been received here I find you are at Madras I consequently address this to you there I some time ago received your very friendly letter of the 9th ult. I assure you I consider my self in a most particular manner obliged to you for the friendly & kind part you took to retain me in the agency indeed I solely hold my self indebted to you Hunter & Smart have seen a Copy of Mr. Mc. Corkills letter to you on the subject neither having trouble nor responsibility on the occasion I know not how far my claim could have been supported or even urged on my part but when we consider that every man in the army is subject to being Detached and that my being so was unsolicited was contrary to my Interest & contrary to my Inclination from these circumstances most moderate men will allow it would have been hard to have deprived me of the situation particularly as I had hopes of again rejaining the army as you have so fully manifested your friendly wishes towards me in this business I shall stand on no kind of ceremony in soliciting a continuance of your Goodness by begging you to endeavor what you can to have me removed to the army previous to the Commencement of next Campaign I consider my sharing in the late agency as a matter of favour from the other agents more than as a matter of right this being the case it would be unreasonable in me to hope for a Continuance of that indulgence particularly should the division of Prize money on a future occasion prove considerable this being the case and from many views totally unconnected with the agency I am very anxious to rejain before you again advance without my further urging it I know you will forward my views Colonel Harris has made many promises that I shall be ordered to join press him if you have an opportunity to do the needful I have this morning rec'd Baisers accounts &c. they will accompany this you will find with the other papers an order on Mr. Tulloh for 644 Pagodas which you had better receive while at the Presidency the other papers &c. relative to the prize business you can carry with you or send to Cainp. Enclosed is a list of the things you left at Coembatore with the amount for which each article sold & likewise is enclosed an order for the amount on my agent Mr. Tulloh the Liquor cases when I took it in charge was nearly full however some of my servants made free with it two old Coats &c. which I thought you would not wish to have sold I gave away—

Not

Not a Word of any thing New have we in this quarter a few of the enemy still remain on the Banks of the Bavanny And on this side but they are not in sufficient force to occasion any alarm — to keep the Country quite clear of an enemy would require an efficient force being Stationed on the Banks of the River near Danion Cottah but the whole of our force is not adguate without Subjecting them to great Risque from a Sudden desent of the enemy — General Abercrimby is expected to Return from Bambay to Tellechary About the beginning of October but it will at the Soonest the first of November before they Receive their Cattle to enable them to Move I Remain Dear Diram your Very Most Obliged —

J. Bannerman, —

Paleghanticherry
19th Septr. 1791 — 3

as Bowsers Bill on Mr
Tulloh is made payable to me
I have endorsed it — J B.

To Which Said answer of your Petitioner the Complainant did on or about the first day of October in the Said year of Our Lord One thousand Seven hundred And Ninety three file his Replication and Said that where there are Several prize agent appointed they are Jointly Responsible if as in the present instance they Jointly accepted of a trust and acted Jointly therein

and that the Complainant having been appointed Jointly with your Petitioner And the other Defendants in the Bill Named as Prize Agents to the Army and the Army having full powers to elect their own Agents for every duty in which they Were might or could be in any wise interested and these agents acting in the Said Trust did from the period of Such Appointment and of acting in the Said trust become Authorized to Receive on Account of the Army as well any donation or Gratuity given in the proportion and in Lieu of prize Money as any other Matter that might arise to the Army by reason of any Captured property and did become Jointly Responsible on Account thereof And denied that he was appointed by the Army as their prize Agent for the Sole purpose of Securing Captured and for no other duty Whatever but generally to perform Every act matter and thing for the benefit and advantage of the Army in which they might be in any Wise interested as well by Reason of any donation or gratuity in Lieu of prize Money as by Reason of any Captured property that might be converted into prize Money to the Complainant and the Complainant by his Said Replication Admitted that he did Write the letter to the Defendant Alex.r Diram Whereof a Copy is Annexed to your Petitioners Said Answer but that the Said Letter was not a public Letter nor meant or intended to be but of a private and Confidential Nature and Written at

a

a Moment when the feelings of the Complainant were as he
alleged all alive to the friendship which he fully believed
the Said Alexander Deram the Said Martin Hunter
And your Petitioner had Shewn towards him on the
opposition they had made to the Attempts of the Said
James Mc Cochill to injure the Interest of the Complainant
And that there was not any thing in the Said Letter Contained
that would amount to a Relinquishment of his Right as
prize agent Notwithstanding the Complainant did in
And by the Said Letter infer that not having trouble
or Responsibility on the Occasion he knew not how his
Claim could have been Supported or Even urged "And
the Said Complainant further Said that though he
delayed instituting his Suit in the Said Mayors Court
against your Petitioner until the Said Alexander
Deram and Martin Hunter had proceeded to Europe
And the Said James Mc Cochill had gone to Bengal
Such delay was Occasioned by the endeavours of the
Complainant to Settle the Matter in Dispute by
Amicable Means and that Notwithstanding the Assertion
of your Petitioner to the Contrary that his the Complainants
Powers as a Prize Agent were not Virtuously Revoked
by his Appointment to do duty With a detachment
under the Command of Major John Cuppage for
that a Revocation Must have come from the Army
by whom Complainant was Appointed or from the
Commander

Commander in Chief but that the Army did not Revoke the
Said Appointment nor did the Commander in Chief Signify
his Pleasure that the Same Should become Void And the
Said Complainant Admitted by his Said Replication
that Lord Cornwallis was the Donor of the gratuity in question
And that the Same was Made on the part and behalf
of the United Company of Merchants and the Said Complai-
=nant alleged that Lord Cornwallis did on granting the Said
Donation or gratuity direct that the Same Should be
Considered in Lieu of prize Money And be distributed by
the prize Agents of whom the Complainant as he also alleged
was one And the Said Complainant further Said that
although he did not ascend the Ghauts With the Army but
did Serve under Another Command yet that the Detachment
With which he so Served formed a part of the Army and
was as much under the Command of Lord Cornwallis as the
Army Over Which he more immediately Commanded at
Seringapatnam And that the Complainant had Nothing
to do With George Moore the Pay Master of the Army who
in being directed to issue the Said Donation or gratuity
acted not as a prize Agent but in his own Official
Capacity as Paymaster and that therefore he the Complainant
had no right Whatever to call the Said George Moore in
question before the Said Mayors Court And that had the
Complainant Made the Said George Moore a party to his
Said Bill as your Petitioner by his Said Answer

insisted

insisted he ought to have done the Complainant would have been irregular for that his said Bill is in the Nature of a Bill of discovery against your Petitioner and the other Defendants touching certain Sums of Money by them had and received on Account of the Petitioner as prize Agents of the Army Jointly with the Defendants And that although the Paymaster was Substituted And authorized by the Commander in Chief to Issue the donation or Gratuity to the Army yet that Complainant had not thereby any Cause of action against the said Paymaster nor could he have been legally made a party for that the prize Agents were generally directed to distribute the said gratuity for had it been otherwise they would have been particularly Named and that the direction of the Commander in Chief in Associating the Paymaster with the prize Agents did not in any wise alter the Appointment of the Prize Agents generally as is Evident by the general Orders of the Commander in Chief by whom Such Appointment was made - and your Petitioner Sheweth unto this Honble Court that he did on or about the day of in the said year of Our Lord One thousand Seven hundred and Ninety three file his Seperate Rejoinder and for Rejoinder to the Replication of the said Complainant Said that the Complainants said Replication did not Maintain or persue the Ground upon which he Commenced his action but attended to involve and draw into the Same point of discussion two Objects foreign

foreign to each other upon one of which the Complainant did not even pretend that there was any matter in dispute to Wit Prize Money And upon the other Not any legal demand can be Maintained to Wit Donation And that your Petitioners Answer drew a line of distinction between these two objects and ascribed to each its relative properties one Originating in Military Custom which established a Right in the Army to Captured property or Prize Money and by Consequence a Right to Confer a power to agents to possess it for that their general use and to make distributions of it According to the Same Custom to each individual of the Army entitled to a Share in it - and that Such agents were by the Same Custom entitled to draw five per Cent upon the Amount So distributed - the other object the Donation - Made by the Commander in Chief was not a Right but was a Gratuity taken upon himself - The Amount of which Donation or Gratuity was in proportion of Six Months Batta But your Petitioner Said that the Donation was not expressed to be in lieu of prize Money as the Complainant had designedly or Mistakingly described the Same to be throughout his pleadings And that the Donation differed from prize Money in as much as it was optional And might have been With held without injury to Wards the Army because they had no Right to what was given until it was possessed the Army could not demand it Nor hold any right in

expectancy

expectancy upon any event or Warfare but Solely from the free Will of the Commander in Chief who likewise directed the destribution of it that the Same Should be Made by the Prize agents and the Pay Master which prize agents only be meant by him to be Such As were on the spot at the time because the Said Commander in Chief by his Order declared that the prize Agents who make up the general Account Will be held Responsible to Government for any Errors or inAccuracies that May Appear between the general Amount And the Separate abstracts as well as for the Correctness of the Calcu=lations The Appointment of prize Agents by the Army your Petitioner hath Shewn was Made by the Army- the Commander in Chief Merely Approved the Choice that they Were for a different purpose- and Acted upon different principles And upon different Considerations to Wit the Army, and the Receipt of five per Cent for Captured — property or prize Money as agent for the distribution of the donation they Were Responsible to Government and the Adventurers Exchange of Panama Was the only profit that they Could possibly expect your Petitioner hath also Shewn that the Army did not regard the Donation in the light of Prize Money that the Commander in Chief Refused to allow of a Change of Five per Cent to be made upon the Said donation or that the Army Should be Charged With it that your Petitioner did not conceive

that

that the Advantages he derived Were from the Nomination of the Army but through the favor and indulgence of the Commander in Chief Who permitted him and the other Defendants to participate in the emoluments from the Said Exchange With the paymaster in order to Reward them for the trouble they personally had in Making up the Abstracts And Accounts And to bend them in Responsibility for the Justice and Accuracy of their Accounts that When it is considered that there was no right existing there could not be any to be Relinquished the Donation therefore Stood of it Self Not as a matter of Right but as a Mark of distinguished Approbation and liberality in the Commander in Chief to Wards the — Army independent of all Right Claim or demand by Military Custom or usage or other Wise And the Complai=nant doth in fact in his Replication admit of a distinc=tion between prize Money and the donation the destri=bution of which he Virtually acknowledged to have been directed by the Sole Authority of the Commander in Chief and not by the Appointment of the Army for he Said that notwithstanding the Commander in Chief in direc=ting the Said donation or gratuity to be issued by the prize agents and by the paymaster Must in the — Nature of things have considered him the Complainant as one of the agents on the Spot and therefrom Inferr that if any Responsibility by Reasons of the premisses attached

to

to the prize Agents that he would have been responsible to Government for any inaccuracies in the Accounts of the distribution of the donation or gratuity whereto your Petitioner said that it was not probable that the Commander in Chief could consider the Complainant to be at any other Spot than that to which he had appointed him and Contenued him Notwithstanding Repeated Solicitations to be removed from it to the Army Serving up the Ghauts Neither was it probable that the Commander in Chief could have an eye to the Complainant as one of the prize agents on the Spot appointed to distribute the said donation because by his general orders he expressly places the Responsibility of errors and inaccurancies on those prize agents and those only who should make up the general account whereto Signature was indoubtedly indispensible By Consequence the Complainant not being above the Ghauts at the time the donation was made the destribution was Regulated or the Accounts thereof Made up and Signed It cannot be presumed that the Commander in Chief could hold the Complainant Responsible to Government for a duty which it was not in his power to perform. the Complainant however wished to avail himself of this Voluntary offer of Responsibility because not any had been incurred as neither errors or inaccuracies appeared in the Accounts of your Petitioner and the other Defendants But it was not to be presumed that the Complainant would have been equally Ready to

Stand

Stand forward to Answer any Responsibility that might have been incurred by the errors or inaccuracies of your Petitioner and the other Defendants had such errors happened But on the contrary that he would in that case have Availed himself of the said order of the Commander in Chief which limited the Responsibility to Such of the Agents only as should Make up the Accounts of the destribution of the Donation Which Shewed on What Vague and Shallow grounds the Complainant hath attempted to establish a right to any emolements on the destribution of the donation in question by implicating it one time with prize Money at other times in lieu of prize Money and again by admitting of the distribution but inferring his Right from premisses that are incoherent and impossible and at any Rate to partake of Advantages Without either trouble or Responsibility — And your Petitioner Said that the Argument of the Probability of an Officer being a prize Agent and detached and joining again had Nothing Analogous with the present State of the Case either as to fact or Circumstance And that the Letter Copy of Which was Annexed unto your Petitioners Answer was evidently a Letter of business — Notwithstanding the familiarity of its address And had Relation to the purposes for which it was produced to Wit to Shew that the Complainant regarded a participation of prize Money to him upon the objections thereto by the Defendant James McCrohill as a Matter of favour from the other Agents and not as a Matter of Right and

by

by a Stranger Argument Drawn therefrom to Shew that he could not be entitled to any emolument on the donation which was of a different Nature and arising from a different Authority and a different Source —

And your Petitioner Said that the Complai= =nant ought to have Made the Said George Hoare a party to the Said Bill because the Said George Hoare received a fifth of that Whole of which the Complainant demands a fifth — and your Petitioner Sheweth unto this Honble Court that upon the before Recited 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 as also one Witness on the part and behalf of your Petitioner and your Petitioner Sheweth that Barry Close Adjutant General in the Service of the Honble Company examined on the part and behalf of the Complainant did to the Second Interrogatory depose that it Was and had been customary to the Deponents Recollection since the year One thousand Seven hundred And Seventy eight for the Troops Serving in the Field on the Coast of Co= =romandel to appoint Prize Agents for the purpose of taking Charge of and otherwise Managing all captured Property And to guard and protect the interest of the said Troops in Regard to Such Captured property And to Receive and take Charge but the Deponent Said that he did not Recollect any — Circumstance Whereby the Said Troops became entitled unto upon or by Reason of any terms the Enemy Might have made by Way of ransome for any Fort Town or Factory to preserve the

the Same from being entered or plundered the Deponent Said that it Was customary for Such prize Agents to take Charge of Any Monies that the Said Troops Might become entitled unto by Reason of plunder of any Fort Town or factory but the Deponent did not know of any instance Where in the prize Agents took Charge of Monies to which the Said Troops became entitled by Reason of any donation or Gratuity in lieu of prize Money the Deponent Said he Recollected that at the Seize of Tanjore in the year One thousand Seven hundred and Seventy three the Nabob of Arcot granted to the Troops in lieu of plunder or prize Money ascertain Sum of Money but did not Remember Whether the Same was or Was not distri= =buted by Prize Agents appointed by the Army the Deponent Said that the only donation Which Was ever given to the Said Troops to the best of his recollection Was that Which in the late War against Tippoo Was granted to the Army by Lord Cornwallis and was in consequence of an Order from him issued by the Prize Agents and the Paymaster to the Army the Deponent Said that he had Always considered that Such Agents do from the time of their appointment become Responsible Jointly and Seperately to the Whole Army for and on account of all captured property and for and on Account of all Monies that May become the property of the Said Troops by Virtue of any terms of capitulation the Deponent Said he Supposed that in the above instance of the donation granted by Lord Cornwallis that the Said prize Agents and Paymaster became Responsible to Government

for the

for the due Execution of their trust as appeared by following Extract of General orders issued by Lord Cornwallis bearing date first May One thousand Seven hundred and Ninety Two "When the "Whole of the Gratuity has been issued the General account thereof "accompanied by the Original gratuity Abstracts delivered by the "Officers is to be transmitted to the Military Auditor General for his "Examination and should the prize Agents who make up the General "account will be held Responsible to Government for any errors or "Inaccuracies which may appear between the General "account and the Seperate Abstracts as well as the Correctness "of the Calculations and the Paymaster is to be held Responsible "to Government that the Rule is observed of paying the "Gratuity According to the Batta which each Rank or Officer is entitled to And to the third Interrogatory the said Witness did depose that the Commander in Chief desired the army to Choose Prize agents who do so by election and Send their Votes to the Adjutant General who reports to the Commander in Chief the Persons who have the Majority of Votes for his Approbation after which their Names are Notified in the general Orders of the Army and that this Mode was observed in the late War And to the fourth Interrogatory the said Witness did depose that the Army under the Command of General Medows during the last War with Tippoo Sultan did about the Tenth day of June One thousand Seven hundred and Ninety proceed to Nominate And Appoint And did Accordingly Nominate And Appoint Captain Martin Hunter And Alexander Dirom on the part of the Kings Troops And Major Charles Smart And Captain Alexander Bannerman on behalf of the Company Coast Troops

And that the Persons so appointed Were Reported by the Adjutant General to General Medows then in Command of the Army and that he did Cause to be issued a General order thereupon on the Seventh day of June One thousand Seven hundred and Ninety and that the said General Orders was in Approbation of all the Persons so Appointed Agents as aforesaid the Deponent said that the Complainant did upon and by reason of Such his appointment as agent as aforesaid entereupon the duties of the said office and that he did as the Deponent always understood deligently attend to the faithfull discharge thereof and arrange and Settle the accounts thereof and did as far as in him lay every thing Necessary to be done therein - And to the fifth Interrogatory the said Witness did depose that a Detachment of Troops from Bengal did about the Month of November One thousand Seven hundred and Ninety Join the Army the Deponent said that the said Bengal detachment did in Order that they Might be equally represented proceed to Nominate and Appoint and did Accordingly Nominate and Appoint the Defendant James Mc Cockill as their Agent And that the then Commander in Chief Lord Cornwallis did in Consequence and in Approbation thereof cause to issue general Order bearing date the tenth day of March One thousand Seven hundred and Ninety one And to the Sixth Interrogatory the said Witness did depose he knew that the Defendants Martin Hunter and Alexander Dirom Were Nominated Prize Agents during the last War With the Tippoo on behalf of the Kings Troops the Defendant Charles Smart and the Complainant John Bannerman on behalf of the Coast Troops

and the Defendant James Mc. Cochill on behalf of the Company's Bengall Troops the Deponent Said that the Whole of the said Prize Agents so appointed on the part and behalf of the Army were on the Twelfth day of December one thousand Seven hundred and Ninety one also Nominated and Appointed Prize Agents on the part of the Honble Company and that he believed the purport of the Order issued by Government in Consequence thereof was as follows— "The Gentleman acting as Prize Agents on behalf of the Army to be Prize agents on behalf of the Company for the Company's Moiety of Stores and Provisions Captured from the Enemy— And to the Seventh Interrogatory the said Witness did depose that the Complainant in the title of the Interrogatories Named did about five Months after his Appointment as one of the Prize agents of the Army receive orders to Join and that he did in consequence thereof Join a Detachment of Troops Serving in the Coembatore Country the Deponent Said that the Coembatore Country the Deponant said that did then belong to Tippoo and that Such detachment was under the Command of the General commanding the Army— And that the said detachment did co-operate with the said Army against Tippoo— And to the Tenth Interrogatory the said Witness did depose that he had not heard that James Mc. Cochill in the title of the Interrogatory Named had Made Any Representation in Writing to Alexander Dirom Martin Hunter and Charles Smart in the Stile of the Interrogatory Named against the Complainant by reason of his being below the Ghauts and to exclude him from the said Prize agency— And to the

Twelfth

Twelfth Interrogatory the Said Witness did depose that Preliminaries of Peace were Settled with Tippoo Sometime on or about the Month of February one thousand Seven hundred and Ninety two and that the then Commander in Chief Lord Cornwallis did express his intentions to take upon himself to Order a handsome gratuity to be distributed to the Troops in the Same proportion as prize Money in consideration of the uncommon Valour and firmness Manifested by the Officers and Soldiers of the King's and Company's Troops during the Whole course of the War the Deponent said that the Commander in Chief did in consequence thereof on the Twenty eighth day of February One thousand Seven hundred and Ninety two Cause a General order to be issued as follows: Abstracts to be sent immediately to the prize agents stating the Amount of a Months Batta for each corps in the form that will be given to the Majors of Brigade in which all officers and Men who were present with their Corps in the field or Sick or on duty any Where in the Mysore Country above the Ghauts on the first February are to be included Such Men as have since deserted only excepted the Deponent Said that the Commander in Chief did afterwards ascertain the amount of the said gratuity or donation by him Promised to the Army and that he did on the Twenty fifth day of March then following Cause a general order to be issued as follows "Lord Cornwallis informs the Army that Six Months Batta Will be issued to the Troops on descending the Ghauts as the gratuity formerly intimated to be discharged from the Money paid to the Company by Tippoo Sultaun and issued by the Prize agents and the Paymaster the Deponent Said that the

the Said Commander in Chief did also on the first day of May One thousand Seven hundred and Ninety two cause to be issued another general Order an Extract of which is as follows - When the Whole of the Gratuity has been issued the General Account thereof accompanied by the Original gratuity abstracts delivered by the Officers is to be transmitted to the Military Auditor General for his Examination and Audit the Prize Agents who make up the General for his Examination and Audit the Prize Agents who make up the General Account will be held Responsible to Government for any errors or inaccuracies which may appear between the General Account and the seperate abstracts as well as for the correctness of the Calculations and the Paymaster is to be held Responsible by Government that the rule is observed of Paying the Gratuity According to the Batta which each Rank or Officers is entitled to - And to the thirteenth Interrogatory the Said Witness did depose that in the case where there are Many Prize Agents it is not as the Deponent Supposed in the power of the Majority thereof to dismiss or set aside any one of their Number by Reason of his being ordered on detachment to a Situation in the field at some distance from the Army without the knowledge or approbation of the Said Army And of the Commander in Chief thereof the Deponent said that the Complainant was not ever dismissed from his said Office of Joint prize Agent by the army or the Commander in Chief or with their knowledge and approbation, and your Petitioner Sheweth that Arthur Gibbings a Captain in the Honble Company's Service - to the Second Interrogatory on the part and behalf of the Complainant did

depose

depose that it was and had been the Custom Since the year One thousand Seven hundred and Seventy eight in time of War for the Troops Serving in the Field on the Coast of Coromandel to Appoint prize agents for the purpose of taking Charge of and Managing all captured property and to guard and protect the Interest of the said Troops in regard to Such captured property and to Receive and take Charge of all Monies to which the Said Troops might become entitled Upon by reason of any terms the Enemy might make by way of ransom for any Fort Town or factory to preserve the same from being entered or plundered or upon or by reason of the plunder of any Fort Town or factory and in the late War with Tippoo Sultan to Receive and take Charge of Such donations and gratuities as were granted in lieu of prize Money and which were conferred in Testimony of and as a Reward for distinguished Services the Deponent Said that he conceived that Such agents from the time of their Appointment as aforesaid do become Responsible Jointly and Seperately to the Whole Army for and on Account of all the Captured property and for and on account of all Monies that may arise upon or by Virtue of any terms of Capitulation and other Matters and things as herein before interrogated unto And to the third Interrogatory the Said Witness did depose that the prize agents were generally chosen and were so in the late War With Tippoo by the army the Deponent Said he concluded that the Said agents when chosen were reported by the Adjutant General to the Commander in Chief for his Approval as their - appointments as prize agents Were Notified in general Orders of the army - And to the fourth Interrogatory the Said Witness

did

died depose that the Army under General Medows died during the last War with Tippoo Some time on or about the Tenth day of June one thousand Seven hundred and Ninety proceed to Nominate and Appoint and did accordingly Nominate and Appoint Captain Martin Hunter Alexander Deram Major Charles Smart and the Complainant in the title of the Interrogatories Named Prize agents the Deponent Said that he concluded that the Said persons so appointed Were reported by the Adjutant General to General Medows then in Command of the Said Army and that he did Cause to be issued a general Order thereupon on or About the Eighteenth day of June one thousand Seven hundred And Ninety the Deponent Said that Such General Order Was in approbation of the Whole of the Said Persons So Appointed Agents as aforesaid the Deponent Said that the Complainant did upon And by reason of Such his Appointment as agent as aforesaid enter upon the Duties of the Said Office the Deponent Said that the Complainant did deligently attend to the faithfull discharge thereof and Arrange and Settle the accounts thereof and did as far as in him lay as the Deponent firmly believed every thing Necessary to be done therein And to the fifth Interrogatory the Said Witness did depose that a detachment of Troops from Bengal did after the Nomination and Appointment of the Said Prize agents but he did not recollect how long after Join the Army the Deponent Said that he had been

been informed that the Said Bengal detachment in Order that they might be equally represented did proceed to Nominate And Appoint and did Accordingly Nominate and Appoint the Defendant James Mc Cochell as prize agent on their behalf of the Deponent said that he Was detatched from the Army on the tenth day of March one thousand Seven hundred And Ninety one and therefore could not Say Whether the Commander in Chief did or did not in consequence and in Approval thereof cause to issue a general Order bearing date on that day — And to the Ninth Interrogatory the Said Witness did depose that he had heard and believed that Some after the Appointment of the Complainant in the title of the Interrogatories Named as one of the Prize agents for the Army James Mc Cochell also on the title of the Interrogatories Named did make a Representation in Writing to Alexander Deram Martin Hunter And Chas Smart Also in the title of the Interrogatories Named Against the Complainant by Reason of his being below the Ghauts and exclude him from the Said Prize Agency the Deponent said he had heard from the Said Alexander Deram and the Said Charles Smart that the Said Alexander Deram Martin Hunter and Charles Smart did Reject the Same and that in consequence it Was With drawn by the Said James Mc Cochell and to the Tenth Interrogatory the Said Witness did depose that the Complainant did continue to participate in the Emoluments benefits And Advantages Arising from the Said Prize agency from the time of his Appointment of Prize agent Jointly With the Said Alexander

Deram

Diram Martin Hunter Charles Smart and James McCochill
Without any objection or interruption Until Some time on or
about the Month of March one thousand Seven hundred &
Ninety Two - And to the thirteenth Interrogatory the Said
Witness did depose that he conceived that in the Case where
there are many Prize agents it is not in the power of the
Majority thereof to dismiss or Set a Side Any one of their
Number by reason of his being ordered on detachment to a
Situation in the Field at Some distance from the Army
Without the knowledge and Approbation of the Said
Army and of the Commander in Chief thereof the Deponent
Said that the Complainant in the Title of the Interrogatories
Named Was never dismissed from his said Office of
Joint Prize agent by the Army or the Commander in Chief the
Deponent said that it Was reported to the Army that the Defendant
had excluded the Complainant from his said Office of Joint
Prize agent which as far as the Deponent could ascertain
Met With the dis approbation of the Army and he had
heard that it also met With the dis approbation of the
Commander in Chief Lord Cornwallis - And to the fourteenth
Interrogatory the Said Witness did depose that in a
Conversation Which he had With the Defendants Chas
= Smart or Alexander Diram but he did not at that time
Recollect Which and Some time but he could not Say
how long after the Complainant left the Grand Army and
proceeded to join the Detachment in the Coembatore Country
the Deponent said he Would readily undertake to act

for

for him the Complainant in any Part of his Duty as Joint
Prize agent during his absence the Deponent Said he did
not Recollect the exact Answer he Received but he believed it
Was that they had no occasion for his the Deponents Assistance
And your Petitioner Sheweth that Alexander Allen Town
Major of Fort St George to the Second Interrogatory on the —
on part and behalf of the Complainant did depose that it Was
And had been the Custom to the best of the Deponents belief since
he came to the Country about fourteen years then last past
And in the time of a War for the Troops Serving in the —
field on the Coast of Coromandel to Appoint prize Agents
for the purpose of taking charge of and Managing all —
Captured property and to guard and protect the Interest
of the said Troops in regard to Such Captured property
And to Receive and take Charge of all Monies to which
the Said Troops might become entitled unto upon or by
Reason of Any terms the Enemy might Make by Way of
Ransome for any Fort Town or Factory to preserve the Same
from being entered or plundered the Deponent Said that
he understood it Was customary for the prize agents to take
Charge of and receive all Monies arising from the plunder of
any Fort Town or Factory but Said that he did Not know
of any instance Wherein any donation or Gratuity had been
granted in Lieu of Prize Money And that the only —
instance of a donation or gratuity being granted to the
Troops to the knowledge of the Deponent Was that granted
by Lord Now Marquis Cornwallis to the Army at Seringa-
patnam —

Seringapatnam and that in Consequence of the uncommon
Valour and firmness that had been uniformly Manifested
by the Officers and Soldiers of the Kings and Company's
Troops during the Whole course of the late War. His Lordship did
take upon himself to Order a gratuity to be distributed to
them in the Same proportion as prize Money and which the
Deponent said was ordered to be issued by the Prize
Agents and the Paymaster to the Army the Deponent said
that Agents as the Deponents conceived dos from the time of the
Appointment as afore interrogated unto became Responsible
Jointly and Seperately to the Whole Army for and on account
of all captured Property and for and on Account of all
Monies that may arise upon or by Vertues of any terms
of Capitulation and other Matters and things as herein
before interrogated unto And to the third Interrogatory
the said Witness did depose that the Commander in Chief
General Medows did in a General order on the tenth June
One thousand Seven hundred and Ninety desire that two
Prize Agents might be recommended to him by the Kings
Officers and two by the Company's Officers and that the
said Commander in Chief did in the same order desire
the Commanding Officers of the Regements And Corps to
Assemble their Officers for that purpose in the Course of the
Next day and to Make a report to the Adjutant General
of the Number of Votes for the Several Candidates And
further that the said Commander in Chief did in the Same
General Order desire Officers not belonging to any Corps in
Camp

Camp to Send their Votes Seperately to the Adjutant General
And to the fourth Interrogatory the said Witness did depose
that the Officers of the Army under the Command of General
Medows during the last War with Tippoo Sultan did as
he believed some time on or about the Eleventh day of June
One thousand Seven hundred And Ninety proceed to Vote
for Prize Agents and that those Votes were as the Deponent
believed reported to the Adjutant General for the information of
the Commander in Chief and that General Medows did as the
Deponent believed on the Seventeenth day of June One thousand
Sen hundred and Ninety Cause to be issued a General Order
that in Compliance with the Order of the tenth of the said
Month of June One thousand Seven hundred And Ninety
the Adjutant General had reported that the Vote for the
Prize Agents Wherein favor of Captains Hunter and Diram
on the part of the Kings Troops and of Major Smart and
Captain Bannerman on the part of the Company's Troops and that the
Commander in Chief did in the Same order Appoint the said
Captain Hunter and Diram Major Smart and Captain —
Bannerman to be Joint Prize Agents for the Army the —
Deponent said that the Complainant died by Reason of Such
his appointment as Agent entering upon the duties of his said
Office and that he did deligently Attend to the faithful discharge
Discharge thereof and Supposed that he did Arrange and
Settle the Accounts thereof And did as far as in him lay
every thing Necessary to be done therein - And to the fifth
Interrogatory the said Witness did depose that a —

detachment

Detachment of Troops from Bengal did some time after but he did not recollect how long the Nomination and Appointment of the said Prize agents Join the Army and that the said Bengal detachment did in Order that they might be equally represented proceed to Nominate and appoint and that they did Accordingly Nominate and Appoint the Defendant James Mc Cockell as their agent the Deponent did not recollect Whether the Commander in Chief Lord Cornwallis did or did not in Approbation thereof Cause to be issued a general Order And your Petitioner Sheweth that William Collins Jackson Military Secretary to the Govern.t of Fort St George to the Sixth Interrogatory on the part and behalf of the Complainant deposed that he believed the Complainant and the Defendants Were the Prize agents Nomi=nated by the Army the last War with Tippoo and that they Were afterwards Nominate and Appointed Agents on the part of the Honble Company for the Moiety of the Captured Stores and Provisions which they the Company had Reserved to themselves by an Order dated Twelfth December One thousand Seven hundred and Ninety one as follows "the Governor in Council has been pleased to appoint the Gentlemen who "Now act as Prize agents on behalf of the Army to be "Agents also on the part of the Honble Company for the Moiety "of Captured Stores and Provisions which they have Reserved "for themselves — And to the Eighth Interrogatory the Said Witness deposed that Major Cuppage commanding the Said detachment Serving in the Coimbatore Country died on the Eighteenth day of January One thousand Seven hundred and Ninety two direct Lieutenant Fireworker Madder and Lieutenant Henry Hall to act conjointly with the Company's Agent Major of Brigades Bannerman And did Report the Same to Government And that the Governor in Council did in Consequence of Such Report from Major Cuppage Resolve that Lieutenant Hall and Lieutenant Fireworker Madder Agents for the detachment be considered also as acting on behalf of the Company Captain Bannermans Appointment of Agent having Relation only to the Grand Army — And to the Eleventh Interrogatory the Said Witness deposed that Preliminaries of Peace between the Company and Tippoo Were Settled Some time on or About the Month of February One Thousand Seven hundred and Ninety two the Deponent Said that the Commander in Chief Lord Cornwallis did in a Letter to Government dated Second March One thousand Seven hundred and Ninety two inform them that he had promised an hand some gratuity to the Troops Whose expectations Were raised perhaps too high at the prospect of entering Seringapatnam in a few days and who had at that time every Claim to Reasonable Consideration the Deponent cannot Say Whether the Commander in Chief did or did not in consequence thereof cause a general Order to be issued And to the Last Interrogatory the said Witness deposed that to a Letter from the Defendants to Government dated twenty Second day of January One thousand Seven hundred and Ninety two expressing their Acknowledgements to

to Government for the honor done them by the order of the
Twelfth December One thousand Seven hundred And Ninety
one as above set forth there was the following Postcript
NB Captain Bannerman who is not at present With the
army is also one of the Agents And your Petitioner Sheweth
that Robert Turing Bregade Major and in the Service of the
Honble the East India Company to the tenth Interrogatory
on the part and behalf of the Complainant did depose that
the Complainant did Continue to participate in the Emoluments
benefits and advantages arising from the said Prize Agency
from the time of his Appointment of Prize agent Jointly
With the said Alexander Dirom Martin Hunter Charles
Smart And James Mc Cockill Without Any objection or inter=
=ruption untill some time on or About the Month of March
One thousand Seven hundred And Ninety two And to the
thirteenth Interrogatory the said Witness did depose that
in the Case where there are many Prize agents be conceived
it was not in the power of the Majority thereof to dismiss or
Set a Side Any one of their Number by reason of his being
ordered on detachment to a Situation in the field at Some
distance from the Army Without the knowledge and appro=
=bation of the said Army And of the Commander in Chief thereof
the Deponent said that the Complainant Was not ever dismis=
sed from his said office of Joint Prize agent by the Army
or by the said Commander in Chief or With their knowledge
and approbation - And to the last Interrogatory the said
Witness did depose that during the absence of the

Complainant

Complainant from the Army or detachment there were many
of his Friends With the Army Who the Deponent knew tendered
their Services to the Defendants to the Defendants and who
Would have willingly undertaken any Part of his the
Complainants duty as Joint Prize but the Defendants
said they did not require any assistance And your Pet.r
Sheweth that John Tulloh of Madras Merchant to the
Twelfth Interrogatory on the part and behalf of the Complainant
did depose that he understood the usual allowance to Prize
Agents by Way of Commission as five per Cent and that he
imagined in a case where there were several Prize agents
it was usual to devide the Profits and emoluments of the
said Trust and share alike - And your Petitioner Sheweth
that Barry Close Adjutant General in the Honble Company's
Service to the Second Interrogatory on the part and behalf
of your Petitioner did depose that he was Adjutant General
in the Military Service of the United Company of Merchants
of England trading to the East Indies under their Presidency
of Fort St George and that he had served in that Station
Since March One thousand Seven hundred and Ninety
two and that his office affords him an opportunity of
observing the detail of the said Military Service and the usages
and Customs thereof the Deponent said that the Army then
under the Command of Major General William Medows
in the late War with Tippoo Sultan on or about the Tenth
day of June One thousand Seven hundred and Ninety did
proceed to Nominate And appoint and did on the

Seventeenth

Seventeenth day of June Nominate and appoint the Complainant and the Defendants Martin Hunter Alexander Dirom and Charles Smart and that such appointment Was Notified in general Order of the Seventeenth day of June One thousand Seven hundred and Ninety as follows "In compliance with the Order of the Tenth Instant the Adjutant General Reports that the Votes for Prize agents and in favor of the following Officers from the Kings Troops in favor of the Captains Hunter and Dirom from the Company Troops in favor of Major Smart and Captain Bannerman the Commander in Chief is pleased to Appoint the above Named Officers to be Joint Prize agents for the army the deponent said that he did not know that the said Prize agents Were Appointed for any other purpose than was so expressed in the said general Order and to the third Interrogatory the said Witness did depose that he did Serve With the army that ascended the Ghauts under the Command of Lord Now Marquis Cornwallis in the late War against Tippoo Sultan the Deponent said that his Lordship died on or about the Twenty fourth day of February One thousand Seven hundred and Ninety two as Commander in Chief of the said Army And after Preliminaries of Peace had been Settled between the Confederate Powers and Tippoo Sultan declare in Public orders his intention to take on himself to Order a handsome gratuity to be distributed to the Officers and Soldiers of the Kings and Company's Troops who Served above the Ghauts the Deponent said that the Commander in Chief died on or about the Twenty fifth day of March One thousand Seven hundred and Ninety two inform the Army in general orders that Six Months Batta Would be issued to the Troops on discending the Ghauts as the intimated gratuity the Deponent said that the said Commander in Chief did on or about the first day of May in the said year One thousand Seven hundred and Ninety two publish a General Order to the tenor and effect following to Wit "When the Whole of the Gratuity has been issued the General Account thereof Accompanied by the original gratuity abstracts delivered by the Officers is to be Transmitted to the Military Auditor General for his examination and Audit the Prize Agents Who Make up the general Account will be held Responsible to Government for any errors or inaccuracies Which May appear between the general Account and the Seperate abstracts as well as for the correctness of the Calculations and to the fourth Interrogatory the said Witness deposed that he Was Adjutant General of the Army, at the time When the said General order of the first day of May Was issued the Deponent said he had in general an opportunity of knowing the Spirit and intent of the general orders issued the Deponent could not pretend to say what Person or Persons particularly by Name Would have been held Responsible by Government for any Errors or inaccuracies that Might have appeared between the Genl. Account and Seperate Abstracts in the said General order Mentioned but he conceived that the order explained its own intention by stating that the Prize agents Who Make up the General Account Will be held Responsible

Two

Responsible or Accountable by Government for Such in-
accuracies the Deponent Said that the Said Gratuity Was
Issued by George Moore Esqr. Paymaster to the Army in
conjunction with the Defendants but that they Were not
Associated therein by Name by the express order of the
Commander in Chief the Said order Mentioning that the
Said Gratuity Was to be Issued by the Prize Agents &
the Paymaster the Deponent Said that he conceived that
the Said Persons Who So Issued the Said gratuity as
having derived their Authority for so doing from the
Commander in Chief the Deponent Said that the Said
Gratuity Money was Seperate And distinct from Prize
Money the Deponent Said that he conceived the Said
Prize Agents Merely as Such And in Virtue of their
Office of Prize Agents could Not have in Any Wise
interfered in the Disposal destribution of the Said
the deponent ogain that he did consider the Issuing of the said Gratuity
Gratuity And the Office of Prize Agents as distinct depart-
=ments the Deponent Said he had understood that the
Prize agents were entitled to a Commission of five
per Cent upon Captured property the Deponent Said that
they were not entitled by any Public Order or public
Agreement to any commission or emolument upon the
donation the Deponent Said that it Was generally
understood And he believed that the then Paymaster
George Moore According to the Course of the Service did
derive Some benefit in the exchange or Issuing the
Said donation the Deponent Said he had heard that
the

the Said Defendants did participate With the Said George
Moore therein but had not heard upon what particular
Grounds More then that of their having been Associated with
him in the distribution the Deponent Said he had heard that the
Subject of the present Suit So far as relates to the Said
Complainant was to be Admitted to a participation or Share of
Such emolument And to the fifth Interrogatory the Said
Witness deposed that the Complainant as an Officer in the Army
did not Share Nor was he entitled to Share in the Said gratuit-
=ty because he was below the Ghauts the Deponent Said that
all the Defendants did participate therein because they were
above the Ghauts the Deponent said that the Complainant Was
detached from the Grand Army to the Coimbatoor Country in conse-
=quence of an Order dated Twenty Seventh December One thou-
=sand Seven hundred And Ninety and that he Served therefrom
on detachment till the end of the War And your Petitioner
Sheweth unto this Honble Court that after Examination of
Witnesses Publication did pass in the Said Cause and the
Same was set down for 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 thirteenth
Day of the Present Instant December and year of Our Lord one
thousand Seven hundred And Ninety Six the Said Mayors-
Court Was pleased to Order And Decree And did Accordingly
Order and Decree that your Petitioner do pay unto the
Complainant the full And just Sum of Two thousand Nine-
=hundred And Sixty Five Pagodas and twenty Seven
fanams being the one fifth Share of the Emoluments received

by

by the Prize agents on the Donation exclusive of Paymasters Share also all Costs of this Suit as by Copy of the said Decree together with an Original Extract properly attested by the Register of the said Mayors Court which said Extract contains the dissent of the Mayor and Messrs. Aldermen Call Webb, and Ross to the Decree of the said Mayors Court for the Reasons in the said Extract Contained / 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 Decree of the said Mayors Court 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 among other Reasons. —

First Because that the Appointment and Office of Prize Agents and the Office of Distributers of the Donation or Gratuity Were Several Seperate totally distinct and in no way whatever connected The one being created by the Choaiff Suffrage of the Army at large and the other by the express Nomination and authority of the Commander in Chief who by his Order of the first day of May in the year of Our Lord One thousand Seven hundred and Ninety two directs "that the Prize Agents "who make up the general account will be held — Responsible

"Responsible to Government for any Errors or Inaccuracies which "May appear between the General account and the sepe= "-rate abstracts as well as the Correctness of Calculations "&c. Now your Petitioner is advised Such Responsibili= =ty could in no way attach itself to the Complainant nor Can it be Reasonably presumed that the Complainant who at the time when such Order Issued was absent from the army that Shared in the Donation could have been included in the Order which in itself is positive and Very properly attaches Responsibility to those only who make up the Accounts and were then upon the Spot where and when such order was Issued nor could the Commander in Chief in the Nature of things have Meant or intended to have held the Complainant Responsible or Accountable for the acts of your Petitioner and the other Defendants whom he particularly associated With the Paymaster for the Very Warding of the aforesaid Order issued by the Commander in Chief as aforesaid to Wit the Prize agents who make up the accounts shall be held Responsible for any errors or in Accuracies &c. Would had there been any Such errors or in accuracies have protected and Sheltered the said Complainant in the Premises being himself absent when Such Accounts Were adjusted and Made up, and consequently not in any degree interested therein Nor was he by Such his Absence to participate in Such donation as the Same Was given granted and Issued to Such only as were then and at that time actually Serving above the Ghauts and the the Complainant by his Bill alleges that he — in

Consideration

Consideration of the Responsibility and trouble which was thrown upon him was entitled to Share in advantages resulting from Issuing the Donation, yet the Complai=nant by his own Letter expresly declares as follows to Wit "Neither having trouble Nor Responsibility on the occasion I know Not how far my Claim could have been Supported or even urged on my part." and in a Subsequent part of the Complainants said Letter he expresses himself in the following Words to Wit "I consider my Sharing in the late Agency as a Matter of favor from the other Agents More than as a Matter of Right. this being the Case it Would be unreasonable in me to hope for a continuance of that indulgence parti=cularly Should the Division of Prize Money on a future occasion prove Considerable" Which of itself clearly evinces that the Plaintiffs allegation in his Bill contained and which alone is the Ground and foundation of his Claim is not founded in fact and no other than a Mere trifling And bare assertion And your Petitioner has been Advised on Refering to the Testimony of Barry Close who has been examined as Well on the part and behalf of the Complainant as on the Part and behalf of your Petitioner that he has expresly and decidedly deposed to a Very essential fact and which is in Substance as follows on being interrogated touching the Nature and Office of Prize agents he deposed that he conceived the said Prize agents

merely

Merely as such and in Vertue of their office of Prize agents could not have in any wise interfered in the destri=bution of the Gratuity, and that he did consider the Joining the said Gratuity and the Office of Prize agents as distinct departments, and further deposed that the Complainant as an Officer in the Army, did not Share nor was he entitled to Share in the Gratuity because he was below the Chants, but that your Petitioner, and the other Defendants did participate therein because they Were above the Chants and the said Witness on being interrogated as to his belief What Person or Persons would have been held Responsible by Government for any errors or inaccuracies that might have appeared between the General Account and Seperate Abstracts he conceived that the Order explained its own intention by stating that the Prize agents who make up the general Account Would be held Responsible to Government but Could Not pretend to say Whether the Complainant Would or Could have been held Responsible or Accountable to Government for Such inaccuracies Now your Petitioner is advised from the before in part recited testimony of the said Barry Close it Clearly appears that the Complainant could not by Vertue of his Office of Prize agent have interfered in the distribution of the Gratuity: that the Appointments were altogether distinct, and that the Complainant did not Share in the donation Nor Could your Petitioner and the other Defendants in Case inaccuracies

had

had Appeared on the Accounts have Made the Complainant Responsible and in which Event it is but fair and just to presume that the Complainant Would have recurred to the aforegoing Order and have alledged that the Commander in Cheef had in Such Order directed and expressed that those only who Made up the Accounts could have been bound for their accuracy And the Complainant being Absent when Such Accounts Were Made up could not have been blamed for their in Accuracy consequently he Would Consider and hold himself exonerated from any Obligation Respecting those Accounts. And your Petitioner is Advised that Such said plea of the Said Complainant Must inevitably have prevailed from the Circumstances before Stated and Added thereto the Said Complainant Admitting Error had crept into the Accounts had a Mother String to his Bow, and which Would have been Refering your Petitioner and the other Defendants to the Letter by him as aforesaid Written to one of the Said Defendants — Wherein he expresses himself in Words following "Neither "having trouble Nor Responcibility on the occasion I know not "how far My Claim could have been Supported or even "urged on my part: And in a Subsequent part of the Said "Letter the Said Complainant thus expresses himself — "I Consider My Sharing in the late Agency as a Matter "of favour from the other Agents More than as a matter "of right this being the Case it Would be Unreasonably "in Me to hope for a Contenuance of that indulgence —

particularly

Particularly Should the Devision of Prize Money on a future occasion prove considerable Now your Petr is Advised from the aforegoing recitals had it So happened that a deficiency had Appeared in the Accounts relative to the Issuing out, and destributing the Said donation and Applic=cation had been Made by your Petitioner and the other Defendants to the Said Complainant to contribute his proporti=onate Quota or Share towards the Making good Such Said deficiency he the Said Complainant it is but Justice to presume Would have referred your Petitioner and the Said other Defendants to the Said Letter before alluded to Whereby they Might perceive that the Portion or part of the emoluments Arising from and out of the Office of Prize Agents, which had been previously handed over, and paid, by your Petitioner and the other Defendants, to the Said Complainant as and on Account of his part or share therein he held. And Considered as an Act of generosity and friendship and not as a Matter of right and further declared that it Would be Unreasonable in him to hope for a continuation of that indul=gence particularly Should the Devision of Prize Money on a future occasion prove considerable, this Circumstance your Petitioner is Advised Merits the particular attention of this Honble Court for had the balance proved to have been on the other Side of the Scale your Petitioner is Advised holding as he and the other Defendants did Such the Letter of the Said Complainants, they Could not have compelled him to have contributed in Making good any

deficiency

Efficiency which Might have Arisen in the Adjust=
=ment of the Said Accounts as by Referring to the Said
Letter the Complainant had expresly Relinquished every
Idea touching his right and Acknowledged to have Received
what he had No Right to Claim from the foregoing circum=
=stances then your Petitioner conceives it to be an Equitable
Principle that those only Who incur a Risk and are
held Responsible for any expres and particular Act have
any pretention to participate in any emolument finally
attendant upon Such risk and Responsibility and your
Petitioner humbly conceives he has fully Shewn to this
Honble Court that in the present Case No Responsibility
whatever could attach itself on the person of the Complai=
=nant in the first instance by the Wording of the Order
as aforesaid Issued by the Commander in Chief Relative
to and touching the Issuing the Said donation Whereby
those only who Made up the Accounts Were held answerable
for all inaccuracies and in the Second instance by the
Wording of his the Said Complainants Letter Written
long antecedent to the Issuing the Said Gratuity Whereby
and in unequivocal terms he exonerates himself from all
and every Responsibility and fully Relinquishes every
pretention of Right as to Sharing in any further emolument
even as attached to and belonging to the Office of Prize
agents and having by Such Letter Voluntarily Relin=
=quished his Right to Participate in the Emoluments
of the Office it Cannot for an Instant be Supposed that he
Could hold himself Responsible for in Accuracies Committed
in

in the Execution of an Office to which he confessed himself
Not entitled to Participate and your Petitioner is
Advised with regard to the Testimony of the Several other
Witnesses on the part and behalf of the Said Complainant
it is in no way whatever binding or conclusive as to the
Subject by them Severally Deposed to as the Whole of their
Testimony tends solely as to their private opinion only
And had it been the object of your Petitioner to have
Consulted opinions he could have brought forward Witnesses
Who would have Supported and adduced a very opposite
one to the opinion delivered by the Said Complainants
Witnesses but your Petitioner Well knew the private
Judgment and Opinion of individuals could Not illu=
=cidate the present question, and holding as he did the
Complainants own opinion on the Subject he was fully
Assured and Satisfied Such his the Said Complainants
own opinion Would operate More forcibly on the Judgment
of a Court than any other Testimony Whatever as it Must
be believed and Very generally understood that No
Man Will pass an opinion which Must eventually
militate against himself unless circumstances and facts
Render it so clear as to be unable to act otherwise.

Secondly — Because the Said Mayors Court have given a Decree
against your Petitioner for the Sum of Two thousand Nine
hundred and Sixty five Pagodas and Twenty Seven fan.
Which the Said Mayors Court were Not Justified in
doing Admitting they held the Claim of the Said
Complainant to be Well founded as it Will appear by the prayer

Made

Made and Contained in the Said Complainants Said Bill of Complaint that the Said Complainant has prayed a Decree — generally against your Petitioner and the other Defendants herein Named and did not by his Said Bill pray that a Decree might be made against your Petitioner or one of the other Defendants Singly consequently the Said Decree of the Said Mayors Court Must be held and considered as erroneous in as much as a Complainant ever conceives himself Satisfied when the prayer he has himself chosen to adopt and Setforth Meets the Sanction And Judgment of a Court, and being so Nearly connected in the Premises he seldom or ever omits to Pray for what he considers he May be entitled to Recover Now that part of the prayer of the said Complainants Bill is as follows - "to Wit" "and that "the Said Martin Hunter Alexander Diram Charles Smart "and James Mc. Cochell May be decreed to deliver and pay "unto your Orator one full Moety or fifth part of the whole of "the Benefits and advantages and Sum or Sums of Money by "them the Said Martin Hunter Alexander Diram Chas. Smart "and James Mc. Cochell derived had and Received upon and "on account of the Distribution to the Army of the Said "Donation or Gratuity given and granted by the Commander "in Chief your Petitioner is advised it is a very great hardship "upon your Petitioner to be decreed to pay from and out of his own Pocket that Which he has never received and what the Complainant prayed in and by his said Bill might be paid and discharged by your Petitioner and the Said other Defendants Jointly and your Petitioner is advised Such said Decree of the Said Mayors Court Cannot

Cannot be Supported upon any Principal either in Law or Equity for the Said Decree of the Said Mayors Court Admitting they held the Claim of the Said Complainant to be good ought to have followed up and Supported the Prayer contained in the Complainants Said Bill of Complaint when and in Such case the Said Decree of the Said Mayors Court would as far as the principals of Law extends have affected your Petitioner and the other the Defendants equally and not your Petitioner individually as it Now does - and therefore the Said Decree of the Said Mayors Court 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 Petr. Such further and other Relief in the Premises as in the Wisdom of this Honble Court Shall Seem Meet. —

/Signed/ Gilbt. Ricketts.
Solicitor for appellant —

Mayors Court

Mayors Court
at
Madraspatnam

Tuesday the 13th Day of December
Anno Domini 1796.

Present
James Daly Esqr. Mayor
James Call — William Webb
Andrew Ross — John Mitford
Benjamin Roebuck Wm. Abbott
Alexander Cockburn Richard Chase
and Wm. Dring — Aldermen.

Between John Bannerman a Captain
in the Military Service of the United Company
of Merchants of England trading to the East
Indies under their Presidency of Fort St George
Complainant and Captain Martin Hunter
Major Alexander Dirom, Major Charles
Smart and Lieutenant James McCarthell
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 the Defendant Charles Smarts Seperate Answer The Replication With Copies of three Exhibits Marked A B & C annexed the Seperate Rejoinder the Interrogatories and Depositions on the part of the Complainant the Interrogatories & Depositions on the part of the Defendant on Hearing the Pleadings made use of by the attornies and on due Consideration had thereon This Court doth think fit to Order and Decree and doth accordingly Order and Decree that the Defendant Charles Smart do pay unto the Complainant the full and just Sum of Two thousand Nine hundred and Sixty five Pagodas and Twenty Seven fanams / Pags 2965 27 / being the One fifth Share of the Emoluments received by the Prize agents on the Donation exclusive of the Paymasters Share also all Costs of this Suit.

Extract

/Signed/ George Taylor Regr

a true Copy

/Signed/ Gilbt Ricketts

Solicitor for appellant

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

Present,

James Daly Esqr. Mayor.
James Call — William Webb.
Andrew Ross — John Mitford
Benjamin Roebuck, William Abbott
Alexander Cockburn Richard Chase
and William Dring — Aldermen.

John Bannerman

~~Heirs~~ Martin Hunter Alexr. Dirom Charles Smart
v James Mc. Askill

Bill Read
Seperate Answer Charles Smart Read
Replication with Copies of three Exhibits marked A B & C annexed Read.—
Seperate Rejoinder Read
Interrogatories on the part of the Complainant Read.—
Six Depositions taken thereto Read
Interrogatories on the part of the Defendant Read
One Deposition taken thereto Read.—

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 — The Defendant Charles Smarts Answer The Replication with Copies of three Exhibits marked A B & C annexed The Seperate Rejoinder, The Interrogatories Complainant the Interrogatories & Depositions on the part of the and Depositions on the part of the Defendant On Hearing the Pleadings made use of by the Attornies and on due Consideration had thereon This Court doth think fit to Order and Decree and doth Accordingly by Order and Decree that the Defendant Charles Smart do pay unto the Complai= =nant the full and just Sum of Two thousand Nine =hundred and Sixty five Pagodas and Twenty Seven fa.ⁿ / Pag.ˢ 2965. 27. " / being the one fifth Share of the Emolu= =ments Received by the Prize Agents on the Donation — " exclusive of the Paymasters Share together with Costs of this Suit.—

The Mayor & Messrs. Aldermen Call Webb and Ross dissent to the Decree of the Court Reasons given by Mr. Alderman Ross — as it appears to him from the Sense and Meaning of the Orders of Lord Cornwallis the Commander in Chief of the Army in Respect to the Allow= =ance upon the Donation granted by him to the Army / the only Matter Now in dispute before the Court / that it should be granted to Such of the Agents of the Army only as were Actually employed in making the Destribution — And upon whom the Responsibility for the due Execution thereof is Solely thrown by the Orders of the Commander in Chief Shall together With the Paymaster be entetled to the usual Allowance and as the Complainant was not at that time with the Army above the Ghauts to Whom alone the

the Donation Was granted but was absent With a part of the Army below the Ghauts and Could not have any Concern in Making the Distribution and of Course no part of the Responsibility attached to him he is not entitled to any Share of the emoluments arising upon the Distribution of the Donation in Which the Mayor & Mr. Alderman All Joint.—

A True Extract

/Signed/ George Taylor Regr

To

To the Right Honble Lord. Hobart,
President in Council &c. &c. &c.

Fort St George

In the Honble the
Court of Appeals

Between John Bannerman a Captain in the Military Service of the United Company of Merchants of England trading to the East Indies under their Presidency of Fort St George Complainant and Charles Smart a Major in the Service of the said United Company of Merchants of England trading as aforesaid one of the Defendants Named in the said Complainants Bill of Complaint Defendant.—

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

Filed in my Office the 31st January 1794
J. Webbe, Clk

This Respondent in Answer to the Petition and appeal of the above Named Defendant doth admit that he died on or about the thirteenth day of March Which was in the Year of Our Lord One thousand Seven hundred and Ninety three Exhibit and file his Bill of Complaint in the Honble the Mayors Court at Madraspatnam against the appellant and other the Defendant in the said Bill Named And did therein and thereby Amongst other things State that it was

the

the Custom of the Army of the Said United Company when
in the field against an Enemy to appoint agents to take Charge
of Captured Property and all Monies arising from the Sale
thereof or to which the Army might become Intitled by
Reason of the Capitulation Surrender or Ranson of any
Fort or Town or otherwise from any Donation or Gratuity
in Lieu thereof and generally to take Charges of the
Interests of the Army in Such Manner as Prize
Agents in Similar Were Accustomed to do that the Mode
of Appointing Such agents Was by the Majority of Votes
in the Army that the Persons Obtaining Such Majority
Were Nominated by the Army and proposed to the Comman-
der of the Army through the Adjutant General Who
Confirmed their Appointment by Announcing it in General
Order to the Army that the Prize agents
Allowed five per Cent upon all Sums Received by them
as a Compensation for their Trouble and Risk to be
Divided among them in equal Proportions Share and
Share alike That during the late War with Tippoo
Sultan the Army under the Command of Major Genl
Medows did on the Eighteenth June One thousand
Seven hundred and Ninety Nominate this Respondent
the Appellant and Captain Martin Hunter and Alexr
Dirom other Defendants in the Said Bill Named
to be their Prize agents and that the Said Commander
in Chief did by General Orders on the Same day confirm
the Same and Make it known by Such General Orders
to the Army That in Consequence thereof this Respondent
as

as one of the Said Prize agents entered upon the duties of his
Office together Which the appellant and the Said other Defendants
and discharged the Same as far as in him lay That about the
tenth day of March One thousand Seven hundred and
Ninety one a Detachment of Bengal Troops Joined the
Army Which Detachment Nominated Mr James MacCorkill
one of the Defendants in the Said Bill Named as their
Prize agent which was also confirmed as such by the
Commander in Chief on the same day by a General Order
That the United Company of Merchants of England aforesaid
Were entitled by usage and Custom to a Moiety of Such
Captured Property &c And by their agents or Representatives
the Government of Fort St George did Nominate and
Appoint this Respondent the Appellant and the Said other
Defendants to act as their Agents also in the premises That
About the Month of January one thousand Seven
hundred and Ninety two, This appellant having Joined
a Detachment of Troops Serving in the Coimbatore
Country Was by them proposed to act as their agent for
the purposes aforesaid that the Same Was Referred to
the Said Government of Fort St George Who objected
thereto because this Respondent although detached
Continued to be an agent for the Army that Sometime
afterwards it Was proposed by the Defendant James
McPherson to exclude this Respondent from a Share of
the Emolument or Profits on Account of his absence
But the appellants and other Defendants Will

Answering

knowing the Justice of the Same Refused to accede thereto That as Joint agent the appellant Continued to Share in the Profits until the Month of March One thousand Seven hundred and Ninety Two that in February in the last Mentioned year the Preliminaries of Peace Were Settled between the Confederate powers and Tippoo Sultan When the Marquess then Lord Cornwallis for diverse Causes and Considerations them thereunto Moving and in this Respondts Bill particularly expressed did order a Donation or Gratuity to the Army and did by a General Order Declare the Same Should be Issued in the Same proportion as prize Money and by a Subsequent order directed that Six Months Batta Should be Issued by the prize Agents and Paymaster Which Said General Orders of the Commander in Chief are particularly Set forth by the appellant in his Petition and Appeal that the Prize agents and Paymaster were held Responsible for inaccuracies in the Account of Distribution of Such Donation or Gratuity and that your Petitioner Consequently from the nature of his Joint agency became implicated in the Responsibility and of Course entitled to a Share or Proportion of the Emolument arising from Such distribution that Several Emoluments did arise from the Same to the prize agents that the Same had been Received by the Said appellant and the Said Defendants But that this Respondent had been Excluded from a participation in the Same to which he

he stated he was entitled in a fair and equitable Consideration from the Nature of his Joint Agency as well as the Responsibility particularly attached to the Prize agents by the Orders of the Said Commander in Chief which Order is More particularly Set forth in the Bill of Complaint of this Respondent And this Respondent did in and by his said Bill of Complaint Pray that the said appellant and the other Defendants might be decreed to deliver and pay unto this Respondent one full Moiety or Half part of the Whole of the Sum so received by them on Account of the Destribution of Such donation and grant unto this Respondent Such other and further Relief in the Premises As to the Said Mayors Court Should Seem Meet

And this Respondent doth admit that the Said Appellant did on or about the Eleventh day of June One thousand Seven hundred and Ninety three exhibit and file his Seperate Answer to this Respondents Bill of Complaint and that the appellant did therein and thereby Set forth and State the Several Matters and things in his Said Petition and Appeal Mentioned But the Said Appellant having omitted to recite divers parts of the Pleadings therein Contained this Respondent humbly Conceives it to be his duty to Recite the Same for the information of this Honble Court for this Respondent Sheweth that the appellant did Neglect to Recite that part of his Said Answer Wherein he admitted that agents appointed by the Army who Should Receive any Money on account of Captured property Would have been Responsible for the Value thereof accordingly

as

as they might have received it — And the Appellant did in another part of his said Answer also admit that the manner or Mode of appointing the said Agents and also the allowance of five per Cent to them for their trouble and Risk as Charged by this Respondent in his said Bill and the said Appellant in reciting that part of his said Answer which states that this Respondent did decline to make a Demand in the Mayor's Court until the said Alexander Dirom and Martin Hunter were gone to Europe and James Mackochill had gone to Bengal "Yet hath also omitted to recite the Admission in the said Answer Contained which implies other Demands having been made upon the Appellant and the other Defendants and as the Case was prior to the Institution of the Suit in the Mayor's Court —

And this Respondent doth Admit that to the said Answer of the said Appellant he did Exhibit and file his Replication and did therein and thereby amongst other things State that although Captured Property was a Matter Dependant upon Events merely Accidental yet the Necessity of appointing Agents was not so and therefore this Respondent did insist that the Custom regarding the Duties and Appointment of Prize Agents was notwithstanding the Appellants Suggestions to the Contrary as Charged by this Respondent in his said Bill of Complaint that although the Appellant had

had refused to Admit by his said Answer the Custom of the Army to appoint Agents to take Charge of Donations and Monies given as a reward for distinguished Services yet the fact was as this Respondent had Charged Notwithstanding the fallacious reasoning and evasive Admission in the said Answer Contained Respecting the same for the Donor of the Gratuity in Question had particularly directed the distribution to be made by the Prize Agents in Conservation with the Paymaster — and this Respondent did State that the Appellant and this Respondent being Appointed at the same time in the same manner and by the same Principals or Constituents for the same purpose the powers granted to the Appellant and the other Defendants could not have been more extensive than those of this Respondent Nor could they have been of a distinct nature that notwithstanding the very evasive Manner in which the Appellant had Admitted this Respondent having entered upon and discharged the Duties of his Office yet the Appellant did well know that even after this Respondent had been Detached from the Army he had Continued in Charge of Captured Property had himself disposed of the same, arranged and made up the Accounts and Received and paid the Amount thereof and which the Appellant was well informed of from this Respondents Constant Correspondence with his Co-agents on the Subjects the benefits and Advantages Arising from which Captured Property so under his immediate Charge was

was shared With the Appellant and the other Defendants and which did appear from the Exhibet annexed to and forming part of his said Answer and those annexed to the Replication of this Respondent that this Respondent was Appointed by the Government of Fort St George on behalf of the said United Company to take Charge together With his Co- Agents of their Moety or Share of the Captured Property according to the established Usage and was conside= =red by Government as one of their Agents which was particularly evidenced by their opposing the Appointment of this Respondent to the Prize agency of the Detachment on the grounds of his being then (altho detached) an Agent for the army although the Appellant had refused to admit the Same and had endeavoured by a fallacious argument to prove that the Government did not appoint any Person Nominally but Such persons as acted as Prize agents for this Respondent humbly observeth that if the Conclusion of Such an argument be Just and it ought to have excluded this Respondent because not Nominally appointed it Must have extended to the Appellant and the other Defendants who were Appointed in the Same Manner and Terms as this Respondent. That the Appointment of the said James Mc Cochill Stated in the said Answer had Nothing to do With the Appointment of this Respondent the said James Mc Cochill being Specifically appointed on the behalf of the Bengal Detachment and not in Stead of this Respondent for the Army or Constituents of

this

this Respondent continued to Consider him as their Agent and did Never Revoke the Power With which as Such he had been entrusted. That this Respondent did Continue to participate in the Emoluments and Advantage of the Prize agency untill the time Charged in his said Bill That although he might have Written the Letter Copy= =Whereof was annexed to the said Answer it was merely a Letter of Friendship and Drawn from him by the great intimacy Which Subsisted between him and the Defendant Alexander Diram for this Respondent at the Moment was particularly grateful for the attention paid by his friends to his Interest and in their objecting to the proposal of the Defendant James Mac. Cochill which he Considered as an Instance of their regard and was Expressing himself to his friend in the fullness of his heart. And this Respondent humbly trusts that it will appear to this Honble Court that any Expression Made use of in a Letter dictated by particular Friendship and to a Person with With Whom he was in the Strictest habits of Intimacy Should not have been brought forward in a Court of Justice to invalidate his right even had any expression in the said Letter tended so to do, for this Respondent at the time of Writing the Same did not Conceive a possibi= =lity of the Appellant or the other Defendants disputing his Just Right to a participation in the Emoluments of the Prize agency so long as the Power who Appointed him did not Revoke or Annul the Appointment and

therefore

therefore the expressions in the said Letter Contained were merely Words or thanks of Course to the said Defendant Alex.r Dirom for his attention to the Interest of this Respondent and Could not Amount to a Relinquishment of his Right that the Donor of the Gratuity had he intended to exclude this Respondent from the Emoluments Arising from the distribution of the Donation Would have — particularly ordered the Distribution to have been Made by the Prize agents on the Spot and Acting with the army But as the distinction Was not Made this — Respondent became included in the Responsibility attached to the Prize agents being Considered by the Commander in Chief Government and the Army as a Prize agent, and in Case of inaccuracies in the Accounts Would have been Resorted to by the Government Agreeable to the Spirit of the Order alluded to in this Respondents Bill of Complaint — that the Army in appointing so many agents had a regard to the frequency of Detachments and the — Necessity of having an agent with each for the purpose of attending to their Interest that every and each agent was indiscriminately liable to be detached, that the time of their return was equally uncertain but that it was — Never known or Conceived that Such Detachment could discharge the Agent either from his Office or Responsi = bility — that an Agent or Agents had been appointed and

Were

Were Considered as Such though not on the Spot as this Respondent believed at the Seiges of Pondichery and Nagapatam or one of these Places — that the power or Responsi = bility of an Office or Agency Could not Depend upon the Joint Agents or person filling the Same but upon the Will of the Principal or Constituents from whence the Power was derived that the Defendant Alexander Dirom Was not on the Spot at the time the said Donation Was granted or the Accounts made up But was Actually on his Way to Europe — and this Respondent begs leave to Submit this Circumstance particularly to this Honble Court in as much as it Must clearly prove — the said Appel = lant and the other Agents and Defendant Cannot With — propriety urge or Allege the Absence or Want of Responsibi = lity in this Respondent as a Just reason for Withholding a Share in the Emoluments Arising from the Distribution for as the said Alexander Dirom Was as before Stated on his Way to Europe he could Neither have Assisted the — Appellant and the other Agents in Making up the Accounts Nor could he When Returning to Europe have incurred a greater degree of Responsibility in the Premises than this Respondent Who remained in India and Continued to Serve With a Detachment of the Army And this Respondent Submits that the Appellant and the other Defendants in having Allowed the said Defendant Alexander Dirom to participate in the Profits and Emoluments Under these Circumstances Cannot Without Committing a Solecism ground their exclusion of this

Respondt

Respondent upon the Argument of his Absence Want of Responsi-
bility and Not having rendered Assistance in Making up the
Accounts And this Respondent did in and by his said
Replication further State that prior to his Commencing
his Suit in the said Mayors Court he had done every thing
in his Power by Correspondence and otherwise by Negotiation
through his friends to Obtain an Amicable Conclusion of the
Matter in Question and hoped the Same Would have been
Settled until the Departure of the Defendant James
Mc Pherill to Bengal Convinced this Respondent he had only
been Amused and that the Appellant and the other Defendants
had not been Serious in the Business as Would Appear by
Letters Annexed to the Replication of this Respondent that
the Officers in the Army on behalf of this Respondent did
offer to Render any Assistance to the Appellant And the other
Defendants but Such offers of Assistance Were declined
by the said Defendants and that the Defendant Alexander
Dirom particularly Said that he would do all that Was
Necessary on the part of this Respondent And Would act
for his this Respondents benefit and advantage - that the
Officers Who Made Such offers Were not Meant as
Substitutes or Deputies as Suggested by the said Appellant
in his answer but to Assist the Appellant and other Defendts
in the Burthen of their Office as agents - That this Respondent
had not any Cause or ground for acting against the said
Paymaster as also Stated in the Appellants answer - nor
Ought the said Paymaster to have been Made a party
to

to this Respondents Bill for the Action of this Respondent was against
the Appellant and the said Defendants as his Co Agents to Recover
certain Money to which he Was entetled and Which was
obtained from him and that if the Appellant or other Defendants had
paid any part of Such Money to the Paymaster he or they had done
So in his or their own Wrong - that the General Order of the Commander
in Chief respecting the distribution of the said Donation did not
alter the Nature of the appointment of the Prize agents as the
Appellant had Suggested - for they Were ordered to distribute
the Same and Make up the Accounts as Prize agents and
Not as Paymasters that this Respondent in not having Made
the said Paymaster a party had not Relinquished any part of
his Right not having as he Was Advised any Claim upon
him as Paymaster - and this Respondent did State as the fact
Was that the Appellant had Answered the Interrogatory in
this Respondents Bill of Complaint Contained in a Very
evasive and in direct Manner - for Where the matter Was
Within his own knowledge he had answered that he Could not
admit the Same and Where the fact Was Subject to proof that
it Might have been as for Ought he knew to the Contrary that
this Respondent Should and Ought to have excepted to the said
answer but Wished to Avoid the Shadow of Litigious Conduct
but begs leave to Submit the Same to this Honble Court and
this Respondent doth admit that the other parts of this Respondents
Replication have been Recited by the Appellant in his
Petition and Appeal and therefore this Respondent doth
forbear to Repeat the Same. ——

And

And this Respondent doth admit that to the said Replication of this Respondent the appellant did Exhibit and file his seperate Rejoinder which in Substance Matter is as Recited by the said appellant in his Petition and Appeal there having been no Material Amission in the Recital thereof except that he admitted the Letter to have been Written Copies Whereof were annexed to the Replication of this Respondent. —

And this Respondent doth admit that upon the aforesaid Pleadings been had in the said Cause Issue did join and Rules did pass for the Examination of Witnesses and that Several Witnesses were Accordingly Examined on the part and behalf of this Respondent and that one Witness was also Examined on the part and behalf of the appellant.

And this Respondent doth further admit that Barry Close an Adjutant General Arthur Gibbings a Captain Alex. Allen, a Captain and Robert Fairing a Captain all in the Military Service of the United Company of Merchants of England aforesaid William Collin Jackson Esq. in the Civil Service of the said Company aforesaid and John Tulloh of Madras Esq. Witnesses Examined on the part and behalf of this Respondent and the said Barry Close Examined on the part and behalf of the Appellant did to the Several Interrogatory depose as is in Substance recited and Setforth by the Appellant in his Petition and Appeal. —

And this Respondent doth also admit that after the Examination of the said Witnesses Publication did pass in the said Cause and the same was Set down to be heard by the Honble the Mayors Court and doth further admit that the same coming on to be heard by and before the said Mayors Court on Tuesday the thirteenth day of December in the year One thousand Seven hundred and Ninety Six the said Mayors Court was pleased to Order and Decree that the Appellant do pay unto this Respondent the full and Just Sum of Two thousand Nine hundred and Sixty five Pagodas and Twenty Seven fanams being the fifth Share of the Emoluments Received by the Prize agents in the Donation exclusive of the Paymasters Share also all Costs of the said Suit as by a Copy of the said Decree to this Respondents answer Annexed for the Inspection of this Honble Court to which this Respondent Craves Reference and begs that the same may be taken in part and deed of this his Answer to the Appellants Petition and Appeal doth and may more fully and at large Appear. —

But this Respondent doth deny that the said Appellant hath any Just Cause or Reason of Appeal from the said Decree of the said Mayors Court. —

And this Respondent in Answer to the first Cause or Reason assigned by the Petitioner Saith that he denies that the Office of Prize Agents and the Office of Distributers of the Donation or Gratuity as Contended for by the said Petitioner Were Several Seperate and totally distinct and unconnected but that the said Office of Distributers of the Donation or Gratuity as termed by the said Petitioners was a Natural and resulting duty from the said Office of Prize agent and not an Office and Duty seperate and apart

apart thereupon from. And this Respondent further denies what is
asserted by the Said Petitioner that the one alleged office as a
seperate office was created by the Suffrage of the army at large
and the other as Contradistinguished by the Express Nomination and
authority of the Commander in Chief. or that they were two offices or that
the Commander in Chief ever did Set up or Create as Stated by the Said
Petitioner any New office in respect to the issuing of the Said
Donation or Gratuity as opposed to the office of Prize agents —
either by the Order of the first day of May in the year of Our Lord
One thousand Seven hundred and Ninety Two or of any other —
Date or Dates - and the Partners Petitioner doth utterly deny
that any office of any kind Whatsoever is Created or made by the
Order of the Said first day of May One thousand Seven hundred
and Ninety Two as insinuated by the Said Petitioner. And
this Respondent in Order to Explain this Respondents Assertions
in the Premises and in Confirmation thereof doth humbly pray
leave to State to this Honble Court that on the tenth day of
June Which was in the year of Our Lord one thousand —
Seven hundred and Ninety he this Respondent Was appoin-
=ted With others a Joint Prize agent for the army at that
time in the field Engaged in Carrying on the then existing
War against Tippoo Sultan and that the Said appointment
of this Respondent Was Confirmed on the Eighteenth day of the
Said Month of June and in the Said year by General Sir
William Meadows then Commanding the Said Army And that
the Said appointment of this Respondent as Joint Prize
agent Was not at any time Revoked or Annulled either by
the

the Said Army or by the Said Commander or any other Commander
or Commanders of the Said army or Resigned by this Respondent
for and during the Said War or at any time Since. And this
Respondent Saith the Said Matters and things as immedi-
=ately Stated by this Respondent are in No Way Contradicted
or Controverted by the Pleadings or Evidence Exhibited and
produced on the Cause and this Respondent further Sheweth
unto this Honble Court that the Said War With Tippoo Sultan
Was Concluded on the Twenty eighth day of February in the
year of Our Lord One thousand Seven hundred and Ninety
Two Preliminaries of Peace afterwards finally Ratified having
been dectated by the allies on the Said day, between the
Confederated Powers and the Said Tippoo Sultan under
the Walls of Seringapatam and this Respondent further
Sheweth that on the Said Preliminaries having been Signed
the Lord Cornwallis then Commanding the Said Confederate Armies
Was pleased on the Said Twenty Eighth day of February to Issue
the following Order "Lord Cornwallis has great pleasure in Announ-
"=cing to the army that Preliminaries of Peace have been Settled
"between the Confederate Powers and Tippoo Sultan Containing
"Conditions highly Honorable and Advantageous to the Company and
"the British Nation and in Consideration of the uncommon Valor
"And firmness that has been uniformly Manifested by the Officers
"and the Soldiers of the Kings and Company's Troops during the
"whole Course of the War it is his Lordships intention to take
"upon himself to Order a handsome Gratuity to be distributed

to

"to them in the same proportion as Prize money from the sum
"Tippoo has bound himself by one of the Articles to pay to the
"Company" —

And this Respondent further Sheweth unto this Honble Court that the Gratuity in the said last Mentioned Order of his said Lordship Mentioned was afterwards fixed at Rated at an ~~assessed~~ Amount equal to Six Months Batta and the same was announced to the Army by a General Order bearing date the Twenty fourth day of April then next ensuing and in words of the following tenor — Lord Cornwallis informs the Army that Six
"Months Batta will be issued to the Troops on descending the
"Ghauts as the Gratuity intimated to be discharged from the ~~Army~~
"Money paid to the Company by Tippoo Sultaun and issued by the
"Prize agents and by the Paymaster" — and this Respondent humbly observes unto this Honble Court that the said Order of the said Twenty fourth day of April is the first Order which directs any thing in respect to the issuing of the said Gratuity and that the said Order creates not any New office to the said Joint Prize agents as Constituted by the said Army or purports so to do But this Respondent Saith that the said Order is a — mere Notification to the said Army, then in the Field of the amount of the Sum to which each individual of that Army under particular Circumstances was entitled and a Direction to such Individual when he may apply for the Receipt of such Amount to which he should be intitled and this Respondent further Sheweth that the said Order

of

of the said first day of May which is pretended by the said Petitioner to Create a New office (as it is termed by him) of Distributers of the Donation or Gratuity is a mere relative and Consequential Order to the said Order of the said Twenty fourth day of April for this Respondent Saith from the face of the said Order of the said first day of May it appears to be an accumulative Cautionary Order to the Joint Prize agents and in reference to the said Order of the said Twenty fourth day of April and not an Original Order Conferring on them as Prize agents any Authority With which they were not previously invested And this Respondent Saith that the said Order cannot be regarded in any other Light than as conveying Intimation as this Respondent Contends to the said Prize agents that they Would be Jointly — holden Responsible touching the Gratuity for any Errors or in Accuracies in Certain Definite Cases —

And this Respondent further Saith that it is plain that the issuing of such Gratuity was a Duty resulting to the said Prize agents out of the Nature of their Office as well from the Fund out of which the said Gratuity was taken from the persons to Whom it was paid from the Circumstances under which it was granted and from the Persons directed to pay it — for this Respond. humbly observes that if Lord Cornwallis had not deemed the — Distribution of such Gratuity as naturally connected and — related with the said Office of Prize agents it Would Seem an extraordinary incident that his Lordship out of a large Number of Meritorious Officers then Around him Should have thought alone of the said Prize agents for the Purpose discharge of an Office out of which a certain Emolument was to accrue

to the

to the Persons so discharging it But had the Destribution of the
Said Gratuity been a distinct office from that of Prize agency
And had been Created by the Commander in Chief in Contradistinc=
=on to the Same but which this Respondent has shewn was not the
Case yet this Respondent Saith as he is Advised that the distri=
=bution of the Gratuity being an office of Trust and being
Cast upon the Joint Prize agents generally / of which this
Respondent Was one / and not on any Particular and
Specifec Persons that he this Respondent Would have
been entitled to have Shared in any Advantage or benefit
Accruing from the Said Joint trust under the Common —
Maxim of Ejus Est Lucrum Onus Sentire Debet Commodum
And this Respondent Saith that this Maxim has been ever
applied And from the Right and equity of the thing ever will
be applicable to all Joint Concerns and undertakings And
this Respondent Saith that the Said Petitioner Seems sensible
of the Justice of the legal Maxim above Referred to by this —
Respondent by his having attempted to take this Respondents
Case without the Scope of the Application of the Same by —
endeavouring to Shew that this Respondent was not Responsi=
=ble in Case of any Error and Inaccuracies to Which the other
Prize agents Defendants to the Said Bill in the Said
Mayor's Cause were rendered liable by the Said Order of the
Said first day of May - And the Said Petitioner has Contended
for this on two Grounds to Wit on the Letter of the Order in
question and from the Circumstance of this Respondents
absence but this Respondent Saith that the Words of the
Said Said Order from which the Said Petitioner argues that this —
Respondent had No liability to be / Namely the Prize agents
who make up the General Account Will be Responsible
&c. in Order to favor the Interpretation of the Said Petitioner
has been taken as Words of a primeitative and Original direction
and not as Words of Reference as this Respondent has already
Shewn for this Respondent Saith the Said Order Seperately
taken by a forced Construction as assumed by the Said
Petitioner Might be Supposed to Operate on Such prize
agents only, as Might Actually have been Employed in —
Making up the general Accounts as Considered apart from
the prize agents generally. But when taken with the —
foregoing Order of the Twenty fourth of April to which it
Latter Order
of the first of May it is evident that No Duty of any kind
is imposed as already Shewn by this Respondent, but a Trust
Resulting from a former Order Declared and Demonstrated
And this Respondent Saith that it Would not have been
known that the Prize agents were bounden to make up the
Accounts alluded to but by Reference to the former Order
Whereby it was directed that they were to pass the Gratuity
in Question; and therefore the Said Words of the Said Order
can only Signify in their Relative Sense that the Prize —
agents / Whose Duty it was become by a preceeding Order
to make up the Accounts / Should be Responsible for any
Inaccuracies in Making up the Same for Distribution
has been Shewn to have been made by any precident or
Subsequent

Subsequent Order between the persons who Might Actually make up the Same, and those whose Common Duty it Was to do — And this Respondent Saith that the Deductions Drawn by the Said Petitioner from the involuntary absence of this Respondent are in this Respondents Mind too futile to Require any Serious answer In as much as the Doctrine of Co. agencies Must in a Commercial Country be universally understood And this Respondent Saith that in all Matters of Joint agency the party absent Must be Concluded by the Act of the party present so long as the absentee Continues to Accept And enjoy the Joint Trust — and this Respondent has already Stated to this Honble Court that his Appointment together with the Said Petitioners and others to the Joint Office of Prize Agents Was Never revoked or resigned —

And this Respondent in Answer to Each part of the Said first Reason of the Petitioner which alludes to a Letter Written by this Respondent Saith that the Same Cannot in itself or in its relation With any other Matter or thing be Considered as a Renunciation of his this Respondents Right to the benefit to be derived in the issueing of the Said Gratuity or of any advantage Relative to Prize. for this Respondent Saith that the Said Letter So far from Saving as to being a Renunciation of future advantage or doth — Manifestly Announce this Respondents intention to Share in future Profits of the Co agency and doth Solicit the Interference of one of his fellow Agents to procure this Respondents Recall to Camp for the precise purpose of Sharing in the More active lines of the Joint Agency — And this Respondent Saith that the Said Letter doth in No Sort — Wave any Right although on the Warmth of Friendship it Would Rather Seem to Consider what had been allowed to this Respondent as the Act of benevolence than as the Advantage of Contest and Litigation — And this Respondent Saith he is Advised that this Respondent Could not in the Manner as Contended by the Said Petitioner have Relinquished his Advantage in the Agency by the letter above referred to but that the Same Must have Continued to him so long as he had a Right or part in the Agency itself and which Could not have been Renounced but by his this Respondents Constituents and although at the time of Writing the Letter in Question it Might have been Supposed by this Respondent that he had not any Responsibility by Reason of the — Yet having been afterwards better informed this Respondents false and erroneous Conclusions Could Never in any Sort or equitable Sense be Converted to his this Respondents Wrong.

And this Respondent in Answer to Such part of the Petitioners Said first Reason as Refers to the Deposition of Barry Close prays leave humbly to observe that the Same is for the Most part Matter of Opinion drawn from facts and Circumstances which were before the Said Mayors Court and which are Now ripe for the Decision of this Honble Court and on which it is the peculiar province of this Honble Court to Determine and to which this — Respondent doth humbly Submit the Same Without — further Observation. —

And

And this Respondent in Answer to the Second Cause or Reason assigned by the said Petitioner Saith that the said Mayors Court Notwithstanding what is alleged by the Petitioner to the Contrary thereof in decreeing the Sum of Two Thousand Nine hundred & Sixty five Pagodas and Twenty Seven fanams to be paid by the Petr. unto this Respondent have decreed According to equity and Right and this Respondent denies what is Contended for by the said Petr. that he this Respondent Was Concluded by the Prayer of his said Bill which is stated to have been against the whole of the Dfendants to the same from the particular Relief granted by the said Mayors Court as against the Petitioner Solely - And this Respondent doth Admit that a Complainant in Most Instances Should and ought to hold himself Satisfied When the Prayer he hath Made doth Meet the Sanction of the Court to whom it is preferred: and he doth further Admit that a Complainant doth Seldom omit to pray for that which he considers himself intitled to Recover: but Confessing the Premisses this Respondent doth deny the Consequence as deduced by the said Petr. for this Respondent Saith that the Relief granted by the said Mayors Court unto this Respondent was and is within the Compass and Comprehension of this Respondents Prayer in his said Bill of Complaint in as much as this Respondent in his said Bill had Prayed a general Relief Such as might Seem Meet to the said Mayors Court in Considering the Premisses in the said Bill Contained: and in Consideration of the Same they did decree in the Manner and form as Described by the said Petr. in his said Petition Not however Contrary to Law as is alledged by him but according to Equity and good Conscience.

For all which Reasons and matters and things and such other as may be offered and deduced or 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 & Order of the Petitioners Petition & appeal to be dismissed with Cost.

/Signed/ Emanuel Samuel
Solicitor for Respondent

Mayors Court. } Tuesday the 13th day of December Anno Domini 1796.
at Madraspatnam }

Present

James Daly Esqr. Mayor,
James Gill, William Webb, Andrew Ross, John Mitford,
Benjamin Roebuck, William Abbott, Alexr. Cockburn,
Richard Chase, and William Denny — Aldermen,

Between John Bannerman a Captain in the Military Service of the United Company of Merchants of England Trading to the East Indies under their Presidency of Fort St. George Complainant and Captain Martin Hunter Major Alexr. Dirom Major Charles Smart and Lieutenant Mr. Cockell 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, the Defendant Charles Smarts Separate Answer thereto, the Exhibits Marked A B & C annexed the Seperate Rejoinder of three Exhibits Marked A B & C annexed the Seperate Rejoinder & depositions The Interrogatories & depositions on the part of the Complainant, 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 Charles Smart do pay unto the Complainant the full and just Sum of Two Thousand Nine hundred and Sixty five Pagodas and Twenty Seven fanams/ Pags 2965. 27. /- being the one fifth Share of the Emolument to Received by the Prize Agents on the Donation Exclusive of the Paymasters Share also all Costs of the Suit.

/Sd/ George Taylor Regr.

a true Copy /signed/ Gilbt. Richette
Solicitor for Appellant

a true Copy /signed/ Emanuel Samuel
Solicitor for Respondent

Court of

And this Respondent in Answer to the Second Cause or Reason assigned by the said Petitioner Saith that the said Mayors Court Notwithstanding what is alleged by the Petitioner to the Contrary thereof in decreeing the Sum of Two Thousand Nine hundred & Sixty five Pagodas and Twenty Seven fanams to be paid by the Pett.r unto this Respondent have decreed According to equity and Right and this Respondent denies what is Contended for by the said Pett.r that he this Respondent Was Concluded by the Prayer of his said Bill which is stated to have been against the whole of the Defendants to the same from the particular Relief granted by the said Mayors-Court as against the Petitioner Solely - and this Respondent doth Admit that a Complainant in Most Instances Should and ought to hold himself Satisfied When the Prayer he hath Made doth Meet the Sanction of the Court to whom it is preferred: and he doth further Admit that a Complainant doth Seldom omit to pray for that which he considers himself intitled to Recover: but Confessing the Premises this Respondent doth deny the Consequence as deduced by the said Pett.r for this Respondent Saith that the Relief granted by the said Mayors Court unto this Respondent was and is within the Compass and Comprehension of this Respondents Prayer in his said Bill of Complaint in as much as this Respondent in his said Bill had Prayed a general Relief Such as might Seem Meet to the said Mayors Court in Considering the Premisses in the said Bill Contained: and in Consideration of the Same they did decree in the Manner and form as Described by the said Pett.r in his said Petition Not Whereunto Contrary to Law as is alledged by him but according to Equity and Good Conscience.

For all which Reasons and matters and things and such other as may be Offered Adduced or 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 & Order of the Petitioner Petition & appeal to be dismissed with Cost.

/Signed/ Emanuel Samuel
Solicitor for Respondent

Mayors Court. } Tuesday the 13th day of December Anno Domini 1796.
at Madrass patnam }

Present

James Daly Esqr. Mayor,
James Gill, William Webb, Andrew Ross, John Mitford,
Benjamin Roebuck, William Abbott, Alex.r Cockburn,
Richard Chase, and William Dring — Aldermen,

Between John Bannerman a Captain in the Military Service of the united Company of Merchants of England Trading to the East Indies under their Presidency of Fort St. George Complainant and Captain Martin Hunter Major Alex.r Dirom Major Charles Smart and Lieutenant M.c Cockell Defendants —

This Cause coming on to be heard and Debated this day in the Presence of the Attorneys on both sides on Reading the Complainants Bill, The three Exhibits Marked A.B.&C. annexed the Seperate Rejoinder of Major Charles Smart Seperate Answer the Replication with Copies of Depositions The Interrogatories on the part of the Complainant, The Interrogatories and Depositions on the part of the Defendant. 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 Charles Smart do pay unto the Complainant the full and Just Sum of Two Thousand Nine hundred and Sixty five Pagodas and Twenty Seven fanams /Pag.s 2965. 27./ being the one fifth Share of the Emolaments Received by the Prize Agents on the Donation Exclusive of the Paymasters Share also all Costs of this Suit. —

/Sign.d/ George Taylor
Reg.r

a true Copy /Signed/ Gilb.t Richette
Solicitor for Appellant,

a true Copy /Signed/ Emanuel Samuel
Solicitor for Respondent

Court of

Court of Appeals at Madraspatnam } Friday the 6th day of October Anno Domini 1797.

Between Charles Smart a Major in the Military Services of the united Company of Merchants of England Trading to the East Indies under their Presidency of Fort St George Appellant and John Bannerman a Captain in the said Services of the United Company of Merchants of England trading to the East Indies under their said Presidency of Fort St George Respondent.

This Cause coming on this day to be heard and debated before this Court by the Attornies on both sides upon hearing the Petition of Appeal and Answer and the several Exhibits of the Honble the Mayors Court together with the Decree of the said Court given in this Cause on Tuesday the 13th day of December 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 dated the 13th day of December Anno Domini 1796, be affirmed with this Variation that the Appellant do pay unto the Respondent the Sum of Seven hundred and Forty one Pagodas Seventeen fanams and Twenty Cash /741. 17. 20./ together with all such Interest as Now is or shall hereafter become due thereon at the Rate of Eight ₰ Cent ₰ Annum from the 1st day of January 1793 as also all Costs in the Mayors Court and that each party do pay their own Costs in this Court.

By Ct Curr

To

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

In the Honourable The Court of Appeals }

Between John Tulloh, John Jervis and James Brodie of Madras Merchants, under the firm of Messieurs Tulloh, Jervis and Brodie, Complainants, and Nagoje Samboje, Coety Chitty and Moodoshietnan also of Madras Inhabitants, Defendants.

The Petition and Appeal of Coety Chitty one of the above named Defendants.

Humbly Sheweth

That some time on or about the Twenty fourth day of March and year of our Lord, One Thousand Seven Hundred and ninety Six, The Complainants above named, did exhibit and file their Bill of Complaint in the Honourable the Mayors Court of Madras patnam, against Your Petitioner and the other Defendants above named, and did therein and thereby amongst other things state, That your Petitioner and the other Defendants above named, stood justly and truly &c Indebted unto them the said Complainants in the full and just Sum of Eight Thousand, Two Hundred and twenty five

Star

Filed in my Office the 2. January 1797
J Webbe clk

Star Pagodas, Thirty fanams and Seventy two Cash of
Current Money of Madras aforesaid, as by the Copy of an
account Current, to their said Bill of Complaint annexed for
the Inspection of the said Mayors Court, to which the said
Complainants craved reference, and prayed that the same might
be taken as part and parcel of their said Bill of Complaint,
The Complainants did say would appear — And your Petitioner
humbly sheweth unto this Honourable Court, That the said
Complainants did in and by their said Bill of Compaint
further state, That they had frequently demanded payment
of the sum aforesaid from your Petitioner and the other
Defendants above named, and alleged that your Petitioner
and the said other Defendants had refused to pay off or
discharge the same, and did thereupon in and by their said
Bill of Complaint pray That the Honourable the Mayors
Court would be pleased to grant unto the said Complainants
a General Relief, such as to their wisdom should seem meet,
and that Your Petitioner, together with the other Defendants above
named, might be decreed to pay unto the Complainants the
aforesaid Sum of Eight Thousand, Two Hundred and Seventy
five Pagodas, Thirty fanams and Seventy two Cash, together
with all Costs of the said Suit —

And your Petitioner humbly sheweth unto

this

this Honourable Court, That being summoned to appear and
answer the said Bill of Complaint of the said Complainants,
he did by his Attorney accordingly appear thereto, and did
exhibit and file his Seperate Plea and Answer to the said
Bill of Complaint, and did and by his said Plea state, That the
End and scope of the Complainants Bill, was to compel the
payment of the Sum of Eight Thousand, Two Hundred and
Seventy five Pagodas, Thirty fanams and fifty two Cash of the
Current Money of Madras, alleged to have been due and oweing
unto the said Complainants from your Petitioner, and one
Nagoge Somoje and Moodokistnah, the other Defendants
above named, on account of the Balance of a Principal Sum,
with a certain Interest, stated to have been assumed on a
Promissary Note, executed by Your Petitioner, and the other
Defendants above named, on the Twenty Sixth day of September
and Year of Christ, One Thousand Seven Hundred and Ninety
five; Your Petitioner by Protestation not confessing or acknowledg-
-ing all or any of the matters and things in the said
Complainants Bill of Complaint contained, to be true, in the
manner and form as the same were therein and thereby set
forth and alleged, For plea thereunto Your Petitioner said, That
the said Promissary Note, mentioned in the Account Current
annexed to the Bill of Complaint of the said Complainants, and

referred

referred to by the same, was executed by him, Your Petitioner, and others the Defendants before mentioned, as a Collateral Security for the payment, within fifteen days after the execution of the said Promissary note, of the Principal Sum of Ten Thousand, Two Hundred and fifty seven Star Pagodas, with an Interest thereon, at and after the rate of Twelve per Cent per Annum, from the Eighteenth day of September, in the said Year of Christ, One Thousand Seven Hundred and Ninety five, by one or Appovalore Mungatha Chitty Eya Permaul, or some other on his behalf on account of a Draft undertaking in Writing, drawn by him = the said Appovalore Mungatha Chitty Eya Permal, and accepted by one Tuculum Moodokistnam Chitty (one of the Defendants, herein before mentioned and described by the name of Moodokistnam) and payable to the Order of the said Complainants or condition on the part of the said Complainants, in the event of the said Sum of Ten Thousand, Two Hundred and fifty Seven, Star Pagodas not being paid within the said Period of Fifteen days, either by the said Appovaloor Mungatha Chitty Eya Permaul, or any other Person or Persons on his behalf, at the end and = expiration of the said Fifteen days, That they said Complainants should deliver up to Your Petitioner and others the said or

Defendants,

Defendants, on payment by them of the said Sum of Ten Thousand, Two Hundred and fifty Seven Pagodas, together with an Interest of Twelve per Cent thereon, from the said Eighteenth day of September, in the said last mentioned year, the said Draft or Undertaking in writing of the said Appovalore Mungatha Chitty Eya Permaul, accepted by the said Tuculum Moodokistnam Chitty, and payable as aforesaid.— And your Petitioner said, That at the end of the said Fifteen days from the execution of the said Promissary note, The said Complainants neither Jointly nor seperately did give any notice in writing or otherwise, That the said Draft or undertaking in writing of the said Appovalore Mungatha Chitty Eya Permaul, had not been discharged by him, or by any other person or persons on his behalf.— And your Petitioner did further state, That at the end and expiration of the said fifteen days, he was ready to pay off and discharge the said Sum of Ten Thousand, Two Hundred and fifty Seven Pagodas unto the said Complainants, with an Interest at and after the rate of Twelve per Cent. per Annum, as aforesaid and promised by your Petitioner and others the said Defendants in the said promissary Note, had the said or Complainants demanded payment thereof of your Petitioner.—

But

But Your Petitioners did aver That the said Complainants or neither Jointly or Severately did demand or cause to be demanded of your Petitioner, any Sum or Sums of Money, either as or Principal or Interest, for or on account of the said Promissary note (so executed as a Collateral security as aforesaid by your Petitioner and others the said Defendants) until long after the fifth day of December, in the said year of Christ, One Thousand seven Hundred and Ninety five — And your Petitioner did further state, That on or before the said fifth day of December, and previous to any demand having been made by the said Complainants on Your Petitioner on account of the said Promissory note in the said Year of Christ One Thousand seven Hundred and Ninety five, the said Complainants did receive of the said Tooculum Moodoohistnam Chitty, the Drawer of the said Approvalore Mungatha Chitty Eyah Permaul, and for and on account of, and in part payment of the said Draft or Undertaking in writing of the said Approvalore Mungatha Chitty Eyah Permaul on the said Tooculum Moodoohistnam Chitty the several sums herein after mentioned, to wit, the sum of Two Thousand Star Pagodas on the fourth day of November, and

and the further Sum of Five Hundred Star Pagodas on the said fifth day of December in the said Year of Christ One Thousand Seven Hundred and Ninety five, and that the Complainants did give an acknowledgement or Receipt in writing for the said Sum of Two Thousand Star Pagodas unto the said Tooculum Moodoohistnam Chitty, declaring and acknowledging the said Sum to have been paid, and to have been received by them the said Complainants in part and discharge of the said draft or Undertaking in writing of the Said Approvalore Mungath Chitty Eya Permaul as aforesaid — And Your Petitioner did further plead as he was advised, the said Want of notice and Demand from and by the said Complainants, to and of Your Petitioner, And the said Receipts of the said and several Sums of Money as aforesaid, and from the said Tooculum Moodoohistnamah Chitty, by the said Complainants in Bar of the said Complainants Bill, and did demand the Judgement of the said Mayors Court, whether he should be obliged and compelled to make any other Answer thereunto, than as aforerecited. — and your Petitioner not waiving his said Plea,

but

but wholly relying and insisting thereon, for Answer to the Complai-
nants Bill, or to so much thereof, as he was advised was materiab
or necessary for him to make Answer unto, He. Your Petitioner
did Answer and say, That he denied, That any Sum or Sums
of money was or were, ever paid by him or others the said
Defendants unto the said Complainants as stated by
them on the Credit side of the Account Current annexed to
the said Bill, for, or on account of the said Promissary note,
executed on the said Twenty Sixth day of September in the
said Year of Christ One Thousand Seven Hundred and
ninety five, But your Petitioner did aver, and say, that he
would in due time prove to the Satisfaction of the said
Mayors Court, That the said and several Sums
mentioned on the credit side of the said Account Current,
annexed to the said Bill were justly and bonâfide paid,
for and on account of the said Draft of the said Apoolay
Mungatha Chitty Cya Permaul.
And your Petitioner further Sheweth unto This Honourable
Court, That to the said several Plea and Answer of your
Petitioner, The said Complainants did exhibit and file
their Replication, And therein and thereby among other things for
Replication did say, That the matter insisted on by Your Petitioner
(Costy Chitty) by way of Plea, even if it were true, but which the
Complainants said, they did not admit, could not as they were
advised, have any force or operation in the Law so as to bar their
action. For the Complainants did say, That the Promissary
note, upon which the action was founded, was an Obligation
whereby Your Petitioner and the other Defendants herein before
named had bound themselves Jointly or severally to discharge,
in fifteen days from the date thereof. The amount for which the
said Obligation was granted, with Interest at and after the rate
of Twelve per Cent per Annum and the only condition attached
to the said Obligation, was, That the Complainants should
deliver up discharged, the Draft of Poovalore Mungatha Chitty
and Jah Permaul, drawn upon, and accepted by Taculum
Moodeliatua Chitty, in favor of the Complainants, and which
the Complainants did allege, they had at all times been ready to
do. And the Complainants did therefore humbly submit to the
said Mayors Court, That the said Promissary note, was not in
the nature of a Collateral security, but an absolute engagement on
the part of Your Petitioner and the said other Defendants, to discharge
the

the amount thereof Jointly or Severally, and for the recovery whereof The Complainants said they were by Law entitled to maintain an Action against them Jointly or each of them Severally— And the Complainants did in and by their said Replication further state, That in order to shew the (alleged) unjust and litigious Conduct of your Petitioner in the Premisses, The Complainants begged leave to state the following circumstances, and which they alleged to be facts, to wit, That Poovalore Mungatha Chitty and Eya. Permaul, in Your Petitioners said Plea and Answer mentioned, Drew a Bill on the Defendants Moodookistna Chitty in favor of the Complainants, which Bill, was duly accepted by him, But, when the same became due, he was unable to discharge the amount, the money which he had provided for the payment of the said Acceptance having been, as the Complainants did pretend,) lent by him the said Moodo-Kistna Chitty to the other Defendant aforesaid Nagoje-Samboje and Your Petitioner, and as the Complainants said they were credibly informed.— Whereupon, the Complainants (said they) were about to institute a Suit against him the said Moodookistna Chitty for the recovery thereof, to prevent which, the Complainants further alleged, the said other Defendant

Nagoje

Nagoje Samboje and Your Petitioner came forward, and earnestly entreated the Complainants to allow fifteen days for Payment, at the expiration of which time they faithfully promised to discharge the Amount, And the Complainants did further state, That they were prevailed upon by the earnest intreaties and Solicitations of the said other Defendants Nagoje Samboje and Your Petitioner to give the time required, and accordingly the Promissory Note on which the present action was founded was drawn out and executed by the said Nagoje Samboje, the said other Defendant and Your Petitioner together with the said Jaweelam Moodookistnama Chitty, under the name description of Moodookistnan.— And the Complainants did further say, That when the said Promissary note became due, It was sent to your Petitioner and the said other Defendants for payment, But that instead of being discharged, as the Complainants said they confidently expected, Your Petitioner and the said other Defendants (as the Complainants alleged) evaded complying with such requisition, under many frivolous pretences; whereupon, they the said Complainants, sent the said Promissory note to their Attorney at Law,

with

with Instructions to demand payment, and in the event of a refusal or delay, to institute a Suit against them, and the Complainants did further state, That in compliance with such Instructions their said Attorney wrote a Letter of Demand, a Copy of which they said they had annexed to the said Replication, and that thereupon Your Petitioner and the said other Defendants, went to them the said Complainants and earnestly begged that a Suit might not be Instituted, alledging, that the great scarcity of Money, was the sole cause of the failure, But that they (Your Petitioner and the other Defendants above named, as the said Complainants did also pretend) they expected daily to be enabled to pay off the amount— And the said Complainants did further in Replication say, That on the fifth day of November, Five Thousand Pagodas was paid in part of the note, And on the fifth day of December following, the further Sum of Five Hundred Pagodas was paid on account of the said Note, But from that period, the Complainants said, they were only amused with promises of payment, until the said Defendants Nagojee Lambojee and Moodoohistnah Chitty had effected their retreat to Tanjour, where they (at the time of filing the said Replication the Complainants did say)—

Continued

Continued to reside, putting their Creditors at Defiance— and the Complainants did further state, That although they admitted the said Sums of Two Thousand Pagodas, and Five Hundred Pagodas were paid by the Defendant, Moodoohistnama Chitty, yet the Complainants did submit to the said Mayors Court, that it was very immaterial, by which of the said Defendants the said Sums were paid, they being Jointly and severally answerable, until the whole thereof was discharged and paid off— And that even if it were true, that no demand had been made from the said Defendant, Cooty Chitty (Your Petitioner) for payment of the said Promissory note, That such Omission did by no means exonerate him, nor could any Omission of that nature, operate on the Obligation, for which he was a party, unless it had extended to that period of time, which the Legislature had fixed as a Boundary or limitation for the Institution of suits— But the Complainants did say, that the fact was, That Payment was frequently demanded, and which in order to avoid, The Complainants alleged Your Petitioner had often times shut himself up in his house— And the Complainants did humbly submit to the said Mayors Court, That

the

the Transaction in all its circumstances was replete with Gross fraud and deceit, on the part (as the Complainants unjustly pretended) of your Petitioner, who (they said) had joined with the other Defendants aforesaid in amusing the Complainants with fair and specious promises of payment until such time as they had effected their retreat from the Coercion of the Honourable the Mayors Court, and who then stood forward with Arguments in his opinion calculated to exonarate himself from the Obligations he had entered into, contrary to every principle of equity and good conscience, as the Complainants did also pretend — and the Complainants did say they therefore hoped the said Mayors Court would mark their disapprobation of such Conduct, by inflicting exemplary Costs on Your Petitioner —

And Your Petitioner humbly sheweth unto this Honourable Court, That to the said Replication of the said Complainants, Your Petitioner did exhibit and file his several Rejoinder, and did therein and thereby amongst other things state, That Your Petitioners said Plea and Answer was well impleaded, That the matters and things therein alleged were true, and that the same ought to have been and were, an effectual Bar to the said Complainants

Complainants Bill — And that the said Complainants in Replying to the said Plea had admitted, notwithstanding what they had otherwise alleged to the Contrary, the validity of Your Petitioners said Plea — And Your Petitioner in further Rejoinder said, That he did admit, That the Promissory Note on which the said Complainants had brought their Action, appeared to be on the face of it a written undertaking of your Petitioner, with others the Defendants herein before named, Jointly and severally to discharge within a certain time the amount mentioned in and upon the said Promissory Note, with an Interest of Twelve per Cent per Annum — And Your Petitioner did also admit that the only Condition in the said Promissary Note, which seemed to respect the said Complainants, was That the said Complainants should deliver up discharged the Draft of a pooravaloor Mungatha Chitty Eya Permaul, in favour of the said Complainants, But then your Petitioner did deny, notwithstanding the appearance of the undertaking in the said Note, that the same was, what the said Complainants had called in their said Replication an absolute Engagement on the part of your Petitioner, either Jointly with the said other Defendants,

mentioned

mentioned in the said Bill, or Seperately by himself, to discharge the amount thereof; Or that the said Note was any thing, under the Circumstances set forth and averred in Your Petitioners said Plea, but a Collateral security for the payment of the Sum mentioned on the said Draft of Apoovaloor Mungatah Chitty and Eya Permaul — And Your Petitioner did submit to the said Mayor Court, That the said Circumstances, Matters and Things, so pleaded by Your Petitioner in his said Plea, should, and ought to have barred the Action of the said Complainants as against Your Petitioner — And Your Petitioner in further Rejoinder, did state, That he did admit, That the said Apovaloor Mungatah Chitty and Eya Permall in the Replication named, might have drawn a Bill on the said Moodookistnan, also in the said Replication mentioned in favor of the said Complainants, and that the same might have been accepted by the said Moodookistnan; And that he the said Moodookistnan might have been unable to discharge the amount thereof, when the said Bill became due; But Your Petitioner did most Solemnly deny, That any money which had been provided for the payment of the said Bill, when it should have become due — was ever lent to Your Petitioner by

by the said Moodookistnah, as was untruely charged by the said Complainants, or to the said Nagojee Sambojee in the said Replication also mentioned, with the knowledge of Your Petitioner; Or that Your Petitioner did stand, in any wise indebted to the said Moodookistnan, at the time when the said Bill became due; But that the same was untruely set forth in the said Replication, with a view to insinuate, That Your Petitioner did receive a valuable Consideration for executing the said Promissary Note, which Your Petitioner utterly disclaimed — And Your Petitioner in further Rejoinder did state, That he did admit, That he did at the entreaty of the said Moodookistnan, and in Company with the said Nagojee Sambojee, wait upon the said Complainants And did request of them the said Complainants, that they would allow the said Moodookistnan fifteen days to discharge the amount of the said Draft of the said Apovaloor Mungatha Chitty and Eya Permaul; And that the said Complainants did propose, That Your Petitioner and the said other Defendant Nagojee Sambojee should execute their Promissory Note to the said Complainants, together with the said Moodookistnan,

Moodookistnan, to secure the payment of the Sum mentioned in the Draft, in the event of the same not being discharged at the expiration of the said fifteen days, which Your Petitioner and the said Nagojee Lamboje did request that the said Complai=nants would allow the said Moodookistnan for the discharge of the same — And Your Petitioner said That he did consent to execute and did execute the said Promissary Note under the =" said Proposal of them the said Complainants; being the said Promissary Note, on which the Complainants said Action was =" Instituted — But Your Petitioner did deny that when the said =" Promissary Note became due, That the same was sent to Your Petitioner for payment, and that he Your Petitioner did evade the same, under various frivolous, or any pretences, as was untruely stated in the said Replication; For Your Petitioner said, as in and by his said =" Answer, he had already said, That neither of the said Complainants did make, a cause, a demand to be made of your Petitioner of the Sum Assumed in and upon the said Promissary Note, at any time previous to the fifth day of December One Thousand Seven Hundred and Ninety five, or did give any notice to Your =" Petitioner, that the said Original Draft had not been duly ="

Honoured

honoured by the said Moodookistnan — And Your Petitioner in further Rejoinder said, That he did not know whether or no the said Complainants did at any time Instruct their Attorney at Law to demand payment of Your Petitioner and others the said Defendants, And in the event of refusal or delay, to insti=tute a Suit for the same; Or that the said Attorney did write a Letter of demand of the purport or effect with the Copy of a pretended Letter said to have been addressed to Your Petitio=ner and others the said Defendants, annexed to the Complai=nants said Replication — But Your Petitioner said, and so the fact was, That he did not at any time receive any Letter from the said Attorney of the said Complainants of the =" purport or effect with the said Copy annexed to the said =" Replication, as was charged by the said Complainants; — And Your Petitioner in further Rejoinder said, That he did not at anytime in Company with others the said Defendants, go to the said Complainants at any time, subsequent to the said Second day of november, in the Year of Christ One Thousand seven Hundored and Ninety five, as was stated also in the said Replication, to request that a Suit might not be instituted

against

against them, nor for any of the purposes assigned in the said Replication — But Your Petitioner did admit that he did on subsequent to the last mentioned period call alone at the house of the said Complainants, and on being requested to discharge the amount of the said Promissary note he might have asked the said Complainants to wait until the said Moodoohistna should be able to satisfy the said Sum, and your Petitioner well hoped under all the circumstances of the Case, that the said Complainants would have waited until that event — And Your Petitioner did deny that he did amuse the said Complainants with any promises of payment for the purpose of effecting the retreat of the said Nagojee Sambojee and Moodoohistna to Tanjour, or for any purpose or other purposes whatever, or that he did give them a promise of payment on his own behalf — And your Petitioner said that it was material and important to your Petitioners Case, that the said Payments acknowledged to have been received by the said Complainants, were made by the said Moodoohistnan and not by your Petitioner, or the said other Defendant Nagojee Sambojee, as the same doth shew that the said

Complainants

Complainants had resorted to the Origenal Draft, and had looked for Satisfaction therefrom, by the said Moodoohistnan, and had thereby discharged your Petitioner and the other Defendant Nagoje Samboje from their Collateral undertaking in and by the said Promissary Note; and your Petitioner said, That so much of the said Replication as referred to the Statute of Limitation was altogether foreign to any matter at Issue between your Petitioner and the said Complainants — and your Petitioner did deny, that he did ever abscond or hide himself in order to avoid the demand of the said Complainants, and which was contradicted by the Complainants themselves, in their Insisting that they had frequently made demands on your Petitioner, which was altogether untrue, And your Petitioner did deny all Fraud and Deceit in the premises, as was also untruely and unjustly stated by the said Complainants in their said Replication —

And your Petitioner Most Humbly sheweth unto this Honourable Court, That upon the Several pleadings aforesaid being had, Issue did Join in the said Cause, and Rules did pass for the examination of Witnesses — And that

Witnesses

Witnesses were accordingly examened on the part and behalf of the Complainants, as well as of your Petitioner.—

And your Petitioner further sheweth unto This Honourable Court, That Poonapillah a Dubash and Inhabitant of Madras, a witness examined on the part and behalf of the said Complainants, to the Second Interrogatory did depose.— That he was in the Service of the said Complai=nants in the Capacity of Dubash.— That he had looked at the paper writing produced and Shewn to him at the time of his Examination, purporting to be a promissory Note or Obligation from your Petitioner (and the said other Defendants) to the said Complainants, and that he know that application had been made to Your Petitioner for payment on the same becoming due.— That such demand, call at the Office of the said Complainants, and made certain promises respecting the payment of the said Note, and that such promises were made frequently previous to the fourth day of November then last past. And that he, Your Petitioner had frequently repeated those promises, subsequent to that period. That Your Petitioner came to him the Deponent, and promised to pay Two Thousand Pagodas in ready Cash in part of the Note, and requested the

Deponent

Deponent to intercede with them the said Complainants to grant him, or further time for the payment, to which proposition the Deponent said he replied, That unless he Your Petitioner paid Four Thousand Pagodas he the Deponent would not=

comply with such request of Your Petitioner.— And your Petitio=ner further Sheweth unto This Honourable Court, That Moo tho naick a Peon and Inhabitant of Madras, another witness =

examined on the part and behalf of the said Complainants, to the Third Interrogatory did depose, That he was, some time, in or about the Month of November last past, directed by his Master, (Master George Chalmers,) to carey a Letter to Your Petitioner, and that he delivered the same into the hands of Your Petitioner, or

And your Petitioner further Sheweth unto This Honourable Court, That George Chalmers, an Attorney at Law, and Inhabitant of Madras, another Witness examened on the part and behalf of the said Complainants, to the fourth Interrogatory did depose, That he was Attorney at Law for the Complainants, That he wrote one Letter to the Defendants, on account of the Promissory Note or Obligation, upon which the present Suit was founded.— And that the exhibit annexed to the said Replication, was

a true

true Copy of the Letter written by him the Deponent, to which the Deponent said he received no Answer. And to the last Interrogatory the said Witness did depose, That upon perusal of the pleadings in the Suit, finding that Your Petitioner had alleged that he had received no letter of Demand from him the Deponent, That the Deponent made enquiries respecting the delivery thereof, and was informed by his head writer, that the said Letter was delivered to Your Petitioner by one Mootoo Naige, a Peon in the Service of the Deponent. And Your Petitioner further sheweth unto this Honourable Court, that Soobroyloo Brammey, a Writer and Inhabitant of Madras, another Witness examined on the part and behalf of the said Complainants, to the fifth Interrogatory did depose, That he was in the Service of the said Complainant, and served in the Capacity of a Writer. That he had looked at the paper Writing, then produced and shewen to him at the time of his examination, purporting to be a promissory note or Obligation, from the Defendants to the said Complainants. That Your Petitioner, one of the Defendants, to his the Deponents knowledge did call upon the Complainants,

and

and did promise at many different times payment of the said promissary Note, and that such promises were made previous and subsequent to the fourth day of November, then, last past. And Your Petitioner further sheweth unto this Honourable Court, That Soliah Pilly a Coniopoly and Inhabitant of Madras, another Witness, also examined on the part and behalf of the said Complainants, to the Fifth Interogatory did depose, That he was in the Service of the said Complainants, in the capacity of Conicoply. That he had looked at the paper writing then produced and shewn to him at the time of his Examination, purporting to be a promissory note from the Defendants to the Complainants. That Your Petitioner did frequently call and promise payment to the said Complainants of the said Promissory note, and that such promises were repeated, previous to the fourth day of November (then) last past and likewise subsequent thereto.

And Your Petitioner humbly Sheweth unto this Honourable Court, That Moorca Pillay, a Conicopoly and Inhabitant of Madras, a Witness examined on the part and behalf of Your Petitioner, to the Second Interrogatory did depose, That he

had

had seen John Tulloh (one of the said Complainants) write, and that he was thereby well acquainted with the manner and character of the hand writing of him the said Complainant (John Tulloh) That he had looked at the paper writing then produced and shewn to him at the time of his Examination, purporting to be a receipt from the Complainants to Thuckolum Moodoo Kistnamah Chitty, one of the Defendants (herein before mentioned) — That the Signature of the Firm affixed thereto, was of the proper hand writing of John Tulloh one of the said Complainants. — And your Petitioner further sheweth unto This Honourable Court, That Vencadachalla pillay a Conicopoly and Inhabitant of Madras another witness examined on the part of your Petitioner, to the Second Interrogatory did depose, That he had seen John Tulloh (one of the said complai= nants) write and that he was thereby acquainted with the character and manner of hand writing of him the said Complainant (John Tulloh). — That he had looked at the paper writing then produced and shewn to him at the time of his examination, purporting to be a Receipt from the said Complainants to Thuckolum Moodoo Kistna

Chitty

Chitty, one of the Defendants (herein before mentioned) — that the Signature of the Firm thereto affixed, was of the proper hand writing of the said John Tulloh one of the said Complainants. —

And your Petitioner humbly Sheweth unto this Honourable Court, That upon the examination of Witnesses as aforesaid, Publication did pass in the said Cause, and the same was set down for hearing, and accordingly came on to be heard, on Tuesday the Twentieth day of December and year of Christ One Thousand Seven Hundred and Ninety Six, When the said Mayors Court, upon hearing the Several Pleadings aforesaid, as well as the Depositions of the Witnesses on the part and behalf of the said Complainants and your Petitioner) thought fit to Order and Decree, and did accordingly Order and Decree That your Petitioner should pay unto the Complainants the full and Just Sum of Eight Thousand, Two Hundred and Seventy five Pagodas, Thirty fanams and fifty two Cash Together with all such Interest as then was or should thereafter became due thereon, until full payment was made. — And it was further Ordered and Decreed, That your Petitioner should be taxed with double Costs of the said Suit. — As by a Copy of the said Order

and

and Decree of the said Mayors Court to this Your Petitioners Petition and Appeal annexed for the Inspection of this Honourable Court, to which Your Petitioner craves reference, and humbly prays that the same may be taken in aid and Assistance of this his Petition and Appeal, doth and may more fully and at large appear.—

By which said Order and Decree of the said Mayors Court Your Petitioner doth conceive himself much, and materially Injured and Aggrieved, and Doth therefore Appeal therefrom, unto the Judgement of this Honourable Court for the following amongst other Reasons—

First . . . . Because The Promissory Note on which the Complainants have grounded their present Action, being in the Nature of Collateral Undertaking or Security for the payment of a like Sum, within fifteen days after the date thereof, by Apporvaloo Mungatha Chitty Eyah Permaul or Tacolum Moodoohistna Chitty, on an express condition, "That the Complainants upon "the receipt of the Sum of Ten Thousand Two Hundred and fifty "Seven Pagodas (condetioned in and upon the same) within

"fifteen days

"fifteen days from the date thereof, should deliver up discharged to "your Petitioner and the said other Defendants The Draft of "Apoovaloo Mungatha Chitty Eyah Permaul drawn and "accepted by Tacolum Moodoohistna Chitty, and payable to the "order of the said Complainants" The said Mayors Court, at the time of making and giving the said Decree and Judgement in the Premises, ought to have had proof before them, that the said Complainants during the said Fifteen days, or on or before the expiration of the same, had used due diligence to obtain payment of the said Original Note, of the Drawer or Acceptor thereof, for your Petitioner humbly sheweth unto this Honourable Court, That he had at the request of the said Complainants been induced to sign the said Note, on which the present Action is grounded, under the hope and expectation, That within the period of Fifteen days, the said Tacolum Moodoohistnah Chitty, the Accepter of the Original Note, would have been able to pay off and discharge the sum secured thereon, and your Petitioner had made his calculation of the chance or risk he might possibly incur by entering into such an engagement for a definite and specific period, and

considered

considered that in the event of inability on the part of the said Tucolum Moodookistnah Chitty to discharge the same, He, Your Petitioner would have had it in his power to pursue legal and coercive measures to enforce payment from him, should Your Petitioner, on account of his Collateral undertaking, have been resorted to by the said Complainants. But Your Petitioner sheweth unto this Honourable Court, That neither at the expiration of the said fifteen days, nor untill sometime in the month of December following, a period of two months and upwards from the signing of the said Note in Question by the said Complainants Bill, the said Complainants nor any or person or persons on their behalf, did give any written or other notice to your Petitioner that the said Tucolum Moodookistna Chitty or Apoovaloor Mungatha Chitty Ogah Permaul had not paid off and discharged the said Draft or Note, nor did they directly or indirectly make any demand upon Your Petitioner for the same. so, that Your Petitioner was reasonably led to suppose, from the non-application for payment by the said Complainants, at the expiration of the said period of Fifteen days, That the said Draft or Note, for which the said Collateral Security was granted, had been duly paid off and discharged by the Drawer or Acceptor of the

Same

same and Your Petitioner humbly contendeth, That the said Complainants ought to have set forth in their said Bill of Complaint, and proved to the said Mayors Court, in order to have lawfully supported their said Action, That an actual demand had been made upon the said Tucolum Moodookistna Chitty, as Acceptor of the said Original Draft or Note, at or before the expiration of the said Fifteen days, and Secondly, in case of Default in him, they should, and ought to have also alleged and substantiated by Evidence, That notice to this effect had been given to Your Petitioner, who, from his collateral undertaking, stood in relation of Indorsor, otherwises Your Petitioner is advised, it is Error, — and upon this Your Petitioner grounded his Plea in Bar to the Complainants Bill, of which, he humbly submits, The said Mayors Court ought to have allowed him the legal benefit and advantage. —

Secondly — Because, There is not any specific day set forth, or anywhere in proof, on which a demand had been actually made upon Your Petitioner: save and except it is alleged, that a Letter of bearing date the Second day of November, and year of Christ one Thousand Seven Hundred and Ninety five, and supposed

to

to have been written by Master George Chalmers Attorney at Law of the said Complainants, of the pretended Tenor of an exhibit annexed to the Replication of the said Complainants, had been sent to your Petitioner. But which Identical Letter, is no where shewn to have been delivered to Your Petitioner on any Specific day. — For your Petitioner humbly sheweth, That even had a Letter been written upon the Second day of November, (to wit, Thirty days after the said note became due) it is no where in proof that such letter, alleged to have been so written, had ever come to the hands of Your Petitioner. For the only Evidence examined to this point in Issue, is Moodoo Naick, (a Peon, alluded to in the deposition of the said Master George Chalmers) who has deposed, That sometime in or about the Month of November he was directed by Master George Chalmers (his master) to carry a Letter to Your Petitioner, and that he delivered the same into the hands of Your Petitioner." — But, Your Petitioner humbly Observes, That throughout his Deposition, it doth not appear, what Letter he was so desired to carry, nor in what Year, Month or day such Letter was so delivered, by him the Deponent into the hands of Your Petitioner. — And Your Petitioner humbly sheweth, That the other Witnesses examined on the behalf of the said Complainants, have only stated general demands to have been made upon Your Petitioner, without specifying any particular day — And therefore Your Petitioner humbly contends, the said Complainants have failed to prove the Gist of their said Action, Namely, the demand, in due season, of the Debt assumed on the said Promissory Note of Your Petitioner and others the said Defendants. For Your Petitioner is advised, That the maker of a Note shall be applied to for Payment at the exact time, when it becomes due, or the holder in case of a Loss, must suffer and sustain it. Otherwise, should a bill or note be kept for a long time, it shall be presumed to have been discharged by some other collateral party — there being an implied trust or credit between the parties, it might often be prejudicial to Commerce if a Bill or Note should rise up at any distance of time, when reconings and accounts may be adjusted. For, in the Interim, Bankruptsy may have ensued, or the drawer or Acceptor (as in the present case) may have absconded, in which Instances the Indorser or person liable for the payment would be defeated of his legal Remedy — And as Your

Petitioner

Petitioner trusts he has- clearly shown to this Honourable Court, the extreme neglect and Laches of the said Complainants in not having demanded, or given notice of a default of payment by the said Tucolum Moodoohistna Chitty nor having made a demand upon Your Petitioner at the time the said Note became due And further as the law abhors, That a Man shall drive any advantage, from his own wrong doing; The said Mayors Court, was not, as Your Petitioner humbly presumes, Justifiable in giving their said Decree, as against Your Petitioner.—

Thirdly— Because, That even had it been charged and proven to the said Mayors Court, That a demand had been made and pursued on the said Tucolum Moodoohistna Chitty the Accepter of the Original Draft or Note, or on the said Apoovaloor Mungatha Chitty Eyah Permaul, the Drawer of the same, and of a default of Payment by him or them: and that notice to this effect, had been given to Your Petitioner, considered in the relation of Indorsor: and, had it been further in proof, That the Complainants had made a demand upon Your Petitioner, as maker of the note; But which hath not been any where shewn or proved, Yet, Your Petitioner is advised, that the said Complainants had forfeited all claim upon Your Petitioner, In as much, as it is in proof, and is also admitted by the said Complainants in their said Replication, That they the said Complainants, had, subsequent to the Collateral Security or undertaking of Your Petitioner, at different times, to wit, on the fourth day of November, and Fifth day of December, and last mentioned year, received from the Tucolum Moodoohistnamah Chitty, the Acceptor of the said Original Draft or Note, the Several Sums of Two Thousand, and five Hundred Pagodas, for which they the said Complainants had granted their Receipt, and which Receipt doth expressly declare such Sums to have been paid and received "in part payment of Apoovaloor Mungatha Chitty Eya Permauls draft on him the said Tucolum Moodoohistnamah Chitty, namely, the said Original draft, on account of which Your Petitioners Undertaking has arisen.— Which, Your Petitioner humbly submits to this Honourable Court, must clearly evince, That the said Complainants in resorting to the said Original Draft, had considered your Petitioner, merely in the relation of Indorsor of such Draft or Note, and not in the Nature of maker of an Original Note, and as the fact is—

is — And your Petitioner humbly contends, That the said Complainants in so doing, had made their Election, and altogether exonerated your Petitioner from any and every undertaking, by reason of such his — Collateral Security — For Your Petitioner sheweth to this Honourable Court, That where the Indorsee of a Promissory note, receives part of the — money from the drawer of the same, It is held, as your Petitioner is advised, to be a taking upon himself to give the whole Credit to the Drawer of the note, and absolutely to discharge the Indorser or — collateral Security — And that if the Indorsee of a Bill of Exchange accepts any sum in part of payment, he can never after resort for payment of the residue or remainder to the Drawer And — Your Petitioner sheweth, That it is laid down in Books of Authority, That in an Action brought by the Indorsee of a Promissory note, against the Indorsor, it having appeared that the Plaintiff after the Indorse — ment had received from the Drawer some part of the money — due upon the note; It was held that the Indorsee had thereby taken upon himself to give the drawer Credit for the whole and had discharged the Indorsor absolutely — and the Plaintiff in that case was nonsuited — Wherefore the said Election of the said Complainants having been made in resorting for — payment

payment to the said Tucolum Moodoohistna Chitty, and expressly — on Account of the said Original Draft, Your Petitioner contends, that he is thereby exonerated and discharged from his said — undertaking, and that the said Mayors Court in framing their said Decree have proceeded counter to legal facts and determina — tions —

And Lastly — Because The note subscribed by Your Petitioner, on which the present Action is founded, being, as before alleged, in the nature of a Collateral Agreement or Security for a definite Sum and on an expressed condition, That upon the payment of the Sum se — cured thereby, The Complainants should on their parts, deliver up to Your Petitioner and Nagojee Samboje one of the said other Defendants, the Original Draft drawn by Apoovaloor Mungatha Chitty Eya Permaul in favor of the said Complainants, and — accepted by the said Tucolum Moodoohistna Chitty, Your — Petitioner sheweth That it was incumbent on the said Complai — nants to have alleged and shewn a tender of the said Original Draft, at the expiration of the said Fifteen days, For Your — Petitioner is advised, That if there be any conditional Agree — ment respecting the Customs of Notes or Bills of Exchange, it is clearly laid down, and supported by Judicial decisions that

such

such conditions must be strictly complied with — And Your Petitioner
farther sheweth, That for the Reasons assigned in Your Petitioners
last cause of Appeal, The Complainants by their own Act are
become wholly incapable of fulfilling such Condition For having
received from the Said Tucolum Moodoosuttnan Chitty, the
several Sums herein before mentioned, expressly on account of the
said Original Draft or Note, they cannot deliver up the same
in such plight, in which Your Petitioner could receive any advan-
-tage thereof, For Your Petitioner sheweth, that the said Draft
or Note being a Chose in Action, an entire and indivisible Thing
cannot be apportioned and multiplied into several Accounts
Wherefore the said Complainants in having changed the
Nature of the said Note, by receiving a part thereof, cannot Indorse
or Assign the same to Your Petitioner, so as to give your Petitioner as
Assignee a Right of recovering the amount from the said Tucolum
Moodoosuttna Chitty, which must have been, and was the equita-
-ble and true Intent of such condition, at the time of making
the same — and therefore the said Complainants, in not having
strictly complied with the said Conditions, and by their after Act
having disqualified themselves for so doing, were not entitled to any
Relief in the Premises —

For

For all which Reasons, and such others as
may be offered at the hearing, Your Petitioner
most Humbly prays this Honourable Court,
will be pleased to reverse the said Decree of the
said Mayors Court, and further Grant unto
Your Petitioner such other Relief in the
Premises, as to the Judgement of this Honourable
Court shall seem meet —

/ Signed / Emanuel Samuel
Solicitor for Appellant

Mayors

Mayors court at Madraspatnam } Tuesday the 20th day of December Anno Domini 1796

Present

James Daly Esqr. Mayor

James Call William Webb

Andrew Ross John Mitford

Benjn. Roebuck Wm. Abbott

Alexr. Cockburn Richd. Chase

William Dring — Aldermen,

Between John Tulloh John Jervies and James Brodie of Madras Merchants under the firm of Messrs. Tulloh Jervies and Brodie Complainants and Nagoje Lombojee Coothy Chitty and Moodoo Kistnan of Madras Inhabitants 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 Copy of an Account Current annexed, the Defendant Coothy Chitty's Real and Answer the Amended Replication the Amended Rejoinder the Interrogatories and Depositions on the part of the Complainant with one Exhibit annexed the Interrogatories and Depositions on the part of the Defendant with One Exhibit annexed On Hearing the Pleadings made Use of by the Attornies and on due Consideration had thereon this Court doth think fit to Order and Decree and doth Accordingly Order and Decree that the Defendant Coothy Chitty do pay unto the Complainant the full and Just Sum of Eight Thousand two Hundred and Seventy five Pagodas thirty fanams and Fifty two Cash / Pagodas 8275. 30. 52. / together with all such Interest as now is or shall hereafter become due thereon untill full payment is Made and It is further Ordered and Decreed that the Defendant Coothy Chitty be taxed with double Costs of this Suit

True Copy /Signed/ George Taylor Regr.

/Signed/ Emanuel Samuel
Solicitor for Appellant

To

To the Right Honble Lord Hobart

Governor and President in Council &c. &c.

Fort Saint George

In the Honble the Court of Appeals

Between John Tulloh, John Ierves and James Brodie of Madras Merchants carrying on under the firm of Messieurs Tulloh, Ierves and Brodie Complainants and Nagojee Sambojee Coothy Chitty and Moodoo Kistnan also of Madras Inhabitants Defendants

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

These Respondents for answer to the Appellants Petition and Appeal or unto so much thereof as is Necessary for them to make answer unto answer and say, that they admit to have some time on or about the Twenty fourth day of March which was in the Year of our Lord one thousand Seven hundred and Ninety six Exhibited and filed their Bill of Complaint in the Honble the Mayors Court, of Madraspatnam against the said Appellant and the other Defendants above named

Filed in my Office the 3d February 1797

J. Webbe Cm

named and did therein and thereby Charge the said Appellant and the other Defendants above named to stand indebted to these Respondents in the full and just Sum of Eight thousand two hundred and Seventy five Pagodas thirty fanams and Seventy two Cash Current Money of Madras as and for the balance due and owing to these Respondents on a Certain Promissory Note granted by the Appellant and the other Defendants above named to these Respondents. And these Respondents admit that the appellant being Summoned to appear to and Answer the these Respondents Bill of Complaint he did appear thereto by his Attorney at Law and did Exhibit and file his Plea and Answer in the said Mayors Court which said Plea and answer being fully Recited and Setforth in and by the said Appellants Petition and Appeal. These Respondents Crave leave to Refer thereunto. And these Respondents further admits that to the said Plea and Answer they did Exhibit and file their Replication and the said Appellant having Rejoined thereto issue did thereupon join and Rules passed for the Examination of Witnesses as by the said Replication and Rejoinder setforth and Recited by the said appellant

in

in his said Petition and appeal Relation being thereunto had will more fully appear. And these Respondents further admit that Witnesses were accordingly examined on the part and behalf of the appellant as well as of these Respondents and that they did Severally depose as is set forth and Recited in and by the said appellants Petition and appeal That Publication having afterwards passed the said Cause was set down for hearing and afterwards Came on to be heard by and before the said Mayors Court on the twentieth day of December one thousand seven hundred and Ninety six, when the said Mayors Court was pleased to order and Decree and did accordingly Order and Decree that the appellant should pray unto these Respondents the full and just Sum of Eight thousand two hundred and Seventy five Pagodas thirty fanams and fifty two Cash together with such Interest as then was or should thereafter become due thereon until payment was made or together with double Costs of Suit as by the said Decree Copy whereof is to the said appellants Petition and Appeal annexed Relation being thereunto had will

More

more fully appear. But these Respondents deny that the appellant is aggrieved by the Order and 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 these Respondents deny that the Promissory Note on which they have grounded their Action is in Nature of a Collateral Security as is untruly alledged by the said appellant on the Contrary these Respondents Contend that as well from the pleadings in the Cause as from what appears on the face of the Note it Can be Viewed in no other light than as an Absolute engagement on the part of the appellant Cooley Chetty either by himself or Conjunctly with Nogoje Samboje and Moodoohistnan the other parties to the said Note to discharge in fifteen days from the date thereof the Sum of Ten thousand two hundred and fifty Seven Pagodas with Interest at and after the Rate of twelve per Cent and the only Condition attached to the said Note is that after payment was made these Respondents should

Deliver

Deliver up discharged the draft or acceptance alluded to by the appellant. And with this Construction of the Note the appellant perfectly agrees for in his Rejoinder he admits that the Promissory Note on which the action had been brought appeared to be on the face of it an Undertaking of him the Appellant with the other Defendants Jointly or Severally to discharge within a Certain time the Amount Mentioned in and upon the said Promissory Note with Interest and that the only Condition in the Promissory Note which seemed to Respect these Respondents was that they should upon payment being Made deliver up discharged the Draft of a poovaloor Mungatha Chitty Eyah Permaul, But from the mode of Reasoning Adopted by the appellant in his said appeal It would appear that he either has forgot the Subject of the Suit or attempts wilfully to pervert it, For he says that he was induced to Sign the Note on which the present action is grounded under the hope and expectation that within the period of fifteen days Moodoohistnah Chitty the acceptor of the Note would have been able to pay off and discharge the Sum received thereon and that he the appellant had made his Calculation of the Risk or Chance he might possibly incur by entering into such an engagement for a definite and Specific period and Considered that in the event of inability of the said Moodoohistnan to discharge the same he the appellant would have had it in his power to pursue legal and Coercive Measures to enforce payment and as the undertaking therefore was only Collateral the appellant Contends that he is discharged for want of notice being given of the failure of the acceptor, But these Respondents Submit that if the said appellant had only intended to become Collateral Security for the payment of the draft accepted by Moodoohistnan Chitty the Promissory Note or Obligation upon which the present action is founded would have been worded differently It would have Necessarily been Indefinite of Moodoohistnan Chitty failing to discharge the Draft accepted by him in fifteen days then we promise to do it But as the note is not Collateral what the appellant has Urged in Respect to Notice is altogether irrelevant and more particularly so as the said Moodoohistnan is one of the makers of the said Promissory Note and a Party Defendant to this Suit and these

Defendants

Defendants further say that the admissions on the part of the appellant in his Rejoinder as herein before is Setforth Vnder any further observations on the extraordinary Arguments in the first Reason Contained unnecessary For if a meaning or Construction is allowed to be placed on Instruments of this Solemn Nature different from what they import on the face of them they must become altogether Nugatory.

And to the Second Reason or Cause of Appeal from the Decree of the said Mayors Court wherein the Appellant doth alledge and say that there is no Specific day Setforth Nor does it any where appear in proof that a demand had actually been made upon him the Appellant For Answer thereunto these Respondents say that although from the Nature of the obligation upon which the present Action is founded It was not incumbent on them to give any Notice to the appellant Yet the fact is that Notice was given and the falsity of the Appellants assertions is Clearly Shewn by the evidence Recited in his appeal For Poonapillah their Dubash to the Second Interrogatory deposes that application was made to the

Appellant

Appellant for payment of the Promissory Note upon the same becoming due and that in Consequence of this demand the Appellant Called at the office of these Respondents and made promises of payment that in particular the appellant came to the Deponent and offered to pay Two thousand Pagodas in part of the Note and Requested the Deponent to intercede with these Respondents and procure him further time for payment. And these Respondents further say that from the Evidence of Soobaroyloo Braminy and Soliah pellah as well as that of the said Poonapellah the assertions in the said Petition and Appeal contained are not only Shewn to be untrue But it is also demonstrated in the Clearest Manner that the Appellant has in his Plea and Answer deliberately Sworn to what is false. For he says that these Respondents Neither Jointly or Seperately did demand or Cause to be demanded from him any Sum or Sums of Money either as Principal or Interest for or on account of the Promissory Note upon which the Action is founded until long after the fifth day of December in the Year one thousand Seven hundred

and

And ninety five Whereas the said Witnesses depose that demands were Made and frequent Promises of payment given both previous and Subsequent to the Period mentioned by the appellant. And these Respondents admit that where a Promissory Note is Endorsed It is incumbent on the Endorsee to Call upon the maker when it becomes due Otherwise the Endorser is discharged &c But these Respondents do not see how this Reasoning is intended to apply to the present Case where no indorsement has been Made, and Where the question lies Merely between these Respondents as the Payees and the appellant as the Maker of the Note.

And for Answer to the third Reason or Cause of Appeal These Respondents say that from the Nature of the Promissory obligation upon which the present action is founded and of which the Draft accepted by the Defendant Moodoohistnan forms part — It was very immaterial whether the Receipt mentioned the Sum of Two thousand Pagodas to have been Received on Account of the one or the Other — But if it Can be Supposed that there was an irregularity in granting the Receipt in that Manner &c

These

These Respondents do not see how that Circumstance Can operate to exonerate the appellant from his Undertaking which is not Collateral But an absolute engagement to pay a Certain Sum of Money.

And to the Last Reason or Cause of Appeal these Respondents deny that it was incumbent on them to Make a tender of the Draft accepted by Moodoohistnan Inasmuch as it appears on the face of the Promissory Note that they are only to deliver it up on Receiving Payment of the sum of Ten Thousand two hundred and fifty Seven Pagodas with Interest at the Rate of Twelve per Cent per Annum and which these Respondents have been always Ready to do.

For all which Reasons and such others as May be offered at the hearing these Respondents pray this Honble Court will be pleased to affirm the Decree of the said Mayor's Court and that the Appellants Petition and Appeal be dismissed with Caamplay Costs to be paid by the appellants.

/Signed/ George Chalmers
Solicitor for Respts

Court

Court of Appeals
at
Madraspatnam

Friday the 6th. day of October
Anno Domini 1797

Between Cootty Chitty of Madras Inhabitant
Appellant and John Tulloh John Dervis and James
Brodie of Madras Merchants under the firm of
Mess.rs Tulloh Dervis 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 20th. day of December
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
Single Costs in this Court —

J Hur

T. C.

To the Kings Most Excellent Majesty in Council

Between John Tulloh John Dervis and
James Brodie of Madras Merchants under the
Firm of Tulloh Dervis and Brodie Complainants
and Nagoojee Sambajee Cooty Chetty and
Moodoo Kistnan also of Madras Inhabitants
Defendants —

The Petition and Appeal of Cooty Chetty one of the above named
Defendants —

Humbly Sheweth unto your Most Excellent Majesty in Council —

That sometime on or about the Twenty fourth day
of March which was in the year of Christ One Thousand Seven
Hundred and ninety six the Complainants above named did
Exhibit and file their Bill of Complaint in the Honourable the
Mayors Court at Madraspatnam against your Petitioner and
the other Defendants above named and did therein and
thereby Amongst other things setforth and state That your Petitioner
and the said other Defendants stood Justly and truly indebted
unto them the said Complainants in the full and Just
Sum of Eight Thousand two hundred and and seventy four
star Pagodas Thirty fanams and seventy two Cash of the Current
Money

Filed in my Office
the 19th. October 1797
T. Oakes Clk.

Money of Madras aforesaid making in sterling Money of Great Britain at the rate of Eight Shillings for every star Pagoda the sum of Three Thousand Three hundred and Ten Pounds and five Shillings or thereabouts as by the Copy of an Account Current to their said Bill of Complaint annexed for the Inspection of the said Honourable the Mayors Court to which the said Complainants prayed leave to Refer and that the same might be taken as part and parcel of their said Bill of Complaint the said Complainants did say would appear And your Petitioner humbly Sheweth unto your Most Excellent Majesty in Council that the said Complainants did in and by their said Bill of Complaint further state That they had frequently and in an amicable manner demanded payment from your Petitioner and the said other Defendants of the aforesaid Sum of Eight Thousand Two hundred and Seventy five star Pagodas thirty fanams and Seventy two Cash But alledged that your Petitioner and the other Defendants had refused to pay off or Discharge the same or any part thereof and that the said Complainants did thereupon in and by their said Bill of Complaint pray That the said Honourable the Mayors Court would be pleased to grant unto them the said Complainants a Genival Relief such as should be agreeable to Equity and good Conscience and that your

Petitioner

Petitioner together with the other Defendants above named should be decreed to pay unto the said Complainants the aforesaid Sum of Eight Thousand two hundred and seventy five Star Pagodas thirty fanams and seventy two Cash together with all such Interest as then was or should thereafter become due thereon and also all Costs and Charges attending the prosecution of the said suit—

And your Petitioner further sheweth unto your Most Excellent Majesty in Council that being summoned and required to be and Appear before the said Honourable the Mayors Court to answer the said Bill of Complaint of the said Complainant he did accordingly by his Attorney at Law in the Honourable the Mayors Court appear thereto and sometime on or about the Third day of May which was in the Last mentioned year did Exhibit and file his Seperate Plea and answer to the said Bill of Complaint of the said Complainant and that your Petitioner did for Plea thereunto say That the end and scope of the Complainants Bill was to Compel the payment of the Sum of Eight Thousand two hundred and Seventy five Pagodas thirty fanams and seventy two Cash of the Current Money of Madras alleged to be due and owing unto the said Complainants from your Petitioner one Nagoji

Samboji

Sambojee and one Moodoo Thistnan the other Defendants above named on Account of the balance of a principal Sum with a Certain Interest thereon stated to have been assumed on a promissory note Executed by your Petitioner and the other Defendants above named on the Twenty Sixth Day of September and year of Christ One Thousand Seven Hundred and ninety five your Petitioner by protestation not Confessing or Acknowledging all or any of the matters and things in the said Complainants Bill of Complaint Contained to be true in the manner and form as the same were therein and thereby Charged setforth and alliged For Plea thereunto your Petitioner did say That the said promissary note mentioned in the said Account Current Annexed to the said Bill of Complaint of the said Complainants and Referred to by the same was Executed by your Petitioner and others the Defendants before mentioned as a Collateral Security for the payment within fifteen Days after the Execution of the said Promissory note of the principal Sum of Ten Thousand Two Hundred and fifty Seven Star Pagodas with an Interest thereon at and after the rate of Twelve per Cent per annum from the eighteenth day of September in the said year of Christ One Thousand seven hundred and ninety five by one Aproovaloor Mungatha Chetty and Eya Permaul or some other on their behalf on Account of a Draft or understathing in writing Drawn by them the said Aproovaloor Mungatha Chetty and Eya Permaul and accepted by one Tuculum Moodoo Thistnan Chetty one of the Defendants therein before mentioned and Described by the name of Moodoo Thistnan and payable to the order of the said Complainants on Condition on the part of the said Complainants in the event of the said Sum of Ten Thousand Two hundred and fifty seven star Pagodas not being paid within the said period of fifteen days either by the said Aproovaloor Mungatha Chetty or Eya Permaul or any other person or persons on their behalf at the end and Expiration of the said fifteen days That they the said Complainants should Deliver up to your Petitioner and others the said Defendants on payment by them of the said Sum of Ten Thousand Two hundred and fifty Seven star Pagodas together with an Interest of Twelve per Cent thereon from the said Eighteenth day of September in the said last mentioned year the said Draft or understathing in writting of the said Aproovaloor Mungatha Chetty and Eya Permaul accepted by the said Tuculum Moodoo Thistnan Chetty and payable as aforesaid and

your

your Petitioner did in and by his said Plea say that at the
end of the said fifteen days from the Execution of the said
promissory note the said Complainants neither Jointly nor 6th
Seperately did give any notice in writing or otherwise that the
said Draft or undertaking in writing of the said Aproovaloor
Mungatha Chetty and Eya Permaul had not been Discharged
by them or either of them or by any other person or persons on their
behalf And your Petitioner did in and by his said Plea
further state that at the end and Expiration of the said
fifteen Days he was ready to pay off and Discharge the said
Sum of Ten Thousand Two hundred and fifty suvvn star Pagodas
unto the said Complainants with an Interest at and after the
rate of Twelve per Cent per Annum as aforesaid and promised
by your Petitioner and others the said Defendants in the
said Promissary note had the said Complainants demanded
payment thereof of your Petitioner But your Petitioner did
aver that the said Complainants neither Jointly nor seperately
did Demand or Cause to be Demanded of your Petitioner
any Sum or Sums of Money either as Principal or Interest
for or on Account of the said promissary note so Executed
as a Collateral Security as aforesaid by your Petitioner and
Others the said Defendants until long after the fifth day of
December

December in the said year of Christ One Thousand Seven
Hundred and ninety five And your Petitioner did in and
by his said plea further state that on or before the said fifth day of
December last mentioned and previous to any demand having
been made by the said Complainants on your Petitioner on Account
of the said Promissory note in the said year of Christ one Thousand
Seven hundred and ninety five The said Complainants did
receive of the said Tuculum Moodoo Chetty the Drawee
of the said Aproovaloor Mungatha Chetty and Eya Permaul and
for and on account of and in part payment of the said draft or
undertaking in writing of the said Aproovaloor Mungatha
Chetty and Eya Permaul on the said Tuculum Moodu Chetty
the several Sums herein after mentioned to wit the sum of Two
Thousand star Pagodas on the fourth day of November and the
further Sum of Five hundred star Pagodas on the said fifth
Day of December in the said year of Christ One Thousand
Seven hundred and ninety five and that the said Complainants
did give an Acknowledgment or receipt in writing for the
said Sum of Two Thousand star Pagodas unto the said Tuculum
Moodoo Chetty Chetty Declaring and acknowledging the
said sum to have been paid by them and Received by them
the said Complainants in part Discharge of the said Draft or

Undertaking

undertaking in writing of the said Apoovaloor Mungatha Chetty and Eya Permaul as aforesaid And your Petitioner did therefore Plead as he was advised the said want of notice and Demand from and by the said Complainants to and of your Petitioner and the said Receipts of the said and several Sums of Money as aforesaid and from the said Tuvalum Moodoo Kistnan Chetty by the said Complainants in Bar to the said Complainants Bill and did Demand the Judgment of the said Honourable the Mayors Court whether he your Petitioner should be obliged and Compelled to make any other Answer thereunto than as afore recited —

And your Petitioner humbly Sheweth unto your Most Excellent Majesty in Council That your Petitioner not waving his said plea but wholly Relying and insisting thereon for Answer to the Complainants said Bill of Complaint or to so much thereof as your Petitioner was advised to be material and necessary for him your Petitioner to make Answer unto He your Petitioner did answer and say That your Petitioner Denied that any Sum or Sums of Money was or were paid by him your Petitioner or others the Defendants before named unto the said Complainants as stated by them on the Credit side of the Account Current

Annexed

annexed to the said Bill of Complaint for or on Account of the said promissary note Executed on the said Twenty sixth day of September in the said year of Christ One Thousand Seven hundred and ninety five But your Petitioner did aver and say that he would in due time aver and prove to the satisfaction of the said Honourable the Mayors Court That the said and several Sums mentioned on the Credit side of the said Account Current so Annexed to the said Bill of Complaint as aforesaid were Justly and bonafide paid for on or Account of the said Draft of the said Apoovaloor Mungatha Chetty and Eya Permaull —

And your Petitioner further humbly Sheweth unto your most Excellent Majesty in Council That to the said seperate plea and answer of your Petitioner as aforesaid the said Complainants did sometime on or about the Twenty Eighth day of June in the said year of Christ One Thousand Seven Hundred and Ninety Six Exhibit and file their Replication in the said Honourable the Mayors Court and therein and thereby amongst other things for Replication say That the matter insisted on by your Petitioner by way of plea even if the same were true but which the Complainants did say they would not admit could not

not as they said they were Advised have any force or Operation in the Law so as to Bar their action For the said Complainants did say that the said promissary note on which the said action was grounded was an Obligation whereby your Petitioner and the said other Defendants herein before named had bound themselves Jointly or severally to Discharge in fifteen Days from the date thereof the amount for which the said Obligation was granted with Interest at and after the rate of Twelve per Cent per annum and that the only Condition Attached to the said Obligation was That the said Complainants should Deliver up Discharged the draft of a promissary Mungatha Chitty and Eya Permaul Drawn upon and accepted by the said Tuckum Moodoo Thistnan Chitty in favor of them the Complainants and which the said Complainants did allege they had at all times been ready to do - and the said Complainants did thereupon submit to the said Honourable the Mayors Court That the said Promissary note was not in the nature of a Collateral Security But that it was an absolute engagement on the part of your Petitioner and the said other Defendants to Discharge the amount thereof Jointly or severally and that for the Recovery thereof the Complainants alleged they were by Law entitled

to

to maintain an Action against your Petitioner and the said other Defendants Jointly or each of them Severally And your Petitioner humbly sheweth that the Complainants in order to shew to the said Honourable the Mayors Court as they pretended the unjust and litigious Conduct of your Petitioner in the premises did in and by their said Replication set forth and state the following Circumstances and did aver the same to be facts to wit That the said Apoovalar Mungatha Chitty and Eya Permaul in your Petitioners said Separate plea and answer mentioned did Draw a Bill on the said Defendant Moodoo Thistnan Chitty in favor of them the said Complainants and which said Bill was duly accepted by him the said Defendant Moodoo Thistna Chitty But the Complainants alleged that when the said Bill became due he the said Defendant Tuckum Moodoo Thistnan Chitty was enable to Discharge the same The funds or money which had been provided for the payment of the sum mentioned in the said Bill and Accepted as aforesaid having been sent by him the said Defendant Moodoo Thistnan Chitty to your Petitioner and the said other Defendant Nagoojee Sambajee as the Complainants said they were Credibly informed In examination your Petitioner most humbly submits unto

Your

your most Excellent Majesty in Council which the Complainants have not attempted to substantiate and which they introduced into their Replication merely to give a Colour to their proceedings in prosecuting Your Petitioner who had not Received any Consideration for his Collateral undertaking and in Order to prejudice in the early part of the Cause the Judgment of the said Honourable The Mayors Court against your Petitioners Defence And the said Complainants did in and by their said Replication further say that the said Defendant Moodu Kistna Chetty not being able to discharge the Amount mentioned in the said Bill when the same became due as aforesaid They the said Complainants were about to institute a suit against him the said Moodoo Kistnan Chetty for the Recovery of the same But that to prevent the adoption of those measure the said other Defendant Nagoojee Sambajee and your Petitioner Came forward and did earnestly entreat them the Complainants to allow fifteen Days for payment at the expiration of which time they your Petitioner and the said other Defendant Nagoojee Sambajee faithfully promised to Discharge the amount and the Complainants did further state that they were prevailed upon by the earnest intreaties

and

and solicitations of the said other Defendant nagojee Sambajee and your Petitioner to give the time Required and that Accordingly the promissory notte on which the present Action was founded was Drawn out and Executed by the said Nagojee Sambajee the said other Defendant and your Petitioner together with the said other Defendant Tanculum Moodoo Kistnan Chetty under the name and description of Moodoo Kistnan And the said Complainants did in and by their said Replication further say That when the said Promissory notte became due it was sent to your Petitioner and the said other Defendants for payment an assertion your Petitioners submits which was thereafter not proven But that instead of its Being Discharged as the Complainants said they Confidently Expected your Petitioner and the said other Defendants the Complainants alleged did evade Complying with such Requisition under many frivalous pretences and that thereupon they the said Complainants did send the said promissary notte to their Attorney at Law with instructions to Demand payment of the amount secured on the same and in the went of Refusal or Delay to institute a suit against your Petitioner and the said other Defendants And the

Complainants

Complainants did further state that in Compliance with such their Instructions their said attorney at Law did write a Letter of Demand to your Petitioner and the said other Defendants a pretended Copy whereof they said was to their said Replication annexed whereupon your Petitioner and the said other Defendants did proceed to the house of them the said Complainants and earnestly intreat and beg that a suit might not be instituted against them and that your Petitioner and the said other Defendants after alleging the great scarcity of Money to have been the Cause of their failure in discharging the said note did say that they Daily Expected to be Enabled to pay off and Discharge the same And your Petitioner humbly sheweth that the said Complainants did in and by their said Replication further say That on the fifth Day of November Five Thousand Pagodas was paid in part of the note and on the fifth day of December following the further Sum of Five Hundred Pagodas was paid on account of the said note But the Complainants said from that period they were only Amused with promises of payment until the said Defendants mortgage Samboyie and Moodoo Kistnan Chitty had effected their Retreat as the Complainants termed it to Tanjore where the

the Complainants said they Continued to reside at the time of Exhibiting their said Replication setting their Creditors at Defiance And the Complainants did in and by their said Replication further state That although they did admit the said sums of Two Thousand Star Pagodas and Five Hundred Star Pagodas to have been paid by the Defendant Moodoo Kistnan Chetty yet the Complainants did submit to the said Honorable the Mayors Court that it was very immaterial by which of the said Defendants the said Sums were paid they being Jointly and severally answerable until the whole thereof was Discharged and paid off and that even if it were true that no Demands had been made from the said Defendant Coolly Chetty your Petitioner for payment of the said promissary note That such omission did by no means Exonerate him nor could any omission of that nature Operate on the Obligation to which he was a party unless it had Extended to that period of time which the Legislature had fixed as a boundary or limitation for the Institution of suits But the Complainants did say that the fact was That payment had been frequently Demanded and which in order to avoid the Complainants unjustly Alleged your Petitioner had often times shut himself up in his house and the said

said Complainants did submit to the said Honourable the Mayors Court that the transaction in all its Circumstances was Replete with grass fraud and Deceit as they most unjustly pretended on the part of your Petitioner whom as they said had Joined with the other Defendants aforesaid in amusing the Complainants with fair and specious promises of payment until such time as they had Effected their retreat from the Coercion of the said Honourable the Mayors Court and who then stood forward with arguments in your Petitioners Opinion Calculated to Exonerate himself from the Obligations into which he had entered But in the mind of them the Complainant Contrary to Every principle of Equity and good Conscience and the Complainants did in and by their said Replication lastly say that they therefore hoped the said Honourable the Mayors Court would mark their Disapprobation of such alleged Conduct by affecting Exemplary Costs on your Petitioner —

And your Petitioner humbly sheweth unto your Most Excellent Majesty in Council that to the said Replication of the said Complainants your Petitioner did sometime on or about the Twenty Sixth Day July and last mentioned year Exhibit and file his Rejoinder and therein

therein and thereby amongst other things state That this your Petitioners said Plea was well impleaded that the matters and things therein alleged were true and that the same ought to have been and were an Effectual Bar to the Bills of Complaint of the said Complainants and that the said Complainants in Replying to the said Plea had admitted notwithstanding what they had otherwise alleged to the Contrary the validity of your Petitioners said plea and your Petitioner did in further Rejoinder say that he admitted the Promissary Note on which the said Complainants had brought their present action appeared on the face of it to be a written undertaking of your Petitioner with others the Defendants herein before named Jointly and severally to Discharge within a Certain time the amount mentioned in and upon the said Promissary note with an Interest of Twelve per Cent per Annum And your Petitioner did also admit that the only Condition in the said promissory note which seemed to respect the said Complainants was that they the said Complainants should Deliver up Discharged the Draft of a paccavalee Mungatha Chetty and Eya Perinault infavor of the said Complainants But Now your Petitioner did deny notwithstanding the appearance of the understating in the said note that the same

was

was what the Complainants had Called it in their said
Replication an absolute Engagement on the part of your Petitioner
Either Jointly with the said other Defendants mentioned in the
said Bill or seperately by himself to Discharge the amount thereof
Or that the said note was any thing under the Circumstances set
forth and averred in your Petitioners said plea but a Collateral
Security for the payment of the Sum mentioned in the
said Draft of Appovaloor Mungatha Chetty and Eya Pennaul
And your Petitioner did therefore submit to the said
Honourable the Mayors Court that the said Circumstances matters
and things so impleaded by your Petitioner in his said plea
should and ought to have Barred the said action of the said
Complainants as against your Petitioner And your Petitioner
humbly sheweth that he did in and by his said Rejoinder
further say That the admitted Appovaloor Mungatha Chetty
and Eya pennaul herein before mentioned and in the said
Replication named might have Drawn a Bill on the
said Moodo Kistnan one of the said Defendants and also
in the said Replication named infavor of the said Complai-
nants and that the same might also have been accepted
by the said Moodoo Kistnan and that he the said Moodo
Kistnan might have been unable to Discharge the
Amount

amount thereof when the said Bill did become due But
your Petitioner did most solemnly Deny That any money
which had been provided for the payment of the said
Bill when it should have so become due was ever lent to
your Petitioner by the said Moodu Kistnan or to the said
other Defendant Nagogee Sambajee with the knowledge
of your Petitioner as had been most unjustly and untruly
Charged by the said Complainants in and by their said
Replication or that your Petitioner did in any wise stand
indebted to the said Moodu Kistnan at the time when the
said Bill became due But that the same was set for th
in their said Replication with a view to insinuate as your
Petitioner hath herein before Observed That your Petitioner
had Received a valuable Consideration for Executing
the said promissary note But which your Petitioner did
utterly Disclaim And your Petitioner did in and by
his said Rejoinder further say That he admitted he did
at the intreaty of the said Moodu Kistnan and in
Company with the said Nagogee Sambojee wait on the
said Complainants and did request of them the said
Complainants that they would allow the said Moodu
Kistnan fifteen Days to Discharge the amount of the
said

said Draft of the said Aposvalor Murgatha Chetty and Eya Permaul and that the said Complainants did propose that your Petitioners and the said other Defendant Naggee Sambojee should Execute their Promissary note to the said Complainants together with the said Moodu Thistnan to secure the payment of the sum mentioned in the Draft in the event of the same not being discharged at the Expiration of the said fifteen Days which your Petitioner and the said Naggee Sambojee did request the said Complainants to allow the said Moodu Thistnan for the Discharge of the same and your Petitioner did in further Rejoinder say that he did Consent to Execute and did Execute the said Promissary note under the said proposals of them the said Complainants being the said promissary note on which the present action of the said Complainants had been instituted But your Petitioner did deny that when the said promissary note did became due the same was sent to your Petitioner for payment or that the your Petitioner did evade the same under various frivolous or other pretences as was untruly stated by the said Complainants in and by their said Replication For your Petitioner said as in and by his said answer he had before affirmed that the said Complainants nor neither of them did make or Cause to be made any Demand on your Petitioner of the sum assumed in

and

and upon the said Promissary note at any time previous to the said fifth day of December and year of Christ One Thousand Seven Hundred and Ninety five nor did give any notice to your Petitioner that the said Original Draft had not been duly honored by the said Moodu Thistnan Chetty And your Petitioner did in and by his said Rejoinder further say That he did not know whether the said Complainants did or did not Interest their Attorney at Law to Demand payment of your Petitioner and others the said Defendants with Directions in the event of Refusal or Delay to institute a Suit for the same or that the said Attorney at Law did write a Letter of Demand of the purport or Effect with the Copy of such pretended Letter so Alleged to have been Addressed to your Petitioner and the said other Defendants and annexed to the Complainants said Replication But your Petitioner did say and so the fact was That he your Petitioner did not at any time Receive any Letter from the said Attorney of the said Complainants of the purport or Effect of the said Copy of Letter so to the said Replication annexed as was Charged by the said Complainants And your Petitioner

did

did in further Rejoinder say That he did not at any time
in Company with the other Defendants herein before mentioned
go to the said Complainants subsequent to the second day
of November and year of Christ One Thousand Seven
hundred and ninety five as was also stated in the said
Replication to request that a suit might not be instituted
against them nor for any of the purposes assigned by the
said Complainants in their said Replication But
your Petitioner did admit that subsequent to the last
mentioned period he did Call alone at the house of the
said Complainants and on being Requested to Discharge
the amount of the said Promissary note might have asked the
said Complainants to wait until the said Moodu Thistnan
should be able to satisfy the sum assumed on the same
and your Petitioner well hoped under all the circumstances
of the case that the said Complainants would have so
waited until that went and your Petitioner did in and
by his said Rejoinder deny that he did amuse the said
Complainants with any promise or promises of payment
for the purpose of Effecting the retreat of the said Nagoyee
Sambajee and Moodu Thistnan to Tanjaur or for any other

purpose

purposes whatsoever or that he your Petitioner
did give the said Complainants a promise of payment on
his own behalf and your Petitioner did also say that it was
material and important to your Petitioners case that the said
payment acknowledged to have been received by the said
Complainants were made by the said Moodu Thistnan and
not by your Petitioner or the said other Defendant Nagoyee
Sambajee as the same doth shew that the said Complainant
had resorted to the Original Draft had looked for satisfac-
tion therefrom by the said Moodu Thistnan and thereby
Exonerated and Discharged your Petitioner and the said
other Defendant Nagoyee Sambajee from their Collateral
undertaking in and by the said promissary note and
in further Rejoinder your Petitioner did say That so much
of the Complainants said Replication as referred to the
Statute of Limitations was Altogether foreign and irrelevant
to any matter of Issue Between the said Complainants and
your Petitioner and your Petitioner did in and by his said
Rejoinder Lastly deny that he had Ever Absconded or hid
himself in order to avoid the Demand of the said Complainant
and which was even Contradicted by the Complainants themselves

in

in their insisting that they had frequently made Demands on your Petitioner which was also altogether untrue and your Petitioner did deny all fraud and Deceit in the premises as had been also unjustly Charged by the said Complainants in and by their said Replication —

And your Petitioner further most humbly sheweth unto your most Excellent Majesty in Council that on the said and several pleadings being had Issue did join in the said Cause and that Rules did pass for the Examination of Witnesses on the part and behalf of the said Complainants as well as of your Petitioner and that Witnesses were Examined Accordingly —

And your Petitioner humbly sheweth that Poonapilla a Dubash and Inhabitant of Madras a Witness Examined on the part and behalf of the said Complainants to the Second Interrogatory did Depose That to the Deponent was employed in the service of the said Complainants in the Capacity of a Dubash That he had looked at a Certain paper writing produced and shewn to him at the time of his Examination and purporting to be a promissary note or Obligation

from

from your Petitioner and the said other Dependants to the said Complainants That to his knowledge Application had been made to your Petitioner for payment on the same becoming due That such demand was made by the means of a Peon That your Petitioner in Consequence of such Demand or application had Called at the Office of the said Complainants and made Certain promises Respecting the payment of the said note That such promises had been made frequently previous to the fourth Day of November then last past That your Petitioner had also often repeated such promises subsequent to the last mentioned period That your Petitioner did also promise him the said Deponent to pay the Sum of Two thousand Star Pagodas in ready money and in part of the said promissary note provided he the said Deponent would intercede with and prevail on them the said Complainants to grant them your Petitioner a further time for payment but that he the Deponent refused to Comply with such your Petitioners request unless your Petitioner would pay the sum of Four thousand Star Pagodas And your Petitioner further Sheweth unto your Most Excellent Majesty in Council That Moodoo Naig a Peon and Inhabitant of Madras another witness examined

On

on the part and behalf of the said Complainants to the third Interrogatory did Depose That sometime on or about the Months of November then last past he the Deponent was Directed by his master Mr George Chalmers to carry a Letter to your Petitioner That he the Deponent Delivered the same into the hands of your Petitioner And your Petitioner further sheweth unto your Most Excellent Majesty in Council that George Chalmer an Attorney at Law and Inhabitant of Madras another witness Examined on the part and behalf of the said Complainants to the fourth Interrogatory did Depose That he was the Attorney at Law of the said Complainants That he had written a Letter to the Defendants on Account of the promissary note or Obligation on which the present suit was founded That the Exhibit annexed to the Replication of the said Complainants was a true Copy of the Letter so written by him the said Deponent and that he the said Deponent had received no answer to the same and to the last Interrogatory on the part and behalf of the said Complainants the said Deponent did Depose that on a perusal of the pleadings in the suit by him the said Deponent he Observed that your Petitioner

had

had Alleged in the same that he had not Received any Letter of Demand from him the said Deponent That he the Deponent had thereupon made enquiries Respecting the Delivery of the said Letter of Demand that the Deponent was informed by his head writer that the said Letter was delivered to your Petitioner by one Mooka Nayg a Peon in the Service of him the said Deponent and your Petitioner further sheweth unto your Most Excellent Majesty in Council that Soobaraya Braminy a writer and Inhabitant of Madras another witness Examined on the part and behalf of the said Complainants to the fifth Interrogatory did Depose that he the Deponent was Employd in the Service of the said Complainants in the Capacity of a Writer. That he the Deponent had looked at a certain paper writing then produced and shewn to him at the time of his Examination and purporting to be a promissary note or Obligation from the Defendants in the Suit of the Interrogatories named to the said Complainants That one of the said Defendants to wit your Petitioner to the knowledge of the said Deponent had called on the said Complainants and at many different times had

promised

promised payment of the note That such promises had been made previous and subsequent to the said fourth day of November then last past — And your Petitioner further sheweth unto your Most Excellent Majesty in Council that Soobiah Pillay a Conicoply and Inhabitant of Madras another Witness examined on the part and behalf of the said Complainants to the fifth Interrogatory did Depose That he the Deponent was Employed in the service of the said Complainant and in the Capacity of a Conicoplay That he the Deponent had looked at a Certain paper writing then produced and shewn to him at the time of his Examination and purporting to be a promissary note or Obligation from the Defendants in the Title of the Interrogatories named to the said Complainants That your Petitioner had frequently Called on the said Complainants and promised payment of the said Promissary notes and that such promises were repeatedly made previous to the fourth day of November then last past and also subsequent to that period —

And your Petitioner humbly sheweth unto your Most Excellent Majesty in Council that Manneapah Pillay a Conicoply and Inhabitant of Madras a Witness Examined on the part and behalf of your Petitioner to

to the Second Interrogatory on the part and behalf of your Petitioner did Depose that he the Deponent had seen John Tullah one of the said Complainants frequently write and that he was thereby well acquainted with the manner and Character of the hand writing of him the said Complainant John Tullah That he the said Deponent had looked at a certain paper writing then produced and shewn to him at the time of his Examination and purporting to be a receipt from the said Complainants to one Thuckalum Moodoo Krishnama Chitty one of the Defendants in the Title of the Interrogatories named That the signature of the name subscribed or affixed to such Receipt was of the proper hand writing of the said John Tullah one of the said Complainants And your Petitioner further sheweth unto your Most Excellent Majesty in Council That Vencatachella Pillay also a Conicoply and Inhabitant of Madras another Witness Examined on the part and behalf of your Petitioner to the said Second Interrogatory did Depose That he the Deponent had seen John Tullah one of the said Complainants frequently write that thereby he the Deponent was well acquainted with the manner and Character of the hand writing of him the said Complainant

John

John Tullock That he the said Deponent had looked at a Certain paper Writing then produced and shewn to him at the time of his Examination and purporting to be a receipt from the said Complainants to one Thuchelum Moodoo Thestnama Chetty one of the Defendants in the Title of the Interrogatories named and That the signature of the firm subscribed or affixed thereto was of the proper hand writing of him the said John Tullock one of the said Complainants —

And your Petitioner humbly sheweth unto your Most Excellent Majesty in Council that on the Examination of Witnesses as aforesaid Publication did pass in the said Cause and the same was set down for hearing by and before the said Honourable the Mayors Court and that on Tuesday the Twentieth day of December in the said year of Christ One Thousand Seven Hundred and Ninety Six the said Cause did Come on accordingly to be heard and Determined by and before the said Honourable the Mayors Court and that the said Honorable the Mayors Court upon hearing the several Pleadings Interrogatories and Depositions herein before recorded read with the several Exhibits annexed to the same On hearing the Pleadings made use of by the Attornies and on due Consideration had thereon did think fit to Order and Decree and did accordingly Order and decree That your Petitioner do pay unto the said Complainants the full and just sum of Eight Thousand two hundred and Seventy five Star Pagodas Thirty fanams and fifty Two Cash together with all such Interest as then was or should thereafter become due thereon until full payment should be made and it was further ordered and decreed that your Petitioner should be taxed with double Costs of the said Suit as by a Copy of the said Order and Decree of the said Honourable the Mayors Court to this your Petitioners petition and Appeal annexed for the Inspection of your Most Excellent Majesty in Council to which your Petitioner humbly prays leave to Refer and that the same may be taken as part and in aid of this your Petitioners Petition and Appeal may more fully and at large Appear the Original being ready to be produced at the hearing if Required —

And your Petitioner humbly sheweth unto your Most Excellent Majesty in Council that Conceiving himself injured and aggrieved by the said Order and

and Decree of the said Honourable the Mayors Court in the premises He your Petitioner did sometimes on or about the day of January in the present year of Christ One Thousand Seven Hundred and ninety Seven Exhibit and file his Petition and Appeal to the Honourable the Court of Appeals at Madraspatnam and therein and thereby after reciting the several matters and things herein before setforth to your most Excellent Majesty in Council as your Petitioners first Reason or Cause of Appeal state That he your Petitioner Considered himself aggrieved by the Judgement of the said Honourable the Mayors Court Because the promissary note on which the said Complainants had grandied their said action being in the nature of a Collateral security or undertaking for the payment of a like sum within fifteen days from the date thereof by Apoovaloor Nungatha Chetty Eya Permaul or Tocalum Moodo Thistnan Chetty on an Express Condition that the Complainants upon the receipt of the sum of Ten Thousand two Hundred and fifty Seven Star Pagodas Conditioned in and upon the same within fifteen days from the date thereof should Deliver it Discharged to your Petitioner and the said other Defendants

the

the Draft of Apoovaloor Nungatha Chetty and Eya Permaul drawn on and Accepted by the said Tocalum Moodo Thistnan Chetty and payable to the Order of the said Complainants The said Honourable the Mayors Court at the time of making and giving their said Decree and Judgment in the premises ought to have had before them sufficient proof that the said Complainants during the said fifteen days or on or before the Expiration of the same had used due diligence to obtain payment of the said Original note from the Drawer or Acceptor of the same For your Petitioner did humbly state unto the said Honourable the Court of Appeals that he your Petitioner at the request of the said Complainant had been induced to sign or Execute the said note on which they had brought their present action under the hope and on the firm Expectation and belief that within the period of fifteen Days the said Tocalum Moodu Thistnan Chetty the acceptor of the Original note would have been enabled to pay off and Discharge the sum secured thereon and that your Petitioner had therefore made his Calculation of the chance or risk he might possibly have incurred by entering into such his engagement for a Definite and specific period and your Petitioner Considered that in the event of the said

Tocalum

Tucolum Moodo Thistnan Chetty being unable to Discharge the same your Petitioner would have had it in his power to pursue legal and Exercive measures to Recover payment from the said Tucolum Moodo Thistnan Chetty provided the said Complai-nants had resorted to your Petitioner on Account of his collateral undertaking But your Petitioner did humbly state unto the said Court of Appeals and as the fact was that neither at the Expiration of the said fifteen Days nor untill sometime in the Month of December following a period of Two Months and upwards from the signing of the said note in Question by the said Com-plainants Bill the said Complainants nor any person or persons on their behalf did give any written or other notice to your Petitioner that the said Tucolum Moodo Thistna Chetty the Acceptor or the said Aproovaloor Nungatha Chetty and Eya Pennaul the Drawers of the said Original note had not paid off or dis-charged the same nor did they Directly or indirectly make any Demand on your Petitioner for payment thereof so that your Petitioner was led reasonably to suppose from such non Applications on the part of the said Complainants for payment as aforesaid at the Expiration of the said fifteen days that the said Original Draft or note for which the said Collateral Security was granted had been duly paid off and Discharged

Discharged by the aforesaid drawers or Acceptor of the same and your Petitioner did humbly Contend that the said Complainants ought to have set forth in their said Bill of Compliant and proved to the said Mayors Court in Order to have Lawfully Supported their said Action that an actual Demands had been made on the said Tucolum Moodo Thistnan Chetty as Acceptor of the said Original Draft or note at or before the Expiration of the said fifteen Days and also in Case of Default of payment by him the said Acceptor that they the said Complainants should and ought to have alleged and substantiated the same by Evidence that notice to that Effect had been duly given to your Petitioner who from his Collateral undertaking stood in the relation of Indorsee and in as much as the said Complai-nants had not done the same your Petitioner did say he was advised that it was Error and on this your Petitioner grounded his Plea in Bar to the Bill of Complaint of the said Complainants and the benefit of which your Petitioner did submit he ought to have been Allowed by the said Honourable the Mayors Court—

And your Petitioner humbly sheweth unto your Most Excellent Majesty in Council that your

Petitioner

Petitioner in and by his said Petition and appeal to the said Honourable the Court of Appeals did assign as a second reason or Cause of Appealing from the said Decree of the said Mayors Court as follows Because your Petitioner did say there was not any specific day set forth or any where in proof to the said Honourable the Mayors Court whereon as Demand had actually been made or your Petitioner save and Except that it was alleged in certain Letter bearing date the second Day of November in the year of Christ One Thousand seven hundred and ninety five of the tenor of an Exhibit annexed to the Petitions of the said Complainants had been written by one Mr George Chalmers the attorney at Law of the said Complainants and sent to your Petitioner But your Petitioner did say that such identical letter if written was not proved to have been Delivered to your Petitioner on any specific Day and that even had such letter been written which your Petitioner did not admit on the said second Day of November / to wit thirty Days after the said note became due yet your Petitioner did say it was not in proof that the same had ever Come to the hands of your

Petitioner

Petitioner for the only Evidence Examined by the said Complainants to prove the Delivery of such Letter was the Testimony of one Mostoo Naigue a Peon alluded to in the Deposition of the said Mr George Chalmers and who had Deposed That sometime in or About the Month of November then Last past he was Directed by his Master Mr George Chalmers to Carry a Letter to the Defendants your Petitioner Coolly Chittly and that he Delivered the same into the hands of your Petitioner But your Petitioner did humbly Observe Throughout the Deposition of the said Mostoo Naigue it did not appear what Letter he was desired to Convey to your Petitioner nor in what year Month or Day he did actually Deliver the same into the hands of your Petitioner and your Petitioner did further say that the other witnesses Examined on the behalf of the said Complainants had only stated generally that Demands had been made on your Petitioner without specifying any particular day and therefore the said Complainants your Petitioner did humbly submit to the said Honorable the Court of Appeals had failed to prove what was the Gist of their action namely the Demand in due season

of

of the Debt aforesaid on the said promissary note of your Petitioner and Others. The said Defendants For your Petitioner did say he was adviaid that the maker of a note should be Applied to for payment at the Exact time when the same should become due or the holder incase of a default must suffer and suitable it and that if a Bill or note should be kept for a long time it must be presumed to have been Discharged by some other Collateral party and there being a trust or Credit between the parties it would be prejudicial to Commence if a Bill or note should be suffered to rise up at any Distance of time when accountings and accounts may have been adjusted For in the meantime Bankruptcy may have ensued the Drawer or Acceptor as in the principal Case may have absconded and thereby the Indors or person otherwise liable would be defeated of his legal remedy and your Petitioner did submit to the said Honourable Court of Appeals that the extreme neglect and laches of the said Complainants in not having demanded payment from the said Tuckom Moodas Kistnan Chetty and in Case of Default of payment by him in not giving due and legal notice thereof to your Petitioner and also in neglecting to make a Demand on your Petitioner at the time the said note became due was manifest and evident and that as the Law abhorred that any man should Derive any advantage from his own wrong doing the said Honourable the Mayors Court your Petitioner did humbly presume was not Justifiable in giving their said Decree as against your Petitioner.—

And your Petitioner further humbly Sheweth unto your Most Excellent Majesty in Council that as a Third Reason or Cause of Appeal from the said Decree of the said Honourable the Mayors Court your Petitioner did assign to the said Honourable the Court of Appeals as follows, That even had it been Charged and proven to the said Honourable the Mayors Court that a Demand had been made and pursued on the said Tucolum Moodu Kistnama Chetty the Acceptor of the said Original Draft or note or on the said Apoavaloo Mungatha Chetty and Ega Permaul the Drawers of the same or on all or any of them and a default of payment by him or them and that notice to that Effect had been duly given to your Petitioner Considered in the relation of Indorser and that if it had been further in proof that the said Complainants had made a Demand on your Petitioner as the maker

of

183
15
168

of the Second note or Collateral undertaking But which your Petitioner did affirm had neither been shewn nor proved yet your Petitioner did say he was advised that the said Complainants had forfeited all Claim on your Petitioner In as much as it was in proof and also admitted by the said Complainants in their said Repleication that they the Complainants Subsequent to the Collateral undertaking or Security of your Petitioner at Different times to wit on the fourth Day of November and fifth Day of December in the said year of Christ One Thousand Seven hundred and ninety Five had received from Tiruloum Moodu Krishnan Chitty the Acceptor of the said Original Draft or note the several Sums of Two Thousand and Five Hundred Star Pagodas for which they the said Complainants had granted their Receipt and that such Receipt did Expressly Declare that such Sums were paid and received in part payment of Apoovalore Mungatha Chitty and Eya Cannadi Draft on him the said Tiruloum Moodoo Krishna Chitty namely the said Original Draft on which the Collateral undertaking of your Petitioner had arisen and your Petitioner did humbly submit to the said Court of Appeals that the Receipt of the said Complainants was an Event

declaration that they the said Complainants by resorting to the said Original Draft Considered your Petitioner merely in the relation of Indorsor of such Draft or note and not in the nature of a maker of an Original note or absolute undertaking and as the fact was and as the said Complainants had received such said and several Sums Expressly as aforesaid your Petitioner did Contend that they the said Complainants had made their Election and thereby Exonerated your Petitioner from any and Every undertaking by reason of such his Collateral Security For your Petitioner did humbly shew to the said Court of appeals that where the Indorsee of a promissary note Received part of the Money from the Drawer of the same It was held as your Petitioner was advised to be to be attaching on himself to give the whole Credit to the Drawer of the note and Absolutely to Discharge the Indorser or Collateral Security and that if the Indorsee of a Bill of Exchange Accepted any Sum in part of payment he could never after resort for payment of the residue or Remainder to the Drawer the same and your Petitioner did also state to the said Honourable the Court of Appeals that in an action brought by the Indorsee of a promissary note against the Indorser it was laid down in

books

books of Authority that it appearing the Plaintiff after the Endorsement had received from the Drawer some part of the money due on the same It was held that the Indorsee had thereby taken on himself to give the Drawer Credit for the whole and had discharged the Indorser Absolutely and the Plaintiff was therefore in that Case nonsuited a Case your Petitioner most humbly submits to your Most Excellent Majesty in Council strictly analogous and in point with that of your Petitioner and your Petitioner did therefore contend that the Election of the said Complainants having been made by their resorting for payment to the said Tucolum Moodo Kistnan Chetty and Expressly on account of the said Original draft your Petitioner became thereby Exonerated from the said Collateral Undertaking and that the said Honourable the Mayors Court had given their said Decree in the premises Contrary to Established legal facts and Judicial Determinations —

And your Petitioner further sheweth unto your Most Excellent Majesty in Council that he did in and by his said Petition and Appeal assign as a further Reason or Cause of Appeal from the said Decree of the said Honourable the Mayors Court as follows - That the note subscribed by your Petitioner and in which the said Complainants had founded their said action being as before alleged in the nature of a Collateral agreement or Security for a definite Sum and on an Expressed Condition that on the payment of the Sum secured thereby the said Complainants should on their part Deliver up to your Petitioner and Nagoojee Sambajee one of the said other Defendants the Original draft Drawn by Aproovalor Mungatha Chetty and Eya Permaub infavor of the said Complainants and Accepted by the said Tucolum Moodo Kistnan Chetty your Petitioner did state the said Honourable the Court of Appeals that it was incumbent on the said Complainants to have alleged and proved a tender of the said Original draft at the Expiration of the said fifteen days For your Petitioner was advised that if there be a Conditional agreement respecting the Customs of notes or Bills of Exchange the laws in such Cases was Clearly understood to be that such Conditions should be strictly Complied with and your Petitioner did say that for the Reasons mentioned in the proceeding Cause assigned for appeal the said Complainants by their own act were become wholly incapable of fulfilling their

Conditional

Conditional agreement For having Received from the said Jacolum Moodoo Kistnan Chetty the several sums before recited and Expressly on Account of the said Original note or draft they the said Complainants became precluded from the possibility of Delivering up such note or draft in that plight from which your Petitioner could derive any advantage the said draft or note being a Chose in action an entire and indivisible thing and therefore your Petitioner did say could not be apportioned and multiplied unto several Accounts and in as much as the said Complainants had Changed the nature of the said Draft or note by receiving apart thereof they could not Indorse or Assign the same to your Petitioner so as to give your petitioner as Assignee a right of recovering the amount thereof from the said Jacalum Moodu Kistna Chetty which must have been and Certainly was the equitable and True intent of such Condition at the time of making the same and therefore the said Complainants not having Complied with their Conditional agreement and by their After act having disqualified themselves for so doing were not Entitled to any relief in the Premises and your Petitioner for the reasons aforesaid and such Others as he might offer at the hearing of his Petition

and

and Appeal did pray that the said Honourable the Court of Appeals would be pleased to reverse the said Order and Decree of the said Honourable the Mayors Court and further grant unto your Petitioner such other relief in the premises as to the Judgement of the said Honourable the Court of Appeals should seem Meet—

And your Petitioner humbly sheweth unto your Most Excellent Majesty in Council that to the said Petition and Appeal of your Petitioner the said Complainants did sometime on or About the third day of the Month of February in the present year of Christ One Thousand Seven Hundred and Ninety Seven Exhibit and file their Answer in the said Honourable the Court of Appeals—

And your Petitioner further sheweth unto your Most Excellent Majesty in Council that the said Complainants did in and by their said answer to the Petition and Appeal of your Petitioner admit to have Exhibited and filed their said Bill of Complaint in the said Honourable the Mayors Court against your Petitioner and the said other Defendants at the time and in the manner recited by your Petitioner in his said petition and Appeal to the Honourable the Court of Appeals and as herein before set forth

and

and the said Complainants did also admit that your Petitioner being summoned to Appear to and Answer the said Bill of Complaint of the said Complainants that your Petitioner by his Attorney at Law did Accordingly Appear thereto and Exhibit and file his seperate plea and answer in the said Honourable the Mayors Court and that the said Plea and Answer being fully recited and setforth in and by your Petitioners said Petition and Appeal They the Complainants did pray leave to refer thereunto And the said Complainants did further admit that to the said Seperate Plea and Answer of your Petitioner they did Exhibit and file their Replication and that your Petitioner having Rejoined thereto Issue did thereupon Join to which said Replication and Rejoinder as also recited by your Petitioner in and by his said Petition and Appeal to the said Honourable the Court of Appeals the said Complainants did by their said answer also Refer And the said Complainants did in and by their said Answer to your Petitioner Petition and Appeal further admit that on Issue being Joined as aforesaid Rules did pass for the Examination of Witnesses and that Witnesses were also Examined on the part and behalf of the said Complainants as well as of your Petitioner and that the

the several Depositions of the said Witnesses were faithfully recited by your Petitioner in his said Petition and Appeal and the said Complainants did also admit that after the Examination of Witnesses as aforesaid Publication did pass and the said Cause was set down for hearing and did Afterwards Come on to be heard and Determined by and Before the said Honourable the Mayors Court at the time mentioned by your Petitioner in his said Petition and Appeal and that the said Honourable the Mayors Court was pleased to Order and Decree and did accordingly Order and Decree as by your Petitioner in his said Petition and Appeal to the said Honourable the Court of Appeals also recited and as herein Before setforth in this your Petitioners Petition and Appeal But the said Complainants did in and by their said answer deny that your Petitioner was Aggrieved by the said Order and Decree of the said Honourable the Mayors Court or that there was any Just reason or Cause of Appeal therefrom —

And your Petitioner further sheweth unto your Most Excellent Majesty in Council that in answer to the first Cause or Reason of Appeal Assigned by your Petitioner the said Complainants did answering deny that

that the Promissary notte on which the said Complainants had grounded their said action was in the nature of a collateral Security as had been alleged by your Petitioner But on the Contrary that the said Complainants did Contend as well from the pleadings in the Cause as from what appeared on the face of the notte the same Could be viewed in no other light than as an absolute engagement on the part of your Petitioner either by himself or Conjunctly with Nagoor Sambyie and Moodoo Thistnan the other partners to the said notte to Discharge in fifteen days from the date thereof the Sum of Five thousand two hundred and fifty Star Pagodas with Interest at and after the rate of Twelve per Cent and that the only Condition attached to the said Notte was that after payment of the same they the Complainants should deliver up the Draught or Acceptance alluded to by your Petitioner and with that Construction of the notte the Complainants said your Petitioner did perfectly agree having in the said Rejoinder admitted That the promissary notte on the face of it on which the action had been brought appeared to be an undertaking of him your Petitioner with the other Defendants before mentioned Jointly or severally to discharge within a Certain time the amount mentioned in and upon the

this said promissary notte with Interest and that the only Condition in the promissary notte which would seem to respect the Complainants was that they should on payment being made deliver up Discharged the Draught of Aprovaloor Nungatha Chetty and Eya Permaul But the Complainants did say that from the mode of Reasoning adopted by the said appellant your Petitioner in his said Petition and appeal it would appear that your Petitioner had either forgot the Subject of his Suit or attempted wilfully to pervert it For that your Petitioner did state that he was induced to sign the notte in which the present action had been grounded under the hope and Expectation that within the space of fifteen days Moodoo Thistnan Chetty the acceptor of the said notte would have been able to pay off and Discharge the sum secured thereon and that he your Petitioner had made his Calculation of the Chance or risk he might have possibly incurred by Entering into such an engagement for a Definite and specific Period and Considered that in the event of the said Moodu Thistna Chetty being unable to Discharge the same That your Petitioner would have had it in his power to pursue legal and Coercive measures to Enforce payment and as the said undertaking was only Collateral your Petitioner therefore had Contended

that

that he was Discharged for want of notice being given of the failure of the Acceptor But the said Complainants did submit to the said Honourable the Court of Appeals that if your Petitioner had only intended to become a Collateral Security for the payment of the Draft accepted by Moodoo Thistnan Chetty the promissary note or Obligation on which the present action had been founde would have been worded differently It would the said Complainants pretended have necessarily run In default of Moodoo Thistnan Chetty failing to Discharge the Draft accepted by him in fifteen days than we promise to pay it But the Complainants did further say as the note was not Collateral that the arguments used by your Petitioner with regard to notice were Altogether irrelevant and more particularly so as the said Moodoo Thistnan was one of the makers of the said promissary note and a party Defendant to the present suit and the Complainants did further say that the admissions of your Petitioner in his Rejoinder before stated and setforth did render any Observations on the arguments in your Petitioners first Cause or Reason of Appeal assigned unnecessary For they said if meanings or Constructions should be allowed to be placed on Instruments of a Solemn nature Different from what they did import on the face of them they would become altogether Nugatory

And your Petitioner most humbly sheweth unto your Most Excellent Majesty in Council that to the second Cause or reason of appeal assigned by your Petitioner in his said Petition and Appeal the said Complainants did in and by their said answer say that with regard to the Allegations in your Petitioners said Reason Contained that there was not any specific day setforth nor did it any where appear in proof that as Demand had actually been made on your Petitioner it was not incumbent on the said Complainants to give any notice to your Petitioner from the nature of the Obligation on which the present action was founded But yet the Complainants did say that the fact was notice had been given and that the falsity of your Petitioners Assertions did Clearly appear by the Evidence recited in the said Petition and Appeal For that Ponapilla the Dubash of the said Complainants to the second Interrogatory did depose That application had been made to your Petitioner for payment of the promissary note upon the same becoming due and that in Consequence of such Demand your Petitioner had Called at the Office of the Complainants and made promises of payment

That

That in particular your Petitioner had been with the said Deponent and offered to pay Two Thousand Pagodas in part of the note and at the same time requested the said Deponent to intercede with the said Complainants and procure him your Petitioner further time for payment And the said Complainants did in and by their said Answer further say that from the Evidence of Sadarayloo Brauniny and Soliah Pillay as well as that of the said Poma. pillay the Assertions in your Petitioners petition and appeal Contained were not only shewn to be untrue but it was also 5 Demonstrated in the Clearest manner that your Petitioner had in his said plea and answer Deliberately sworn to what is false For that your Petitioner had thereon and thereby said that the said Complainants neither Jointly nor seperately did Demand or Cause to be Demanded from him your Petitioner any sum or Sums of Money either as principal or Interest for or on Account of the promissary note upon which the action was founded until long after the fifth day of December in the year One Thousand seven hundred and Ninety five Whereas the said Witnesses deposed that Demands

Demands were made and frequent promises of payment given both previous and subsequent to the period mentioned by your Petitioner an Insinuation so untrue and Groundless and introduced by the said Complainants from motives so evident that your Petitioner doth not deem it necessary to make any Observation on the same the Evidence in the Cause having been faithfully recited will in itself refute the illiberal Assertions of the said Complainants And the said Complainants did in and by their said Answer to your Petitioners Petition and Appeal admit That where a promissary note should be indorsed it would be incumbent on the Indorsee to call on the maker when the same became due otherwise the indorser would be discharged But the Complainants Declared they did not see how the reasoning of the same could be Applied to the present Case where no indorsement had been made and where the Question Appeared to be merely between the Complainants as the Payees and your Petitioner as the maker of the note —

And

And your Petitioner further sheweth unto your Most Excellent Majesty in Council that to the third Reason or cause of Appeal assigned by your Petitioners the said Complainants did in and by their said answer say That from the nature of the promissary Obligation on which the present Action was founded and of which the Draft accepted by the defendant Moodoo Kistnan Chetty did form a part it was very immaterial whether the receipt mentioned the sum of Two Thousand Pagodas to have been received on account of the one or the other But that if it Could have been supposed that there was any 6. irregularity in granting the receipt in that manner the Complainants said they could not see how that Circumstance Could Operate to Exonerate your Petitioner from his undertaking which they pretended was not Collateral but an Absolute engagement to pay a Certain Sum of Money —

And your Petitioner humbly sheweth that to the last Cause or Reason of Appeal by your Petitioner Assigned to the said Honoble the Court of Appeals the said Complainants did in and by their said answer say that they deemed it was encumbent on them

them to make a Tender of the Draft Accepted by Moodoo Kistnan Chetty in as much as they said it Appeared on the face of the promissary note that they were only to Deliver it upon receiving payment of the Sum of Two Thousand Two hundred and fifty seven Pagodas with Interest at the rate of Twelve per Cent per annum and which the said Complainants declared they had been always ready to do And the said Complainants did in and by their said answer to the Petition and appeal of your Petitioner pray that the said Honourable the Court of Appeals would be pleased to Affirm the said Decree of the said Honoble the Mayors Court and that the petition and appeal of your Petitioner should be dismissed with Exemplary Costs to be paid by your Petitioner —

And your Petitioner most Humbly Sheweth unto your Most Excellent Majesty in Council That on Friday the sixth day of this present Instant October and present year of Christ One Thousand Seven Hundred and Ninety Seven the said Petition and

appeal

Appeal of your Petitioner together with the said Answer of the said Complainants Came on to be heard and debated by and before the said Honourable the Court of Appeals and that the said Court of Appeals did think fit to Order and Decree and did Accordingly Order and Decree that the said Decree of the said Honourable the Mayors Court should stand Affirmed and that your Petitioners Petition should be thence Dismissed with single Costs in the Court of Appeals as by a Copy of the said Order and Decree of the said Honourable the Court of Appeals hereunto Annexed for the Inspection of your Most Excellent Majesty in Council to which your Petitioner humbly prays leave to refer and that the same may be taken as part of this your Petitioners petition and Appeal may more fully and at large Appear the Original being ready to be produced at the hearing if required By which said Order and Decree of the Honourable the Mayors Court and affirmation thereof by the said Honourable the Court of Appeals your Petitioner doth

Consider

Consider himself very 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 Promissary note Executed by your Petitioner and others unto the said Complainants was and is in the nature of a Collateral Security for the payment of the Sum assumed in and upon the said Original Draft Executed by the said Apoavaloor Mungatha Chetty and Eya. Permaul unto the said Complainants and payable by one Tuckom Moodu Thistnama Chetty on whom the said draft is Drawn And your Petitioner humbly Sheweth unto your Most Excellent Majesty in Council that it doth appear in and by the Replication Exhibited on the part of the said Complainants in the said Honourable the Mayors Court at Madras and to which your Petitioner doth humbly Crave leave to refer that your Petitioner and others in the said Bill of Com. plaint named did undertake in and by the said promissary

promissary note by them Executed as aforesaid to become as security for the payment of the said sum mentioned in and upon the said Original Draft within fifteen Days from the date of the said Promissary note increase the sum therein stated and setforth should not be discharged within the said Period Either by the Drawer or Acceptor of the said Original Draft and not otherwise And your Petitioner humbly sheweth unto your most Excellent Majesty in Council That as the undertaking of your Petitioner and others was not a positive undertaking to pay at all events but a Conditional agreement to pay if others did not within the time specified the said Complainants ought to have shewn or setforth in the said Bill of Complaint a nonpayment of the sum mentioned in the said Original Draft or at least to have alleged a Demand and refusal on the part of the said Drawer of the said Original Draft or acceptor of the same And your Petitioner begs leave humbly to state to your Most Excellent Majesty in Council That the said Complainants have

have not any where Alleged or shewn either that the Original Draft hath not been Discharged or that any Demand had been made at previous to or After the said fifteen days on the drawer or Acceptor of the said Original Draft and your Petitioner humbly Contendeth that as the said Complainants have neither alleged nor proven the Breach of the Condition or understanding on the part and behalf of your Petitioner and others the parties to the said promissary note they have failed to shew the Contingency or Event whereupon and whereby your Petitioner and others the said parties in the said Bill named were Chargeable in the premises and whereupon your Petitioner humbly saith that the said Complainants ought not to Recover in the said action as against your Petitioner —

460
490
750
600
18
0
2

Secondly Because your Petitioner and others in the said Bill of Complaint named did undertake to become as security for the payment of the sum in and upon the said Original Draft mentioned by the Acceptor

and

and Drawer both or either of them within fifteen Days
from the Date of their Undertaking in the said promissary
note and not for any longer space or period and your Petitioner
humbly sheweth unto your Most Excellent Majesty in Council
that it was incumbent on the said Complainants the premises
Considered to have given notice to your Petitioner of the non
payment of the said Original Draft at the Expiration
of or within the period prescribed and your Petitioner
Crave leave to state that it is not any where declared in the
pleadings Exhibited on the part of the said Complainants
or Demonstrated in Evidence that any notice was given
on the part of the said Complainants of the failure of payment
by the Drawer and Acceptor of the said Original Draft within
the time specified and Defined and by failure of such
notice having been made to your Petitioner by the said
Complainants your Petitioner doth humbly Contend that the
said Complainants did abandon the Collateral security
entered into by your Petitioner and others and did by an
implication of law as your Petitioner is advised give Credit to

The

the Drawer and Acceptor of the Original Draft for the sum
mentioned in their said Draft thereby with drawing all responsi-
bility from your Petitioner and other the parties to the said
Collateral undertaking and seeing by the matters and things in
this your Petitioners Reason of Appeal set forth that the said
Complainants had voluntarily foregoing the Security tendered
by your Petitioner by such their own Act the said Mayors Court
and Court of Appeals ought not to have Decreed as they have
done against your Petitioner and your Petitioner further humbly
Sheweth unto your Most Excellent Majesty in Council that the
said Complainants aware of the neglect or omission on their part
in respect to notice to your Petitioner of the non payment of the
sum in question by the Drawer or Acceptor of the said Original
draft have endeavoured to shew that they had made frequent
Demands and that your Petitioner on such frequent or several
Demands had made several promises of payment of the sum
Assumed in the said promissary note after the same had
become due unto the said Complainants thereby seeking to infer
that such Demands were in the nature of a notice to your

Petitioner

Petitioner of the said Nonpayment But your Petitioner begs leave humbly to state that such Demands as are attempted to be proven by the said Complainants are Demands general for the payment of the Sum mentioned in the said promissary note without Reference to the said Original Draft whatsoever and that the said Demands are setforth with such incertainty both as to the Demandant and the time and place and every supposed Concurrent Circumstance as not to have offered to the said Mayors Court or Court of Appeals any reasonable grounds to infer that any Demand had been made much less to decide whether such Demands had been made within the limitted time and therefore your Petitioner most humbly Concludes that if such Demands had they been regularly and duly proved Could not have operated any thing to affect your Petitioner in the premisses that the demands suggested by the said Complainants from the senseless manner in which they have been endeavoured to be evidenced Could not in any wise act in your Petitioners Case—

Thirdly

Thirdly ... Because the said Complainants even had they duly and clearly alleged and proven that the sum Mentioned in and upon the said Original Draft had not been paid by the said Drawers and Acceptors Or that they had Demanded seasonably the payment of the same when it had became payable and that the said Acceptor or Drawer had refused to pay off and Discharge the same yet from the Caprice of the said Complainants they would not as your Petitioner is advised have been Entitled to have recovered against your Petr in their said action For your Petitioner humbly sheweth unto your Most Excellent Majesty in Council that it did appear in Evidence in the said Cause that the said Complainants long after the said Fifteen days to wit on the fourth day of November and fifth Day of December in the year of Christ one Thousand Seven Hundred and ninety Six did actually receive of the Drawer of the said Original Draft and for and on Account of the Drawer the Several Sums of Two Thousand Pagodas and Five Hundred Pagodas in part payment as is evidenced on a written Receipt granted by the said Complainants

of

of the said Original Draft and your Petitioner doth humbly Contend that by the Receipt of such last mentioned sum in part payment as aforesaid they the said Complainants did give an implied Credit to the said Drawer or acceptor both or either of them for the residue of the said Sum due on the said Original Draft and thereby did Exonerate your Petitioner and others from all and every supposed undertaking in and upon the said Promissary note and therefore the said Mayors Court and Court of Appeals ought as your Petitioner is further advised to have decreed in the said Cause in behalf of your Petitioner and not for the said Complainants as it appears they have done—

And lastly Because by the receipt of the said several sums of Two Thousand and Five Hundred star Pagodas as setforth by your Petitioner in the preceding Cause or Reason for appeal unto your Most Excellent Majesty in Council the Complainants Could not fulfil the implied Condition by them undertaken to be performed in and upon the said Promissary note whereby they did promise as is hereinbefore shewn to your Most Excellent Majesty in Council on the payment of the Sum mentioned on the same to give up discharged to your Petitioner and others the said Original Draft of the said Apoovaloor Munga Chetty and Eya Permaul and wherefore by the said Decree of the said Mayors Court and Court of Appeals at Madras if the same were to stand affirmed against your Petitioner your Petitioner would be bounden to pay the said Sum in the said promissary note undertaken without the Consideration mentioned on the same—

For all which Reasons and such others as may be offered at the hearing of this your Petitioners Petition and Appeal your Petitioner most humbly prays that your Most Excellent Majesty in Council will be pleased to Reverse the said Decree of the said Honoble the Mayors Court and Court of Appeals at Madras patnam and 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/ H. A. D. Compton
for Emanuel Samuel
Solicitor for appellant

Mayors

Mayors Court at Madrasspatnam } Tuesday the 20th day of December Anno Domini 1796

Present.

James Daly Esquire Mayor

James Call
Andrew Ross
Benjn Roebuck
Alexr Cockburn } William Webbe, John Milford, William Abbott, Richard Chase

and William Dring — Aldermen

Between John Tullah John Ivers and James Brodie of Madras Merchants under the firm of Messrs Tullah Ivers and Brodie Comr: plaintants and nagogie Sambogie Cooty Chetty and Moodie Christnan of Madras Inhabitants 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 the Copy of an Account Current annexed the Defendant Cooty Chettys plea and Answer the amended Replication the amended Rejoinder the Interrogatories and Depositions on the part of the Complainants with one Exhibit annexed and the Interrogatories and Depositions on the part of the Defendant with one Exhibit annexed On Hearing the pleadings made use of by the Attornies and on due Consideration had thereon This Court doth think fit to Order and Decree and doth Accordingly Order and Decree that the Defendant Cooty Chetty do pay unto the Complainants the full and Just Sum of Eight Thousand Two Hundred and Seventy five Pagodas Thirty fanams and fifty Two Cash Pags 8275. 30. 52. together with all such Interest as now is or shall hereafter become due thereon until full payment is made and It is further Ordered and Decreed that the Defendant Cooty Chetty be taxed with double Costs of this suit —

Pleur

A True Copy
Signed / W. A. D. Compton
for Emanuel Samuel
Solicitor for Appellant

Signed / George Taylor, Regr

Court

Court of Appeals at Madraspatnam } Friday the 6th day of October Anno Domini 1797

Between Coaly Chitty of Madras Inhabitant Appellant and John Tulloh John Jervis and James Brodie of Madras Merchants under the firm of Messieurs 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 Honourable the Mayors Court together with the Decree of the said Court given in this Cause on Tuesday the 26th day of December Anno Domini 1796 upon due Consideration had of the matters therein severally Contained and of the pleadings and Arguments used by the Attornies on both Sides This Court doth think fit to Order and Decree and Doth accordingly Order and Decree that the said Decree of the Honourable the Mayors Court do stand affirmed and that the appellants petition be hence Dismissed with single Costs in this Court—

A True Copy
/Signed/ W. A. Compton.
for Emanuel Samuel
Solr for Appellant

/Signed/ T. Oakes Clerk

To the King's Most Excellent Majesty in Council

Between John Tulloh John Jervis and James Brodie of Madras Merchants under the Firm of Tulloh Jervis and Brodie Complainants and Nagojee Sambajee Coatey Chetty and Moodeathistnan Also of Madras Inhabitants Defendants—

The Answer of the above named Complainants To the petition and appeal of Coatey Chetty one of the above named Defendants—

These Respondents for

Filed in my Office the 8th December 1797
Sml Baker Clk

Answer to the Appellants petition and Appeal to your Most Excellent Majesty in Council or unto so much thereof as they are advised is material or Necessary for them to make Answer unto Answer and say that they admit to have sometime on or about the Twenty fourth day of March which was in the year One Thousand seven hundred and ninety Six Exhibited and filed their Bill of Complaint in the Honourable the Mayors Court

Court of Madraspatnam against the said Appellant and the other Defendants above named and did therein and thereby Charge the said Appellant and the other Defendants above named to stand indebted to these Respondents in the full and Just sum of Eight thousand Two hundred and seventy five Pagodas thirty fanams and seventy two Cash Current Money of Madras as and for the balance due and owing to these Respondents on a Certain promissary note granted by the said 6
Appellant and the other Defendants above named to these Respondents —

And these Respondents admit that the Appellant being Summoned and Required to appear before the said Honourable the Mayors Court and answer these Respondents Bill of Complaint he did appear thereto by his attorney at Law in the said Court and sometime on or About the third day of May which was in the year One thousand seven hundred and

and Ninety six did Exhibit and file his plea and Answer to the said Bill of Complaint which said plea and Answer being recited and setforth in and by the said Appellants Petition and appeal to your Most Excellent Majesty in Council These Respondents crave leave to refer thereunto —

And these Respondents further admit that to the said plea and answer they did sometime on or About the Twenty Eighth day of June in the said year One thousand seven hundred and ninety six Exhibit and file their Replication in the said Mayors Court and the Appellant having 5
Rejoined thereto issue did thereupon Join and rules passed for the Examination of Witnesses as by the said Replication and Rejoinder setforth and recited by the said Appellant in his said petition and Appeal to your Most Excellent Majesty in 5
Council relation being thereunto had will more fully Appear —

And

And these Respondents further admit that Witnesses were accordingly Examined on the part and behalf of the Appellant as well as of these Respondents and that they did Severally Depose as is setforth and recited in and by the said appellants Petition and Appeal to your most Excellent Majesty in Council That publication having afterwards passed the said Cause was set down for hearing and afterwards came on to be heard by and before the said Mayors Court on the Twentieth day of December in the said year One thousand seven hundred and Ninety six when the said Mayors Court was pleased to Order and Decree that the appellant should pay unto these Respondents the full and Just Sum of Eight thousand Two hundred and Seventy five Star Pagodas thirty fanams and fifty two Cash together with such interest as was or should thereafter become due thereon until full payment should be made with double Costs of suit as by the said Decree of the said Honourable the Mayors Court Copy whereof is to the said appellants

Petition

Petition and appeal to your Most Excellent Majesty in Council annexed Relation being thereunto had will more fully appear From which said Decree of the said Mayors Court these Respondents admit that the said Appellant did on the Second day of January in the present year One thousand Seven hundred and ninety seven Appeal to the Honourable the Court of appeals at Madras pattnam alledging himself to be much Injured thereby for Certain Reasons by him adduced and setforth which being Recited in and by the Appellants Petition and appeal to your Most Excellent Majesty in Council these Respondents Crave leave to refer thereunto and pray the same may be taken as part and parcel of this their Answer

And these Respondents for further Answer to the Appellants petition and Appeal to your Most Excellent Majesty in Council admit to the said petition and appeal of the said

Appellant

Appellant to the said Honourable the Court of Appeals of Madras they did on the third day of the Month of February in the present year of Our Lord One thousand seven hundred and Ninety seven Exhibit and file their answer As by the said Answer recited and setforth in and by the said appellants petition and appeal to your most Excellent Majesty in Council relation being thereunto had will morefully appear —

And these Respondents further admit that on Friday the sixth day of October in the present year one thousand Seven hundred and ninety seven the said petition and appeal of the appellant and these Respondents answer came on to be heard whin the said Court of appeals at Madras patnam were pleased to Order and Decree and did accordingly Order and Decree that the said Decree of the said Honble the Mayors Court should stand affirmed and that the appellants Petition and appeal should be Dismissed with Single Costs in the said Court of

of appeals as by the said Order and Decree of the said Court of appeals true Copy whereof is to the said appellants petition and appeal to your Most Excellent Majesty in Council annexed relation being thereunto had will morefully appear. But these Respondents deny that the appellant is aggrieved by the said Order and Decree or that he has any Just Cause or reason for appealing therefrom —

And to the Several Reasons or Cause of Appeal to your Most Excellent Majesty in Council These Respondents for answer deny that the promissary note upon which the present action is founded is in the nature of a Collateral Undertakeing as by the said appellant is untruely asserted But on the Contrary is a positive and absolute undertaking by the appellant and the other Defendants Nagojee Sambajee and Moodoochistnan Jointly or severally to pay in fifteen days the sum of Ten thousand two hundred and fifty seven Star Pagodas from the date thereof and these Respondents

Observe

Observe that the appellants in the reasons adduced by them
his said petition and appeal to your most Excellent
Majesty in Council has most grossly misstated the matter
in these Respondents said Replication contained for
he hath alledged that it is therein setforth that the appellants
and others meaning the other Defendants undertook to
be answerable for the sum mentioned in the promissary
note in fifteen days from the date thereof Provided the
said sum should not be discharged in that period either
by Appavaloo Mungatha Chetty and Eyah permaul
or Moodoosistna Acceptor of a Draft in the said
promissary note alluded to and not otherwise Whereas
these Respondents in describing the nature of the transac-
tion did in their said Replication state that the
said Appavaloo Mungatha Chetty and Eyah permaul
drew a Bill on Moodoosistna Chetty as Defendant in this
Cause in favor of these Respondents and which said
Bill was duly accepted by him But being unable to
Discharge the same when it became due these Respondents

were

were about instituting a suit against him to prevent
which the appellant and Nagoojee Sambajee came
forward and earnestly Entreated these Respondents
to allow fifteen days to payment at the Expiration of
which time they promised to Discharge the amount
That in Consequence of these earnest Solicitations These
Respondents were prevailed on to give the time
required and accordingly the promissary note on which
the present action is founded was granted whereby the
appellant Coilley Chetty the said Nagoojee Sambajee
and Moodoosistnan the Drawer and acceptor of the
original Draft by the name and discription of Moodoo-
sistnama Understook Jointly or either of them severally
to pay in fifteen days the amount of the said note
From this statement then and which these Respondents
say will be found Correct by reference to the Original
pleadings It will appear that these Respondents with
the view of accommodating the acceptor Moodoosistna
and at the earnest solicitation of the appellant lost

their

their claim on the Drawers Appravaloo Mungatha Chetty and Eyah permaul who by the laws and Customs of Merchants were Discharged There Cannot therefore be a shadow of foundation for the Appellant saying that he became Collateral Security only in the Event of the Drawer or Acceptor of the Original draft not paying it all legal Claim on the former having been Lost in Consequence of the said Bill or draft not having been returned to them under protest for non payment and with respect to the Acceptor of the said Draft he being a party to the note on which the present action is founded what the Appellant has said in regard to him is equally absurd And with respect to the Extraordinary assertions in the said appeal Contained namely that no notice was given him when the note became due these Respondents say that although no notice was necessary Inasmuch as the parties who had granted the said note having fixed the day of payment were supposed to be prepared to

to discharge it and not to require any notice yet the fact is that the fullest notice was given if reapeated demands of payment can be termed notice all which is most clearly established in evidence by Poonapillah the head Dubash of these Respondents as well as from the Evidence of Seebaroyloo Bramany and Saliah pillah Examined also on the part of these Respondents which together with the other Proceedings in the Mayors Court are now Submitted to the Review of your Most Excellent Majesty in Council And these Respondents Submit that although their Case did not require proof of these frequent Demands as well as promises of payment yet it was introduced for the purpose of shewing that the Appellant has sworn falsely - And with regard to what the Appellant has said about a Receipt having been given on Account of the Original Draft instead of the promissary note upon which the action is founded These Respondents observe that it is a Circumstance very immaterial Since the payment was made by one of the parties to the said note To wit the said Moodaliarchetty and

and

and who is a Defendant in this Cause and the Condition of the said note is that upon the whole thereof being paid that then the said Draft was to be delivered up discharged and therefore such payment cannot operate to Discharge the Appellant from his said Joint and Several Obligation which is not in the nature of a Collateral Engagement as unjustly Contended for but an absolute undertaking to pay Jointly or Severally to these Respondents or their order the Money thereon Specified —

For all which reasons and such Others as may be offered at the hearing these Respondents humbly pray that the Decrees of the said Honourable the Mayors Court and Court of Appeals may be affirmed by your Most Excellent Majesty in Council and that the Appellants Petition and Appeal be dismissed with Examplary Costs to be paid by the Appellant

/ Signed / George Chalmer,

Solicitor for Respondent