Gt. 11999

Vol 4

7
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Serial No. 1
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28948

In Witneſs whereof I hereunto set my Hand in the Choultry Court where this is Registred Randal Fowke Esq^{r} being the Magistrate now present.

Coovetoor Timina

Drawn by Managapah Town Conacoply

January 20th 1719/20

I Coovetoor Timina do hereby acknowledge to have Borrowed and Received of Pata Yacumbrum Moodalare the Just sum of Pagodas 3. 21. 10, Which Sum he the said Yacumbrum is to repay himself with Interest at 12 ⅌ Centum ⅌ Annum out of the Amount of my House on which he has a Mortgage when he shall dispose of the same.

Drawn by Thoolapa

Coovetoor Timina

Witneſsed by

Narrain Chittee Cundapa &

Bomie Caul Bubabadroo

August 31st 1742

The Answer of Govinda Chitty Merchant of Madraſs Defendant to the Bill of Complaint of Sealum Moodalare of said Place

He this Defendant saving and reserving to himself all Benefit and advantage of Exception to the manifold Errors

Incertainties

Incertaintys and Insufficiencies in the said Bill Contained for Answer thereunto or to so much thereof as this Defendant is advised materially Concerns him to make Answer unto the this Defendant Answereth and Saith

First that the two Bonds annext to the Complainants Bill is no Less than 23 years old by the Date thereof and this Defendant really believes by Comparison of Hands, that this Defendants Brother never wrote the said Bonds having seen them in Court But above all if as the Complainant says the said Bonds are really true why has not the Complainant made some Demand of those Bonds within these 15 years this Defendants Brother having been dead so long and this Defend^t. Declares he never heard of any such Demand till within these two or three months But this Defendant Declares he never received nor does he now Enjoy any part whatever of his deceased Brother's Effects nor is the House this Defendant now lives in any part of the Deceased's Effects But the House the Complainant pretends is mortgaged to him is this Defendants house and has been this Defendants house for this Twenty years and upwards that is five years before his Brothers death at which time this Defend^t. and his late Brother had disputes about their, maintenance & the one being married, and the other un married, Upon which they was Called before the heads of their Cast who allotted this Defendant half the said House and gave the Deceased brother the other half which he sold directly in his life time so that this Defendant is left in present possession of no more than the half of the said house for those who bought the other Half house being neighbours adjoining directly cut off his part of the house and Ground by a party Wall which several Transactions the Complainant and his Ancient Mortgage never once appeared to make Demand But says 15 years after the Man is dead picks up an Old Bond nobody knows how or where and then puts it in Court to get this Defendants house tho' this Defendant never received any part of the Deceased's Effects nor any Body else for the Deceased while living had hardly enough to relieve his daily wants wherefore there ~~is little~~ reason to believe the Deceased left any Estate behind him; In Short the Contents of these pretended Bonds shew the Mortgagor must have been but in very low Circumstances to Mortgage his House for 13 or 14 Pag.s

But this Defendant denys that the Bonds now Sued for are (this Defendant believes) the hand writing of this Defendants Brother deceased and this Defendant believes the said Bonds are Trumpt up and are false and this Defendant denies to be possessed of any part of the Deceased's Effects whereby this Defendant is in no wise liable to pay his deceased Brothers Debt on any Account tho' never so true and this Defendant is ready to aver maintain and prove the same as this Honourable Court shall direct and humbly prays to be hence dismissed with his reasonable Costs in this Behalf most wrongfully sustained.

Henry Deveil Attorney for the Defendant

19th October 1742.

Replication of Sealum Moodalare of Madras
Merchant Complainant to the Answer of Govindas
of the same place Merchant Defendant

This Replyant now and at all times hereafter saving and reserving to himself all and all manner of Benefit and advantage of Exception to the many errors and untruths of the said Answer for Replication thereunto Saith that all and singular the matters and things in this Repliants Bill contained are certain true as they and every of them are therein alledged and expreſsed and that the Defendants Answer to the said Bill is very untrue Imperfect and Insufficient to be replied unto and this Replyant for a Replycation to the said Answer saith further

That as to the Defendant in his Answer saying that he doth not poſseſs any part of the Deceased Timma's Estate is absolutely false for the House he the Defendant now lives in actually was Timmas during his life time nor was the half of it ever disposed as the Defendant falsely pretends but this Replyant acknowledges that Timma sold during his lifetime some pt of the Back yard belonging to the said house but none of the house on the Contrary he the said Timma died in the said house Immediately upon his death the Defendant took poſseſsion of the said house and has remained in it ever since the Def.t pretends he is Ignorant there was any Mortgage on his House which must be false or else the Defendant must have a very short Memory for this Replyant doth averr that the Defend.t was present several times when this Replyant demanded (the Sums now sued for) of Timma in his life time and since the death of the said Timma this Replyant hath more than a hundred times as this Repliant verily believes demanded payment of the Defendant who Continually put this Repliant off with fair promiſses but never denied the Justneſs of this Repliants demand til about a month or two before this Repliant ffyled his Bill in this Honourable Court.

In Short this Replyant will prove the Mortgage Bond to be given by Timma, will produce a Choultry Bill of Sale wherein the Mortgaged premiſses are particularly specified and will prove that the Defendant himself more than once promised to repay this Repliant the money lent by this Repliant to Timma which this Replyant humbly hopes will be satisfactory to this Honourable Court.

All which matters and things this Replyant is ready to aver, maintain and prove and humbly prays as in and by his said Bill he has already prayed.

William Dumbleton Attorney for the Replyant

9th November 1742

The Rejoinder of Govinda to the Replycation of Sealum Moodalare Complainant

This Defendant now and at all times hereafter, saving and reserving to himself all manner of Benefit and advantage of Exception to Incertainties and Insufficiencys of the Repliants Replycation Saith, that all and singular the matters and things in this Defendants said Answer are true and sufficient in the Law to be replied unto and this Defendant further saith again that he does poſseſs no part of the Decds Effects, and that the said House of the Deceased, was sold in the —

Deceased's lifetime, and this Defendant saith that the Complainant should have made his Claim in the deceased's lifetime, but instead of so doing the Complainant letts his pretended Claim be Dormant till the person is dead on whom the demand ought to be made, then the Complainant brings out some old demand of many years standing, no body can prove how it arises, or whether paid or not, a practice much used of late by some of the Inhabitants who make their daily Livelihood, to Trump old Bonds and Antient demands, that have lain a Sleep from Family to Family and some perhaps discharged many years ago, and when the Complain^ts think every branch of the Family is gone that was old enough to give an Account of past Transactions, then they build upon no bodys being alive or in the place to Disprove what they affirm, then some helpleſs Widow or some young Relique of the Family is made a prey on, and Terrified into the payment of some money, or a new Bond to make a good debt of that, which was none at all, which practice tis hoped will be Inquired into, and Suppreſsed by this Honourable Court

And this Defendant saith as in and by his Answer he hath already said and does and will Aver and maintain all and every thing and things to be true and certain in such manner and form as is therein and thereby Setforth alledged and Expreſsed —

Henry Deveil

Attorney for the Defendant

Interrogatories to be administered to such Witnesses as shall be produced, Sworn and Examined on the part and behalf of the Complain^t. in a certain Cause wherein one Selam Moodalare is Complainant and one Govindoo is Defendant.

To all the Witnesses Imprimis do you know the parties Complainant and Defendant in this Cause or either of them and how long have you known them or either and which of them Declare

2d To Sadashava Item were you ever sent by the Complainant or his ffather to demand any money which of them sent you, who were you sent to, how much did you demand, how came the money due, what Answer did you receive from the person of whom you made the Demand Declare

3d To Irsapah Item was you present when the Complainants Father or any person for him demanded any money of a certain person, who was the person of whom the Money was demanded, what was the Sum demanded, how came it due, what Answer was given by the person from whom the money was demanded Declare

4th To all the Witnesses Item Do you know any other matter or thing material for the Complainant If Yea setforth the same as you know have heard or do believe with the reasons of such your knowledge or belief Declare.

William Dumbleton
Attorney for the Complainant

Mayors Court at
Madraspatnam } Between Sealum Moodelaze Complainant
and Govindoo .... Defendant

Depositions of Witneſses in this Cause taken by and before the Examiner in this Court as follows

Sadashava of madras Conicoply aged 38 years or thereabouts being produced as a Witneſs in this Cause on the part of the Complainant was on the 12th day of March 1743/4 Shewn at the Office of Mr Henry Devoil attorney for the Defendant by Connecapa who left a Note of the Name Title and place of abode of the said Sadashava and afterwards on the same day being sworn and Examined deposeth as follows

1st To the first Interrog this Deponent saith That he hath known the Complainant Seventeen years and the Defendant Twenty years or thereabouts.

2d To the second Interrogatory this Deponent saith that he was sent by the Complainants ffather to demand payment of two Bonds, amounting to 13 or 14 Pagodas of the Defendants Brother Timmana who answered he would wait on the Complainants Father and satisfy him And further saith not to this Interrogatory ..... To the last Interrogatory this Deponent saith that since the death of Timmana payment of the above Bonds has been several times demanded of the Defendant who as often promised but failed and more saith not.

Joseph Githin Examr

Sadashava

Irsapah of Madras Conicoply aged 53 years or thereabouts being produced as a Witneſs in this Cause on the part of the Complainant and afterwards being Sworn and Examined Deposeth as follows.

1st To the first Interrogatory this Deponent saith that he knows the partys Complainant and Defendant and hath so known them 16 years or thereabouts.

3d To the third Interrogatory this Deponent saith that he was present at two several times when the Complainants Father demanded payment of two Bonds of the Defendants Brother Timmina but cannot say the amount of the sums therein contained that Timmana answered at such times that the Greatneſs of the Famine then had reduced him to such Extremity that he was scarce able to maintain himself and desired the Complainants ffather to have patience that he would discharge both the Bonds when his Circumstances would admitt and more saith not to this Interrogatory.

To the last Interrogatory this Deponent saith that since the death of Timmana this Deponent by the Complainants Order, demanded payment of the above Bonds of Timmana's Wife who acknowledged the debt and said she would sell out her Houses in order to discharge them as also he has once demanded payment thereof of the Defendant who likewise promised payment and more saith not

Joseph Githin
Examr

Irsapah

Mayors Court at
Madraspatnam

Tuesday the 1st day of March A.D. 17[illegible]

Between Scalum Moodelare (Son of Ponta Yacumbrum deceased) of Madras Merchant Compl.t & Govinda (Brother to Covetore Timmana Deceased) Inhab.ts of the same place Defendant

This Cause coming on this day to be heard and debated before this Court in presence of the parties and their Attorneys on both sides On Hearing the Complainants Bill with Translate of two Bonds under the Defendants Brothers hands, the one dated the 26th June 1719 for Pagodas 13 the other dated the 20 January 1719/20 for Pag.s 3: 21: 20 thereto annext, The Defendants Answer, the Replycation and Rejoinder also the proofs taken in this Cause on the part of the Complainant (the Defendant not having produced any) Read. and on Examination of the matters in this Cause, what was alledged on either side, and due Consideration had thereon This Court doth therefore think fit to order and Decree, and doth accordingly Order and Decree that the Defendant do pay unto the Complainant the full and just Sum of Sixteen Pagodas Twenty one fanams forty Cash Current of Madrass being the principal money of the before mentioned Bonds together with such Interest from their respective dates after the rate of Eight p Cent p Annum as now is or hereafter shall become due thereon until full payment is made & also the Costs of this Suit — Pg. 16: 21: 40

P.r Cur.

Noah Casamajor (Reg.r)

21 Aug.^t 1744

To the Honourable the Mayors Court
at Madraspatnam

Humbly Complaining sheweth to this Honourable Court Pertahe Subbiah Jagaswah merchant of Madras that one Mahadan late of Madras but deceased having in his life time Occasion for a sum of money did apply himself to your Orator for the Loan thereof whereupon your Orator did advance and lend unto the said Mahadan the ſum of Eighty Pag.^s ten fanams and Ten Cash for Security of which sum he the said Mahadan did Mortgage and make Over to your Orator his house and Ground lying and being in the Pedanaigues Petta in Yeacombrum Isvera Pagod's Street between the Houses of Verrago Saustrey and Narrionopayon in length 27 feet and in breadth thirty six and half with a piece of Ground in lenth thirty three feet and in breadth Twenty seven feet To have and to hold the said House and Ground your Orator and his Heirs for ever Subject neverthe leſs to the usual Proviso in such Cases as by the said Mortgage Bond now in your Orators Custody bearing date 2.^d day of December 1741.

And your Orator shews one Lingamah now living Widow and Relict of the said Mahadan is now in her poſseſsion of the said premiſses so Mortgaged to your Orator and your Orator shews he hath frequently

demanded his said principal sum of .... Pag.^s	80. 10. 10
also further lent on a petty Bond Pag.^s	5. " "
also Rice and Paddy sold the Family	9 " "
Besides Interest the principals only .... P.^o	94. 10. 10

But the said Lingammah absolutely refuses to give your Orator any satisfaction in the premiſses.

To the End therefore that the said Lingammah may upon her Corporal Oath true and perfect answer make to all and every the matters aforesaid as fully truly and Effectually to all Intents and purpoſes as if the same was here again repeated and Interrogated and be Decreed to pay your Orator his several principal moneys and Interest due thereon and that your Orator may have such further and other Relief in the premiſses as may be agreeable to Equity and good Conscience.

Henry Deveil Attorney for the
Complainant

2^{d} December 1741.

I Mahadau son of Coliah do hereby acknowledge to have Borrowed and received of Portchee Subariah Jagaswah the sum of Eighty Pag.^{s} ten fanams and ten Cash for securing the repayment of which sum with Interest at twelve ℘ Cent in one year I Mortgage my house wth the Bill of Sale and on default of such payment at the time Limited I am to put him in poſseſsion of the said house

Witneſs

Mahadau

Ramah Chandru
Vishwanada Sankarajee
drawn by Ramah Chandrue
Translated from a paper Writing said to be the Original

Joseph Githen
Exam^{r}

18th September 1744

The Answer of Lingamah Widow of Madrass Defendant to the Bill of Complaint of Portakee Subriah Jagaswah of the same place Merchant Complainant,

The said Defendant now and at all times here after saving and reserving to herself all and all manner of Benefit and advantage of Exception to the manifold Errors Imperfections, Incertainties and Untruths in the Complainants said Bill Contained for answer thereunto or unto so much thereof as she this Defendant is advised Materially doth concern this Defendant to make answer unto, she this Defendant answereth and saith.

That she admitts her Husband to borrow of the Complainant the Sum of Pagodas Eighty, Ten fanams and Ten Cash for Securing the Repayment whereof he this Defendants Deceased Husband did mortgage unto the Complainant the Bill of Sale of his House; and this Defendant further says that Thirty Pagodas of the above Sum has been repaid in the lifetime of this Defendants Husband as he declared in his last Moments by saying he stood Indebted to the Complainant only Principal Pagodas Fifty, Ten fanams and Ten Cash on which Interest for one year was due.

As to the Bond for five Pagodas this Defendant acknowledges her Deceased Husband did sign it, but never received any valuable Consideration for so doing

As to the Quantite of Paddy this Defendant knows nothing of any such parcel as the said Complainant Charges nor does she believe the said Charge to be true, but however she is willing to put the Iſsue of this Cause upon the Complainants taking his Oath at Triplicane Pagoda to the truth of his Demand, which this Defendant prays he may be Compelled so to do.

All which Matters and things this Defendant is ready to aver, maintain and prove the same as this Honourable Court shall award, and humbly prays to be hence dismiſsed with her reasonable Costs and Charges in this behalf most wrongfully sustained.

William Dumbleton
Attorney for the Defendant

16th October 1744

The Replycation of Portakee Subrish
Jagaswah to the Answer of Lingamah
of Madras Complainant

The said Replyant saving to himself all advantages of Exception to the Incertainties, Untruths and Insufficiencys of the Defendants answer for Replycation thereunto saith That all and singular the matters and things in this Repliants said Bill contained is true as is therein alledged and that the Answer of the said Defendant to the said Bill is very untrue Imperfect and Insufficient to be replied unto.

For this Repliant ſaith that the house now under Suit was first mortgaged by the Defendants husband for Pag.s 102 & he afterwards paid in part of the Bond 34 But [illegible] being other [illegible] Accounts in this Replyants Favour a Ballance was struck and there remained due to this Replyant the sum of Pag.s 80. 10. 10 upon which the Old Bonds was Cancelled and the new Bond under Suit was given of which no part has been paid to this Repliant or to any person by his Order knowledge or belief as to the other little Bond for Pagodas 5 it was lent after the other Bond and the Defendants husband promised it should be Included in the Mortgage.

As to the 9 Pagodas of Rice which the Defendant in her answer Erroniously calls paddy this Repliant has several Witneſses to prove it due and therefore the Defendants Request of Swearing at the Pagoda is very unreasonable and this Repliant humbly conceives if the Defendant denys what this Repliant Aſserts it is the Repliants Interest to prove it and that has been always held sufficient by this Honourable Court.

The Court has sometimes thought proper to administer an Oath in the most Solemn manner But that has been Generally Speaking matters of Great Importances, and the Oath always given to the Defendant and then only when the proofs have not appeared to the Courts Satisfaction.

All which Matters and Things this Replyant is ready to aver, maintain and prove as this Honourable Court shall direct and humbly prays to us in and by his said Bill is already prayed.

Henry Deveil Attorney
for the Repliant

Rejoinder General

Mayors Court at
Madraspatnam

Tuesday the 26th day of March A.D. 1745 Between Portakee Subriah Jagaswah of Madras Merchant Complainant and Lingamah (Widow of Mahadevu late of the same place Goldsmith Deceased, Defendant

This Cause coming on this day to be heard and debated before this Court in the presence of the plaintiff and the Attorneys on both sides, on hearing the ~~Comp~~lainants Bill with Translate of a paper mortgage Bond or Writing under the hand of Mahadevu the Def.ts deceased Husband dated the 2 Decem.r 1741 for Pagodas 50. 10. 10 thereto annext the Def.ts answer, the Replycation and Rejoinder read and on Examination of the matters in this Cause what was alledged on either side and due Consideration had thereon This Court doth therefore think fit to order and Decree, and doth accordingly order and Decree that the Defendant do pay unto the Complainant the full and just Sum of Eighty five pagodas, Ten fanams, Ten Cash being the principal money of the two Bonds on which the plaintiff sues (he having made Oath to the satisfaction of this Court that neither he nor any other person for him hath received any part of the principal or Interest of the said Bonds) together with such Interest after the rate of Eight ℘ Cent ℘ annum as now is or shall hereafter P.o 85: 10: 10

Become due thereon until full payment is made, and also the Costs of this Suit, and that the said Debt and Costs be paid unto the Complainant out of the sum of Pagodas 136: 32: 48 now remaining in the Cash of this Court for residue of the nett amount of the Sale of the Defendants house Mortgaged to the Plaintiff and Sold by Execution and returned into Court the 27th November last past at the suit of Crojusaw

Pr Cur:

Noah Casamajor
Regr.

1st May 1744

To the Honourable Mayors
Court at Madraspatnam

Humbly Complaining Sheweth unto this Honourable Court Your Orator Tomby Chitty Merchant of Madras, was Concern'd in the Tobacco Farm Jointly with one Poncla Kisnash formerly Merchant of Madras, but now deceased and your Orator shews that at the time the said Poncla Kisnash departed this life there was a Ballance due from the said Poncla Kisnash on Account of the said Tobacco Farm to your Orator to the amount of Pagodas 658: 24 Current money of Madras which sum your Orator demanded from the Executors of the said Poncla Kisnash by name Permoll Moodalare and Ram Chendrue both Inhabitants of the place aforesaid, and your Orator shews that the said Permoll Moodalar and Ram Chendrue did Inform your Orator that they had paid out of the Cash of the Tobacco farm, the sum your Orator demanded to the Honourable Company on Account of Ponda Kisnash, who stood indebted that Sum to the said Company, but they at the same time Informed your Orator that in order to secure to your Orator the Sum your Orator demanded (which demand they acknowledged to be just they would give unto your Orator one Bond or Obligation there by making over unto your Orator all the Revenues that should arise from the said Farm until your Orators said Demand should be fully Discharged and that they would receive no part of the said Revenues till the Contents of the said Obligation should be fully Complied with, and your Orator shews your Orator did consent to their Proposal and a Bond to the above Tenor was drawn and signed by the said Pernaul Moodalare and Ram Chendzue, as will appear by a Translate thereof for the Inspection of this Honourable Court hereunto annext to which your Orator most humbly referrs and prays the same may be admitted as part of this your Orators Bill of Complaint which said Bond bearing date Aug.st the first 1743 is for Pagodas 658: 24 which make in Sterling money of Great Britain accounting each Pagoda Eight shillings £263. 9: 4 1/2 or thereabouts and your Orator shews the said Pernoll Moodalare and Ram Chan Zue have made a Breach in the said Contract or Obligation by receiving the whole revenues of the said Tobacco farm ever since the said Contract was made without ever accounting with your Orator for any part thereof though your Orator hath often and [illegible] in the most amicable manner requested them so to do.

Your Orator therefore prays a General Relief touching the premisses such as to this Honourable Court shall appear agreeable to Equity and good Conscience Is the End of the Bill.

William Dumbleton
Attorney for the Complainant

August 1st 1734 Madraspatnam

Whereas, by the Accounts of the Tobacco farm Six hundred fifty eight Pagodas and Twenty four ffanams, due to Tomby Chitty the Company's Merchant, is found deficient in the Cash thereof, We therefore deliver up our Right or part therein to Tomby Chitty and do hereby Impower him to receive the whole produce of the said ffarm until he shall have been fully paid the said Sum of Six hundred fifty eight Pagodas twenty four fanams with Interest at nine p^r Cent.

Witness
Tripassure Mam Chitty
Rangamaz Rangapah Chitty
drawn by Choliapah

Permaul Executor of Poncla Vicatna
Ramah Chendrue Conicoply

Translated from a Cadjan said to be the Original
Joseph Githin Examd.

5th June 1744

The Joint Answer of Parmaul Moodelare and Ramah Chendrue to the Bill of Complaint of Tomby Chitty of Madras Merch^t.

These Defendants saving and reserving to themselves all and all manner of Benefit and advantage of Exception to the manifold Errors Incertainties and Insufficiencys in the Complainants Bill contained for Answer thereunto or to so much thereof as these Defendants are advised materially concern them to make answer unto they these Defendants answereth and saith

That they do admit the Complainant and the deceased Poncala Kisnah were partners in the Beetle and Tobacco farm, and they also admit that the Note or Obligation annext to the Complainants Bill was also given to the Intent and purpose hereafter mentioned.

After the decease of Poncala Kisnah the Complainant came to these Defendants and said that the Deceased's Estate stood Indebted to him the Complainant in the sum of 658:24 Current of Madrass and as Security for such money the Complainant desired these Defendants would Assign over to him the Complainant a power to receive and Collect in the profits Rents and Revenues of the deceaseds proportion in the Beetle and Tobacco farm of which the Deceased had been a principal Partner and in Consequence of which there was remaining a Stock in the said Partnership which the Complainant desired might not be removed til his the Complainants Demand was satisfied to which these Defendants Consented and to that Intent gave the Complainant the note annext the Bill of Complaint the Tenor of which shews the Complainant had full possession of the said Beetle and Tobacco farm and kept the Cash thereof and it was therefore Impossible these Defendants could make any Breach in the said Contract

And these Defendants say that from the time such power was given these Defendants have never once Intermeddled with the said farm in any shape whatsoever which is plain for if the Complainant was [illegible]jured why has he been Silent so many years.

In short the Complainant ought rather to render an account to of his own Transactions in the said ffarm to the Minor now of age the deceased son and who is the only person to whom these Defendants can be accountable as every done in his Minority was in his right only and these Defendants acted but as Executors, that the Executorship is now expired by the Minors being at age and these Defendants cannot be any longer made accountable to the said Estate but to the Minor only to whom these Defendants are ready to account for all past Transactions and to another person for the Justneſs of which plea these Defendants humbly appeal to the Judgment of this Honourable Court.

All which matters and things these Defendants are ready to maintain and prove the same as this Honourable Court shall award and humbly pray to be hence Dismiſsed with their reasonable Costs and Charges in this Behalf most wrongfully sustained.

Henry Deveil Attorney for the Defts.

10th July 1744

The Replycation of Tomby Chitty of Madras Merchant Repliant, to the Answer of Permaul Moodalare and Ramah Chendrue of the same place Merchants Defendants.

The said Replyant saving and reserving to himself now and at all times hereafter all manner of Benefit and advantage of Exception to the many Errors untruths Uncertainties and Imperfections in the Defendants said Answer contained for Replycation thereunto saith.

That since the Defendants have admitted the Obligation to be Genuine it remains with them (in the humble Opinion of this Replyant) to discharge it or prove it has been discharged which this Defendant doth not in any wise admitt.

The Consciences of the Defendants can assign a Cause why this Replicant has been so long silent in this Demand, which was no other than the repeated fair promisses of the Defendants from time to time to settle and adjust the accounts from whence the Ballance arose for which the Bond under Suit was given.

The Defendants make use of a Law in hopes to screen themselves from being Compelled to do what is Equity Viz.t They say, the person who Contracted the debt sued for has a son and Heir alive, at age and capable to answer all demands at Law, and that he being arrived at age are no longer accountable to any other person than him, This plea the Defendants Introduce and appeal to this Honourable Court to support them in it, Tis Granted this plea may be good in Law, but at the same time that is admitted it must be observed that Equity was Intended for the Relief of the Law which sometimes stands in need of it as in the present Case, which stands thus Here are two left Executors in Trust for the Heir of the Deceased, the Deceased stands Indebted on account to Tomby Chitty for which Ballance the

Executors give a Bond to Tomby Chitty, thinking this Bond of sufficient Validity Tomby Chitty delivers the accounts by which the Debt appears to the Executors; some time after Tomby Chitty applies to the Defendants to pay off their Obligation since they had made a Breach in the Tenour of it by receiving the Revenues as were by the said Obligation made over to Tomby Chitty the Defendants putt off Tomby Chitty from time to time for along while but when Tomby Chitty expects according to the Defend.^ts promise that the time is come where at he is to be paid, to his great surprize, he is told by the Defendants that they have delivered up their Charge to the son and heir of the deceased and that they were no longer accountable to any Body but him, with this Shuffle Tomby Chitty is sent to the Son and Heir who asks, which way the debt arose, Tomby Chitty shews his Bond, says the son and Heir that Bond is given by Permaul Moodalare and Ramah Chandrue, but I do not see thereby that I am answerable, where are these Accounts upon which the debt appears; Tomby Chitty answers, they are with Permaul Moodalare and Ramah Chendrue, Replies the son and Heir produce them let me see, that the debt, be just, Tomby Chitty applies to Permaul Moodelare and Ram Chendrue for the accounts who make him the same answer as before that he must look to the Heir for payment, for they have nothing to do with any Body but him, In this manner Tomby Chitty has been trifled with and put off, One answers he is not liable to pay the Bond, and the other that they are not Liable to be called to an account by any Body but the Heir so that Tomby Chitty is in a way of being paid by neither (The reason Tomby Chitty sues the Defendants and not the Heir, is because according to the Laws of their Cast, the Defendants are obliged to pay the money upon the Obligation, and according to the Laws of the Cast, the Defendants have not discharged their Trust as Executors till they deliver up all their accounts to the Heir and produce a Written Instrument under the hand of the Heir, in the nature of a General Release, Neither of which the Defendants have yet done and are therefore liable to pay Tomby Chitty's Demand

All which matters and things this Repliant is ready to aver maintain prove and Testify as this Honourable Court shall direct and humbly prays as in and by his said Bill he hath already prayed

William Dumbleton
Attorney for the Replyant

15
7 August 1744

The Rejoinder of Permall Moodelare and
Ramachendrue Defendants to the Replication
of Tomby Chitty of Madras, Complainant.

The said Defendants saving and reserving to themselves, all manner of Benefit and advantage of Exception, to the Incertainty and Insufficiency of the said Replication Saith.

That these Defendants said Answer is certain true, and sufficient in the Law to be replied unto and these Defendants also saith

That what the Complainant calls an Obligation, is of a Quite

different

Kind to that of a Bond for payment of money nor are these Defendants bound by any such writing to the payment of any such money.

For these Defendants never received any Consideration for the Sum mentioned in the agreement, as is plain by the Tenor of the said Writing – These Defendants signed only as Executors and at the Complainants request not for money paid or received but for money said to be due to the Complainant from the deceaseds estate, and the agreement now under Suit was only given, as a promise the Complainant should be paid out of the profits arising from his share of the Beetle and Tobacco farm, and these Defendants never did touch part of such profits, but left them to be received by the Complainant in and towards the discharge of this very debt, and the Complainant Enjoyed the same Unmolested from the deceaseds death till the Expiration of the Cowl when the Deceased's property therein Ceased, but during all this time what has the Complainant done with those profits so arising from the said Farm, and which he hath Converted to his own use, and for securing which profits to his the Complainants Use, the Agreement now under

In short the power of these Defendants as Executors is now at an End and these Defendants are ready and even desirous to deliver up all Accounts to the Heir of the Deceased, who is now Arrival to the age of Twenty one years, he both sues, and is sued, in this Honourable Court, which prevents these Defendants, being [illegible] any longer answerable for the said Estate, to any but himself, these Defendants can no longer receive on account of the said Estate, and surely Equity –

will not Compell these Defendants, where they cannot receive, these Defendants are and always have been ready to deliver up an Account of their Trust when the deceaseds Heir will call them to an account, and to him alone these Defendants are accountable if these Defendants signed any obligation during the Heirs Minority, it was in his Right and on his behalf and he is now accountable for his Executors actions and they accountable to him

As to the Heirs pretence made to the Complainant, that the Executors Trust is not delivered in, we answer, we desire he would call upon us, the accounts are already for his Inspection, and only wait for his Demand, and these Defendants do again Declare they will no longer pay or receive on Account of the said Estate, nor is there any Effects left so to do in these Defendants hands, and no Executor is obliged to pay any further then the estate will Extend which is the Tenour of an Executors Oath and when the Effects are gone the Executors must be acquitted in Law and Equity, if the produce of the said Estate hath been misapplied the Executors are accountable to the Heir and him only.

And these Defendants say as in and by their said Answer they have already said and does and will Aver and maintain, all and every thing and things there contained to be true and certain in such manner and form as is therein and thereby set forth alledged and expressed.

Henry Deveil Attorney
for the Defendants.

Interrogatories to be administred to such Witneſses as shall be produced Sworn and Examined on the part and behalf of the Complaint. in a certain Cause wherein one Tomby Chitty is Complaint and Permaul Moodelare and Ram Chundrue are Defendants.

To all the Witneſses Imprimis Do you know all the parties Complainant and Defendants in this Cause, or either and which of them and how long have you known them or either and which of them Declare.

To Tomby Charpullee and Palliapah Chitty Item. Did Poncla Kistnoma Naigue to your Knowledge stand Indebted to the Complainant any Sum or Sums of money If yea, how arose the debt, and what methods have been taken to discharge them by Poncala Kistna's Extors Do you know of any Agreement Bond being given by one of the Contending parties to the other (if yea) what was the purport of such Bond, and to what Intent was it given, how stands the affair of the Beetle and Tobacco Farm, and who has received the Revenues thereof since the Decease of Poncala Kistna Declare.

To all the Witneſses Item Do you know or can you say any other matter or thing Material for the Complainant in this Cause (if yea) set forth the same as you know, have heard or do

Believe, with such the manner of your knowledge and belief Declare

William Dumbleton
Attorney for the Complainant

Mayors Court at
Madraspatnam }

Between Tomby Chitty ...... Complainant
and Permaul Moodelare and Ramah Chinduee Defs

Depositions of Witnesses in this Cause taken by and before the Examiner in this Court as follows.

Tomby Charpullee of Madras Conicoply to Tomby Chitty aged 42 years or thereabouts being produced as a Witness in this Cause on the part of the Complainant was on the 22d day of November 1744 shewn at the Office of Mr. Henry Deveil Attorney for the Deft. by Connecappa who left a Note of the name Title and place of abode of the said Tomby Charpullee and afterwards being Sworn and Examined Deposeth as follows.

1st ...... To the first Interrogatory this Deponent Saith that he knows the parties Complainant and Defendant in this Cause and hath so known them 15 years or thereabouts.

2d ...... To the 2d Interry this Depn.t saith That he knows Ponda Kistnamah Naique did stand Indebted unto the Complainant on account of the Tobacco Farm for a part of the Revenues which he had received and not paid into the Common stock he farther saith that Ponda Kistnama Naigues Executors in order to redress the Complainant gave him an Agreement whereby they Impowered him to receive the whole Duties of the said Farm till he had recovered the Deficiency that he knows not how the affair of the Bettle and Tobacco Farm stands neither can he say who has received the Revenues thereof or further to this or the last Interrogatory

Joseph Githin Examr. Somby Charpullee

Talliapah Chitty of Madras Shroff aged thirty years or thereabouts being produced as a Witneſs in this Cause on the part of the Complainant and afterwards being Sworn and Examined deposeth as follows.

1st...... To the first Interrogatory this Deponent saith that he knows the Complainant and hath so known him 20 years and the Defendant he hath also known 20 years or thereabout.

2d.... To the ſecond Interrogatory this Deponent saith That he knows Poncla Kistnama Naigue did stand Indebted to the Complainant for part of the Duties of the Bettle and Tobacco Farm, He further saith, that he heard Poncla Kistnama's Executors gave an Agreement to the Complainant whereby they Impowered him to receive the whole Duties of the said Farm until Poncla Kistnamas debts were discharged which appeared to be Six hundred and odd Pagodas, when his Accounts were Ballanced, after his decease, This Deponent further saith That he heard Permaul Moodelare, one of the present Defendants has received the Revenues of the said Farm since the decease of Poncla Kistnama by the Complainants and Narrain Chittys order, and more saith not to this or the last Interrogatory

Joseph Githin Examr. Polliapen

Mayors Court at
Madraspatnam

Tuesday the 26th day of March Anno Dmo 1745 Between Tomby Chitty of Madras Merchant Complt and Permall Moodelare and Ram Chenderu Executors of the last Will and Testament of Poncala Chistna deceased of the same place also Merchants Defendants.

This Cause coming on this day to be heard and debated, before this Court in the presence of the Defendants and the Attorneys on both sides, On hearing the Complainants Bill with Translate of a Cadjan bond or Deed of Assignment under the Defendants hands dated the 1st August 1734 for Pag.o 658: 24 f.o thereto annext, The Defendants joint answer, the Replycation and Rejoinder also the proofs taken in this Cause on the part of the Complainant (the Deft not having produced any) read, and on Examination of the matters in this Cause, what was alledged on either side, and 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 out of this Court, and that each party do pay their own Costs of Suit

658: 24 f:

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Noah Casamajor
Regr

14th August 1764

To the Honourable the Mayors Court
at Madraspatnam

Humbly Complaining sheweth unto this Honourable Court your Orator John Scott of Madraspatnam Mariner, That Poncala Ravanapah als of the same place Dubash now being within the Jurisdiction of this Honourable Court, did on a certain Bond or Writing under his Hand bearing date the 6th day of August which was in the year of our Lord 1743 borrow of your Orator the full and just sum of 75 Pagodas Current of Madras, which sum was to run at Respondentia on the Brigantine Tellesinga Permall of which Joseph Hendrick Oalderman was then said to be Chief Mate (but happened not to go as such the Voyage from the Port of Madras aforesaid to that of Arracan and back again at the Rate of 25 ⅌ Cent, and the the said Poncala Ravanapah did thereby oblige himself his Heirs Executors &c to pay unto your Orator or his Assigns upon the safe Arrival Brigantine Tellesinga Permall at the aforesaid Port of Madras the above mentioned sum with the Respondentia that should be due thereon, at or before Twenty one days after the safe Arrival of the said Brigantine, and in Case of the Loss of her such an Average as by Custom should be due on the Salvage as in and by the said Bond or Writing in your Orators Custody ready to be produced as this Honourable Court shall direct will appear [illegible] Orator further shews that the said Brigantine did perform the said Voyage and Arrive at the said Port of Madras on or about the 29 day of June last past and that your Orator hath demanded his said principal and Premium pursuant to the Tenor of the said Bond or Writing, but the said Poncala Ravanapah refuses to pay your Orator pretending that it was agreed between him and your Orator, That he your Orator should Sail from Arracan aforesaid with the said Veſsell on a before the 30th of December last past for this Port of Madras, which he did not, and by which Neglect or delay he the said Poncala Ravanapah hath suffered a Considerable Loſs by the Damage which the said Veſsell hath Sustained But your Orator humbly apprehends that in Equity he cannot be bound by the said Agreement nor ought he any way to be Answerable for the Consequences that attended the Breach of it seeing that he did all that was in his power towards the performing it, and that it was rendred Impoſsible for him so to do by an After Act in the Noquedah Ryculla Vencatta Petty, who had a Superior Command over him. The Agreement being founded on a Supposition, that the said Noquedah was to stay at Arracan aforesaid But when your Orator acquainted him the said Noquedah that according to Agreement with the said Pencala Ravanapah he was on the said 30th day of December at farthest to deliver the said Veſsell to him to be brought to Madraſs, The said Noquedah refused so to do, So that your Orator having no power to compell the delivery of the Veſsell, in Vindication of himself protested against such proceedings as by a Translate of such Protest hereunto annext will appear and on the

thirteenth