Wednesday the 12th. January 1789

Present

The Honble John Hollond

James Henry Casamajor & Robert Maunsell

To the Honorable. Major General Sir. Archibald Campbell

K. B. President in Council

Fort Saint George

In the Court

of Appeals

Between Brigadier General

Richard Smith by his Attorney

Nathaniel Edward Kindersley

of Fort Saint George Esquire Complainant

and James Call also of Fort Saint

George Esquire Defendant

The Humble Petition and Appeal of the above named James Call

Sheweth

That the above Named Complainant did on the

Filed in my Office the 5. December 1788

Twenty fourth day of January in this present Year of our Lord

One Thousand Seven hundred and eighty eight file his Bill of Complaint

Chas. S. White Clk in the Mayors court at Madraspatnam Against Your Petitioner for

the

the recovery of the Sum of Ten Thousand Nine hundred and thirty eight Pagodas twenty eight fanams Current Money of Madras Charged to be due on the Bond or Obligation of your Petitioner Copy whereof together with an Account Current as Annexed to the Complainants said Bill of Complaint To which said Bill of Complaint Your Petitioner Appeared by his Attorney and filed his Answer and did thereby setforth that it Appeared by the Complainants own Shewning in the Account Current annexed to his said Bill of Complaint that your Petitioner did offer to the Complainant a certain Security which was the best Security in his Power towards Securing unto the Complainant the Payment of such Sum as your Petitioner might owe him and that your Petitioner did further Setforth that he could not in justice to his other Creditors make any further or more Satisfactory Arrangement than the one therein proposed for Your Petitioner Said he and James Taylor and George Savage now of Fort Saint George Senior Merchants in the Service of the Honorable the United Company of Merchants of England Trading to the East Indies and also Andrew Majendie late also Senior Merchant in the Servic and since Deceased have been for Several Years back jointly Interested in certain Money Transactions

on

or Dealings under the name of the Concern which said Concern is present Indebted unto divers and sundry Persons in very considerable Sums of Money which it is not in the Power of the said Concern to liquidate at present nor that they could ever venture to fix a Period when such liquidation will take place because as the said Concern hath Claims on his Highness Wow Law Jau Dee Nabob of the Carnatic to the Amount of Several Lacks of Pagodas the Payment whereof altho now in a Train of Settlement under the Sanction of an Act of Parliament must depend on the Continuance of Peace in the Carnatick the Competency of the said Concern to settle with their Numerous Creditors must in like Manner depend on the said Event and your Petitioner further Stated that as the Interest of Twelve \% cent at which the Debts of his said Highness the Nabob formerly run is reduced to six \% cent on all such as are included in that Species of Debt commonly known and distinguished by the Name of the New Consolidated Debt and as a considerable Portion of the Claims of the said Concern on his said Highness the Nabob is of that Discription while many of the Debts due by the said Concern are at an Interest of Twelve \% cent Your Petitioner could not nor could the said Concern form any

Accurate

Accurate State of the Ultimate situation of such Concern and therefore that it was out of his Power to give to the Complainant any precise satisfaction respecting the same and that he could not therefore as certain the time when he would be able to discharge any private Claims on him individually except as far as he may be able so to do from his own Individual Funds for your Petitioner said that the said Concern do conceive themselves bound by Law to pay off all the Debts of the Concern from such Funds as are for that purpose in their Custody posession or Power before they could appropriate those Funds to the liquidation of the Debts of the Individual Members of the said Concern and that when the Debts of the said Concern shall have been fully discharged then and not before the Partners thereof have Individually a Right each to his Separate Share of the Surplus Fund and may individually Apply the same to the Payment of their Separate and Individut Debts or in such other Manner as to them individually Should seem meet. Your Petitioner Sheweth that in his said Answer he did further setforth that being thus circumstanced he had no Right whatever to ask or Demand from the said Concern any part of the Joint Funds thereof towards the liquidation

Liquidation of his private Debts and that as he had not any Individual Funds equal to the Discharge of the Complainants Demand he could only propose to Mortgage such Separate Property as belonged to him Individually towards Securing the Payment of such Debt as he might owe the Complainant which Your Petitioner said he had already done by an offer of a new Consolidated Bond as appeared by the Account Current annexed to the Complainants Bill on which it appeared that the Complainant by his Attorney had received three Dividends and therefore there is reason to hope that the same would in time have been a Solvent as well as a Sufficient Security. Your Petitioner further Stated that it appeared of the Complainants over Shewing by his Instructions to his said Acting Attorney Nathaniel Edward Hindersley that he did not look to the Receipt of his Claim on your Petitioner for his said Attorney by his Letter under Date the Twenty first day of September last past and which was in the Year of Our Lord One thousand Seven hundred and eighty Seven said that he was Authorized to accept a Consolidated Cavalry Bond as the lowest Security for the payment of his Claim but your Petitioner did solemnly declare that he had no separate Right Title Power or property in or Over any Cavalry Bond for such as they might possess

until

until vested in the said Concern and engaged for the payment thereof and that the new Consolidated Bond already in deposit for the satisfaction of the Complainants Attorney is the only part of the Funded Claim on his Highness the Nabob which was in the power of your Petitioner to Appropriate as his Individual Property towards Securing the payment of his separate and individual Debts. Your Petitioner did lastly in his said Answer setforth that as the Arrangement above made for the reduction of Interest on the new Consolidated Debt was so made under and by virtue of act of Parliament of his present Majesty and done on principles of fair Justice to his said Highness Waw Law Jaw Nabob of the Carnatic and his several Creditors and in such a manner as was Consistant with his Highness's Finances and resources after the heavy expenses he had incurred by a long and Calamitous War in the heart of his Country so his Creditors who are sufferes by such reduced Interest had a Claim of a similar Indulgence from their Creditors at large by moderating the rigor of the Law and giving time till by a reestablishment of the public resources of his Highness the Nabob he should have discharged his Debts and the said concern as well as his

Creditors

Creditors at large be thereby enabled to discharge their several Obliga to their respective Creditors and Your Petitioner said that the said Concerns had a greater right than any other Creditors of his said Highness the Nabob to a Relaxation of the rigor of the Law in their favor by reason of the Assistance given by the said Concern towards the relief of his said Highness in his Political exigencies Your petitioner therefore humbly Submitted to the Consideration of the said Mayors Court whether the Complainant should receive any greater Interest than Six p Cent upon such original Claim as he might prove to have upon Your Petitioner and Your Pet.r further hoped that as he had Offered a fair and adequate security for the payment of such Debt as he might owe the Complainant that the said Mayors Court would postpone any further proceedings on the Cause to such future time as might enable Your Petitioner to discharge all his individual as well as partnership Debts the Period of which indulgence he Submitted to the said Court and that he was the more encouraged in the hope of a benign attention from the said Court to the peculiar circumstances of his Situation because the Lord Chancellor of Great Britain had set an example of the like Clemency and on Similar Grounds during the General distresses of the late War by post- poning the foreclosure of the Equity of Redemption on Mortgaged

Estates

Estates while the War raged and the price of the Lands was much below
their real and Intrinsic Value which Case your Petitioner Submitts
was not so forcible as your Petitioners whose distresses in part
Originated from the liberal Attention jointly with his other
partners in the said Concern to the public and general Weal
To which said Answer the Complainant filed his Replication and
did thereby among other things Setforth that he knew not either
did it Concern him what Transactions or dealings your Petitioner
Might have had with the said James Taylor and George Savage
or with the said Andrew Mayrdie and insisted that your
Petitioner was indebted unto him and therefore prayed as in
and by his said Bill he had already prayed Your Petitioner
Sheweth that he filed a General Rejoinder when upon Issue
was joined and the Complainant examined a Witness to the
execution of the Bond not by producing the said Original
Bond but by producing the Copy thereof altho it was acknowledge
the Original Bond was in the Complainants possession upon
which publication passed and the said Cause Set down for
hearing and the same came on to be heard on Saturday the
22. day of November last past when the said Mayors Court
did think fit to order and decree and did Accordingly Order
and decree that Your Petitioner Should Pay unto the Complainant
the

the aforesaid Sum of Ten thousand Nine Hundred and thirty
eight Pagodas Twenty Eight fanams together with all such
Interest as then was or should thereafter become due thereon
until full payment was made also all Costs of the Suit

Which Decree of the said Mayors Court Your
Petitioner conceives to be Contrary to the principles of Substantial
Justice for the following among other Reasons

First — Because by the Complainants own Shewing it Appears that
your Petitioner did Offer him a certain Security which was the
best Security in your Petitioners power towards Securing unto
the Complainant the Payment of Said Sum as your Petitioner
may owe to him which the Complainant refuses to Accept

Secondly — Because the Complainant has no Right whatever to a preference
of the other Creditors of an equal Decree and because he well
knew the Actual Situation of your Petitioner and of the said
Concern to be such as has been above Setforth for which reason
the Complainant Ought not to have Attempted to put your
Petitioner at the expence of a Suit at Law from a principle
which does not Carry with it an equal Justice to the other
Creditors in equal Degree of your Petitioner

Thirdly — Because the Arrangement above made for the reduction of the
Interest on the above Conditioned Debt was so made under and

by

by Virtue of an Act of Parliament of his present Majesty and done on Principles of fair Justice to his said Highness Wawe Law Jaw Vs. Nabob of the Carnatic and his several Creditors and in such a manner as was Consistent with the Situation of his Highness's Finances and Resources after the heavy Expences he had incurred by a Long and Calamitous War in the heart of his Country so that his Creditors who are Sufferers by such reduced Interest have a Claim of Similar Indulgence from their Creditors at large by Moderating the Rigor of the Law and giving time till a Reestablishment of the public Resources of his Highness the Nabob shall have enabled him to discharge his Debts and thereby enable your Petitioner and the said Concern to discharge their Several Obligations to their respective Creditors the more so as the same were incurred by the Assistance given by the said Concern towards the Relief of his said Highness the Nabob in his potitical Exigences

Fourthly — Because the Lord Chancellor of Great Britain has set an Example of the like Clemency and in Similar Grounds deserving the General distresses of the late War by Postponing the Foreclosure of the Equity of Redemption on Mortgaged Estates while the War raged and the price of Lands much below their Real and Intrinsic Value which Case your Petitioner Submits is not so forcible as that of your Petitioners whose distress have in part originated as aforesaid from his Liberal attention to the Public and General Weal

Fifthly — Because the Complainant did not produce the best Evidence which appeared in his power in Support of any Claim he might have against Your Petitioner in as much as he examined Evidence to the Copy of the Obligation charged to have been Signed by your Petitioner when his Bill of Complaint states that he is in possession of the Original Bond Executed by your Petitioner

For all which reasons and such others as may be offered at the hearing Your Petitioner Most humbly prays that the Decree of the said Mayors Court be reversed with Costs of Suit to be paid by the Complainant

/Signed/

Stephen Popham

Solicitor for the Appellant

Mayors

Mayors Court at
Madraspatnam

Saturday the 22d. day of November
Anno Domini 1788

Present

Edward Garrow Esquire Mayor
William Webb Sir John Menzies
George Savage Vincentio Corbett
Josias du Pre Porcher & Andrew Ross
Aldermen

Between Brigadier General Richard Smith by his Attorney Nathaniel Edward Kinderseley of Fort St. George Esquire Complainant and James Call also of Fort St. George Esquire 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 a Bond or Obligation and Account Current Annexed. The Defendants Answer. The Replication. The General Rejoinder. The Interrogatories and Deposition on the part of the Complainant with Copy of an Exhibit Annexed Marked A 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

Decree and doth Accordingly Order and Decree that the Defendant shall pay unto the Complainant the full and just Sum of Ten thousand Nine hundred and thirty eight Pagodas and Twenty Eight fanams Pagodas 10938. 28/ 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.

/Signed/
George Taylor
Dupt. Regr.

To

To the Honble. Major General Sir. Archibald Campbell K.B.
President in Council
In the court of Appeals
at Madraspatnam

Fort Saint George

Between Brigadier General Richard Smith by his Attorney Nathaniel Edward Kindersley of Fort Saint George Esquire is Complainant and James Call also of Fort Saint George Esquire is Defendant

The answer of the above Named Brigadier General Richard Smith by his said attorney Nathaniel Edward Kindersley.

This Respondent admits that he did on or about the Twenty fourth Day of January in this present Year of Our Lord One thousand Seven hundred and Eighty Eight by his aforesaid Attorney file his Bill of Complaint in the Mayors court at Madraspatnam Against the said Appellant for the Recovery of the Sum of Ten thousand Nine hundred and Thirty Eight Pagodas and Twenty Eight fanams the Amount due on the Bond or Obligation of the said Appellant in Favor of this Respondent a Copy of which Bond together with an Account Current was Annexed to this Respondents said Bill of Complaint To which said Bill this Respondent Admits that the said Appellant did Appear and file his Answer thereto and that he did Setforth in his said Answer

Filed in my Office the 20th December 1788
Chas. B. White Clk

Answer

Answer the Several Matters and Things in his said Appeal stated To which said Answer this Respondent Admits that he did file his Replication and that he therein setforth that he know not Neither did it concern him this Appellant what Transactions or dealings the said Appellant Might have had with James Taylor and George Savage Senier Merchants in the Service of the Honble United Company of Merchants trading to the East India or with Andrew Majendie Now deceased or whether he the said Appellant was in Consequence of such dealings indebted unto divers and Sundry Persons or whether any Period could or could not be fixed for a Liquidation thereof to take place This Respondent admits that he did in and by his Replication further Setforth that the Demand made by him this Respondent on the said Appellant Arose on a Simple Bond or Obligation bearing Interest at the Rate of ten per cent and which was granted by the said Appellant in favor of this Respondent for a Sum of Money belonging to this Respondent which had been Left in the Hands of the said Appellant That therefore this Respondent could not help expressing his Surprize that the said Appellant Should Pretend to submit to the said Honble Mayors court whether the Rate of Interest expressed in the said Bond Should

Not

not be reduced and that he should attempt Accuse this Respondent of Possessing an Oppressive and persecuting Spirit because he was using his Endeavours to Recover his Property That this Respondent conceived he might with at Least as much Justice and Propriety Accuse the said Appellant of Possessing a Spirit for Strife and Litigation by setting up the Defence he had adopted Against his own act and Deed and endeavouring to reduce this Respondent to the Necessity of the Proof thereof by not fully admitting it to have been such To which said Replication this Respondent admits the said Appellant did file a General Rejoinder and that thereupon Issue was joined and that this Respondent did examine a Witness to the Execution of the Bond granted by the said Appellant by Producing a Copy instead of the Original thereof which Copy this Respondent saith the said Witness deposed to be a true Copy of the Original Bond and that he had examined and Compared the same therewith upon which that Publication Passed and the said Cause was setdown for hearing and came on to be heard on Saturday the Twenty Second day of November last Past when the said Mayors Court did think fit to order and decree and did Accordingly order and decree that the said Appellant should pay unto this Respondent the aforesaid Sum

Sum of Ten thousand Nine hundred and thirty Eight Pay Twenty Eight pannams together with all Interest which then was or should thereafter became due thereon untill full Payment was made and also all Bills of Suit.

By which decree this Respondent saith he conceives nomore than Substantial Justice was granted.

First Because he had Proved the due Execution of his Bond by the Oath of the Subscribing Witnesses thereto.

Secondly Because without taking into Consideration the Claims of others The Existance of which concerned not this Respondent he this Respondent had an Undoubted Right to be Paid his just Demand Neither could he be deemed as bound to Accept of any Security that might have been heretofore offered by the said Appellant which he this Respondent Might have reason to consider as inadequate to his demand on the said Appellant Neither could his said Demand be at all Supposed to be Affected by any Concerns the said Appellant might have been engaged in with others.

Thirdly Because the Subscribing Witness to the Bond was the best Evidence that could be produced to Substantiate and to prove the same.

For all which Reasons and such others

as

as may be Offered at the hearing this Respondent Prays that the Judgement of the Mayors Court May be Affirmed with Exemplary Costs to be paid by the Appellant for the Leligious Conduct in the first instance and his very Vexatious Appeal from the Decree of the Mayors Court without Stating any — Reasonable Pretext for such Appeal —

/Signed/ Charles Baker
Attorney for Respondent

Court of Appeals
at
Madraspatnam

Wednesday the 21st January
Anno Domini 1789

Between James Call of Fort St —
George Esquire Appellant and Brigadier
General Richard Smith by his Attorney
Nathaniel Edward Kindersley of Fort
St George Esquire 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 Saturday the 22d day of November anno Domini 1788. upon due Consideration had of the — Matters therein Severally contained and of the Pleadings and Arguments used by the Attornies on both Sides This Court doth think fit to order and Decree and doth Accordingly Order and Decree that the said Decree of the Honble the Mayors Court do stand Affirmed and that the Appellants Petition be hence — Dismissed with Costs —

Vera
Signed/ Chas V. White
Clk

To

Court

To the Kings most Excellent Majesty in Council

Between Brigadier General Richard Smith by his Attorney Nathaniel Edward Kindersley of Fort Saint George Esquire Complainant and James Call also of Fort Saint George Esquire Defendant

The Humble Petition and Appeal of the above named James Call

Most humbly Sheweth

That the above named Complainant did on the twenty fourth day of January which was in the year of Our Lord One thousand seven hundred and Eighty Eight file his Bill of Complaint in the Mayors court at Madrasspatnam against Your Petitioner for the recovery of the Sum of Ten thousand Nine hundred and thirty Eight Pagodas twenty Eight fanams Current Money of Madras charged to be due on the Bond or Obligation of your Petitioner Copy whereof together with an Account Current are Annexed to the Complainants said Bill of Complaint To which said Bill of Complaint, Your Petitioner Appeared, by his Attorney and filed his Answer, and did thereby Setforth that it Appeared by the Complainants own Shewing in the Account Current Annexed to his said Bill of Complaint that your Petitioner did offer to the Complainant a certain Security which was the best Security in his power towards securing unto the Complainant the payment of such Sum as your Petitioner might owe him and that your Petitioner did further Setforth that he could not in Justice to his other Creditors make any further or more satisfactory Arrangement than the one therein proposed for your Petitioner said that he and James Taylor and George Savage now of Fort Saint George Senior Merchants in the Service of the Honble the United Company of Merchants of England trading to the East Indies and also Andrew Mayendie late also Senior Merchant in the said Service and since Deceased, have been for several Years back jointly interested in certain Money Transactions or Dealings, under the name of the Concern which said Concern is at present indebted unto divers and Sundry Persons in very Considerable Sums of Money which it is not in the Power of the said Concern to liquidate at present nor that they could even venture to fix a Period when such liquidation will take place because as the said Concern hath Claims on his Highness Wauw law Jaw Vizr Nabob of the Carnatic to the Amount of several Lacks of Pagodas the payment whereof altho' now in a Train of Settlement under the Sanction of an act of Parliament must depend

Filed in my Office
Charles K. White
Clk

depend on the continuance of Peace in the Carnatic the Competency of the said Concern to settle with their Numerous Creditors must in like manner depend on the same Event and Your Petitioner further stated that as the Interest of twelve per Cent at which the Debts of his said Highness the nabob formerly run is reduced to six per Cent on all such as not included in that Species of Debt commonly known and dis by the name of the new Consolidated Debt and as a Considerable Portion of the Claims of the said Concern on his said Highness the Nabob is of that discription while Many of the debts due by the said Concern are at an Interest of twelve per Cent your Petitioner could not could the said Concern form any Accurate state of the Ultimate situation of such Concern and therefore that it was out of his Power to give to the Complainant any precise Satisfaction respecting the same and that he could not therefore Ascertain the time when he would be able to discharge any private Claims on him individually except as far as he May be able so to do from his own individual funds for Your Petitioner said that the said Concern do conceive themselves bound by Law to pay all the debts of the Concern from such Funds as are for that purpose in their Custody

possession

possession or Power before they could Appropriate those Funds to the liquidation of the Debts of the Individual Members of the said Concern and that when the Debts of the said Concern shall have been fully discharged then and not before the Partners thereof have individually a Right each to his separate Share of the Surplus Fund and may individually apply the same to the payment of their separate and individual Debts or in such other manner as to them individually should seem meet Your Petitioner Sheweth that in his said Answer he did further set forth that being thus circumstanced he had no Right whatever to ask or demand from the said Concern any part of the Joint Funds thereof towards the liquidation of his private Debts and that as he had not any Individual Funds equal to the Discharge of the Complainants Demand he could only propose to mortgage such Separate Property as belonged to him individually towards securing the Payment of such Debts as he might owe the Complainant which your Petitioner said he had already done by an offer of a new Consolidated Bond as appeared by the Account Current Annexed to the Complainants Bill on which it appeared that the Complainant by his Attorney had received three Dividends and therefore there is reason to hope that the same would in time have

been

been a Solvent as well as a Sufficient Security. Your
Petitioner further stated that it Appeared of the Complainants
own Shewing by his Instructions to his said acting Attorney
Nathaniel Edward Hindersley that he did not look to the
receipt of his Claim on your Petitioner for his said Attorney
by his Letter under date the twenty first day of September
last past and which was in the year of our Lord one thousand
Seven hundred and Eighty Seven, said that he was Authorised
to accept a Consolidated Cavalry Bond as the lowest Security
for the payment of his Claim but your Petitioner did solemnly
declare that he had no separate right Title Power or Property
in or over any Cavalry Bond for such as they might possess
were vested in the said Concern and engaged for the payment
of the debts thereof and that the new Consolidated Bond
Already in deposit for the Satisfaction of the Complainants
Attorney is the only part of the funded Claim on his Highness
the Nabob which was in the power of your Petitioner to
Appropriate as his individual property towards securing
the payment of his separate and Individual debt your Petitioner
did lastly in his said Answer setforth that as the arrange-
-ment above made for the reduction of Interest on the new
Consolidated Debt was so made under and by virtue of an

Act

Act of Parliament of his present Majesty and done on principles
of fair justice to his said Highness Waw Law Jaw Nabob of the
Carnatic and his several Creditors and in such a manner as
was consistent with his Highness's Finances and resources —
after the heavy expenses he had incurred by a long and
Calamitous war in the heart of his Country so his Creditors
who are Sufferers by such reduced Interest had a Claim of
Similar Indulgence from their Creditors at large by moderating
the rigour of the Law and giving time till by Reestablishment
of the Public resources of his Highness the Nabob he should
have discharged his Debts and the said Concern as well as his
Creditors at large be thereby enabled to discharge their Several
Obligations to their respective Creditors and your Petitioner
said that the said Concern had a greater Right than any
other Creditors of his said Highness the Nabob to a Relaxation
of the Rigor of the Law in their favour by reason of the Assistance
given by the said Concern towards the relief of his said
Highness in his Political Exigencies Your Petitioner
therefore humbly Submitted to the consideration of the said
Mayors Court whether the Complainant should receive any
greater Interest than six per Cent upon such Original
Claim as he might prove to have Upon Your Petitioner and

Your

Petitioner further hoped that as he had offered a fair and adiquate Security for the payment of such Debt as he might owe the Complainant that the said Mayors Court would postpone any further proceedings in the Cause to such future time as might enable your Petitioner to discharge all his individual as well as Partnership Debts the period of which indulgence to be Submitted to the said Court and that he was the more encouraged in the hope of a benign Attention from the said Court to the peculiar circumstances of his Situation Because the Lord Chancellor of Great Britain had set an example of the like Clemency and on Similar Grounds during the General Distresses of the late War by postponing the foreclosure of the Equity of Redemption on Mortgaged Estates while the War raged and price of Lands was much below their real and Intrinsic Value which case your Petitioner Submitted was not so forcible as your Petitioners whose distresses in part Originated from the liberal attention jointly with his other Partners in the said Concern to the public and General Weal To which said Answer the Complainant filed his Replication and did thereby among other things setforth that he knew not neither did it Concern him what Transactions or Dealings your Petitioner might have had with the said James Taylor and George Savage or with the

Said

said Andrew Mayendie and insisted that your Petitioner was indebted unto him and therefore prayed as in and by his said Bill he had already prayed- Your Petitioner Sheweth that he filed a General Rejoinder whereupon Issue was joined and the Complainant examined a Witness to the execution of the Bond not by producing the said Original Bond but by producing the Copy thereof altho it was Acknowledged the Original Bond was in the Complainant Possession upon which Publication passed and the said Cause was setdown for hearing and the same Cause came on to be heard on Saturday the twenty second day of November last past when the said Mayors Court did think fit to Order and Decree and did Accordingly Order and Decree that your Petitioner Should pay unto the Complainant the aforesaid Sum of Ten Thousand Nine hundred and thirty eight Pagodas twenty eight fanams together with all such Interest as then was or Should thereafter become due thereon until full Payment was made also all Costs of the Suit

From which said Decree of the said Mayors Court Your Petitioner it Appeal to the Honorable the Court of Appeals as they Conceived the said Decree to be contrary to the Principles of Substantial Justice for the following

Among

Among other Reasons ~

First — Because by the Complainants own Shewing it appears ~ that your Petitioner did offer him a certain Security which was the best Security in your Petitioners power towards Securing unto the Complainant the Payment of such Sum as your ~ Petitioner may owe to him which the Complainant refused ~ to Accept ~

Secondly Because the Complainant had no Right whatever to a preference of the other Creditors of an Equal Decree and because he well ~ knew the Actual Situation of your Petitioner and of the said Concern to be such as has been above setforth for which ~ reason the Complainant ought not to have Attempted to put your Petitioner at the expence of a Suit at Law from a Principle which does not carry with it an Equal Justice to the other Creditors in equal Degree of your Petitioner ~

Thirdly — Because the arrangement above made for the Reduction of the Interest on the New Consolidated Debt was so made under and by Virtue of an Act of Parliament of his Present Majesty and done on Principles of fair Justice to his said ~ Highness Waw Law Jaw &c. Nabob of the Carnatic and his Several Creditors and in such a Manner as was Consistent with the Situation of his Highness's Finances after the heavy

Expence

he has incurred by a long and Calamitous War in the heart of his Country so that His Creditors who are Sufferers by Such Reduced Interest have a Claim of similar indulgence from their Creditors at large by Moderating the Rigor of the Law and giving time till a Reestablishment of the Public ~ Resources of his Highness the Nabob Shall have enabled him to discharge his Debts and thereby enable your Petitioner and the said Concern to discharge their Several Obligations to their respective Creditors the more so as the same were incurred by the Assistance given by the said Concern towards the relief of his said Highness the Nabob in his Political Exigencies ~

Fourthly Because the Lord Chancellor of Great Britain had set an ~ example of the like Clemency and on Similar Grounds during the general distresses of the late War by postponing the Foreclosure of the Equity of Redemption on Mortgaged Estates while the War raged and the Price of Lands much below their Real and Intrinsic Value which Case your Petitioner Submits is not so forcible as that of your Petitioner whose Distresses have in part Originated as aforesaid his Liberal Attention to the Public and General Weal ~

Fifthly Because the Complainant did not produce the best Evidence which Appeared in his power in Support of any Claim he might

have

have against Your Petitioner in as much as he examined Evidence to the Copy of the Obligation Charged to have been Signed by Your Petitioner when his Bill of Complaint states that he is in possession of An Original Bond executed by your Petitioner

To which said Petition and Appeal the Complainant did put in his Answer setting forth many evasive Matters and things which your Petitioner did not nor doth by any means Admit And your Petitioner sheweth that his Petition and Appeal and the Answer of the said Complainant thereto Came on to be heard and Determined on the Twenty first day of January last by the said Court of Appeals at Madras who were pleased to Confirm the Decree of the said Mayors Court with Costs of Suit in the said Court of Appeals to be paid by your Petitioner all which will more fully and at large Appear by reference to the Several Proceedings had in the Above Cause in the said Mayors Court and Court of Appeals to which said Several Proceedings and to each of them respectively your Petitioner Prays leave to refer and to have such full and ample benefit of them and of each of them as if they and each of them were herein before fully stated and Setforth and Made part of this Appeal

From which said Decree of the said Mayors Court and Court of Appeals Your Petitioner most humbly Appeals to your Most Excellent Majesty in Council for the reasons Assigned in your Petitioners said Appeal to the Court of Appeals at Madras as above stated and for such other Reasons as may be offered at the hearing of this Cause and your Petitioner Most humbly Prays that the said Decrees of the said Mayors Court and Court of Appeals at Madraspatnam be reversed and set aside and that the Complainant be ordered to pay all Costs of Suit

/Signed/

Stephen Popham

Attorney for Appellant

Court

Court of Appeals
at
Madraspatnam

Wednesday the 21st January
Anno Domini 1789

Between James Call of Fort St George
Esquire Appellant and Brigadier General
Richard Smith by his Attorney Nathaniel
Edward Kindersley of Fort St George Esquire
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 Saturday the 22d day of November Anno Domini 1788. upon due Consideration had of the matters therein Severally Contained and of the Pleadings and Arguments used by the Attornies on both Sides This Court doth think fit to Order and Decree and doth Accordingly Order and Decree that the said Decree of the Honble the Mayors Court do stand Affirmed and that the Appellants Petition be hence Dismissed with Costs

Test

/Signed/

To
Charles N. White
Clk

To the Kings Most Excellent Majesty in Council.

Between Brigadier General Richard Smith
by his Attorney Nathaniel Edward Kindersley
of Fort Saint George Esquire Complainant and
James Call of the Same place Esquire Defendant

The answer of the above Named Brigadier General Richard Smith by the said attorney Nathaniel Edward Kindersley to the Petition and Appeal to your most Excellent Majesty in Council of the said James Call

This Respondent admits that he did on or About the Twenty fourth day of January in this Present Year of our Lord One thousand Seven hundred and Eighty Eight by his aforesaid Attorney file his Bill of Complaint in the Mayors Court at Madraspatnam Against the said Appellant for the Recovery of the Sum of Ten thousand Nine hundred and thirty Eight Pagodas Twenty Eight fanams the Amount due on the Bond or Obligation of the said Appellant in favor of this Respondent a Copy of which Bond together with an Account Current was annexed to this Respondents said Bill of Complaint to which said Bill this Respondent Admits that the said Appellant did Appear and file his Answer thereto and that he did Setforth in his said Answer the

Filed in my Office
the 4th February 1789
Charles N. White
Clk

Several

Several Matters and things in his said Appeal stated To which said Answer this Respondent Admits that he did file his Replication and that he therein setforth that he knew not — neither did it Concern him this Appellant what Transactions or Dealings the said Appellant Might have had with James Taylor and George Savage Senior Merchants in the Service of the Honble United Company of Merchants trading to the East Indies or with Andrew Majendie Deceased or — whether he the said Appellant was in Consequence of such — Dealings indebted unto divers and Sundry Persons or whether any Period could or could not be fixed for a Liquidation thereof to take place — This Respondent Admits that he did in and by his Replication further setforth that the Demand made by him this Respondent on the said Appellant arose on a Simple Bond or Obligation bearing Interest at the rate of ten per Cent and which was granted by the said Appellant in favor of this Respondent for a Sum of money belonging to this Respondent which had been left in the Hands of the said Appellant That therefore this Respondent could not help expressing his Surprize that the said Appellant should pretend to submit to the said Honble Mayors Court whether the Rate of Interest expressed in the said Bond should not

not be reduced and that he should Attempt to accuse this Respondent of possessing an oppressive and persecuting Spirit because he was using his Endeavours to recover his Property — That this Respondent conceived he might with at least as much Justice and Propriety Accuse the said Appellant of Possessing a Spirit for Strife and Litigation by setting up the Defence he had adopted Against his own Act and Deed and endeavouring to reduce this — Respondent to the Necessity of the Proof thereof by not fully Admitting it to have been such — To which said Replication this Respondent admits the said Appellant did file a General Rejoinder and that thereupon Issue was joined and that this Respondent did examine a Witness to the execution of the Bond granted by the said Appellant by proceeding a Copy instead of the Original thereof which Copy this Respondent saith the said Witness deposed to be a true Copy of the Original Bond and that he had — examined and Compared the same therewith upon which that Publication passed and the said Cause was set down for hearing and Came on to be heard on Saturday the Twenty Second day of November last past when the said Mayors Court did think fit to order and Decree and did Accordingly Order and Decree that the said Appellant should pay unto this Respondent the aforesaid Sum of Ten thousand Nine hundred and thirty Eight

Pagodas

Pagodas Twenty Eight fanams together with all Interest which then was or Should thereafter became due thereon untill full — Payment was made and also all Costs of Suit — From which said Decree of the said Mayors Court this Respondent allows the said Petitioner did appeal to the Honble the Court of Appeals at Fort Saint George pretending the said Decree was Contrary to the Principles of Substantial Justice and that he did — State and setforth such Reasons for so Appealing from the said Decree of the said Mayors Court as he the said Appellant hath in his Present Appeal to his most excellent Majesty in Council recited — To which said Petition and Appeal this — Respondent saith he did put in his Answer stating that he conceived no more than Substantial and Strict Justice was granted for the following Reasons —

Firstly — Because he had proved the due Execution of his Bond by the Oath of one of the Subscribing Witnesses thereto —

Secondly — Because without taking unto Consideration the Claims of Others The existance of which Concerned not this Respondent he this Respondent had an undoubted Right to be paid his just Demand neither could he be deemed as bound to accept of any Security that might have been heretofore offered by the said Appellant he this Respondent might have reason to Consider as indiquate to his Demand on the said Appellant Neith could his said Demand be as all supposed to be affected by any Concerns the said Appellant had been engaged in with Others —

Thirdly — Because the Subscribing Witness to the Bond was the best Evidence that could be produced to Substantiate and to prove — the same —

And this Respondent admits that the said — Petition and Appeal and the Answer of this Respondent thereto came on to be heard and Determined on the Twenty first day of January last past by the said Court of Appeals at Madras who were pleased to Confirm the Decree of the said Mayors Court with Costs of Suit of Appeals by the said Appellant as by the Proceedings had in the said Mayors Court and Court of Appeals will fully Appear and to which this Respondent prays leave to refer and to have and be allowed all benefit and advantage therefrom —

Which said Decree of the said Mayors Court and the Confirmation thereof by the Said Court of Appeals at Madras for the Reasons assigned by him this Respondent in his Answer to the Petition and Appeal of the Appellant to the Said Court of Appeals and herein again Stated and for such other Reasons as may be offered at the hearing of this Cause

this

this Respondent conceives to have been granted and given on the Strongest Grounds and Principles of Justice and Prays that the said Judgement of the said Mayors Court and Court of Appeals may be Affirmed and he further prays to dismiss the said Petition and Appeal of the Appellant with Costs to be paid by the said Appellant

/Signed/

Charles Baker

Attorney for Respondent

To

the Honble. Major General Sir Archibald Campbell K. B.

Pt President in Council

Fort St George

n the Honble the

ourt of Appeals

Between John Brathwaite Complainant

and George Savage James Call and

James Taylor Executors of Andrew

Majendie Deceased Defendants

The Humble Petition and Appeal of the abovenamed Defendants

Sheweth

That the above named Complainant did on the

fifth day of September in this present year of Our Lord one thousand

Seven hundred and Eighty Eight file his Bill of Complaint in the mayors

Court against your Petitioners as Executors of Andrew Majendie

for recovery of the Sum of Nine thousand Eight hundred

and Nine Star Pagodas Thirty four fanams and forty One

Ash current Money of Madras charged to be due on the Bond

or Obligation of the said Andrew Majendie. to which said

Bill of Complaint Your Petitioners Appeared by their Attorney

and after certain Rules had issued for them to answer the

said Bill of Complaint. they duly filed their Answer on Record

thereby Acknowledging themselves to have been Appointed

Executors

Filed in my office

the 29. decembr 1788

Charles F. White

Clk

Executors of the Will of the said Andrew Mayendie an
they had duly proved the same in the Mayors Court an
upon themselves the Burden and Execution thereof and s
that it might be true for ought your Petitioners k
to the Contrary, that the said Andrew Mayendie Mi
have executed the Bond to the Complainant of the Da
Tenor and Purport stated and set forth in the Copy ther
to the Complainants Bill of Complaint and that it migh
be true for ought your Petitioners knew to the Contrary
the Balance due on the said Bond on the first day of
in the Year of our Lord one thousand Seven hundred and
Nine was Four thousand five hundred and fifty Six
Pagodas fifteen fanams and forty one Cash as stated in
Account Current Annexed to the Complainants Bill of Com
but your Petitioners said that suppose the same to be
Nevertheless the Situation of the affairs of the said
Mayendie and your Petitioners prevented them from gi
Satisfaction whatever to the said Complainant except as
after is stated and which is as follows. Namely that
Petitioners together with the said Andrew Mayendie ha
for Years back jointly interested in certain moneys
and Dealings under the Name of the Concern which said

is at present indebted unto divers and Sundry Persons in
very Considerable Sums of Money which it is not in the
Power of the said Concern at present to liquidate. nor
could they even venture to fix a Period when such
Liquidation will take Place. because as the said Concern
hath Claims on his Highness Waw law Jaw &c. Nabob
of the Carnatic to the Amount of Several Lacks of Pagodas the
Payment whereof. altho' now in a Train of Settlement under
the Sanction of an Act of Parliament Must depend on the
Continuance of Peace in the Carnatic the Competency of the
said Concern to settle with their Numerous Creditors Must in
like Manner depend on the Same Event and your Petitioners
further stated that as the Interest of twelve per Cent at
which the Debts of his said Highness the Nabob formerly
run is reduced to six per Cent on all such as are included
in that Species of Debt commonly known or distinguished by
the name of the new Consolidated Debt and as a Considerable
Portion of the Claims of the said Concern on his said
Highness the Nabob is of that Description while many of
the Debts due by the said Concern are at an Interest of
twelve per Cent p Annum, your Petitioners did therefore
solemnly declare in their said Answer that they could not

form

form any Accurate state of the Ultimate situation of such Concern and therefore it was out of their Power to give to the Complainant any precise Satisfaction respecting the same or to ascertain what may be the Ultimate Situation of the Affairs of the said Andrew Majendie or to state as they ought to do was it in their Power An Account Current of the Estate of the said Andrew Majendie as his Executors and your Petitioners further stated that they were bound by Law as well as by their Duty to the Concern to pay off all the Debts of the said Concern from such Funds as are for that Purpose in their Custody, Possession or Power before they can Appropriate those Funds to the Liquidation of the Debts of the Individual Members of the said Concern and that when the Debts of the said Concern shall have been fully discharged Then and not before the Partners thereof have individually a Right each to his Separate Share of the Surplus Fund and may individually Apply the same to the Payment of their Separate and individual Debts or in such other Manner as to them individually may seem meet

Your Petitioners then Observed in their said Answer that the situation of the said Andrew Majendie as a Partner in the said Concern, jointly with your Petitioners being such as is therein and herein after stated and your Petitioners being as they conceive, bound in legal Duty as surviving Partners of the said Andrew Majendie, to Apply all such Funds as are in their Possession, wherein he is interested as a Partner in the said Concern towards payment of the Debts due by the said Concern they could not with safety to the said Concern satisfy or discharge the Demands of the said Complainant on the Estate of the said Andrew Majendie even tho' he should be fully able to prove the validity of his Claim to the satisfaction of the Mayors Court

Your Petitioners further stated that the said Andrew Majendie was at the Time of his Death and his Estate is still indebted on Bond unto several Persons in Europe as well as in India in Sundry Sums of Money and therefore your Petitioners humbly Submitted that the said Complainant ought not to have any Preference of such other Bond Creditors and that the payment of the Claim of the said Complainants might have been an Admission of Assets (which is not the Case) in the Hands of your Petitioners and make them liable to discharge the Separate Debts of the said Andrew Majendie

all

All which Matters and things your Petitioners were ready to aver and Prove as the Mayors Court should direct and therefore prayed to be thence dismissed with their — Reasonable Costs and Charges in that behalf most wrongfully sustained —

Your Petitioner shew that they swore to their — Answer as above stated and the said Complainant filed a — Replication and did therein among other things state that the said Andrew Majendie did in his life time promise to give to the Complainant as a further security for his said Demand a Bond granted by his said Highness Waw law Jaw &c. — Nabob of the Carnatic for the Sum of Five thousand Pagodas as is expressed in the Copy of the Bond exhibited with the — Complainants Bill of Complaint but that the same was never delivered or given to him altho he Applied to your Petitioners for the same since the Decease of the said Andrew Majendie to which said Replication your Petitioners filed a Rejoinder and did therein Set forth that the said Andrew Majendie might for any thing Your Petitioners knew to the Contrary have promised to give the Complainant a Bond by way of — Security but that the said Andrew Majendie had left no such Bond in the Possession of your Petitioners or of either of them —

Your

Your Petitioners shew that upon the above Proceedings Issue was joined and Witnesses examined on the Part of the Complainant after which Publication passed and the said Cause was setdown for hearing and came on to be heard by and before the Mayors Court on Tuesday the sixteenth Day of this Instant December when the said Court were pleased to order and decree and did Accordingly order and decree that your Petitioners should pay unto the said Complainant out of the Estate and Effects of the said Andrew Majendie Deceased the full and just sum of nine thousand eight — hundred and Nine Star Pagodas thirty four fanams and forty Cash together with all such Interest as then was or should thereafter become due thereon untill full Payment was made also all Costs of the Suit as by the said Decree herewith lodged in this Honble Court and by the other Proceedings in the said Cause reference being thereunto respectively had may more fully appear — which Decree of the said Mayors Court Your Petitioners conceive to be contrary to the Principles of Substantial Justice for the following among other Reasons —

First — Because the said Complainant has no right whatever to a Preference of the other Creditors of an equal Decree and

because

because he well knew the actual Situation of the Estate of the said Andrew Majendie and of your Petitioners as his Executors to be such as has been above setforth for which Reasons the said Complainant ought not to have Attempted to put the Estate of the said Andrew Majendie to the expense of a Suit at Law from a Principle which does not carry with it an equal Justice to the other Creditors in equal Degree of the said Andrew Majendie —

Secondly — Because the Arrangement Above made for the Reduction of the Interest on the new Consolidated Debt was so made under and by virtue of an Act of Parliament of his present — Majesty and done on Principles of Strict Justice to his said Highness Wan Law Jaw Nabob of the Carnatic and his several Creditors and in such a Manner as was Consistent with the Situation of his Highness's Finances and Resources. After the heavy expences he had incurred by a long and Calamitous War in the Heart of his Country. so that his Creditors who are Sufferers by such — reduced Interest have a Claim of Similar Indulgence from their Creditors at large by moderating the Rigor of the Law and giving Time till a Re establishment of the Public — Resources of his Highness the Nabob shall have enabled him to discharge his and thereby enable the Concern to —

discharge

discharge their several Obligations to their respective Creditors the more so as the same were incurred by the Assistance given by the said Concern towards the Relief of his said Highness in his Political Exigencies —

Thirdly Because the Lord Chancellor of Great Britain has set an Example of the like Clemency and on similar Grounds — during the general Distresses of the late War by postponing the Foreclosure of the Equity of Redemption on Mortgaged — Estates while the War raged and the Price of Lands much below their real and intrinsic value. which Case your — Petitioners Submit is not so forcible as that of your Petitioners whose Distresses have in part Originated as aforesaid from their liberal Attention to the Public and General Weal —

Fourthly Because the said Complainant well knowing that the only Chance of Making the Estate of the said Andrew — Majendie solvent was from the Receipt of the Claims which he individually or as one of the said Concern had on his said Highness the Nabob never Attempted to enforce the Payment of his said Claim untill the Arrangement — above made had been in part put in Execution, and as it Appears from what your Petitioners have Stated that they

are

are not yet competent therefrom to discharge the Claims against the said Andrew Majendie the Complainant ought from the same Principle to have waited patiently till your Petitioner had been enabled to have done equal and full Justice to all the Creditors of the said Andrew Majendie—

For all which Reasons and such others as may be Offered at the hearing your Petitioners most humbly pray that the Decree of the said Mayors Court be reversed with Costs of Suit to be paid by the Complainant—

[Signed]

Stephin Popham

Attorney for Appellants

Mayors

Mayors Court at

Madraspatnam

Tuesday the 16th day of December

Anno Domini 1788

Present

Edward Garrow Esquire Mayor

William Webb Josias du Pre Porcher

& Andrew Ross Aldermen

Between John Braithwaite a Colonel in the Service of the Honble United English East India Company Amplainant and George Savage James Call and James Taylor of Fort St George Esquires Executors named in the Last Will and Testament of Andrew Majendie late of Madras Merchant Deceased Defendants

This Cause Coming on to be Heard and Debated this Day in the Presence of the Attornies on both sides on Reading the Complainants Bill with Copies of an Account current and a Bond or Obligation Annexed The Defendants Answer The Replication The Rejoinder The Interrogatories and Depositions on the part of the Complainant with Exhibit Marked A annexed

on

on Hearing the Pleadings made use of the Attornies and on due Consideration had thereon This Court do th think fit to order and Decree and doth Accordingly Order and Decree that the Defendants shall pay unto the Complainant out of the Estate and Effects of Andrew Majendie Deceased the full and Just Sum of Nine thousand Eight Hundred and Nine Pago das thirty four fanams and forty one Cash /Pag.s 9809.34.41/ 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

Hur

/Signed/

James Taylor

Reg.r

To

To the Honble. Major General Sir. Archibald Campbell K. B. President in Council

Fort Saint George

In the Court of Appeals

Between John Brathwaite a Colonel in the Service of the Honble United East India Company — Complainant and James Taylor George Savage James Ball of Fort Saint George Esquires Executors Named in the last Will and Testament of Andrew Majendie Deceased Defendant —

The answer of the Above Named Colonel John Brathwaite

This Respondent admits that he did on or About the Second day of September in this year of Our Lord one thousand Seven hundred and Eighty Eight file his Bill of Complaint in the Mayors Court at Madraspatnam Against the said Appellants as Executors as aforesaid for the recovery of the Sum of Nine thousand Eight hundred and Nine Pagodas Thirty four fanams and forty one Cash being the Amount due on the Bond or Obligation of the said Andrew

Filed in my office the 5. January 1789

Charles A. White Clk

Andrew Majendie granted in favor of this Respondent a Copy of which said Bond together with an Account Current was annexed to this Respondents said Bill of Complaint To which said Bill this Respondents Admits that the said Appellant did Appear and file his Answer thereto and that he did Setforth in his said Answer the Several Matters and things in his said Appeal Stated To which said Answer this Respondent Admits that he did file his Replication and that he therein Setforth that it was immaterial to this Respondent what Concerns were or Might have heretofore bein between the said Andrew Majendie and the said Appellants and that Notwithstanding Such Concerns Might have existed or did still exist that the same Neither could or ought to affect the Demand which this Respondent had on the said Appellants as Executors to him the said Andrew Majendie which as this Respondent had Setforth in his Bill of Complaint Arose on a Bond duly granted and Executed by the Said Andrew Majendie in his life time in favor of this Respondent as this Respondent doubted not to be able to prove and also the Ballance remaining due thereon this Respondent Admits that he did further setforth that the said Andrew Majendie did in his life time promise

promise to give this Respondent as a further Security for his said demand a Bond granted by his Highness Wauw law jaw Nabob of the Carnatic for the Sum of five thousand Pagodas as was expressed in the Copy of the Bond exhibited with this Respondents Bill of Complaint but that the same was never delivered to this Respondent and that this Respondent had often thro his Attorney Applied to the said Defendants Since the Decease of the said Andrew Majendie for the said Bond of his said Highness the Nabob aforesaid but had been informed that no such Bond Appeared among the Papers or Property of the said Andrew Majendie deceased or any of a Similar Amount except such as had been Made over and disposed of to others to whom the said Andrew Majendie in his life time Stood indebted To which said Replication this Respondent Admits the said Appellant did file a Rejoinder and that thereupon Issue was joined and that this Respondent did examine Witnesses to the Execution of the said Bond so granted by the said Andrew Majendie in his life time and duly proved the same and that he did produce a Copy thereof instead of the original but which Copy this Respondent saith was proved to be a true Copy of the said original Bond and that it had been compared and examined therewith

and

and this Respondent Saith he did Likewise prove that the
Ballance Appearing due on the said Bond was justly due and
owing from the Estate of the said Andrew Majendie to this
Respondent upon which that Publication did pass and the said
Cause was Set down for hearing and came on to be heard on
Tuesday the Sixteenth day of this Instant December when the
said Mayors Court did think fit to order and decree and did
Accordingly order and Decree that the said Appellants should
pay unto this Respondent out of the Estate and Effects of the
said Andrew Majendie the aforesaid Sum of Nine thousand
Eight hundred and nine Pagodas thirty four fanams and
forty one Cash together with all Interest which then was or who
should thereafter become due thereon untill full Payment
was made and also all Costs of this Suit —

By which Decree this Respondent saith he
conceives no more than Substantial and Strict Justice was
granted —

First Because this Respondent had proved the due Execution of the
Bond of the said Andrew Majendie by the Oath of one of the
Subscribing Witnesses thereto and likewise that the Ballance
due thereon was just and true —

Secondly - Because without taking into Consideration the Claims of

others

others on the said Estate of the said Andrew Majendie Deceased
if any this Respondent had an undoubted Right to be paid his Just
Demand neither could the same be at all affected by any Concerns
the said Andrew Majendie might have bin engaged in with the
said Appellant or others this Respondents Claim being founded
upon a Simple and Regular Bond granted by the said Appellant
at a certain Rate of Interest therein Expressed —

For all which Reasons and such others as
may be Offered at the hearing this Respondent Prays that
the Judgement of the Mayors Court may be Affirmed with
Examplary Costs to be paid by the Appellant for the Litigious —
Conduct in the first Instance and is very Vexatious Appeal from
the Decree of the Mayors Court without Stating any Reasonable
Pretext for such Appeal —

/Signed/
Charles Baker
Attorney for Respondent

Court

Court of Appeals
Madraspatnam } Wednesday the 21st January
Anno Domini 1789

Between George Savage James Call and
James Taylor of Fort Saint George Esquires
Executors named in the last will and
Testament of Andrew Majendie late of Madras
Merchant Deceased Appellants and John
Braithwaite a Colonel in the service of the
Honble United English East India Company
Respondent

This Cause coming on this day to be heard and Debated before this Court by the attornies on both Sides upon hearing the Petition of Appeal and answer together with the Decree of the Honble the Mayors Court given in this Cause on Tuesday the 16th day of December Anno Domini 1788 upon due Consideration had of the Matters Wherein several Contained and of the Pleadings and Arguments used by the Attornies on both Sides This Court doth think fit to order and Decree and doth Accordingly Order and Decree that the said Decree of the Honble the Mayors Court do stand Affirmed and that the Appellants Petition be hence Dismissed with Costs

Test / Signed / Chas N. White
Clk

To the Kings Most Excellent Majesty in Council

Between John Braithwaite Complainant
and George Savage James Call
and James Taylor Executors of
Andrew Majendie Deceased Defendants

The Humble Petition and Appeal of the above named Defendants

Most Humbly Shieweth

That the above named Complainant did on the
15th Day of September which was in the year of Our Lord One
thousand Seven hundred and Eighty Eight file his Bill of
Complaint in the Mayors Court against your Petitioners as
Executors of Andrew Majendie for recovery of the Sum of Nine
thousand eight hundred and Nine Star Pagodas thirty four Fanams
and Forty One Cash Current Money of Madras Charged to be due
on the Bond or Obligation of the said Andrew Majendie to
which said Bill of Complaint Your Petitioners Appeared by their
Attorney and after Certain rules had issued for them to answer
the said Bill of Complaint they duly filed their Answer on record
thereby Acknowledging themselves to have been Appointed Executors
of the Will of the said Andrew Majendie and that they had duly

proved

Filed in my office
the 3d Febry 1789
Charles N. White
Clk

proved the same in the Mayors Court and taken upon themselves the burden and execution thereof and stating that it might be true for ought Your Petitioners knew to the contrary that the said Andrew Majendee might have executed the Bond to the Complainant of the Date Tenor and purport stated and setforth in the Copy thereof Annexed to the Complainants Bill of Complaint and that it might also be true for ought Your Petitioners knew to the contrary that the Balance due on the said Bond on the first day of January one thousand Seven hundred and Seventy Nine was Four thousand five hundred and fifty six Pagodas fifteen fanams and Forty one Cash as Stated in the Account Current Annexed to the Complainants Bill of Complaint but your Petitioners said that Suppose the same to be true nevertheless the Situation of the affairs of the said Andrew Majendee and Your Petitioners prevented them from giving any Satisfaction whatever to the said Complainant except as thereinafter is stated and which is as follows namely that your Petitioners together with the said Andrew Majendee had been for Years back jointly interested in certain Money transactions and Dealings under the name of the Concern which said Concern is at present indebted unto divers and sundry Persons in very considerable Sums of Money which it is not in the Power of the said Concern at present to liquidate nor could they even venture to fix a period when such liquidation will take place because as the said Concern hath Claims on His Highness Waw Law Jaw Dow Nabob of the Carnatic to the Amount of several Lacks of Pagodas the Payment whereof altho' now in a train of Settlement under the Sanction of an act of Parliament must depend on the Continuance of Peace in the Carnatic the Competency of the said Concern to settle with their numerous Creditors must in like manner depend on the same Event and your Petitioners further stated that as the Interest of twelve per Cent at which the Debts of his said Highness the Nabob formerly run is reduced to six per Cent on all such as are included in that Species of Debt commonly known or distinguished by the Name of the New Consolidated Debt and as a considerable Portion of the Claims of the said Concern on his said Highness the Nabob is of that discription while many of the Debts due by the said Concern are at an Interest of twelve per Cent per annum Your Petitioners did therefore solemnly declare in their said Answer that they could not form any Accurate state of the Ultimate Situation of such Concern and therefore it was out of their Power to give to the Complainant any Precise Satisfaction respecting the same or to ascertain what may be the Ultimate Situation of the Affairs of the said Andrew Majendee or to state as they ought to do was it in their Power an account Current

proved the same in the Mayors Court and taken upon themselves the burden and execution thereof and stating that it might be true for ought Your Petitioners knew to the contrary that the said Andrew Majendee might have executed the Bond to the Complainant of the Date Tenor and purport stated and setforth in the Copy thereof annexed to the complainants Bill of complaint and that it might also be true for ought Your Petitioners knew to the contrary that the Balance due on the said Bond on the first day of January one thousand Seven hundred and Seventy Nine was Four thousand five hundred and fifty six Pagodas fifteen Fanams and Forty one Cash as Stated in the Account Current Annexed to the complainants Bill of complaint but your Petitioners said that Suppose the same to be true nevertheless the Situation of the affairs of the said Andrew Majendee and Your Petitioners prevented them from giving any Satisfaction whatever to the said Complainant except as thereinafter is stated and which is as follows namely that your Petitioners together with the said Andrew Majendee had been for Years back jointly interested in certain Money transactions and Dealings under the name of the Concern which said Concern is at present indebted unto divers and sundry Persons in very considerable Sums of Money which it is not in the Power of the said Concern at present to liquidate nor could they even venture to fix a period

when

when such liquidation will take place because as the said Concern hath Claims on His Highness Wass Law Jaw Vizr Nabob of the Carnatic to the Amount of Several Lacks of Pagodas the Payment whereof altho' now in a train of Settlement under the Sanction of an act of Parliament must depend on the Continuance of Peace in the Carnatic the Competency of the said Concern to settle with their numerous Creditors must in like manner depend on the same Event and your Petitioners further stated that as the Interest of twelve per Cent at which the Debts of his said Highness the Nabob formerly run is reduced to Six per Cent on all such as are included in that Species of Debt commonly known or Distinguished by the Name of the New Consolidated Debt and as a considerable Portion of the Claims of the said Concern on his said Highness the Nabob is of that Discription while many of the Debts due by the said Concern are at an Interest of twelve per Cent per annum Your Petitioners did therefore solemnly declare in their said Answer that they could not form any Accurate state of the Ultimate Situation of such Concern and therefore it was out of their Power to give to the Complainant any Precise Satisfaction respecting the same or to ascertain what may be the Ultimate Situation of the Affairs of the said Andrew Majendee or to state as they ought to do was it in their Power an Account

Current

current of the Estate of the said Andrew Majendie as his Executors and Your Petitioners further stated that they were bound by Law as well as by their duty to the concern to pay off all the Debts of the concern from such Funds as are for that purpose in their Custody Possession or Power before they can appropriate those Funds to the Liquidation of the Debts of the individual Members of the said concern and that when the Debts of the said concern shall have been fully discharged them and not before the Partners thereof have individually a Right each to his separate Share of the Surplus Fund and may individually apply the same to the Payment of their separate and individuall Debts or in such their manner as to them individually may seem meet

Your Petitioners then observed in their said Answer that the Situation of the said Andrew Majendie as a partner in the said concern jointly with your Petitioners being such as is therein and hereinafter stated and your Petitioners being as they conceive bound in Legal Duty as Surviving partners of the said Andrew Majendie to apply all such Funds as are in their Possession wherein he is interested as Partner in the said concern towards payment of the Debts due by the said concern they could not with Safety to the said concern satisfy or discharge the Demand of the said Complainant on the Estate of the said Andrew Majendie even tho he should be fully able to prove the Validity of his Claim to the Satisfaction of the Mayors Court

Your Petitioners further stated that the said Andrew Majendie was at the time of his Death and his Estate is still indebted on Bond unto Severab Persons in Europe as well as in India in Sundry Sums of Money and therefore Your Petitioners humbly Submitted that the said Complainant ought not to have any preference of Such other Bond Creditors and that the Payment of the Claim of the said Complainant might have been an admission of Assets (which is not the case) in the Hands of Your Petitioners and make them liable to discharge the Debts of the said Andrew Majendie

All which matters and things Your Petitioners were ready to Aver and prove as the Mayors Court Should direct and therefore prayed to be hence dismissed with their Reasonable Costs and Charges in that behalf most wrongfully Sustained

Your Petitioners most humbly Shew that they swore to their Answer as above stated and the said Complainants filed a Replication and did therein among other things state that the said Andrew Majendie did in his life time promise to give

to

to the Complainant as a further Security for his said Demand a Bond granted by his said Highness Wow law Jaw &c.a Nabob of the Carnatic for the Sum of Five thousand Pagodas as is expressed in the Copy of the Bond exhibited with the Complainants Bill of Complaint but that the same was never Delivered or given to him altho he often Applied to your Petitioners for the same since the Decease of the said Andrew Majendee to which said Replication Your Petitioners filed their Rejoinder and did therein Set forth that the said Andrew Majendee might for any thing Your Petitioners knew to the Contrary have promised to give the Complainant a Bond by way of Security but that the said Andrew Majendee had left no such Bond in the Possession of your Petitioners or of either of them.

Your Petitioners shew that upon the above Proceedings Issue was joined and Witnesses examined on the part of the Complainant after which Publication Passed and the said Cause was set down for hearing and came on to be heard by and before the said Mayors Court on Tuesday the Sixteenth day of this Instant December when the said Court were pleased to Order and Decree and did accordingly order and Decree that your Petitioners should pay unto the said Complainant Out of the Estate and Effects of the said Andrew Majendee deceased the full and Just Sum of Nine thousand eight hundred and nine Pagodas thirty four Fanams and forty one Cash together

together with all such Interest as then was or should hereafter become due thereon until full Payment was made also all Costs of the Suit.

From which said Decree of the said Mayors Court Your Petitioners did Appeal to the Honble the Court of Appeals as they conceived the said Decree to be contrary to the principles of Substantial Justice for the following among other Reasons.

First Because the said Complainant has no Right whatever to a preference of the other Creditors of an Equal Decree and because he well knew the actual Situation of the Estate of the said Andrew Majendee and of Your Petitioners as his Executors to be such as has been above Set forth for which reason the said Complainant Ought not to have Attempted to put the Estate of the said Andrew Majendee to the Expence of a Suit at Law from a principle which does not carry with it an equal Justice to the other Creditors in Equal Degree of the said Andrew Majendee.

Secondly Because the Arrangement above made for the reduction of the Interest on the New Consolidated Debt was so made under and by vertue of an act of Parliament of his Present Majesty and Does on principles of Fair Justice to his said Highness Wow law Jaw the Nabob of the Carnatic and his several Creditors and in such a manner as was consistent with the Situation of his Highness's finances

finances and resources after the heavy expences he had incurred by a long and Calamitous War in the heart of his Country so that his Creditors who are Sufferers by such reduced Interest have a Claim of similar indulgence from their Creditors at large by Moderating the rigor of the Law and giving time till a Reestablishment of the Public Resources of his Highness the Nabob shall have enabled him to discharge his debts and thereby enable the said Concern to discharge their several Obligations to their respective Creditors the more so as the same were incurred by the Assistance given by the said Concern towards the relief of his said Highness in his Political Exigences

Thirdly Because the Lord Chancellor of Great Britain has set an example of the like Clemency and on Similar Grounds during the General distresses of the late War by postponing the Foreclosure of the Equity of Redemption on Mortgaged Estates while the War raged and the Price of Lands much below their real and Intrinsic value which case Your Petitioners Submit is not so forcible as that of your Petitioners whose Distresses have in part Originated as aforesaid from their Liberal Attention to the Public and General Weal

Fourthly Because the said Complainant well knowing that the only Chance of making the Estate of the said Andrew Majendie solvent was from the Receipt of the Claims which he individually or as one of the said Concern had on his said Highness the Nabob never attempted to enforce the Payment of his said Claim until the Arrangement above made had been in part put in Execution and as it appears from what your Petitioners have stated that they are not Yet competent therefrom to discharged the Claims against the said Andrew Majendie the Complainant ought from the same principle to have waited patiently till your Petitioners had been enabled to have done equal and full Justice to all the Creditors of the said Andrew Majendie

To which said Petition and Appeal the Complainant did put in his answer setting forth many evasive matters and things which your Petitioners did not nor do by any means admit and your Petitioners shew that their Petition and Appeal and the answer of the said Complainant thereto came on to be heard and determined on the Twenty first day of January last by the said Court of Appeals at Madras who were pleased to confirm the Decree of the said Mayors Court with Costs of Suit in the said Court of Appeals to be paid by your Petitioners all which will more fully and at large appear by reference to the several Proceedings had in the above Cause in the said Mayors Court and Court of Appeals to which said several Proceedings and to each of them respectively Your Petitioners pray leave to refer and to have such full and ample benefit

benefit of them and each of them as if they and each of them were herein before fully stated and setforth and made part of this appeal

From which said Decree of the said Mayors Court and Court of Appeals Your Petitioners most humbly Appeal to your most Excellent Majesty in Council for the reasons Assigned in your Petitioners said Appeal to the Court of Appeals at Madras as above stated and for such other reasons as may be offered at the hearing of this Cause and Your Petitioners most humbly Pray that the said Decrees of the said Mayors Court and Court of Appeals at Madraspatnam be reversed and set a side and that the Complainant be ordered to pay all Costs of Suit

/Signed/

Stephen Popham

for Appellant

Court of Appeals at Madraspatnam &c.

Wednesday the 21st January Anno Domini 1789

Between George Savage James Ball and James Taylor of Fort Saint George Esquires Executors named in the last will and Testament of Andrew Majendee late of Madras Merchant Deceased Appellants and John Braithwaite a Colonel in the Service of the Honble United English East India Company Respondent

This Cause coming on this day to be heard and Debated by this Court by the Attornies on both sides upon hearing the Petition of Appeal and answer together with the Decree of the Honble the Mayors Court given in this Cause on Tuesday the 16th day of December Anno Domini 1788 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 the Mayors Court do stand Affirmed and that the Appellant's Petition be hence Dismissed with Costs

Vera /Signed/ Charles N. White Ctk

To the Kings Most Excellent Majesty in Council

Between John Brathwaite a Colonel
in the Honble Companys Service Complainant
and James Taylor George Savage and James
Call of Fort Saint George Esqaires Executors
Named in the last Will and Testament
of Andrew Majendie deceased Defendants

The answer of the above named John Brathwaite to the Petition
and Appeal to your Most Excellent Majesty in Council of the said
James Taylor George Savage and James Call Executors of Andrew
Majendie Deceased

This Respondents admits that he did on or about
the Second day of September in the Year of our Lord one thousand
Seven hundred and Eighty Eight file his Bill of Complaint in the
Mayors court at Madraspatnam Against the said Appellants as
Executors as aforesaid for the Recovery of the Sum of Nine thousand
Eight hundred and Nine Pagodas thirty four fanams and forty one
Cash being the amount due on the Bond or Obligation of the said
Andrew Majendie granted in favor of this Respondent a Copy of which
said Bond together with an Account Current was Annexed to this
Respondents said Bill of Complaint To which said Bill this Respondent

Filed in my Office
the 14th February 1789
Charles D White
Clk

admits that the said Appellant did Appear and file his answer
thereto and that he did Setforth in his said answer the Several matters
and things in his said Appeal Stated to which said Answer this
Respondents admits that he did file his Replication and that he
therein Setforth that it was immaterial to this Respondent what
Concerns were or might have heretofore been between the said Andrew
Majendie and the said Appellants and that Notwithstanding
Such Concerns might have existed or did Still exist that the
Same Neither Could or Ought to Affect the Demand which this
Respondent had on the Said Appellants as Executors to him the
Said Andrew Majendie which as this Respondent had Setforth
in his Bill of Complaint arose on a Bond duly granted and executed
by the said Andrew Majendie in his life time in favor of this Respondent
as this Respondent Doubtless not to be able to prove and also the Balance
Remaining due thereon this Respondent Admits that he did further
Setforth that the said Andrew Majendie did in his life time promise
to give this Respondent as a further Security for his said Demand
a Bond granted by his Highness Wawlaw Jaw Nabob of the Carnatic
for the Sum of Five thousand Pagodas as was Expressed in the
Copy of the Bond exhibited with this Respondents Bill of Complaint
but that the Same was never delivered to this Respondent and that
this Respondent had often thro his Attorney Applied to the said

Defendants

Defendants since the Decease of the said Andrew Majendie for the said Bond of his said Highness the Nabob aforesaid but had been informed that no such Bond Appeared Among the Papers or Property of the said Andrew Majendie Deceased or any of a Similar Amount Except such as had been Made over and disposed of to others to whom the said Andrew Majendie in his Life time Stood indebted— To which said Replication this Respondent Admits the said Appellant did file a Rejoinder and that thereupon Issue was Joined and that this Respondent did examine Witnesses to the Execution of the said Bond so granted by the said Andrew Majendie in his life time and duly proved the Same and that he did produce a Copy thereof instead of the Original but which Copy this Respondent Saith was proved to be a true Copy of the said Original Bond and that it had been compared and examined therewith and this Respondent Saith he did likewise prove that the Balance Appearing due on the said Bond was Justly due and Owing from the Estate of the Andrew Majendie to this Respondent upon which that Publication did pass and the said Cause was set down for hearing and came on to be heard on Tuesday the Sixteenth day of last December when the said Mayors Court did think fit to order and Decree and did Accordingly Order and Decree that the said Appellant should pay unto this Respondent Out of the Estate and Effects of the said Andrew Majendie the aforesaid Sum of Nine thousand Eight hundred and Nine Pagodas thirty four Fanams and forty one Cash together with all Interest which then was or which should thereafter become due thereon until full Payment was made and also all Costs of Suit. From which said Decree of the said Mayors Court this Respondent allows the said Petitioner did Appeal to the Honble the Court of Appeals pretending the said Decree was contrary to the Principles of Substantial Justice and that he did State and Set forth such Reasons for so Appealing from the said Decree of the said Mayors Court as he the said Appellant hath in his present Appeal to his Most excellent Majesty in Council Recited— To which said Petition and Appeal this Respondent saith he did put in his Answer Stating that he conceived Nomore than Substantial and Strict Justice was granted for the following Reasons—

Firstly —Because this Respondent had proved the due Execution of the Bond of the said Andrew Majendie by the Oath of one of the Subscribing Witnesses thereto and Likewise that the Balance due thereon was just and true—

Secondly— Because without taking into Consideration the Claims of others on the said Estate of the said Andrew Majendie Deceased if any this Respondent had an undoubted Right to be paid his Just Demand Neither could the same be at all affected by any Concerns the said Andrew Majendie might have been engaged in with the said

said Appellant or others this Respondents Claim being founded upon a Simple and Regular Bond granted by the said Appellant at a Certain Rate of Interest thereun Expressed—

And this Respondent admits that the said Petition and Appeal and the answer of this Respondent thereto came on to be heard and Determined on the Twenty first day of January last past by the said Court of Appeals at Madras who were Pleased to confirm the Decree of the said Mayors Court with Costs of Suit of Appeal by the said Appellant as by the Proceedings had in the said Mayors Court and Court of Appeals will fully Appear and to which this Respondent Prays Leave to refer and to have be allowed all Benefit and Advantage therefrom—

which said Decree of the said Mayors Court and the Confirmation thereof by the said Court of Appeals at Madras for the Reasons Assigned by him this Respondent in his answer to the Petition and Appeal of the Appellant to the said Court of Appeals and herein again Stated and for such other Reasons as may be offered at the hearing of this Cause this Respondent conceives to have been granted and given on the Strongest Grounds and Principles of Justice and Prays that the said Judgement of the said Mayors Court and Court of Appeals may be affirmed and he further prays to dismiss the said Petitions and Appeal of the Appellant with Costs

Costs to be paid by the said Appellant—

[Signed]

Charles Baker

Attorney for Respondent—

To the Honble. Major General Sir Archibald Campbell
K. B. President in Council

Fort Saint George

In the Court
of Appeals

Between Chengleroy Moodeliar
Petitioner and Edward Lewcock Respondent

In the Cause of Edward Lewcock Complainant
and Francisco Xavier Brandao de Souza
Defendant—

The humble Petition and Appeal of the above named Edward Lewcock

Sheweth

That Your Petitioner did on or about the day of February

Filed in my Office the 5. December 1788 Charles F. White Clk

which was in the Year of our Lord One thousand Seven hundred and Eighty Six exhibit and file his Bill of Complaint in the Honble the

the Mayors Court at Madraspatnam against the above Named Francisco Xavier Brandaõ de Souza for the recovery of the Sum of Four hundred and Ninety five Star Pagodas Fifteen fanams and thirty two Cash due and owing unto Your Petitioner from the said Francisco Xavier Brandaõ de Souza upon Two Separate Mortgage Bonds whereupon the said Mayors Court were pleased on the Ninth day of May in the aforesaid to grant a Decree against the said Francisco Xavier Brandaõ de Souza for the Amount of Your Petitioners Demand and the Term of Fourteen days allowed by the Charter having elapsed without the said Francisco Xavier Brandaõ de Souza Satisfying the Decree of the said Mayors Court or appealing therefrom the said Mayors Court were pleased to grant a Writ of Execution against the Goods Chattles and Effects of the said Francisco Xavier Brandaõ de Souza directed to the Sheriff of Fort Saint George Town of Madraspatnam and the Districts thereof requiring and Commanding him the said Sheriff to seize upon and Sequester the Goods Chattles and Effects of the said Francisco Xavier Brandaõ de Souza and by Sale thereof to levy the Amount of Your Petitioners said Demand by Virtue of which said writ of Execution the said Sheriff did seize the Premises that were mortgaged to your Petitioner to wit a certain Peice or parcel of Ground together with two Houses and other Buildings thereon situate and being in the Maratta Town in the Street commonly called or known by the name of China

Bazar

Bazar Street Your Petitioner Sheweth that after the Seizure of the said Premises was made to wit on the Eleventh day of July in the aforesaid Year the said Chengleroy Moodelliar did file a Petition in the said Mayors Court therein reciting the Cause hereinbefore by your Petitioner already recited and pretending that the said Premises so seized under the execution aforesaid were sold to the said Chengleroy Moodelliar in the Month of December which was in the Year of our Lord one thousand Seven hundred and Eighty two for the Sum of Eight hundred Star Pagodas and that the said Chengleroy Moodeliar did in the said month of December pay unto the said Francisco Xavier Brandaõ de Souza the said Sum of Eight hundred Star Pagodas and took from him an Instrument purporting to be a Bill of Sale of the said Premises as by a Copy whereof Marked A is annexed to the said Petition may appear and in the said Petition it is further stated that the said Chengleroy Moodeliar required the said Francisco Xavier Brandaõ de Souza to put the said Premises in Possession of the said Chengleroy Moodelliar and that the said Francisco Xavier Brandaõ de Souza refused so to do and requested the said Chengleroy Moodelliar to take back his purchase money and that the said Chengleroy Moodeliar would not Amply therewith but instead thereof filed a Bill of Complaint in the said Mayors Court against the said Francisco Xavier Brandaõ de Souza in order to Oblige him to give Possession to the said Chengleroy

Moodeliar

Moodeliar of the said Premises and that the said Francisco Xavier Brandaõ de Souza having appeared thereunto and acknowledged the receipt of the said Eight hundred Pagodas and also the delivery of the Bill of Sale of the said Premises to the said Chengleroy moodeliar the Mayors Court was pleased on the Fourth day of April in the said Year one thousand Seven hundred and Eighty Six to grant a Decree in favor of the said Chengleroy Moodeliar whereby it was ordered and Decreed that the said Francisco Xavier Brandaõ de Souza should put him in Possession of the Two Houses and Grounds with the Appurtenances thereunto belonging as by a Copy of the said Decree Marked B annexed to the said Petition may appear and in the said Petition it is further stated that the said Francisco Xavier Brandaõ de Souza did accordingly deliver up unto the said Chengleroy Moodeliar the said Premises and that he remained in the quiet and Peceable possession thereof until the second Day of July one thousand Seven hundred and Eighty Six when your Petitioner caused the said Premises to be seized as the lawful property of the said Francisco Xavier Brandaõ de Souza and Mortgaged unto Your Petitioner and the said Chengleroy Moodeliar prayed in the said Petition to the Mayors Court to order the said Warrant of Execution to be superseded as far as relates to the seizure of the said Premises and that the Sheriff's Seal be taken therefrom and that he be put into Possession of the

Same

Same To which said Petition of the said Chengleroy Moodeliar Your Petitioner filed his answer therein admitting such parts of the said Petition as recited the original Cause but your Petitioner insisted that the said Houses and Grounds were the Property of and belonging to the said Francisco Xavier Brandaõ de Souza Notwithstanding the pretended Bill of Sale said to be executed and given by the said Francisco Xavier Brandaõ de Souza to Chengleroy Moodeliar so far back as the Year of our Lord One thousand Seven hundred and Eighty two and in order to explain fully to the Satisfaction of the said Mayors Court Your Petitioner did in his said answer setforth that some time in the Year of our Lord One thousand Seven hundred and Eighty five, Your Petitioner at the express desire and request of the above named Francisco Xavier Brandaõ de Souza did lend and advance him the Sum of Three hundred and Seventy four Star Pagodas upon his the said Francisco Xavier Brandaõ de Souza, Mortgage Bond bearing Date the fourteenth day of January in the said Year of our Lord seven hundred One thousand, and Eighty five that some time after to wit on the Second day of August in the said Year of Our Lord one thousand Seven hundred and Eighty five the said Francisco Xavier Brandaõ De Souza did further request of your Petitioner to lend him a

further

further Sum of One hundred Pagodas upon the Mortgage of another House belonging to the said Francisco Xavier Brandaõ de Souza and accordingly a Mortgage Bond was Drawn and executed by the said Francisco Xavier Brandaõ de Souza for the said Sum of one hundred Pagodas but your Petitioner paid him no more than Eighty four Pagodas and one fanam in part of the said Mortgage Bond and the remainder was by his own desire reserved to pay for the fees of a new Bill of Sale which was intended to be made in the Choultry Court and that for the further security of your Petitioner the said Francisco Xavier Brandaõ de Souza deposited in the hands of Your Petitioner the Original title Deed of the said Houses and Grounds now in question made by Paul de rozario to Namal Committy and by him sold unto Francisco Xavier with whose Widow Reta de Rozario the said Defendant entermarried and in Consequence thereof became possessed of the Ground and the Buildings and Premises thereon erected or appertaining thereunto which said original Bill of Sale being delivered into the registry of the said Mayors court at the instance of the said Chengleroy Moodelliar Your Petitioner further Setforth that the said Francisco Xavier Brandaõ de Souza did also deliver into Your Petitioners a Note to Mr. Joseph Shaw the Choultry Court

Register

Register to have a new Bill of Sale made in the Choultry Court in the name of the said Francisco Xavier Brandaõ de Souza and to deliver the same to your Petitioner to no other Person upon your Petitioners paying the usual fees due on such occasion as by a Copy of the said Note Annexed to your Petitioners said answer may appear the Original thereof having been delivered to the said Joseph Shaw Your Petitioner did further Setforth that the Bill of Sale given by the said Francisco Xavier Brandaõ De Souza to the said Chengleroy Moodeliar and which bears Date on the said fifteenth day of December which was in the Year of our Lord One thousand Seven hundred and Eighty two was Merely to save the said Ground and Premises from falling unto the Hands of Cottrell Barrett of Madras Inhabitant the administrator with the will annexed of the said Francisco Xavier who conceived that the said Cottrell Barrett as the administrator of the said Francisco Xavier would after her Demise come upon him for the Delivery of the said Houses as there was Disputes and differences between the said Cottrell Barrett and the said Retta De rozario regarding the said Houses But that no Consideration whatever was paid by the said Chengleroy Moodelliar to the said Francisco Xavier Brandaõ de Souza for the said Houses and Grounds so conveyed by the said Francisco Xavier Brandaõ de Souza to

Chengleroy

Chengleroy Moodelliar by virtue of the said Pretended Bill of Sale Your Petitioner did further setforth that after the said Bill of Sale was executed as aforesaid the said Francisco Xavier Brandas de Souza did often and as late as the Year one thousand Seven hundred and Eighty four in Your Petitioners Presence Demand back from Chengleroy Moodelliar the delivery of the said Bill of Sale Assigning as a reason that he had Settled with the said Coltrell Barrett and was not any longer in Apprehension of his seizing the said Houses But that the said Chengleroy Moodelliar had always put off from time to time with Many evasive and frivolous excuses Your Petitioner Sheweth that in his said answer he did among other things further setforth that at the time he lent the said Money to the said Francisco Xavier Brandas de Souza he observed to him that he did not think himself safe to lend him any Money upon the Mortgage offered unto your Petitioner of the aforesaid Premises until such time as the said Francisco Xavier Brandas de Souza would receive back the said Bill of Sale from the said Chengleroy Moodelliar and that the said Francisco Xavier Brandas de Souza did among several other things observe unto Your Petitioner that if the said Houses were actually sold to the said Chengleroy Moodelliar he would not have suffered the said Francisco Xavier Brandas de Souza to

remain

remain as he had done even to that time in Possession of the said Houses and to Convert the Rents issues and profits thereof to his own proper use and benefit without Accounting to the said Chengleroy Moodelliar for the whole or any part thereof and that Your Petitioner being satisfied with the Relation of Matters as above stated and Convinced from what he saw of the Transaction that the real property in the said Ground and Houses was in the said Francisco Xavier Brandas de Souza did therefore lend and advance unto him the aforesaid Sums upon the Mortgage of the said Houses and Your Petitioner did further setforth that the said Francisco Xavier Brandas de Souza continued in actual Possession of the said Houses and Peceably quietly enjoyed the same without the least Molestation either from the said Chengleroy Moodelliar or from any other person or persons whomsoever until some time after he was put in Geal at the instance of Your Petitioner and the said Francisco Xavier Brandas de Souza did also during all the said time let out the rent the said Houses by Lease for a certain Period of time as by Copy of a Lease from the said Francisco Xavier Brandas de Souza to Daniel McKenzie of Madras Publican bearing date the Ninth day of March which was in the Year of Our Lord One Thousand Seven hundred and Eighty four, annexed to Your Petitioners said Answer might

Appear

Appear by which it was evident that the said Francisco Xavier Brandaõ de Souza had been in possession of the said Houses for near fifteen Months after the Date of the pretended Bill of Sale given by the Defendant to the said Chengleroy Moodeliar Your Petitioner did further Setforth that the several Tenants who occupied the Houses now in Question paid the rents thereof to the said Francisco Xavier Brandaõ de Souza and that a few days before the said Francisco Xavier Brandaõ de Souza was put in Gaol Your Petitioner having occasion for one of the said Houses the said Francisco Xavier Brandaõ de Souza let it to your Petitioner at the Monthly rent of Eight Pagodas as might appear by an Account Current Annexed to the answer of the said Francisco Xavier Brandaõ de Souza to Your Petitioners Bill of Complaint in a Cause then and now at Issue in the said Mayors Court wherein Your Petitioner was Complainant and the said Francisco Xavier Brandaõ de Souza was Defendant the Attested Copy of which Account Current is herewith sent for the inspection of this Honble Court of Appeals in which the said Francisco Xavier Brandaõ de Souza hath debited Your Petitioner for three Months rent of the said House to wit from the tenth day of October one thousand seven hundred and Eighty five to the Twentieth day of January One thousand Seven hundred and Eighty Six Your Petitioner further Sheweth that in his said

Answer

Answer he also Stated that it hath never happened in the said Mayors Court that a special for a special purpose should be filed in manner as hath been the Case in this instance and that the Defendant as in this Case should come and Acknowledge the Complainants Right of Action and his readiness to comply with such special Terms so prayed for when such compliance if regular and equitable in itself and not entended with a View to deprive Your Petitioner of his previous Right to the said Premises Might have been acceded to without the intervention of the Mayors Court as well as by a Bill of Complaint which Bill was Evidently Calculated to deprive Your Petitioner of his Just Right and title to the Premises in Question Your Petitioner did further Setforth that the Bill of Sale Marked A Copy of which is Annexed to the Petition of the said Chengleroy Moodelliar is not the Same Bill of Sale given by the said Francisco Xavier Brandaõ de Souza to Chengleroy Moodelliar on the said fifteenth December one thousand Seven hundred and Eighty two for Your Petitioner was ready to prove and did afterwards positively prove by uncontrovertible Witnesses that the said Bill of Sale was in the proper hand writing of the said Francisco Xavier Brandaõ de Souza nor was the Measurement or Situation Mentioned therein and that it was Witnessedly two Persons one a Native Malabar and the other Nanesseus Rodrigues and Your Petitioner further Shew that the said Premises were actually

Measured

Measured by the said Chengleroy Moodelliar since the said Francisco Xavier Brandaõ de Souza was put in Geal and the pretended Bill of Sale must have been written as Your Petitioner verily believed since then and that the said Chengleroy Moodelliar caused two Witnesses of his own Cast to attest the Execution thereof in order to serve his own purposes Your Petitioner did further Setforth that the said Francisco Xavier Brandaõ de Souza hath frequently since the said Year of our Lord one thousand Seven hundred and Eighty two offered for Sale the said Houses and Premises to several Persons all of whom were ready to testify the truth thereof and even after the said Francisco Xavier Brandaõ de Souza was Sued in this Honble Court at the instance of Your Petitioner he offered to give Your Petitioner an Order on Mr. Spencer his Attorney at Law to confess Judgement and to have the said Houses Sold at Public auction provided Your Petitioner would pay the Sheriffs Charges which Your Petitioner that they would confirm the Mortgage so before made to your Petitioner and to direct the Sheriff to sell the House and Ground to Satisfy the Decree of the said Mayors Court in favor of Your Petitioner and Your Petitioner also prayed that the Petition of the said Chengleroy Moodeliar might be dismissed with Exemplary Costs to be paid by him and Francisco Xavier Brandaõ de Souza jointly by Reason of their having combined together in manner

Aforesaid

Aforesaid to defraud Your Petitioner of his just Claims on the said Francisco Xavier Brandaõ de Souza—

Your Petitioner Sheweth that Issues was Joined and Witnesses Examined on both sides and Publication passed and the same was set down for hearing and come on to be heard by and before the said Mayors Court on Saturday the Twenty first day of November last when the said Court did think proper to order and did Accordingly Order that the prayer of the Petitioners Petition (Meaning the said Chengleroy Moodelliar) be held Good and that the Sheriffs Seals be taken off the Premises in dispute and that each party do pay their own Costs as by the said Petitions and Answer and other the Proceedings thereon had in the said Mayors Court together with the Order thereof herewith Sent for the Inspection of this Honble Court of Appeals reference being thereunto respectively had had may More fully Appear Your Petitioner craving as fully and ample benefit from them and each of them as if they had and each of them had been herein before at full length setforth—

From which said order of the said Mayors Court Your Petitioner doth Appeal to this Honble Court of Appeals as he conceives the same erronious and that Your Petitioner is much Aggrieved thereby for the following among other Reasons—

First

First — Because the Decree of the Mayors Court in favor of Your Petitioner for the amount of the said Francisco Xavier Brandão de Souza's two Mortgage Bonds proves in the first instance that Your Petitioner advanced his money to the said Francisco Xavier Brandão de Souza on the Security of the said Houses and that the Mortgages were made to Your Petitioner for securing unto him the repayment of the amount Appearing Due on the said Mortgage Bonds—

Secondly Because the Evidence on the part of Your Petitioner proves that he took the most pointed pains to inform himself of the Title of the Defendant to the Premises in Question before he lent his Money on the Securily thereof and he was induced so to do from the information he had before received that a Collusive Bill of Sale had been made so far back as the Year one thousand seven hundred and Eighty Two the Defendant and the said Chungleroy Moodelliar and it further Appears by a Variety of Evedince that the Defendant had repeatedly declared the purport of such Bill of Sale being as before stated and that Chungleroy Moodeliar had no right to the Premises by Virtue thereof and that Narcipeus rodrigues the very Witness thereto had at the Instance of the Defendant Assured Your Petitioner he was safe in lending the money and that he with other Persons were present when the Defendant Violently attached the said Chungleroy Moodelliar in the Public Streets Demanding the said Bill of Sale and publickly declaring he had no right to detain the same from the Defendant—

Thirdly — Because the several Witnesses on behalf of Chungleroy do not attempt any Support whatever of his Right to the Premises but indeavour to impeach the Original Right of the Defendant which if founded would equally be against the said Chungleroy Moodelliar since his Claim and Your Petitioner are both derived from the Defendant and the only Point at Issue before the Mayors Court and now for the consideration of this Honble Court is whether the Sale from Defendant to Chungleroy Moodelliar be Collusive or not — If collusive then Your Petitioners Right to the Mortgaged Premises is good If valid the same as being Prior in Date to the Mortgage in favor of Your Petitioner takes place thereof—

Fourthly Because such collusion is evident from the following Circumstances—

1st — It is proved that the Bill of Sale under which Chungleroy Moodeliar claims was made in Goal so late as the Year of our Lord One thousand Seven hundred and Eighty Six and no Consideration paid to the Defendant—

2dly — It is proved that the said Bill of Sale so made is not the same which was executed in One thousand Seven hundred and Eighty

Two.

Two and if it was, Yet no Right occured to the said Chengleroy Moodeliar therefrom as it was avowedly a Collusion to over the property from Coltrell Barnell who was Supposed to have Claims thereon—

3.dly ——— It is evident that if the Defendant had sold the Premises to Chengleroy Moodeliar in One thousand Seven hundred and Eighty Two he could not let them to Your Petitioner in One thousand Seven hundred and Eighty Six as appears to have been the case by his taking Credit in his answers filed on Record in the Majors Court and previously Sworn to by him wherein as by the Copy of his Account hereunto annexed he takes Credit for the rent thereof for three months at Eight Pagodas per Month—

4.thly ——— The Witnesses who signed the collusive Bill of Sale say there was but one House and a third Person who was present when it was executed says there were two Houses—

5.thly ——— It is evident that the Bill of Complaint filed against the Defendant by Chengleroy Moodeliar for Possession of the said Houses while he was in Goal and the Confession of the Defendant in Open Court in favor Chengleroy Moodeliar was for the Collusive purpose in Question— because it is an

unheard

unheard of Process to file a Bill for so Special a purpose as the Delivery of Title Deeds and for the Person said to Confess the Right before even the regular Rules for Answering expired— If all was well meant on all sides the Keys might be Delivered up without a Process at Law—

Fifthly Because Chengleroy Moodeliar in Order to give a Colouring to his Cause and Draw the attention from the real Merits has endeavoured to impeach the Credit of the Mortgages made to Your Petitioner by examining Witnesses to an in accurate Copy of one of the Mortgage Bonds, altho' he might have examind to the Original Bonds— and in such Copy he Supposes the Name of One of the Subsisting Witnesses to be Leditta instead of L'etoile— Attempts them to prove La Ditta means L'Etoile and then proves this L'etoile to be a Man of Bad Character, whereas the Fact is that L'Etoile who Witnessed the Mortgage Bond is a Merchant of repute and well known in Madras—

Sixthly Because a Lease of one of the Houses in Question from the Defendant to Daniel Mc Kenzie is proved by Daniel Mc Kenzies own Testimony so late as the Year One thousand Seven hundred and Eighty Six and his paying the rent for the same to the Defendant as also the Defendants offer to sell the

Two

Two Houses to him, which he could not do in one thousand Seven hundred and Eighty Six if he had Sold them to Chingleroy Moodeliar in one thousand Seven hundred and Eighty two nor would Chingleroy Moodeliar have permitted the Defendant to have remained in possession of the Houses and Receipts of the rents to the Year one thousand Seven hundred and eighty Six if he had purchased them of the Defendant in one thousand Seven hundred and Eighty Two

For all which reasons and such others as may be offered at the hearing of this Cause Your Petitioner Prays that the order of the said Mayors Court may be reversed with exemplary Costs to be paid by the said Chingleroy Moodeliar and that the Sheriff be directed to Sell the aforesaid Premises towards satisfying the Decree of the Mayors Court of the Ninth day of May in the said Year one thousand Seven hundred and Eighty Six in favor of Your Petitioner

/Signed/

Stephen Popham
Solicitor for the Appellant

Extract

Extract from the Minutes of a Court Held at the Town Hall on Saturday the 22d. day of November Anno Domini 1788

Present

Edward Garrow Esquire Mayor
William Webb Sir John Menzies
George Savage Vincentio Corbett
Jos: du Pre Porcher & Andrew Rose
Aldermen

Edward Sewcock

Francisco ~~vaz~~ xavier Brandao de Souza

Petition Chingleroy Moodeliar with Copys of Several Exhibits annexed Marked **A B C D & E** Read

Answer with Two Exhibits Annexed Read

Interrogatories on the part of the Petitioner with Copies of Two Exhibits Annexed Marked **A** Read

Three Depositions taken thereunto Read

Additional Interrogatories on the part of the Petitioner with Copys of 3 papers Marked **C D & E** Read

Nine Depositions taken thereunto Read, The Witnesses N 3 7 & 10 did not Appear for Examination

Additional Interrogatories on the part of the Petitioner with one Exhibit

Exhibit delivered in by the Respondent in the Proceedings in this Matter Read—

Two Depositions taken thereunto Read—The Witness N°1 did not Appear for Examination—

Interrogatories on the part of the Respondent with two Exhibits annexed

Three Depositions taken thereunto Read—

Additional Interrogatories on the part of the Respondent Read

One Deposition taken thereunto Read—

Further additional Interrogatories on the part of the Respondent Read—

Two Depositions taken thereunto Read—The Witness N°2 did not Appear for Examination—

Further additional Interrogatories on the part of the Respondent Read

Three Depositions taken thereunto Read—The Witness N°2 did not Appear for Examination—

Two Exhibits on the part of the Respondent Read—

The Matter in dispute between the Petition Chingleroy Moorhead and the Respondent Edward Lewcock coming on to be Argued and Determined this Day in the Presence of the Attornies on both Sides and the Court having had due Consideration thereon doth think fit to Order

and doth accordingly Order that the Prayer of the Petitioners Petition be held good, and that the Sheriffs Seals be taken off the Premises in dispute and that each party do pay their own Costs—

A true Extract

(Signed)

George Taylor

Dep^t Reg^r

To

To the Honble Major General Sir Archibald Campbell
K: B: President in Council
In the Court
of Appeals

Fort Saint George

Between Chengleroy Moodeliar
Petition and Edward Lewcock Respondent
In the Cause of Edward Lewcock
Complainant and Francisco Xavier
Brandon de Souza Defendant

The Answer of the Chengleroy Moodelliars
to the Petition and appeal of the above Named Edward Lewcock

This Respondent for answer to the said
Petition and Appeal or onto so much thereof as this Respondent
is advised is Material or Necessary for him to make Answer unto
Answereth and Saith that he admits the above Named Appellant
did on or about the Month of February which was in the Year
of Our Lord One thousand Seven hundred and Eighty Six exhibit
and file his Bill of Complaint in the Honble the Mayors Court
at Madraspatnam against the above Named Francisco Xavier
Brandon DeSouza for the Recovery of the Sum of Four hundred
and Ninety five Star Pagodas fifteen fanams and thirty two Cash

Filed in my Office
the 20th december
1788
Chas. F. White
Clk

Paid

Said to be due and Owing unto the said Appellant by the said
Francisco Xavier Brandon DeSouza in Manner and Form as in and
by the said Appellants Petition and Appeal is Stated and Setforth
and that the said Mayors Court did grant a Decree thereon in
favor of the said Appellant for the amount of his aforesaid Demand
and that after the Term of Fourteen Days allowed by the Charter
had elapsed the said Francisco Xavier Brandon DeSouza not
having Satisfied the said Decree of the Mayors Court or appealed
therefrom a writ of Execution directed to the Sheriff of Fort Saint
George Town of Madraspatnam and the Districts thereof
requiring him the said Sheriff to seize and Sequester the goods
Chattels and Effects of the said Francisco Xavier Brandon
DeSouza and by Sale thereof to levy the amount of Your
Petitioners Demand did issue This Respondent further admits
that the said Sheriff did by Virtue of such writ of Execution
Seize upon a certain Piece or Parcel of Ground together with Two
Houses and other Buildings thereon Situate lying and being
in the Marahttah Town as in the said Appellants Petition
and Appeal is discribed and Setforth which said Premises
being the Sole Property of this Respondent and not of the
said Francisco Xavier Brandon DeSouza this Respondent did

file

file his Petition in the said Honble Mayors Court
claiming his Right and Title thereto and Shewing that
on or about the Month of December which was in the year
of Our Lord one thousand Seven hundred and Eighty Two he
did Purchase of and from the said Francisco Xavier Brandon
DeSouza the aforesaid Piece or Parcel of Ground together with the
Houses and other Buildings thereon Situated as aforesaid at
and for the Rate or Sum of Eight hundred Star Pagodas which
said Sum of Eight hundred Star Pagodas this Respondent did
in the said Month of December pay and advance to the said
Francisco Xavier Brandon DeSouza and Obtained from him
a Bill of Sale of the said Premises and Copy of which Bill of
Sale this Respondent did file and annex to and with his said
Petition to the said Mayors Court as Exhibit Marked A
Stating the original thereof to be as it still is in this
Respondents Possession and Ready to be Produced when required
This Respondent further Saith that he did by his said Petition
Set forth his having at the same time required the said Francisco
Xavier Brandon DeSouza to put him the said Respondent in
Possession of the said Premises and which the said Francisco
Xavier Brandon DeSouza did then Promise to do in the Space

of Two Months by which time he should be able to discharge
the Tenants who then occupied the same and that upon the
said Tenants delivering up the said Premises to the said
Francisco Xavier Brandon DeSouza this Respondent did
again Request the said Francisco Xavier Brandon DeSouza
to put him this Respondent in Possession of the said
Premises but which he the said Francisco Xavier Brandon
DeSouza did not think proper to comply with and requested
this Respondent to take back his Purchase Money but that
this Respondent refused so to do and that being unable to
Obtain Possession of the said Premises from the said Francisco
Xavier Brandon DeSouza this Respondent was Obliged to file
a Bill of Complaint against the said Francisco Xavier Brandon
DeSouza in order to effect the same - That the said Francisco
Xavier Brandon DeSouza did Personally in Court Appear
thereto and Acknowledged the Receipt of the said Sum of
Eight hundred Star Pagodas and Likewise the Delivery of the
Beforementioned Bill of Sale of the said Premises to this
Respondent that in Consequence thereof the said Honble
Mayors Court was Pleased on the fourth Day of April
then last past to grant a Decree in favor of this Respondent

Ordering

Ordering the said Francisco Xavier Brandon DeSouza to put this Respondent in Possession of the said two Houses and Premises and this Respondent Saith that he did Annex to his said Petition a Copy of the said Decree and did further State that the said Francisco Xavier Brandon DeSouza did in Pursuance thereof deliver up unto this Respondent the said Premises and that he this Respondent did remain in the Quiet and Peaceable Possession thereof until the said Appellant caused the same to be Seized under the Pretence that the said Premises had been Mortgaged to him the said Appellant and this Respondent Saith he did further by his said Petition State that Notwithstanding the said Francisco Xavier Brandon DeSouza might grant such Mortgages to the said Appellant that he had no right so to do as Appeared evident by the Dates of the said Mortgage Bonds themselves they being respectively dated on the fourteenth day of January and the Second day of August which were in the Years of our Lord One Thousand Seven hundred and Eighty five To which said Petition of this Respondent the said Appellant filed his Answer Admitting so much of this Respondents Petition as formed the Recital of the Original action but Pretending that the said Houses and Ground were the said Property of the Said Francisco Xavier Brandon DeSouza and that he the said Appellant upon the express desire and request of the said Francisco Xavier Brandon DeSouza did on the fourteenth day of January in the Year One thousand Seven hundred and Eighty five Lend and Advance him the Sum of three hundred and Seventy four Star Pagodas on his Mortgage Bond of that Date and that afterwards to wit on Second Day of August in the same Year the said Francisco Xavier Brandon DeSouza did at further request of the said Appellant the further Sum of One hundred Pagodas on the Mortgage of the other House which was Accordingly complyed with by him the said Appellant and further by his said Answer pretending that the Bill of Sale executed by the said Francisco Xavier Brandon DeSouza to this Respondent in the Year One thousand Seven hundred and Eighty two was fictitious and only executed to answer certain purposes as Stated in the said Petition and Appeal.

This Respondent Admits that upon such Petition and Answer Issue was Joined and Witnesses examined and that Publication having passed the same was set down for hearing and came on to be heard before the said Mayors Court on Saturday the twenty first Day of November last past

and

and that the said Court did thinks proper to Order and Decree that the Prayer of this Respondents Petition should be held Good and that the Sheriffs Seals be taken off the Premises in dispute and that each Party do pay their own Costs as well— Morefully and at Large Appear by the Order and Decree of the— Honble the Mayors Court— To which as well as all other Proceedings had on the said Petition and Answer this Respondent craves leave to refer and to have such full and Ample benefit thereof and— every part thereof as if the same were herein repeated and fully Setforth— By which Order and Decree of the said Mayors Court— this Respondent humbly Contends that the said Edward Lewcock hath not been injured in any respect whatsoever nor had he any good reason or Cause to appeal therefrom for the following Among other Reasons—

1st ..... Because this Respondent stands possessed of a Bill of Sale of the Premises in Question granted by the said Francis Xaviers and Brandon DeSouza and for a full and— Valuable Consideration received— The execution whereof is fully proved by the Subscribing Witnesses thereto and that the said Consideration Money was actually seen paid into the Hands of the said Francisco Xavier Brandon DeSouza all which the said

Appellant

Appellant hath not by any Part of his Evidence Adduced in any Degree impeached or controverted altho in his Answer to this Respondents Petition to the said Mayors Court he hath Pretended to call the Validity of the said Bill of Sale in Question—

2dly ..... Because Notwithstanding the said Appellant did file his Bill of Complaint in the said Mayors Court against the said Francisco Xavier Brandon DeSouza upon his said Pretended Mortgage Bonds the said Francisco Xavier Brandon DeSouza upon a Bill being soon after filed against him in the said Mayors Court at the Suit of this Respondent for the Recovery of the Premises in Question did personally Appear in the said Open Court and Acknowledge the execution and Delivery of the said Bill of Sale and also that he did receive the Sum of Eight Hundred Star Pagodas the Consideration Money thereon Mentioned for the Sale of the said Premises in— Consequence of which Acknowledgement on the part of the said Francisco Xavier Brandon DeSouza the said Mayors Court— were pleased to grant a Decree for the Delivery of the said Premises a Copy of which Decree is hereunto Annexed—

3dly ..... Because the said Appellant by his own Shewing

hath

hath no Right or Pretensions to the said Premises or any part thereof. It Appearing by the Mortgage Bonds themselves under which he claims that they were granted more than two Years Subsequent to the beforementioned Bill of Sale granted to this Respondent and it Appears that the said Appellant by his Answer to this Respondents Petition was himself aware how unsafe it was for him to lend the said Francisco Xavier Brandon DeSouza Money without being put in Possession of the Title Deeds of the Premises in Question—

Fourthly Because the said Appellant from his Anxiety to invalidate the Bill of Sale granted by the said Francisco Xavier Brandon DeSouza to this Respondent hath invalidated the Testimony of Thamachullum Moodelly One of his principal Evidence who Swears to Transactions which took place Subsequent to the Day on which it Appears he was examined—

Fifthly— Because no Collusion whatever relative to the aforesaid Bill of Sale altho so Strongly pretended and Asserted by the Appellant is in any Shape Substantiated and if the said Francisco Xavier Brandon DeSouza had Left the Premises to the said Appellant as the said Appellant Attempts to Shew he ought and — undoubtedly would have given the said Francisco Xavier Brandon DeSouza

DeSouza Credit for the Rent due to the said Francisco Xavier Brandon DeSouza in his account Current Annexed to the Bill of Complaint filed by him the Appellant of the said Francisco Xavier Brandon DeSouza in Consequence of which Bill of — Complaint it is that the said Francisco Xavier Brandon — DeSouza filed the Answer in the Mayors Court alluded to by the Appellant and therefore as no Credit is in such Account Current given for Rent it Evidently Appears that the said — Appellant Never did Rent the Premises of the said Francisco Xavier Brandon DeSouza—

For all which Reasons and such others as may be offered at the Hearing this Respondent Prays that the Judgement of the Mayors Court may be Affirmed with Exemplary Costs to be paid by the Appellant for the Litigious Conduct in the first instance and his very Vexatious Appeal from the Decree of the Mayors Court without Stating any Reasonable Pretext for such Appeal—

/Signed/

Charles Baker

Attorney for Respondent

Court

Court of Appeals
at
Madraspatnam

Wednesday the 21st January
Anno Domini 1789

Between Edward Lewcock Appellant
and Chinglroy Modelliar 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 and Appeal and Answer and the Several
Exhibits of the Honble the Mayors Court together with the Order
of the said Court given in this Cause on Saturday the 22d day
of November Anno Domini 1788 upon due Consideration
had of the Matters therein Severally contained and of the
Pleadings and Arguments used by the Attornies on both sides
This Court doth think fit to Order and Decree and doth
Accordingly Order and Decree that the said Order of the Honble
the Mayors Court do stand affirmed and that the Appellants
Petition be hence Dismissed with Costs

Hun /Signed/ Chas. S. White
Clk

Saturday

Saturday the 18th April 1789

Present

The Honble John Hollond
James Henry Casamaijor & Edw. T. Holland

To the Honble Major General Sir Archibald Campbell
K. B. President in Council
Fort St. George

In the Honble the Court
of
Appeals at Madraspatniam

Between Charles Bromley one of
the attornies of the Honble the Mayors
Court at Madras Complainant and
Henry Alexander of Madras Esquire
Defendant

Which Suit was Revivedly
Elizabeth Bromley as Executrix to
the Last Will and Testament of the
said Charles Bromley

Filed in my office
the 11th July 1788
Charles S. White
Clk

The

The Humble Petition and Appeal of the above named Defendant.

Sheweth

That the above named Charles Bromley died in his Life time to Wit on or about the Twenty first Day of July which was in the Year of Our Lord One thousand Seven hundred and Eighty Six exhibit a Bill of Complaint in the Hon^ble the Mayors Court at Madras against Your Petitioner for a Debt by him said to be due and Owing unto the said Complainant of the Sum of One thousand Eight hundred and fifty Pagodas four fanams and Sixteen Cash Current Money of Madras Arising on a pretended Right or Charge of five per Cent for Agency in Consideration of Advice and Opinion and in further Consideration of Trouble and Attendances by writing and Answering Letters together with frequent Meetings and Applications to and with the Administrators and Representatives to the Estate of Dawsonne Drake Esq^r respecting Your Petitioners demand on the Estate and which demand the said Deceased did Charge that Your Petitioner did Leave to his Discretion and Management as the most Eligible plan of Securing the Payment of Your Petitioners Bond for the principal being thirty Seven thousand and five hundred Star Pagodas and also for other pretended Services which it appears by the said Bill of Complaint that your Petitioner did not Acknowledge. And Your Petitioner did therefore put in his answer to the said Bill of Complaint denying to be indebted unto the said Deceased in the said Sum of One thousand Eight hundred and fifty Pagodas four fanams and Sixteen Cash or in any other Sum or Sums of Money — And Your Petitioner in Answer thereto did admit that he did Apply unto the Deceased in the Month of June and July One thousand Seven hundred and Eighty three, and not in the Month of May One thousand Seven hundred and Eighty three but not concerning his demand upon the Estate of Dawsonne Drake Deceased Respecting which your Petitioner did set forth that he did not Advise with the Complainant upon untill some time afterwards But that the business your Petitioner did employ the Deceased upon in the Month of June and July aforesaid was to use his Ministry as an Attorney of the Mayors Court to recover for him a Sum of Money Owing unto your Petitioner by Charles Darke of Madras Merchant. and it was not untill afterwards that he employed the Deceased in the said Demand upon the said Estate of the said Dawsonne Drake. and did absolutely deny that he employed the Deceased therein in any other Capacity than that of an Attorney of the said Court — And he did absolutely deny that he entered into any Conditions to allow the Deceased a Commission of five per Cent upon all Sums of Money which should be Recovered by the Deceased from the Administrator or the Representatives of the Estate of the said Dawsonne Drake Deceased. as well as upon all Securities for Monies and Transfers. whether in Goods Wares and Merchandize or on Houses Lands and Tenements & which should not come before the said Hon^ble Court And your Petitioner did also say that the Assertion of

the-

the Complainant that your Petitioner had at that time Retained M. Henry DuPuy as his Attorney at Law was a mistake Because your Petitioner Shewed that he had Retained the said Henry DuPuy in his affairs before he ever opened himself on the Subject of them to the Deceased And which he only did because the said Henry DuPuy did not hold himself disengaged from former Retainers from the said Charles Darke was to be at Liberty to be an Attorney in an Action against them And at his desire to decline proceedings Against him the said Chas. Darke on his behalf your Petitioner did then Retain the Deceased and not before and your Petitioner did not again employ the said Henry DuPuy in his Affairs until Sometime about the beginning of the Year One Thousand Seven hundred and Eighty Six — your Petitioner did therefore say that the Deceased Representing the said Henry DuPuy as the Attorney at Law and the Deceased as your Petitioners Agent at the time alluded to for the purpose of colouring his Demand under that Qualification was untrue. because the Deceased was not ever his Agent but his Attorney at Law only. — And your Petitioner did Shew that the first Action that he settled Viz the means of the Deceased was his demand upon the said Charles

Darke.

Darke. which was afterwards discharged by an assignment of a Bond from Thomas Davis to him the said Charles Darke and by a Note of hand from the said Charles Darke to your Petts for the Sum of three hundred and fifty one Pagodas and eight fanms under date of the Second day of August One thousand Seven hundred and Eighty three. Which said Sum of three hundred and fifty one Pagodas and eight fanams was paid by the said Charles Darke to the Deceased. part whereof being due to him on Account of Fees. and the Remainder being the Sum of One Hundred and sixty eight Pagodas was detained by the Deceased on Account of Retainers and Fees to be incurred in future — Your Petitioner did Shew that he said afterwards Viz on the Twenty fifth day of August in the same year file a Bill of Complaint against the said Thomas Davis for the Recovery of Payment of the said Bond so assigned to him by the said Charles Darke — That the said Thomas Davis did put in his Answer to the said Bill and the said Cause was prosecuted thro all the usual proceedings of the Law unto a Decree in the said Mayors Court which was Granted in Favor of your Petitioner with Costs Wherefrom the said Thomas Davis did afterwards Appeal But did afterwards withdraw the same upon Condition that your Petitioner should allow him the Term of three Years to pay the Debt Interest and Costs included for which the

said

said Thomas Davis did execute a Bond unto your Petitioner under date of the Eighth day of September One Thousand seven hundred and Eighty four. wherein the said Thomas Davis did Mortgage a House and Garden situated at Choultry plain the Title Deeds where of were delivered unto the Deceased — And which he the Deceased did absolutely Refuse to deliver unto your Petitioner unless the your Petitioner would allow and pay him a Commission of five per Cent upon the Transfer or assignment of the said Thomas Davis Bond from Charles Darke. being Ten thousand three hundred and Seventy one Pagodas with which demand your Petitioner did partly comply from his Real ignorance of the Customs and Course of the Law and partly by the Deceased absolutely insisting upon the same to be his right and his positive Refusal to deliver up the Title Deeds without that your Petitioner would pay him the Sum of Five hundred and Eighteen Pagodas and thirty fanams his Charges of Commission on the Sum of Ten thousand three hundred and seventy one Pagodas and a further Sum of Five Hundred and and Twenty eight Pagodas and eighteen fanams the Amount of Fees included in the said Bond from the said Thomas Davis and on no other account or Consideration. —

And.

And your Petitioner did in his Answer deny that the Question of Interest on your Petitioners demand on the said Estate of the said Dawsonne Drake Deceased was the first but that it was the last that was settled with the administrator of the said Estate or that the said Question of Interest was of that entreacy as the Deceased did attempt to make the Same appear — And that your Petitioner did never entertain an Idea but that the Administrator was bound to pay him Indian Interest the said Dawsonne Drake in his Life time and the Administrator after his decease having failed in fulfilling his Contract by not paying the Sum of Money due on his Bond in Europe — And your Petitioner did in his Answer shew that there was a Law Suit thereon Against the Administrator who did thereupon accede to your Petitioners demand of Indian Interest — And did give your Petitioner a Bond for the Balance of the Amount in which was included the Sum of three hundred and forty two Pagodas and thirty two fanams and the Sum of three hundred and forty six Pag. and eighteen fanams for the deceaseds Charges for Fees in the said Suit —

And Your Petitioner did deny that he ever did promise the Deceased any Commission upon Sums which should be Recovered from the Estate of the said —

D —

Dawsonne Deaths — And your Petitioner did shew that he did always urge the commencing of an Action against the Administrator, which if the Deceased had done your Petitioner did say he verily believed he should by means there of have come to a more substantial and speedy liquidation with the Administrator than he had Because the Ultimate and final Settlement with him the said Administrator was by that means — And your Petitioner by way of further Answer did say that the Administrator did not plead to the said Action a Decree against the Deceased in his Lifetime nor did he make use of the said Plea to any other Actions which were commenced against him by other Creditors — And your Petitioner did therefore say that the Deceased's Apprehensions that he would have done so in the Event of an Action having been Originally brought against him, were entirely groundless — And your Petitioner did shew that many Decrees had been Obtained against the Estate without any difficulty or Litigation — And your Petitioner did say that it was owing to the Deceased not commencing an Action against the Estate that your Pet. did settle with the Administrator of the Estate for the sum of Thirty Seven thousand Nine hundred and Two Pagodas Six fanams & fifty two Cash upon the uncertain Terms that he had — which your Pet. did say would thereafter Appear. and that

Your

your Petitioner had been so far from settling / which he considered to be generally understood to be Realizing / of his Concerns with the Estate that he had by the means used by the Deceased been involved in Law Suits with which he had not properly any thing to do. and which might have been avoided by one Suit against the Administrator And your Petitioner did say that upon a supposition of his Agency having been promised / which your Petitioner did absolutely deny that he ever did / the Deceased was in no since authorized to make any such Charge because it rather Appeared from the manner in which his accounts had been made up with the Estate. that the Deceased had a View to his own Advantage than to your Petitioners interest. Because altho' the Deceased had endeavored to shew in his Bill that the Sum of Thirty seven thousand Nine hundred and two Pagodas Six fanams and Twenty three Cash had been absolutely Realized. and that solely by the Deceased's means. — Your Petitioner did shew the Real Situation of the Debts and Effects Received by him in part payment of his Debt on the Estate. — Your Petitioner Referring in his said Answer to the mode of Settlement which the Deceased pretended to have been effected by his Means — The Debt of Doctor Story for four thousand seven hundred and Seventy Six Pagodas Twenty three fanams and Sixty two Cash. Your Petitioner did charge that he did himself manage and accept. and that he had received the different Sums that

had

had been paid in part thereon without any advice or Assistance from the Deceased — M. Antonio De Souza's Bond your Petitioner did say that the Same was so far from being Liquidated that the Same was then in litigation before his Majesty in Council — And your Petitioner had paid the Deceased for fees thro' the Different Courts enclusive of Registers fees and office Copies the Sum of One Thousand Seven hundred and thirty three Pagodas Six fanams and Sixty eight Cash — A Sett of Bills on M. Samuel Johnson at Calcutta for Ten thousand two hundred and fifty Pagodas. Your Petitioner did say that he did receive the Same himself upon an Offer made by the Representatives of the Estate and did himself send them to Calcutta and had already paid a Commission or Agency thereon the Amount of Fillagree Work Four thousand eight hundred and Ninety Six Pagodas your Petitioner did say he imprudently Accepted it from the Representatives of the Estate and did himself send the Same to Calcutta where he paid Custom and different Charges thereon and the was then unsold except about the Amount of a little more than Six hundred and Sixty Pagodas or thereabouts and the rest had been sent back to Madras. House and Garden at the Luz Eight thousand Pagodas — Your Petitioner did accept the Same in part payment at the Advice of the Deceased and upon his assurance and Warranty of the Goodness and clearness of the Title to the House and Garden except to Some Ground detached from the Garden which your Petitioner did himself know was not clear and the greatest part of which said detached Ground your Petitioner had by his own means at great Trouble and expense got confirmed to him by Government. — But your Petitioner shewed that he Never had any Knowledge or belief that the Garden wherein the House and built was any way Claimed, but that the Same was free and unincombered, and in which Confidence your Petitioner did take down the old House and had erected anew one at the expense of near Three thousand Pagodas — And your Petitioner shewed that he had applied for a Bill of Sale of the said House and Garden upon the Title Deeds drawn by the Deceased which he had not been able to obtain by reason of different Claims made upon the Garden, which your Pet.r had combated by Petitions and Representations to Government which then remained undetermined And your Petitioner shewed that he was then actually threatned with Law Suits touching his possession of the said Garden, not withstanding which the Deceased hath charged him a Commission upon the Sum of Eight thousand Pagodas the estimated price thereof. Majr Lewis Smith's Bill of Exchange at Calcutta for One thousand and Seventy four

Pagodas

Pagodas and Three fanams — Your Petitioner did Shew that the Same was entirely a Negotiation between him and Mr Peter Walker the Attorney of the Administrator who endorsed the same over to your Petitioner which your Petitioner sent to Calcutta for Payment but was afterwards returned Protested — And in consequence thereof your Petitioner did commence an Action Against him by the means of the Deceased who received his fees thereon and your Petitioner did Receive the whole Amount except the Sum of Two hundred and fifty Pagodas, which the Deceased himself Received upon his own Receipt from the said Peter Walker — From all which your Petitioner shewed it would Appear that it would have been much more beneficial and Advantageous to have commenced an Action Against the Estate, than to have run himself into the Difficulties he hath by contesting the demand upon Mr Antonio de Souza at so great an expense and to be exposed to have the House and Garden at the Luz disputed with him by different Suits at Law from which it was the Deceaseds duty to have secured him and it would have been more especially preferable to have commenced an Action Against the Estate Because he believes no persons had at that time made their Claims in publick Court consequently there is every Reason to believe that he might have possessed himself of this property, or any other property under a Decree which would have been better than making private bargains with the Administrator or his Representatives — And Your Petitioner did in his Answer before Observe that his Accounts with the Estate were only finally settled by an Action in the Mayors Court against the Administrator who did acceed to his demands and gave your Petitioner a Bond with Security for the Balance in which were included the Deceaseds fees — And your Petitioner did therefore say that the Deceased had done wrong in pretending that he had not received any thing on Account of the Estate by way of fee or Received, because the said Credit for the aforesaid Sum of three hundred and forty Two Pag.s and thirty two fanams, and three hundred and forty six Pagodas and Eighteen fanams in the said Bond for his fees is a Real and Good payment and Consideration And your Petitioner did set forth many other matters and things in the said Answer Absolutely denying that he did ever promise or that the Deceased had any Right to demand Commission or Agency on any of the Sums paid him from the Estate of the said Dauronine Drake Deceased and did Annex unto his said Answer an Account Current whereby it —

it appeares that the Deceased had Received from him on Account of Fees for business arising from his said demand upon the said Estate of the said Dawsonne Drake upwards of two thousand and four hundred Pag.s — And your Petitioner did therefore pray that he might to be dismissed with his Reasonable Costs & Charges. —

Wh to which answer the Deceased did file a Replication but as not any thing therein contained or in the Deceased's Bill is proved. your Pet.r doth not think Necessary to take Notice of the said Bill or Replication further than he hath done. because the same is become unnecessary by your Petitioners Answer standing uncontroverted in every part of the proceedings and fully and Amply maintained by the Evidence exhibited at the hearing of this Cause. —

And your Petitioner sheweth that Issue did join and Rules did pass for the Examination of Witnesses and Witness were examined on the part of the Deceased and of your Petitioner But the Deceased had departed this Life before publication did pass and the said Suit was Revived by Elizabeth Bromley his Executrix aforesaid after which publication passed and the Cause came on to be heard in the Worn.ble Mayors Court on the Twenty eighth day of June in this present Year of our Lord One thousand Seven hundred and Eighty Eight When your Petitioner Sheweth that the said Worn.ble Court were pleased to Order and Decree and did Accordingly order

8

And Decree that your Petitioner should pay unto the Complainant The sum of Five hundred Pagodas together with all Costs of Suit as may more particularly Appear by Copy of the said Decree hereunto annexed. and by the Original to be produced at the hearing of this your Pet.r Appeal. —

By which said Order and Decree your Petitioner doth conceive that he is aggrieved and doth therefore Appeal therefrom and for Cause of Appeal Sheweth. That the said action was not grounded upon any just or legal Cause but on the Contrary the said Action and the demand thereupon was very unjust and unwarrantable and the Decree given thereupon contrary to Evidence produced at the hearing

Because your Petitioner Sheweth that altho the Deceased doth not stile himself Attorney of the Mayors Court in his Bill of Complaint it is evident that the Deceased could not have commenced his Action under any other Title or if he had acted for your Petitioner on any extra official occasions he ought to have produced some Written Agreement or other Legal Obligation to entitle him to make the demand on your Petitioner: that he has. and to have given in Evidence that he had fulfilled the said Agreement and was thereby entitled to a performance on the part of your Petitioner. or that he had otherwise have performed for your Petitioner the Services he hath declared that he did perform and have Left the

estimation

estimation of them to the Mayors Court. but instead there of the Deceased hath grounded his claim upon no certainty whatever because in part of his Bill he declares upon a promise to allow him a Commission of five per Cent on all Monies Recovered by his means. which should not come through the Court and at other times. he declares upon the Special Circumstances of the Case. that he had done certain Services for your Petitioner. for which he had not been Rewarded and therefore he made a Charge of five per Cent on the Value of such Services performed — Which your Petitioner sheweth is an irregularity that Militates against that Right which the Deceased did pretend he was entitled to — And when the same is contrasted with the Answer of your Petitioner /on Oath/ whereto he was called by the Deceased. absolutely denying that any such promise was made by him or that any such pretended Services were performed. your Petitioner sheweth that it is a real hardship on him that he should be Decreed to pay any proportion of a Demand so groundlessly laid and without any Manner of Evidence to support it. — And your Petitioner said that the said Mayors Court could not proceed upon a Decree even upon so Vague an Action but from Evidence exhibited fully Insuing the Deceaseds demand or such part thereof as they have been

Been pleased to Decree your Petitioner to pay. besides the Deceaseds Costs. but your Petitioner sheweth that no part of the Evidence produced goeth to justify the payment of the Deceaseds demand or any part thereof — But on the Contrary your Pet. saith that the whole of his Answer is admitted and fully proved by Evidence produced on his part. in as much as the Deceased nor his Executrix have not produced any Evidence to support the Bill or Controvert the Answer. which enters fully into every Transaction between the Deceased and your Petitioner from the time of your Petitioner first employing him as his Attorney at Law in the Suit Against Charles Darke until the time of his taking his Concerns out of his hands. — And your Pet. sheweth that in that part of his Answer wherein he Relates the Circumstance of the Deceased demanding of him Commission on the Assignment of Thomas Davis's Bond at the time that the Title Deeds of the House of the said Thomas Davis were in the hands of the said Deceased. and of the Deceased Refusing to deliver the said Title Deeds without that your Petitioner would make the said Allowance of Commission. and of your Petitioner objecting to the Allowance of such Commission is as fully proved as a transaction of that Nature could be by the Evidence of Charles Darke. who deposes to the Ninth Interrogatory that he was one day at the deceaseds

Office.

Office when he heard a dispute between the Deceased and your Pet.r on the Deceased demanding five perlcent Commission for settling the Concern between him and the Deponent Charles Drake and your Petitioner, and that your Petitioner went away seemingly dissatisfied but that he returned again and paid the five perlcent Commis=sion your Petitioner sheweth that no Evidence can be stronger that your Petitioner was under the compulsion of the Deceased having his papers and Concern in his hands and that he paid the same on no other Account than being under such Compulsion.

Your Petitioner hath thought proper to introduce this part of the Evidence as corresponding with and proving that part of his Answer relating to the said Transaction, in Order to shew that instead of your Petitioner having intered into any Agreement to pay Commission, that he absolutely objected to make any such Allowance.

And your Petitioner sheweth that the said Deceased hath not produced any Evidence to satisfy this Honble Court that he was entitled to make such a Charge on your Petitioner or that he did take all that trouble and pains on behalf of your Petitioner in Respect of the Matters Charged by him which he hath pretended that he did, but your Petitioner on the Contrary hath shewn in his Answer that he did manage and transact the said Matters himself and that the Deceased had not any thing to do therewith. And your Petitioner sheweth that he hath examined Peter Walker one of the Administrators Agents or Representatives throughout the whole of the transactions whereupon the Deceased doth make a Charge of Commission and who was well Acquainted therewith. And the said Peter Walker deposes that your Petitioner did make frequent personal and Applications of payment of the Deceased Dawsonne Drake's Bond to him for Fifteen thousand Pounds Sterling and Interest. And that the Deceased did also write several Letters to him as joint Attorney making demands of payment of your Petitioner's said Debt and that such Letters were so made by the Deceased in the Capacity of and as Attorney to your Petitioner. And that the Deceased did commence two several Actions Against the joint Attornies of the Estate of the said Dawsonne Drake for the purpose of recovering the sums due to him therefrom And that the Deceased was employed therein by your Petitioner as his Attorney. And your Petitioner sheweth that the Depositions of Nelleydom the Deceased's own Servant do testify the Receipt of many Large Sums of Money by the Deceased from your Petitioner on Account of the said demand and consequence Suits and Actions brought Against the said Administrator of Dawsonne Drake Deceased and his Attornies and Representatives. And the Deceased nor his Executrix have not produced

produced any Evidence to prove that any Agreement did exist between the Deceased and your Petitioner or that he did all or any of the Services by him charged to have been done in his Bill which if the same were true could have been brought in Evidence by the Examination of Peter Walker or Sir John Menzies the other Attorney of the Administrator as easily as your Petitioner hath proved that they were not by the examination of Peter Walker and by the Variety of Exhibits produced & proved at the hearing of this Cause shewing that the Deceased was your Petitioners Attorney at Law and in no respect your Petitioners Agent and that Your Petitioner had paid and discharged whatever was due by him to the Deceased previous to his Retaining another Attorney — Your Petitioner therefore sheweth that the Question of Law as well as the Evidence upon it being so entirely in favor of your Petitioner. he is certainly aggrieved by the Decree of the said Mayors Court to pay the Sum of Five hundred Pagodas and also the Costs of Suit instituted against him by the said Deceased personally as his own Attorney —

Your Petitioner therefore humbly refers the same to the Consideration of this Honble Court praying that they will Reverse the said Decree and as

Ex[illegible]

the

The same is not warranted by any Law practice or Custom and totally unsupported by Evidence but on the Contrary being totally controverted by your Petitioners Answer and the Evidence produced on his Behalf Your Petitioner humbly hopes that this Honble Court will be pleased to Reverse the said Decree and order and Decree on Behalf of your Petitioner that the Bill may be dismissed with Costs and also that this Honble Court will be pleased to grant such further & other Relief as to them may seem Equitable and Meet. —

/Signed/ Henry DuPuy

Solicitor for the Appellant —

Mayors Court.

Mayors Court at Madraspatinam } Saturday the 28th day of June Anno Dominie 1788.

Present.
Edward Garrow Esqr. Mayor
James Call William Webb
Sir John Menzies Robert Ewing
George Savage Jos. DuPre Porcher
Andrew Ross & Robert Mitford
Aldermen.

Between Elizabeth Bromley of Fort St. George Widow and Executrix of Charles Bromley heretofore of the same place Attorney at Law but now Deceased Complainant and Henry Alexander of Fort St. George Esqre heretofore a Major in the Service of his Highness the Nabob of the Carnatick 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 a Bill for Agence and two Letters annexed the Defendants Answer with an Account Current Annexed. the Replication with Eighteen Exhibits Annexed The Rejoinder with Copies of Account Marked N.1.2.3. & 4. annexed The Bills of Revivor. The Interrogatories and Depositions on the part of the Complainant The Interrogatories and Depositions on the part of the Defendant. Two Exhibits 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 shall pay unto the Complainant the full and Just Sum of Five hundred Pagodas / Pag.s 500. - / together with all Costs of this Suit.

Ekur
/Signed/ James Taylor
Registr

/a true Copy/
Henry DuPuy
Solicitor for the Appellant

To the Honble Major General
Sir Archibald Campbell K.B.
President in Council
Fort Saint George

In the Honble the Court of
Appeals at Madraspatnam }

Between Charles Bromley one of the
Attornies of the Honble the Mayors Court
at Madras Complainant and Henry
Alex.r of Madras Esq.re Defendant.

Which Suit was Revived by
Elizabeth Bromley as Executrix to
the Last Will and Testament of the
said Charles Bromley.

The Answer of Elizabeth Bromley to the
Petition and Appeal of the above Named Henry
Alexander.

This Respondent in Answer to the Petition and Appeal
the Above Named Appellant or unto so much thereof as this
Respondent conceives to be Necessary for her to make answer
unto Answereth and saith It is true that her late Husband
the Above named Charles Bromley did in his Life time and
on or about the Twenty first day of July which was in the
Year of Our Lord One thousand Seven hundred and Eighty Six
file his Bill of Complaint in the Honble the Mayors Court of
Madraspatnam against the said Appellant for the Recovery of the Sum of
One thousand Eight hundred and fifty Pagodas four fanams and
Sixteen Cash arising on a Right of five per Cent for Agency in
consideration of Advice and opinion and in further consideration of
Trouble and Attendencies by writing Letters together with frequent
meetings and Applications to and with the Administrator and Represen-
tatives of the Estate of Dawsonne Drake Esq.re respecting a
demand the Appellant then had on the said Estate and which as
is charged and setforth in the said Bill of Complaint the
Appellant did leave to the discretion of the said Charles Bromley
trusting to his Management for the most eligible Plan for securing
the Payment of the Appellants Bond out of the said Estate the
Principal Sum of which Amounted to thirty Seven thousand and
five hundred star Pagodas and also further and other services rendered
to the Appellant by the said Charles Bromley. This Respondent admits
that the Appellant did put in his answer to the said Bill of
Complaint and did thereby deny to be indebted unto the said Chas.
Bromley in the said Sum of One thousand Eight hundred and
fifty Pagodas four fanams and sixteen Cash or in any other
Sum or Sums of Money and did say that he did Apply to the
said Charles Bromley in the Month of June and July One
Thousand Seven hundred and Eighty three not in the Month of
May One thousand Seven hundred and Eighty three and not

Concerning.

Filed in my Office
the 20. August 1788
Charles N. White
Clk

concerning his demand upon the Estate of Dawsonne Drake deceased respecting which the Appellant did say that he did not advise with the said Charles Bromley until some time afterwards but that the Business in which he did employ him on in the Month of June and July was to use his Ministry as an Attorney of the Mayors Court to recover for him a Sum of money owing to the Appellant by Charles Darke of Madras Merchant and it was not until Afterwards that he employed the said Charles Bromley in the said demand upon the Estate of the said Dawsonne Drake denying that he employed the said Charles Bromley therein in any other Capacity than that of an Attorney of the said Court or that he had entered unto any conditions to allow the said Charles Bromley a Commission of five per cent upon all Sums of Money which should be recovered by the said Charles Bromley from the Administrator or the Representatives of the Estate of the said Dawsonne Drake deceased as well as upon all Securities for monies and transfers whether in Goods Wares and Merchandize or on Houses Lands and Tenements which should not come before the said Honble the Mayors Court - and this Respondent Admits that the Appellant in his said answer did also set forth in opposition to the Assertion of the said Charles Bromley that he had at that time retained Mr. Henry DuPuy as his Attorney at Law that he had retained the said Henry DuPuy in his Affairs before he opened himself

on

on the Subject of them to the said Charles Bromley and which he only did because the said Henry DuPuy did not behold himself disengaged from former Retainers from the said Charles Darke so as to be at Liberty to be an Attorney in an Action against him and that it was then and not before that the Appellant did Retain the said Charles Bromley and did not again employ the said Henry DuPuy in his affairs until some time in the beginning of the Year One Thousand Seven hundred and Eighty Six - and this Respondent admits that the Appellant in his said Answer did therefore say that the said Charles Bromley respecting the said Henry DuPuy as the Attorney at Law and himself as the Agent of the Appellant at the Time alluded to was untrue, because the said Charles Bromley was never his Agent but his Attorney at Law only - and this Respondent admits that the Appellant in his said Answer did say that the first Action he settled through the means of the said Charles Bromley was his demand upon the said Charles Darke which was afterwards discharged by an Assignment of a Bond from Thomas Davis to him the said Charles Darke and by a Note of hand from the said Charles Darke to the Appellant for the Sum of Three hundred and fifty one Pagodas and eight fanams under date the Second day of August One thousand Seven hundred and eighty three and that the said Sum of Three hundred and fifty one Pagodas and eight fanams was paid by the said Charles Darke to the said Charles Bromley part thereof being due to him on Account

of

of Fees and the remainder amounting to the Sum of One hundred and Sixty Eight Pagodas was detained by him for Retainers and fees to be incurred in future — This Respondent admits the Appellant in his said Answer did say that he did afterwards on the Twenty fifth day of August in the same Year file a Bill of Complaint against the said Thomas Davis for the Recovery of Payment of the said Bond so Assigned to him by the said Charles Darke that the said Thomas Davis did put in his Answer to the said Bill and that the said Cause was prosecuted through all the usual Process of the Law unto a Decree in the said Mayors Court which was granted in favor of the Appellant with Costs wherefrom the said Thomas Davis did Appeal but did Afterwards withdraw the same upon Condition that the Appellant should allow him the Term of three years to Pay the Debt Interest and Costs included for which the said Thomas Davis did execute a Bond to the Appellant on the eighth day of September one thousand Seven hundred and Eighty four wherein the said Thomas Davis did Mortgage a House and Garden situated on Choultry Plain the Title Deeds where of were delivered to the said Charles Bromley and which the Petitioner did say he refused to deliver up to him unless he would allow and pay him a Commission of five per Cent upon the Transfer or Assignment of the said Thomas Davis's Bond from Charles Darke being Ten Thousand three hundred and Seventy one Pagodas with which demand the Appellant.

did.

did partly comply from his real ignorance of the Customs and Course of the Law and partly by the said Charles Bromley absolutely insisting upon the same to be his Right and his positive refusal to deliver up the Title Deeds unless the Appellant would pay him the sum of Five hundred and Eighteen Pagodas and thirty fanams his charges of Commission on the Sum of Ten Thousand three hundred and Seventy One Pagodas and a further Sum of Five hundred and twenty Eight Pagodas and Eighteen fanams. the Amount of Fees included in the said Bond from the said Thomas Davis and on no other Account or consideration This Respondent admits that the Appellant did in his said Answer deny that the Question of Interest on his demand on the said Estate of the said Dawsonne Drake was the first but that it was the last that was settled with the Administrator of the said Estate or that the said Question of Interest was of that intricacy the said Charles Bromley did make the same Appear to be and that the Appellant never entertained an Idea but that the Administrator was bound to pay him Indian Interest the said Dawsonne Drake in his Life time and the Administrator after his decease having failed his fulfilling his contract by not Paying the Sum of Money due on his Bond in Europe — and this Respondent admits that the Appellant did in his said Answer say that there was a Law Suit thereon Against the Administrator who did thereupon accede to the Appellants demand of Indian Interest and did give him a Bond for the Balance of the Amount in which was included the Sum of Three hundred and forty two Pagodas and thirty two fanams and the Sum of three hundred and forty six Pagodas and

Eighteen

Eighteen fanams the Amount of the said Charles Bromley's charges for fees in the said Suit. This Respondent admits the Appellant in his said Answer did deny that he ever promised the said Charles Bromley any Commission upon Sums which should be Recovered from the Estate of the said Dawsonne Drake and that he had always urged the Commencing of an Action against the Administrator which if the said Charles Bromley had done the Appellant did say he verily believed he should by means thereof have come to a more Substantial and Speedy Liquidation with the Administrator than he did because the ultimate and final Settlement with him the said Administrator was by that means — And this Respondent admits that by way of further Answer the Appellant did say that the Administrator did not plead to the said Action a Decree against the deceased in his Life time nor did he make use of the said Plea to any other Actions which were commenced against him by the other Creditors and the Appellant did therefore say that the said Charles Bromley's Apprehensions that he would have done so in the Event of an Action having been originally brought against him were entirely groundless and the Appellant did say that many Decrees had been obtained against the Estate without any Difficulty or Litigation and that it was owing to the said Charles Bromley not commencing an Action against the Estate that Appellant settled with the Administrator of the Estate for the Sum of Thirty Seven thousand Nine hundred and Two Pagodas Six fanams and Fifty Two Cash upon the uncertain Terms that he did which the Appellant did say would Appear and that he had been so far

from

from settling which he considered to be generally understood to be realizing of his concerns with the Estate that he had by the Means used by the said Charles Bromley been involved in Law Suit with which he did say had not properly any thing to do and which might have been avoided by one Suit against the Administrator — This Respondent admits the Appellant in his said Answer did say that upon a Supposition of an Agency having been promised which he denied he ever did the said Charles Bromley was in no sense authorized to make any such charge because it rather appeared from the manner in which his Accounts had been made up with the Estate that the said Charles Bromley had a View more to his own Advantage than to the Appellants Interest because although he had shewn in his Bill that the Sum of Thirty Seven thousand Nine hundred and Two Pagodas Six fanams and Twenty three Cash had been absolutely Realized and that to solely by the said Charles Bromley's means the Appellant did shew what he calls the situation of the Debts and Effects received by him in part Payment of his Debt on the Estate to be the mode of Settlement set forth in his said Answer which the said Charles Bromley declared to have been effected by his means and the Appellant in his said Answer did charge that he did himself manage and accept the Debt of Doctor Lucy for four thousand seven hundred and seventy Six Pagodas Twenty three fanams and Sixty two Cash and had received the different Sums that had been paid in part thereon without any Advice or Assistance from the said Charles Bromley and the Appellant did say that Mr. De Souza's Bond was so low

from

from being Liquidated that the same was then in Litigation before his Majesty in Council that he had paid the said Charles Bromley for fees through the different Courts exclusive of Registers fees and Office Copies the Sum of One thousand Seven hundred and thirty three Pagodas six fanams and Sixty Eight Cash and this Respondent admits the Appellant in his said Answer did say he did himself receive the Amount of a Set of Bills on Mr. Samuel Johnston at Calcutta being the Sum of Ten thousand Two hundred and fifty Pagodas upon an offer made by the Representative of the Estate and did himself send them to Calcutta and had already paid a Commission of Agency thereon - the Amount of Filigree Work Four thousand Eight hundred and Ninety Six Pagodas the Appellant in his said Answer did say he imprudently Accepted from the Representatives of the Estate and did himself send the same to Calcutta and there paid Custom and different Charges thereon and the same was then unsold except about the Amount of a little more than Six hundred and Sixty Six Pagodas or thereabouts and that the rest had been sent back to Madras and this Respondent admits the Appellant in his said Answer did say that he did accept the House and Gardens at the Luz at Eight Thousand Pagodas in Part Payment at the advice of the said Charles Bromley upon his Assurance and Warranty of the goodness and clearness of the Title to the House and Garden except to some Ground detached from the Gardens which the Appellant did himself know was not clear the greatest part of which he

did.

did say was by his means and at a great Trouble and Expence confirmed to him by Government but that he never had any knowledge or belief that the Garden wherein the House was Built was any way claimed but that the same was free and unincumbered and that in such confidence the Appellant did take down the old House and had erected a New one at the expence of near Three thousand Pagodas and that he had Applied for a Bill of Sale of the said House and Garden upon the Title Deeds drawn by the said Charles Bromley which he had not been able to Obtain by reason of different Claims made upon the Garden which the Appellant did say he had Combated by Petitions and Representations to Government which then remained undetermined and further that he was then threatned with Law Suits touching his Possession of the said Gardens notwithstanding which the said Charles Bromley had charged him a Commission upon the Sum of Eight thousand Pagodas the estimated price thereof — and this Respondent admits the Appellant did in his said Answer also say that Major Lewis Smith's Bill of Exchange at Calcutta for one thousand and Seventy four Pagodas and three fanams was entirely a Negotiation between him and Mr. Peter Walker the Attorney of the Administrator who endorsed the same to the Appellant and which the Appellant sent to Calcutta for Payment but which was afterwards returned Protested in consequence thereof the Appellant did say he commenced an Action against him by means of the said Charles Bromley who received his Fees thereon and that the Appellant did receive the whole Amount except the Sum of Two hundred and

fifty

fifty Pagodas which the said Charles Bromley himself received upon his own Receipts from the said Peter Walker from all which the Appellant did say it would appear that it would have been much more beneficial and Advantageous to have commenced an Action against the Estate thanto have ran himself unto the Difficulties he did by Contesting the demand upon M.r Antonio DeSouza at so great an expence and be exposed to have the House and Garden at the Luze disputed with him by different Suits at Law from which he did say it was the said Charles Bromley's duty to have secured him and that it would have been more especially preferable to have commenced an Action against the Estate because he believed no person had at that Time made their claims in a Public Court and Consequently there was every reason to believe that he might have possessed himself of that property or any other property under a Decree which he did say would have been better than making private Bargains with the Administrator or his Representatives - And this Respondent admits that the Appellant did in his said Answer observe that his Accounts with the said Estate were only finally Settled by an Action in the Mayors Court against the Administrator who did accede to the Appellants demand and gave him a Bond with Security for the Ballance in which were included the said Charles Bromley's fees the Appellant did say that therefore the deceased had done wrong in pretending that he had not received any thing on Account of the Estate by way of Fees or reward because the said Credit for the aforesaid

Sum of

Sum of Three hundred and forty two Pagodas and thirty two fanams and Three hundred and forty Six Pagodas and Eighteen fanams in the said Bonds for his fees the Appellant did say was a real and good Payment and Consideration And this Respondent admits that the Appellant did set forth other matters and things nearly to the purport mentioned in his said Petition all which Matters and things as set forth by the Appellant this Respondent with Submission says are evasive vague untrue and insufficient calculated as the only Alternative to answer the most unjust purposes and aim at frustrating a Legal and well grounded process instituted for the recovery of a just and equitable demand — And this Respondent admits that the said Charles Bromley did file a Replication to the said answer of the Appellant and amongst other Things did insist that the Appellant stood indebted unto him in the said Sum of One thousand Eight hundred and fifty Star Pagodas as the Amount of his Agency for his Trouble care and Attention in Assisting Aiding and Advising the Appellant in Arranging Adjusting and settling his Accounts with Nathaniel Barlow Administrator to the Estate and Effects of the late Dawsonne Drake also for the Cares and Trouble the said Charles Bromley took and experienced in the Transfers and purchases of so much of the Estate and Effects of the said Dawsonne Drake as the said Charles Bromley and the said Nathaniel Barlow and his Attornies and Representatives could agree upon being business that did not in any shape come before any Court all which Negotiations and Transactions occupied the greater part of the time and engaged the particular

Attention

attention of the said Charles Bromley for the space of ten Months — And this Respondent further says that the said Replication wholly and in the most clear and distinct manner confuting every Assertion contained in the Appellants said Answer did demonstrate that it was entirely owing to the political conduct of the said Charles Bromley with the Administrator of the Estate of the said Dawsonne Drake and his Representatives and the great weight his arguments had in their decisions that the different objects of the Appellants pursuit were obtained. The first Instance in which the said Charles Bromley exerted himself in favor of the Appellant as his Agent and friend involved a Question of considerable intricacy and equal importance — It was whether the Administrator of the said Dawsonne Drake should pay the Appellant five per Cent the Rate of Interest specified in the Bond under which he claimed or whether he should allow him Twelve per Cent the highest legal Interest in India and as no Authority in any of the Law Reports could be produced where an Administrator had been Adjudged to Pay out of the Assets of the deceased a Large or higher interest then specified in the Terms of Agreement entered into by the deceased in his Life time it required every Address the said Charles Bromley was Master of to obtain the desired Success — And this Respondent further saith that the said Charles Bromley in his said Replication in Reply to the particular Passages of the Appellants said Answer and as a justification of his proceedings towards him did also set forth

and

and declare that on or about the Twenty Sixth day of May in the year of our Lord one thousand seven hundred and Eighty three the Appellant did apply to him for the purpose of retaining him against an intended prosecution by Charles Darke of Madras Merchant for usury enclosing him at the same time Letters from the said Charles Darke on the Subject that to prevent such prosecution taking place and to bring about an Amicable Settlement between the parties caused infinite trouble Vexation and uneasiness to the said Charles Bromley but that it was at last happily effected to the great joy and Satisfaction of the Appellant who was exceedingly Apprehensive that he should lose the whole of the Original Debt due to him from the said Charles Darke from the Arrangement made by the said Charles Bromley the said Charles Darke paid the fees of the Suit giving his Note of hand for the Amount and so pleasing was the whole transaction to the Appellant that he promised and undertook Voluntarily to pay the said Charles Bromley a Commission of Five per Cent — And this Respondent further saith that the said Replication did also set forth that the Business between the Appellant and the said Charles Darke being settled the Appellant did at the Recommendation of Messieurs Pelang and De Fries apply to the said Charles Bromley on the Tenth day of July one thousand Seven hundred and Eighty three to settle his demand on the estate of the Late Dawsonne Drake and in Consequence thereof the said Charles Bromley did peruse such of his Papers as the Appellant laid before him and gave him his opinion to the

best

Best of his Judgement and abilities which the Appellant communicated to his friends who acceded thereto. that the said Charles Bromley had many meetings with Messieurs Johnson and Walker the attornies to Nathaniel Barlow the administrator to the Estate of the said Dawsonne Drake in order to prevail on them to allow the Appellant Twelve perbent Interest instead of five perbent the Interest specified in the Bond and in which Business he succeeded to the Satisfaction of the Appellant who could not have carried so desirable a Point by any other means the Appellant then immediately insisted on a Bill of Complaint being filed against the said Nathaniel Barlow for the Ballance of principal and Interest due on the Bond in Question but which the said Charles Bromley declined for many reasons given to the Appellant and his Friends as such a proceedure would have been very prejudicial to the Appellants Interest more particularly as there were specially Creditors unsatisfied and particularly a Decree of this Honble Court for thirty thousand Pagodas against the Estate then existing these considerations being submitted to the Defendant and his friends it was deemed most prudent to drop all Idea of prosecution and endeavour by private Negotiation to get from the Administrator or his attornies what could be obtained whether in Cash purchases or Transfers and for the Surplus if any to enforce the payment by Law whereupon the said Charles Bromley took down in writing the following instructions from the Appellant — " The Administrator Mr. Barlow or his attorneys being Messieurs Walker and Johnson are to make up Major Alexanders Bond from the late Mr. Drake at Twelve perbent to commence from the last payment of Interest in England the Bond is in Pagodas to get what ready money we can from the Administrators or the Attornies and for the Ballance a Security either in Bonds or Bonds Six Months Credit not exceeding " — And this Respondent further says that the said Replication did then state that the Appellant having thus left Matters to the discretion of the said Charles Bromley he addressed himself to the said Messieurs Johnson and Walker as the attornies and Representatives of the aforementioned Nath.l Barlow as the Administrator to the Estate and effects of the aforesaid Dawsonne Drake when a meeting was held and several propositions for payment and securing such payment were made (and sundry Schedules of the late Dawsonne Drakes Estate and effects produced and left with the said Charles Bromley for his perusal that on the Twelfth of July in the Year One thousand Seven hundred and Eighty three he the said Charles Bromley received an Offer from the said Attornies of the several Articles comprised in the List Marked B. Annexed to the said Replication Amounting to Forty Seven thousand Eight hundred and Seventeen Pag.s and on a Consideration between the said Charles Bromley and the Appellant it was Agreed to make an Offer on the Appellants Account and in consequence thereof an Address was

was written under date the Fourteenth July one thousand seven hundred and Eighty three enclosing a List of the Articles with the Prises the said Charles Bromley set against them a Copy whereof Marked C is annexed to the said Replication and which plainly shews that the Negociation was entirely carried on by and between the said Charles Bromley and the Attornies of the said Administrator and this Respondent saith that the said Replication did also set forth that after Numberless meetings held at the House of the said Charles Bromley with the said Attornies until the Nineteenth day of July one thousand seven hundred & Eighty three he received a Note Marked D. annexed to the said Replication from the before mentioned Peter Walker enclosing a List of Sundry Articles valued at Forty thousand and Eight hundred Pagodas which occasioned several meetings between the said Charles Bromley and the Appellant and the said Chas Bromley drew out a List of the several Articles the Appellant wished to possess and affixed the prices to each of them and the Appellant Approving thereof a Letter under date the Twenty first of the said Month of July enclosing such List was sent to the said Peter Walker a Copy whereof Marked E. is annexed to the said Replication to which address the Appellant received an Answer enclosing a Letter to James Johnson on the Subject a copy of which Marked F is annexed to the said Replication. that several personal Attendances then took place and that much altercation ensued until the

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Twenty-

Twenty second day of the said Month of July when the said Charles Bromley addressed the said Peter Walker to the purport as set forth in the Copy of such address Marked G and annexed to the said Replication which not meeting with immediate compliance and some discussions of a disagreeable nature between the said Peter Walker and the Appellant taking place the said Charles Bromley was under the necessity of writing the said Attornies Letters in a formal way at the desire of the Appellant in order to induce them to facilitate the Settlement of his accounts as appears by a Copy of the said Letter Marked H. annexed to the said Replication that no Answer was received until the first day of August when the said Charles Bromley wrote to the before named James Johnson and received an Answer from him the same day a Copy of which marked I. is annexed to the said Replication. but as the said James Johnson did not fulfil his promise therein contained the said Charles Bromley wrote a Note to him to the Purport set forth on the Copy marked K. and annexed to the said Replication. This Respondent further saith that the said Replication did also shew that with much difficulty and on promise of Accepting some Transfers and Assignments of the Assets of the said Dawsonne Drakes Estate an assignment of Doctor Storys Bonds was granted and a Receipt endorsed upon the back of Mr. Drakes Bond as so much Cash received which once more opened the Negociation with the Attornies to the said Administrator that deeming it advisable to secure a further part of the Effects

of

of the said Dawsonne Drake he proposed on the behalf and with the consent of the said Appellant to accept of an Assignmt of what Anthonio De Souza owed to the Estate of the said Dawsonne Drake being a declared Ballance upon a Specialty with a Security of quadruple the amount in the Nabobs new consolidated Bonds which was agreed to and the said Charles Bromley took the Assignment conditionally for so much as might be recovered the Expences of the Law Suit to be borne by the Estate in the event of an Opposition from the said Antonio De Souza and the said Charles Bromley then Addressed the said Messieurs Johnson and Walker to the purport set forth in the Copy of the Address marked L and Annexed to the said Replication that on the Eighteenth day of the said Month of Augt he received a Letter from the Appellant requiring the Assignment of the said Antonio De Souzas Bond with the Security and an Order to put him in Court to enforce the Payment: that on the Twentieth of the said Month of August Bills of exchange for One thousand and Seventy four Pagodas and three fanams endorsed by the said Messieurs Johnson and Walker were obtained and carried to the Credit of the said Dawsonne Drake. That many Altercations arose between the Appellant and the Attornies of the said Administrator and many Notes were written by the said Charles Bromley upon the Occasion and the parties by his interposition brought to an Amicable Accommodation when the Offer of Bills of exchange originally offered by the said Attornies at Seven Thousand and Five hundred Pagodas

were

were now advantageously settled at Eleven thousand Two hundred and fifty Pagodas and the Quantity of Fillagree Work proposed and Accepted submitted to the Appraisement of some Armenian Merchants who reduced the price to Four thousand Two hundred Pagodas and the price of the Luze house and Gardens at Nine thousand Seven hundred and fifty Pagodas - that these matters being thus settled by the said Charles Bromley the Appellant on the fourth day of October contrary to the Opinion of the said Charles Bromley insisted that he should in his Character as an attorney at Law attach the Attornies of the said Administrator and Address them in writing to the purport set forth in a Copy of a Letter marked N and Annexed to the said Replication that previous thereto the said Attornies did send to the Office of the said Charles Bromley a regular open Account Current between the Appellant and the Estate of the said Dawsonne Drake which Actually specified the Allowance of Twelve per Cent per Annum the first time the same had been committed to writing by the said Attornies a Copy of which marked O. is annexed to the said Replication that from the date of the Last Note to the Fourteenth day of the said Month of October a daily Negociation in writing and by personal Attendencies with the said attornies took place and a Letter was written to them by the said Charles Bromley having had Reason to suppose he should have settled the whole of the Appellants business Copy of which Letter Marked P. is annexed to the Replication that from such time to the Tenth of November a continual scene

of

of altercation was exhibited particularly respecting the Deed of
assignment as drawn out by the said Charles Bromley of the Title
Deeds of the said Dawsonne Drakes house and Gardens at the
Luz the Deed of assignment expressing a Warranty of a clear
Title and the said attornies therefore refused to execute As
they could not warrant the same however from an indefatiga-
ble investigation into such Title the said Charles Bromley found
himself very safe in advising the Appellant to accept the
assignment in the Common form provided he could procure the
premisses for the sum of Eight thousand Pagodas and which
the Appellant had before accepted for Nine thousand Seven
hundred and fifty Pagodas he approved of this Suggestion &
the said Charles Bromley offered the said Sum of Eight
thousand Pagodas but soon afterwards the Appellant went
privately to frighten the aforesaid Peter Walker with a
view of inducing him to give the premisses at a cheaper rate
and by such Conduct had nearly distroyed the Negociation
which with much difficulty was once more set on foot
by the said Charles Bromley and the Appellant Sending his
Error settled with the Dubash of the said Peter Walker
and took possession of the Premisses under every incumbrance
as appear by a Copy of his Address Marked Q/ and
annexed to the said Replication That an Altercation again
taking place between the said Attornies and the Appellant
who

who became outrageous and violent the said Charles Bromley a
was obliged to interpose by which means peace was again restored
and the assignments of the Title Deeds and other Writings executed
by the said James Johnson and Peter Walker when the
Appellant declared the Bargain to be an excellent one as
Mr. Miguel Johannes had offered him the same Sum of
Money as he had given and which the said Charles Bromley
advised him to accept without delay but which the Appellant
rejected saying - he excepted Eleven thousand and Five
hundred Pagodas that about this period the said James Johnson
departed this Life and John Menzies Esquire now Sir John
Menzies Baronet was joined in his stead with the said Peter
Walker as attorney to the Administrator to the Estate of the said
Dawsonne Drake and on the Sixteenth day of February One
thousand Seven hundred and Eighty four the said Charles
Bromley did address them at the instance of the Appellant
respecting the Ballance due to him from the said Estate informing
them he had been instructed to prepare a Bill of Complaint
to enforce them to Comply and this was the first time the said
Charles Bromley was retained as an Attorney at Law to
prosecute the Estate of the said Dawsonne Drake That
on the Twenty first of the said Month of February he received
an answer from the said John Menzies and Peter Walker
refusing to accede to the Request of the Sixteenth but were
willing to refer the difference of Interest which had been
before allowed but as the Appellant had then received above

Nine-

Nine per cent Interest it appeared to the said Charles Bromley very absurd to allow him by submitting to Arbitration to risk what he had obtained the said Charles Bromley therefore wrote them in reply fully and especially on the Subject and thus concluded the Business of the private Agency in which Volums of Letters had been written exclusive of those herein mentioned and not a Single Pagoda was ever paid to the said Charles Bromley for all the painful solicitude he constantly felt and the trouble and Anxiety he incessantly experienced in One of the most complex intricate and disagreable Transactions that ever was conducted — and this Respondent further saith that the said Replication further sets forth that the said Charles Bromley having traced out the proceedings by him had in his private Capacity for and on Account of the Estate of the said Dawsonne Drake deceased prayed leave to enter into the Merits of the Appellants Answer as to the particulars of the Articles which he said he had himself Negociated that he did insist he was employed by the Appellant not only as his Agent to Negociate with the said Attornies to the said Administrator but as his Attorney at Law in those matters that unavoidably if otherwise were prosecuted in Court and also as a Notary Public that the entering into an Agreement with the said Charles Bromley to allow him Commission instead of Fees was very beneficial and Advantagious to the Appellant for had he retained the said Charles Bromley to have immediately preferred a Suit against the Estate of the said

Dawsonne.

Dawsonne Drake it would have been productive of bringing all the Creditors upon the Administrator it would also have been the means of shewing the Administrator it was his duty to have pleaded the Judgements obtained in the Life time of the deceased and so have obliged him and his Attornies to have pleaded as the Law directs whereas the mode advised by the said Charles Bromley Adopted by the Appellant and Approved of by his friends was deemed and looked upon by every Person as most for the Appellants Interest for in fact what remained of the said Dawsonne Drake's Estate upon the Arrival of the Appellant in India consisted only of Houses and Gardens with a Quantity of Bonds of his Highness the Nabob then in no estimation or Value of Course there remained no choice: that the said Charles Bromley did not involve the Appellant in any difficulties by his Advise and Opinion but that if the Appellant found himself imbarrassed such embarrassment originated in his own intemperate conduct which often occasioned much Additional trouble and uneasiness to the said Charles Bromley that to shew the falacy of the Assertion of the Appellant respecting his employing the said Charles Bromley as his Attorney at Law in arranging and settling his affairs if that had been the Case a Bill of Cost for Business done out of Court must have amounted to about Three or Four thousand Pagodas which if the Appellant had presented for Payment the Defendant would immediately have pleaded that the said Charles Bromley was employed by him as his Agent only and that he had agreed to allow him a Commission of five per cent in Lieu of his

trouble

Trouble and for his advise and assistance and have proved the same by saying he had in conformity to such Agreement paid the said Charles Bromley a Commission on the above named Charles Darke's Debts. that the Appellant did consult his Friends and it was found more to his Advantage to allow Commission thereby excluding the said Charles Bromley from making any charges as a Solicitor or attorney at Law and this Respt. further says that the said Replication did also state that with respect to the Suit instituted against the before mentioned Thomas Davis the said Charles Bromley having fortunately extricated the Appellant from the predicament in which he stood with the said Charles Darke the Appellant undertook of his own free will to promise the said Charles Bromley a Commission of Five perbent on the Sum as a recompense for the extraordinary trouble he experienced and the Address he made use of in doing away the usurious prosecution intended by the said Charles Darke Apprehensive that it would have gone against him in the event of a litigation as he declared the whole a matter of fact that having procured an Assignment of the said Thomas Davis's Bond and also a Bond of Iwenty Thousand Pagodas executed by Umdul ul Omrah Behawder in full satisfaction of the differences subsisting between the Appellant and the said Charles Darke the Appellant preferred a Bill of Complaint and obtained a Decree against the said Thomas Davis who appealed therefrom alarmed at the Idea of an

Execution

Execution issuing against his Effects. that some time afterwards the said Thomas Davis by means of the said Charles Bromley recovered from the Estate of the said Dawsonne Drake the Title Deeds of his House and Gardens on Choultry Plain and which he offered as a further Security upon certain conditions the same was accepted after the Deeds had been examined. the disputes were settled by the said Charles Bromley in the following manner — The Decree of the Honble the Mayors Court to stand — against the said Thomas Davis and the Title deeds to be — Assigned over as the Security for the Payment of the Debt. being Star Pagodas Twelve Thousand Eight hundred and Sixty Six the whole to be paid in three years with an interest of Twelve perbent per Annum payable Annually for which growing Interest three Bonds were given payable in One two and three Years and in default of any part of the Agreement the Decree of Court to be enforced by a Warrant of Execution — that as to the charge which the Appellant alledges in his Answer that the said Charles Bromley detained the Title Deeds until he had paid him the Commission of five perbent upon the Transfer of Thomas Davis's Bond from Charles Darke the said Charles Bromley denied the whole and that so far from being in the possession of the Title Deeds the said Thomas Davis after the said Charles Bromley had once perused them and given his opinion in writing as to the Validity of the Title never would entrust them either in his hands or in the hands

of

of the Appellant but deposited them in the hands of a Gentleman until the Mortgage Deeds were determined on and concluded so that the Charge of the Appellant is highly unjust and further that the said Charles Bromley never charged Commission on the Sum arising from the Transaction nor did he ever entertain an Idea of so doing the matter being a Business of Court and this Respondent further says that the said Replication does also set forth and shew on the Assertion of the Appellant that the Interest was the last Article settled. that it would appear from the Account Current Marked. O. annexed to the said Replication and from the Correspondence carried on between the said Charles Bromley and the said Attornies James Johnson and Peter Walker that the basis of the adjustment with them was the allowance of Twelve perbent per Annum that having with great Assiduity and indestry procured from them the principal Sum due upon the Aforementioned Bond of the said Dawsonne Drake and also a further Sum of Money as Interest equal to Nine perbent annum there remained only the difference of Interest as the Balance of the Account and for which the Appellant insisted a Bill of Complaint should be drawn out and pushed with the utmost rigor against the administrator which was accordingly done some time in the Month of February One thousand Seven hundred and Eighty four much against the opinion of the said Charles Bromley who used his endeavors to an accommodation and which was Actually upon the Carpet a new arrangement took place as to the Security of the payment

and

and certain advantagious terms were offered and accepted by the Appellant with this Difference that as he had accepted the Debt of the before named Antonio DeSouza conditionally that he should accept the same as so much ready Cash received and give a receipt for the same which was done and a writing was drawn up and executed by all parties. but some unaccountable Idea having suggested it self to the Appellant and influenced by the false opinion of others a second Suit was insisted on against the Attornies and filed accordingly upon the special Circumstances of the Case and which had nearly overset the whole of the Negociation that from such period much altercation took place and continued in Agitation until the Arrival of the above named Nathaniel Barlow from England who was applied to in order to put an end to further proceedings and prevent the Suit coming to a hearing and that to frighten him into a compliance a special Bill was drawn out and ready to be filed at the instance of the Appellant as Appears by his own Letters and Mr. Barlows Correspondence and which brought the said Nathaniel Barlow to a final Settlement to the great satisfaction of the Defendant who appeared to be perfectly satisfied until some one persuaded him to contrary Sentiments all which several matters cost the Appellant nothing as the Administrator had included all charges that had arisen thereon in the Bond given to the Appellant with his Assent. in order to facilitate the Accommodation — and this Respondent saith that the said Replication also states that the Appellant must have been convinced he was deviating from justice and

the.

the real matter of fact when he asserted that commencing an Action in the first stage of the Business against the Estate of the said Dawsonne Drake would have procured him a more substantial real and early Liquidation than he met with because at the time the Appellant arrived in India all the moveables Monies Jewels and Effects belonging to the said Estate had been disposed of and that Nothing remained but a few specialties some Houses and Gardens which no one could be found to purchase it being in the Time of war and nothing but the laborious researches of the said Charles Bromley into the Books of the said Dawsonne Drake could have led the Appellant into the Receipt of so much ready Cash and effects and that so in preference to several specially Creditors of the said Dawsonne Drake who would have been happy to have settled their several Claims in the manner the Appellant has done that had the Appellant commenced his Suit on his first arrival it would have alarmed the Creditors and obliged them to have resorted to the Administrator and so have prevented any undue preference taking place to their prejudice. That a Bill of Complaint was prepared by Mr. Popham for Major Wolley against the Estate and the above Named James Johnson was ready in Court both as Attorney at Law and as Attorney to the Administrator to confess the Debt. To oppose which both the above named Peter Walker and the Appellant desired the said Charles Bromley to consider himself as retained. — and this Respondent further saith that the said Application did also state Observations on the several Articles specially Noticed in the Appellants answer.

(and

And amply and distinctly Demonstrate the injustice of his charges against the said Charles Bromley overthrow the Arguments the Appellant had made use of to establish his curious Doctrines and fully and most satisfactorily shew that the Advantages derived by the Appellant from the Estate of the said Dawsonne Drake if not wholley was in a very great measure owing to the Address the influence and the indefatigable exertions of the said Charles Bromley. This Respondent further saith It is true as the Appellant has said that Issue did Join and Rules did pass for the examination of Witnesses in the Cause abovementioned and that Witnesses were Accordingly examined on the part of the Appellant and of the said Charles Bromley that before Publication did pass the said Charles Bromley departed this Life and that the said Suit was revived by this Respondent as Widow and Executrix to the said Charles Bromley - and this Respondent also admits that the said Cause came on to be heard in the Hon^ble the Mayors Court on the Twenty Eighth day of June One thousand Seven hundred and Eighty Eight and that the said Hon^ble Court were pleased to order and Decree and did accordingly order and Decree that the Appellant should pay into this Respondent as Executrix as aforesaid the Sum of five hundred Pagodas with all Costs of Suit which said Order and Decree was so granted as aforesaid after a full and minute investigation in to the several Matters urged on the part of the Appellant and on that of this Respondent at which time it was evident that the Appellant had benefited in the highest Degree from the private Services of the said Cha^s Bromley & that

had

had the Valuation of such services been left to Arbitration the whole of the Sum sued for if not much more would in all probability have been awarded to the said Charles Bromley therefore this Respondent cannot admit that the Appellant was in the least aggrieved by the Order and Decree of the Honble the Mayors Court as aforesaid for that the action on which the said Decree arose was grounded upon just and legal Principles and supported by all that evidence necessary to give it the strength which Equity demands and the Law requires - With respect to the reasons produced by the Appellant to give weight to his assertions on the subject of the injury he pretends to have sustained by the said Decree of the Honble the Mayors Court this Respondent says that they are Vague inconclusive and erroneous and insufficient. a Multiplication of words meant more for the purpose of deluding than that of carrying a Conviction - and in answer to so much thereof as is Necessary for this Respondent particularly to Answer unto this Respondent says it is fully set forth in the Replication of the said Charles Bromley and supported by the affidavits of the aforenamed Thomas Davis and Charles Darke and never once contradicted by the Appellant that the said Charles Bromley did perform the most important extra Official Services for the Appellant — such as saving him from a prosecution for usury threatned by the said Charles Darke and at which throughly sensible of the impropriety of his conduct in the Transaction alluded to. he was greatly alarmed - Again the said Charles Bromley

was

was instrumental in preventing the before named Thomas Davis from Appealing a Decree of the Honble the Mayors Court obtained against him in favor of the Appellant and procuring from him Security to the full Amount of the said Decree which is proved by the affidavits of the said Thomas Davis and the said Charles Darke. Then again obtaining for him an interest of Twelve instead of five per cent making a Difference of upwards of Fifteen thousand Pagodas; and procuring the Lize House for him for Eight thousand Pagodas after he had agreed to receive it for Nine thousand Seven hundred and fifty Pags. which matters amongst a Variety of others already stated by this Respondent and Corroborated by evidence are sufficient to shew that the said Charles Bromley was employed by the Appellant as his Agent and that the said Charles Bromley in that Capacity did procure for the Appellant the greatest part of the Money and to a very considerable Amount that he carried with him from this Country and which could not have been procured by coersive measures and here it may be proper to give a part of the deposition of the said Charles Darke who upon his Oath says he was informed both by the said Charles Bromley was employed by the Appellant to settle all his concerns with the Estates of the said Dawsonne Drake and that he had often seen the said Charles Bromley with the Representatives of the said Estate settling and adjusting between them (and the Appellant not are the Appellants own

instructions.

instructions less to the point for he is there seen tracing out the rude rough and Arbitrary Lines for an Amicable Accommodation specifying "
"that the said Charles Bromley was to get what money he could
"from the aforesaid Administrator and for the Ballance a Security
"in Houses or Bonds - with limitted Credit of six Months -"
and this the Appellant has no where attempted to deny consequently
if was out of his power so to do — and he is under the Necessety
of confessing in one part of his Petition to this Honble Court that
he allowed a Commission of five per Cent to the said Charles
Bromley for transacting one particular part of his Business
because unfortunately for him the above named Charles Darke
was present at the transaction but then he says he did so from
Compulsion for that the said Charles Bromley had his Papers
in his Possession and then to shew such Compulsion he brings
forward a part of the said Charles Darkes deposition purporting
that the Appellant after convering with the said Charles Bromley
on the five per Cent Commission went away seemingly dissatisfied
but that he returned again and paid the five per Cent. a
Circumstance that instead of aiding the Appellants purposes
gives them a fatal stock - No one is fonder of money than
the Appellant to part with it was what he ever dreaded and
therefore when the said Charles Bromley made the demand of
Five per Cent Commission he left him dissatisfied but upon
second thoughts and observing the old Proverb of two Evils
choose the least he returned back and paid the five per Ct.
Agency to avoid a Lawers Bill which might have been

double —

Double the Sum — and as to the Papers to which he has reference and which he has in another place Sworn positively were in the Lands of the said Charles Bromley were not in the Possession of the said Charles Bromley and to this the said Thomas Davis has solemnly deposed The Appellant states his Answer as given upon Oath and speaks of Evidence in support of what he had Advanced - But by a Comparison between the Letters exhibited with the Application of the said Charles Bromley and tracing Circumstances to their fountain head it will be found that the Appellant has some how and only to be Accounted for by himself made many mistakes in his Answer and that the Evidence he boasts so much of have not deposed any thing — Material in his favor on the other hand the Evidence produced and examined on the part of the said Charles Bromley have given Testimony so as to Validate every thing of importance that he had setforth as far as was Necessary for them so to do — The Declaration of the Appellant has thought proper to make that he settled and transacted all Matters himself is truely ridiculous every body who knows him to be extremely illeterate and wholly unequal to the task of settling entricate Accounts and that he is so ungovernable in his disposition as frequently for Trifles to burst into the most Violent passions that are often detrimental to his interest and some times involve him in difficulties these Matters can be easily proven and partly by his own Letters

to -

to the said Charles Bromley under such Circumstances he must have made a prelty figure in Negociations, as to the Evedence of the above Named Peter Walker This Respondent saith it was never denied that the said Charles Bromley made Application to him in his professional Capacity but on the Contrary Steadily Admitted and the reasons given for such Applications not much to the Credit of the Appellant but the said Peter Walkers Evedence tho the fullest in favor of the Appellant that has been brought forward does not go to confute the Asseverations of the said Charles Bromley for in that Head is totally silent nor was it ever said that the Appellant did not Apply to the said Peter Walker on the Busoness then in Question and full of Suspecion at all times it was not to be supposed he would remain free from Alarms when all he held dear was in other hands when the darling Idol of his Soul was in a precacious Situation — and therefore it is to be presumed that he did often importune the said Peter Walker and this Respondent says that trifling as the Evedence of the said Peter Walker may be as to the Points the Appellant wishes to establish the Evedence that follows is yet more insignificant the very shadow of a Shade Velaydem Moodily an who the Appellant says has testified the Receipt of many Large Sums of Money by the deceased on account of

of a demand on the Estate of the said Dawsonne Drake and the Suits and Actions brought Against the before Named Administra=tor. does not in any part of his deposition offer a Word tending to invalidate any part of the Charges of the said Charles Bromley and it may be found on a Reference to the deposition of the said Velaydem Moodily an he never once avers that the said Charles Bromley Received large Sums of money from the Appellant but that as may be seen in his Answer to the Seventh Interrogatory the said Charles Bromley only frequently Applied to the Appellant for money but does not say such Requests were ever complied with nor does he say that the Applications were made on the Appellant Sole Account on Account of a demand on the Estate of the said Dawsonne Drake from all which Circumstances Matters and things This Respondent says and humbly insists that the Appellant is in no wise aggrieved by the decree of the Honble the Mayors Court, but that he has attempted to impose on the Judgement of this Honble Court by evasions unjust Statements and the most glaring Dabbles in Order to deprive This Respondent as Executrix as aforesaid of the Debts justly due to her which was earned by great labour and the constant attention of the said Charles Bromley and which said debts forms a great part of the little all left her for the support

support of herself and a Large family This Respondent having thus as she humbly conceives clearly shewn that the said Charles Bromley did in his Life time Act as the Agent to as well as the Attorney at Law of the Appellant and that in such Capacity he gained by his Address Local knowledge and indefatigable Zeal industry and Preseverance and which could not have been gained by any other means many thousand Pounds for the sole use and entire advantage of the Appellant that as Agent the Appellant promised him a Commission of five per Cent and did actually pay the same in One Instance as has been already fully set forth that the Conduct of the Appellant has been and is ungenerous and unjust endeavouring by flying from Subterfuge to Subterfuge to avoid the payment of what he will knows is a just Debt that therefore this Respondent humbly hopes this Honble Court will not find any Cause to Reverse the said Decree of the said Honble the Mayors Court but on the Contrary grant such further and other Relief as this Honble Court in its Wisdom and justice may seem meet ——

/Signed/ J. Stuart Hall

Solicitor for the Respondent.

Ea.

Court.

Court of Appeals
at
Madraspatnam

Saturday the 18th April
Anno Domini 1789 —

Between Henry Alexander of Fort St. George Esqr heretofore a Major in the Service of his Highness the Nabob of the Carnatick Appellant and Elizabeth Bromley of Fort St. George Widow and Executrix of Charles Bromley 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 Saturday the 28th day of June Anno Domini 1788. 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 Petn be hence dismissed with Costs. ——

By the Court

/Signed/ Chas N. White Clk

To

To the Honble Sir Archibald Campbell K.B.

President and Governor in Council of

Fort Saint George

Between Covoor Yacambarah Moodily and Mootiah Moodily of Madras Inhabitants Administrators to the estate and Effects of Covoor Vedenada Moodily Deceased Complainants and Benjamin Sulivan of Fort Saint George Administrator of the Estate and Effects of Henry Benjamin Sulivan alias Henry Boyle Sulivan Deceased Defendant

The Petition and Appeal of Benjamin Sulivan as Administrator as aforesaid.

That the said Covoor Yacambarah Moodily and Covoor Mootiah Moodily as Administrators to the Estate of Covoor Vedenada Moodily deceased did on the Twenty fourth day of July file their Bill of Revivor against your Petitioner as Administrator of the Estate and Effects of Henry Benjamin Sulivan alias Henry Boyle Sulivan deceased stating that the said Covoor Vedenada Moodily did in his Lifetime exhibit a Bill of Complaint in the said Mayors Court against the said Henry Benjamin Sulivan alias Henry Boyle Sulivan deceased

Filed in my office the 4th August 1788
Charles B. White Clk

then a Captain in the Service of his Highness the Nabob of the Carnatic for the Recovery of the Sum of Nine hundred Star Pagodas Making in Sterling Money of Great Britain at the Rate of Eight Shillings for every Pagoda the Sum of Three hundred Sixty Pounds Whereas your Petitioner sheweth the said Bill of filed by the said Covoor Vedena= =da Moodily in his Lifetime against the said Henry Boyle Sulivan was so filed in the Name of Henry Benjamin Sulivan only and not Henry Boyle Sulivan as the said Administrators of the said Covoor Vedena Moodily by their said Bill of Revivor seem to imply and further Stating that the said Henry Benjamin Sulivan did appear thereto without making Objections at the time of his name and Title not being properly called and Described and after the usual Rules for putting in an Answer to the said Bill of Complaint so filed by the said Covoor Vedenada Moodily had expired did likewise suffer a Decree to pass against him the said Henry Benjamin Sulivan alias Henry Boyle Sulivan in the said Mayors Court for the said Sum Sued for with Interest for the same and Costs of Suit from which said Decree your Petitioner admits that the said Boyle Sulivan and not the said Henry Benjamin Sulivan as the said Covoor Yacam= =baram Moodily and Mootiah Moodily as Administrators as aforesaid have stated did appeal to the President and Council of Fort St. George Alledging amongst other things that being upon Service it was not in the Power of him the said Henry Boyle Sulivan to give Instructions to his Attorney to plead

Plead a Misnomer or any other Plea or to file an answer to the said Bill of the said Covoor Videnada Moodily and therefore that he the said Henry Boyle Sulivan did Consider the said Order and Decree of the Mayors Court as injurious and therefore prayed that the said Decree might be set aside and that a Weeks time might be granted to him the said Henry Boyle Sulivan in the said Cause to enable him to plead or Answer thereto — your Petitioner further Sheweth that altho he admits the said Henry Boyle Sulivan did depart this life before the said Petition and Appeal came on to be heard yet he denies that the death of the said Henry Boyle Sulivan was the Cause of the said Suit abating as the said Covoor Yacambarah Moodily and Covoor Mootiah Moodily as Administrators as aforesaid have in their said Bill of Revivor untruely suggested for your Petitioner saith that the said Henry Boyle Sulivan survived the said Covoor Videnada Moodily by the space of several Months the said Covoor Videnada moodily having departed this life in the Year of our Lord One thousand seven hundred and Eighty two and the said Henry Boyle Sulivan on the first day of February which was in the year of our Lord One thousand Seven hundred and Eighty three your Petitioner further Sheweth that the said Covoor Yacambarah Moodily and Covoor Mootiah Moodily as Administrators as aforesaid did in and by their said Bill of Revivor pray that your Petitioner might shew cause why the said Bill should not stand revived against your Petitioner as Administrator to the Estate and Effects of the said Henry Benjamin Sulivan alias Henry Boyle Sulivan and your Petitioner saith that he did on the Twenty second day of July last — shew Cause accordingly and State such Reasons against the said Revival of the said Suit as your Petitioner conceived would have been sufficient together with the Law Authorities Adduced by your Petitioner in support thereof to induce the said Honble Mayors Court to dismiss the said Bill of Revivor Notwithstanding your Petitioner sheweth the said Honble the Mayors Court on the said Twenty second day of July last were pleased to Order that the said Suit should stand revived as appears by a Copy of the said Order hereto — annexed from which Order of the said Honble the Mayors Court so made and Passed as aforesaid your Petitioner Prays leave to Appeal to this Honble Court as for the following amongst other Reasons. ——

First — Because the Original Suit did not abate by the death of the said Henry Boyle Sulivan as is untruely suggested by the said Bill of Revivor the said Henry Boyle Sulivan having survived the said Covoor Videnada Moodily by several months.

Second — Because the now Plaintiffs as administrators of the estate and effects of the said Covoor Videnada Moodily did not as they were bound to do revive the said Suit against the said Henry Boyle Sulivan in the lifetime of him the said Henry Boyle Sulivan. ——

Thirdly

Thirdly - Because the sum sued for by the said Covoor Videnada Moodly was a simple Contract debt extinguishable by Operation of Law in six years after the same encurred. —

Fourthly Because the Decree passed in the said Suit had not the force validity or effect of a Decree the same being appealed from to this Honble Court by the said Henry Boyle Sulivan as partial and injurious. —

Fifthly - Because the said Decree untill affirmed by this Honble Court could operate only as evidence of the Claim of the said Covoor Videnada Moodly and give it an extention of six years longer. —

Because seven years and upwards have elapsed since the passing of the said Decree and the appeal therefrom.

For all which Reasons and such others as may be offered at the Hearing your Petitioner Prays that the said Order of the Honble the Mayors Court be Reversed with Costs. —

/Signed/ Charles Baker

Appellants Attorney -

Extract

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 22d. day of July Anno Domini 1788.

Present

Edward Garrow Esqr. Mayor
George Savage Vincentio Corbett &
Andrew Ross, Aldermen,

Covoor Yagambaram Moodelly and Covoor Mootiah Moodelly admtors of Covoor Vydenada Moodly Deceased

vers

Benjamin Sulivan admtor to the Estate and Effects of Henry Boyle Sulivan alias Henry Benjamin Sulivan.

Mr. Charles Baker attorney for the Defendant who appeared to the Bill of Revivor filed by the abovenamed Complainants in this Cause and prayed a time to shew Cause why the said Bill of Revivor should not stand Revived against the said Defendant as administrator to the said Henry Boyle Sulivan Acquaints the Court that the said Suit Never having been Revived in the life time of either of the Original Parties and the time of Six Years and more having Elapsed since the last Continuance of the Suit He therefore prays that the Suit may not stand Revived. Mr. Henry Du Pay Attorney for the Complainants Objects to the Motion made as irregular and prays that the Suit may Stand Revived. The Court having taken the same into Consideration Ordered that the Motion be Overruled and that the Suit do Stand Revived.

A true Extract
/Signed/
George Taylor
Deputy Regr.

To the Honble Sir Archibald Campbell K. B.

President and Governor in Council at Fort St. George

Between Covoor Yacambaram Modelly and Mootiah Modelly of Madras Inhabitants Administrators to the Estate and Effects of Covoor Vydenada Modelly Deceased Complainants and Benjamin Sulivan of Fort St. George Administrator of the Estate and Effects of Henry Benjamin Sulivan alias Henry Boyle Sulivan Deceased Defendant

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

The said Respondents say that they are Advised that the Causes of Appeal set forth by the said Appellant are very Vague and ineffectual to the purpose of setting aside the Order of the Mayors Court for the Reviving of the Decree in question against the said Appellant as Administrator of the Estate and Effects of Henry Benjamin Sulivan Alias Henry Boyle Sulivan —

Filed in my Office the 6. Sept. 1788
Charles Whites Clk

And in Answer to the first Objection these Respondents say that the said Deceased did depart this life some time

before

Before the said Covoor Vydenadah — But these Respondents say that it is very an important which of them died first.

To the Second — These Respondents say that the said Henry Benjamin Sulivan alias Henry Boyle Sulivan having Departed this life in the life time of the said Covoor Vydenadah these Respondents could not have Letters of Administration to his Estate and could not therefore Revive the said Suit against the said deceased Henry Benjamin Sulivan alias Henry Boyle Sulivan —

To the Third — These Respondents say that their Debt is not a Simple Contract Debt extinguishable by operation of Law in Six Years, but their said Debt is upon a Decree of the Mayors Court which is not extinguishable but by payment which said Decree they now seek to Revive.

To the Fourth — These Respondents say that altho' the said Decree had not any force or effect by the Same having been Appealed from by the Deceased Defendant in his lifetime — The said Decree is nevertheless a judgement of the Mayors Court and hopes it will remain so by the Affirmance thereof by this Honble Court. —

To the Fifth — These Respondents say that by the Affirmance of the said Decree by this Honble Court the same will be equally as if the Same had not been Appealed from. —

And these Respondents say that the said Covoor Vydenadah departed this Life some time on or about the Month of August One thousand Seven Hundred and Eighty

Eighty two And these Respondents did take out Letters of Administration to His Estate under date the Tenth day of October in the Same year as may appear by Reference being had to the Record of the Mayors Court. —

These Respondents therefore pray that the Order of the said Mayors Court for Reversing the said Cause may stand affirmed and the Appellants Petition be dismissed with Costs. —

[Signed] Henry Dundas
Atty for Respondents.

Court of Appeals

Court of Appeals
at
Madraspatnam } ps

Saturday the 18th April
Anno Domini 1789.

Between Benjamin Sulivan of Fort Saint George Esqre Administrator to the Estate and Effects of Henry Boyle Sulivan Alias Henry Benjamin Sulivan Deceased Appellant and Covoor Gacam= baram Moodily and Covoor Mootiah Moodily Administrators of Covoor Vydenada Moodily Deceased Respondts

This Cause coming on this day to be heard and Debated before this Court by the Attornies on both sides upon hearing the Petition of Appeal and Answer together with the Order of the Honble the Mayors Court given in this Cause on Tuesday the 22d. day of July Anno Domini 1788. 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 Honble the Mayors Court do stand Affirmed and that the Appellants Petition be hence Dismissed with Costs. —

Test [Signed] Chas. N. White
Clk

Tuesday

Tuesday the 12th May 1789.

Present

The Honble John Hollond

James Henry Casamajor and Edw.d John Hollond

To Charles White Esqr

Register of the Honble the Court of Appeals

Sir

I beg leave to present you with a Petition on behalf of Mr. Paul Benfield as it is of the highest importance to my Client to be speedily taken into consideration and is singular in its Nature I beg you will as soon as Possible inform the Honble Court that such Appeal has been Lodged in your Office. —

I am

Sir

Your most Obedient Servant

Benjamin Roebuck.

Attorney to Mr. Benfield. —

Fort Saint George
5th May 1789.

To the Honourable John Hollond Esqr

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

Fort Saint George.

In the Court of Appeals
at
Madraspatnam —

The Humble Petition of Benjamin Roebuck of Fort Saint George Gentleman

Sheweth

That your Petitioner is attorney to Paul Benfield late of Fort Saint George Esqr who did on the Fourth and Sixteenth days of August last appeal from certain orders of the Honble the Mayors Court to this Honble Court in a Cause entitled Paul Benfield by his attorney John Turing against Brigadier General Mathew Horne and in the Cross Cause Brigadier General Mathew Horne against Paul Benfield and John Turing. —

That agreeable to the Practice of the said Honble the Mayors Court on a Notification from the Clerk to this Honble Court of an Appeal having been lodged therein the Original Papers in the Suit on which such Appeal had arisen are invariably sent up as appears by the annexed Extract from the Records of the said Honble the Mayors Court to which your Petitioner begs leave to refer and that all Proceedings cease and are at an end until such Appeal be decided on which is a Matter of Course agreeable both to Reason -

Reason and to the Law because were Proceedings to go on an
Appeal might be absurd Superfluous and unnecessary. —

That Notwithstanding the said Appeals of
the said Paul Benfield and the practice of the said Honble
the Mayors Court the Papers in the Causes on which the said
Appeals are founded have not been sent up to this Honourable
Court nor have proceedings stalde in the said Honble the Mayors
Court so that the Grievances complained of in the said Appeals
of the said Paul Benfield have absolutely taken place before
those Appeals have come under the consideration of this Honble
Court a Matter contrary to the express Letter and spirit of
the Charter and a Violation of the Prerogative and an insult
to the dignity of this Honble Court a matter that strikes at
the root of the Rights of the Subjects wrests from him a
Privilege granted by an act of the Legislature and leaves him hopeless
of redress for any severities he may encounter in a litigious and
unjust Prosecution. —

That the Honourable the Mayors Court
have lately been pleased to order that on an Appeal being lodged
from any of their Orders or Decrees to this Honble Court Petns
should be file Praying that the several Papers in the respective
Causes might be sent up and that in consequence of such Order and
in conformity thereto Mr James Stuart Hall the attorney at Law
for Mr Benfield did on Friday Last the First Instant
file two Petitions in the Cause and Cross Cause hereinbefore alluded
to —

to Copies of which are hereunto Annexed and to which your
Petitioner Prays leave to refer but the said Honble Court instead of
granting the Prayer thereof were pleased to order that the Extract of
the Minutes of Court only should be sent up to this Honble Court.

That such are the Orders of the said
Honble the Mayors Court relative to the Conduct of their Officers
that no orders can be appealed from to this Honble Court unless
by Petition they may be enabled to obtain leave for that purpose a
line of Conduct which your Petitioner humbly Conceives is both
arbitrary and unjust and such as no Court of Law under the
British Constitution ever adopted before It is from those
Circumstances that your Petitioner is thus obliged to presume and
unprofessionably to come forward in an Appeal to the Wisdom
justice and Equity of this Honble Court — And thereupon your
Petitioner in behalf of his Constituent the said Paul Benfield
most humbly Prays. —

That this Honble Court will be pleased
to order up the said Original Papers in the said Causes of the said Paul
Benfield by his attorney John Turing against Brigadier General
Mathew Horne and the said Cross Cause Brigadier General
Mathew Horne against Paul Benfield and John Turing inorder
that the Merits of the Petitions of the said Paul Benfield may be
enquired into and he be enabled to derive that Benefit and
Advantage which in justice and in Equity he is well entitled to. —

Signed Benj.n Roebuck
Attorney for the Petitioner.

Extract

Extracts from the Minutes of a Court Held
at the Town Hall on Friday the 1st Day of May
Anno Dominí 1789.

Present

William Webb Esqre Mayor
James Call . Edward Garrow
George Savage . Vencentio Corbett.
Jos: DuPre Porcher. Andrew Ross
Robert Mitford and James Landon
Aldermen.

Paul Benfield by his attorney John Taylor
Vers
Mathew Horne.

Et. C. Contra.

Petition of Paul Benfield Read and filed. —

Petition of Paul Benfield Read and filed —

Ordered that the Register do send up Extracts from the Minutes of Court to which the aforegoing Petitions Refer as also the Affidavits of Mr Henry DuPuy —

A true Extract

James Taylor
Regr

Extract

Extracts from the Minutes of the Worshipful the Mayors Court at Fort St George

20th December 1779

Nagapah Chitty
Vers
Dawsonne Drake

Letter from the Clerk to the Court of Appeals to the Register Read setting forth that the Complainant in this Cause has this day lodged an Appeal from the Orders of this Court dated 7th Instant

Ordered that the several Papers in this Cause be sent to the Court of Appeals

21st March 1780

William Harrison and J. Leathom Executors of M. Tennet Deceased
Vers
J. C. Bathelomew

Letter from the Clerk to the Court of Appeals to the Register Read setting forth that the Complainant did this day Lodge an Appeal in the said Court from an Order of this Court of the 7th day of this Instant. —

Ordered that the several Papers in this Cause be sent to the Court of Appeals

30th May 1780

George Foster by his attorney
Chengleroy
Vers.
Chas Bromley

A Letter from the Clerk to the Court of Appeals to the Registers Read setting forth that the Defendant did on the 27th Instant Lodge an appeal from an Order of this Court of the 16th Instant.

Ordered that the several Papers in this Cause be sent to the Court of Appeals

15th June 1780

Abdul Rosahk by his attorney
T. A. Callander
Vers
Baubee Rangel

A Letter from the Clerk of the Clerk to the Court of Appeals to the Register Read setting forth that the Defendant did on the 27th Instant Lodge an appeal from an Order of this Court of the 16th Instant. —

Ordered.

Ordered that the several Papers in this Cause be sent to the Court of Appeals

14th January 1783.

William Petrie and Alex.r Brody Executors to John Aitchen Vers.s Stow Seteram Aauze

Letter from the Clerk to the Court of Appeals to the Register Read setting forth that the Complainant did on the 26th December last lodge an Appeal in the said Court from an Order of this Court dated 13th Instant.

Ordered that the Proceedings in this Cause be sent up to the Court of Appeals.

5th August 1789.

Covoor Yacambra Moodaly &c Covoor Mooleah Moodaly Administrator of Covoor Ryderadah Moodaly Deceased Vers.s Benjamin Sulivan Administrator of Henry Boyle Sulivan Alias Henry Benjamin Sulivan Dec.d

Letter from the Clerk to the Court of Appeals to the Register Read setting forth that the Defendant died on the 2d Instant lodge an Appeal in the said Court from an Order of this Court of the 22d Ultimo.

Ordered that the Proceedings be sent to the Court of Appeals.—

A true Extract.

/Signed/ Benjamin Roebuck

Attorney for the Petitioners.—

To the Hon.ble the Mayors Court at Madraspatnam

Between Paul Benfield by his attorney John Turing Complainant and Brigadier General Mathew Horne Defendant. Et. E Contra.—

The humble Petition of the above Named Paul Benfield—

Sheweth.

That a Bill of Complaint having been exhibited and filed in this Honourable Court against the above named Defendant for the Recovery of a certain Sum of Money due from him to the said John Turing under and by Vertue of the Assignment of a Bond executed to your Petitioner by the said Defendant.—

That shortly after the said Bill had been so exhibited and filed the said Defendant did pray Leave to examine Witnesses de bene esse. and that a Commission might issue for that purpose without filing an Affedavit stating the Necessity of such Measure such as that the Witnesses so to be examined were about to depart the Jurisdiction of this Hon.ble Court or that some or all of them were old and infirm.—

That this Honourable Court taking the said Prayer into consideration were pleased to order that the same should be complied with from which said Order your

Pet.r

Petitioners did appeal to the Wonble the Court of Appeals of —
Madraspatnam. —

Your Petitioner therefore humbly Prays this
Wonble Court will be pleased to order the
Register to send up the Original Papers
in the above Cause to the Wonble the Court
of Appeals to attend the hearing of
your Petitioners said Appeal and your
Petitioner, —

Shall ever Pray

/Signed/ P. Stuart Hall.
/A true Copy/
Attorney for the Petr.

Benjamin Roebuck.
Atty. for the Petitioner.

To

To the Wonble the Mayors Court at Madraspatnam

Between Paul Benfield by his
attorney John Turing Complainant and
Brigadier General Mathew Worne
Defendant Et. E. Contra. —

The Humble Petition of the above named
Paul Benfield. —

Sheweth

That a Bill of Complaint having been —
Exhibited and filed in this Wonble Court against the above named
Defendant by the above named John Turing for the Recovery of a
certain Sum of Money due from him to the said John
Turing under a Bond executed to your Petitioner by the said
Defendant and by your Petitioner assigned over to the said —
John Turing —

That the usual Rules having expired for
Answering the said Defendant did exhibit and file his
Answer to the said Bill of Complaint and at the same time did
also exhibit and file a Cross Bill against the said John
Turing and your Petitioner. —

That on or about the Twelfth day
of August last past the said John Turing did upon Affidavit
Pray leave to examine your Petitioner as a Witness in the
Above,

Above Cause and this Hon'ble Court taking the Same into their consideration were Pleased to Order Accordingly from which Order your Petitioner had Appealed to the Hon'ble the Court of Appeals.

Your Petitioner therefore Prays this Hon'ble Court will be pleased to Order the Register to send up the Original Papers in the above Cause to the Hon'ble the Court of Appeals to attend the hearing of your Petitioners said Appeal and your Petitioner shall ever Pray.

/Signed/ J. Stewart Hall.
Atty. for the Pet'r
/a true Copy/
B. Roebuck
Atty. for the Pet'r

To

Saturday

Saturday the 30th May 1789

Present

The Hon'ble John Hollond

James Henry Casamajor & Edw'd J. Hollond

To the Honorable Sir Archibald Campbell K.B.

President & Governor &c. in Council of

Fort St. George

In the Honorable
the Court of Appeals.

Between Latchemeboy
Daughter and Heiress of
Gungah Dut Davah Deceased
and surviving Executrix named
in his last will and Testament
Petitioner and Soobarow Gopaul-
row Respondent in the Cause
of Soobarow Gopaul Row of
Madras Soucar Complainant
and Ratnaboy of the same Place
Inhabitant Defendant.

The.

The humble Petition & Appeal of
the above named Respondent.

Sheweth

That your Petitioner did on the Twenty first Day of November which was in the year One thousand seven hundred and Eighty Six exhibit and file his Bill of Complaint in the Honorable the Mayor's Court at Madraspatnam against Ratnaboy the above named Defendant for the Sum of One thousand and five hundred Star Pagodas being the Amount of a certain Mortgage Bond given and granted by the said Defendant to your Petitioner to which the said Defendant did Appear and well knowing the said Debt to be by her justly due and owing did acknowledge the same and a Decree did Accordingly regularly pass against her and Execution issued thereon, and by Virtue of such Execution the Sheriff did seize upon the Mortgaged Premisses and advertized the same to be sold under and pursuant to the said writ of Execution on a certain Day your Petitioner further Prays leave to shew unto this Honourable Court that previous to the Day so appointed for the said Sale, to wit, on the Twenty first Day of December in the same year One Thousand Seven Hundred and Eighty six, a Petition was filed in the said Honourable the Mayor's Court by a

Filed in my Office the 2d March 5788.
Chs. N. White Clerk

Person

Person of the name of Latchemeboy who pretended she was Daughter and Heiress of Gunga Dut Davah deceased the Husband of the said Defendant Ratnaboy and surviving Executrix named in his last will and Testament, and did further in and by the said Petition State and say that her Father the said Gunga Dut Davah was in his Life time seized and possessed of the said Mortgage & Premises and Other Effects to a large Amount and being so possessed did some time in or about the Month of July which was in the Year One thousand seven Hundred and Eighty one, duly make and publish his last will and Testament, and thereby devised his whole Estate to his Three Daughters by a former Marriage, of which the said Latchemeboy was the eldest his then wife Ratnaboy the Defendant above named and a Daughter he had by her, to hold the same to them jointly for the Term of their natural Lives, with Benefit of Survivorship and under an express Declaration that the said House and Effects should not be disposed of or otherwise attended to any other use whatsoever, and having named his said Wife, the said defendant one of his Executrix and the said Latchemeboy the other and declared that they should Act jointly, and that no Act of the One should be valid without the other, he delivered the said Will into the Hands of

the

the said Ratnaboy the Defendant above named so &
duly executed, and departed this Life on the Evening
of the said Day your Petitioner further prays leave to
state that the said Latchemeboy did in her said Petition
make several improper and ill founded Asertions,
such as that the said Ratnaboy the above named &
Defendant had by the advice of some evil disposed
Persons Obtained a Choultry Bill of Sale of the said
House in her own Name after the Death of her said
Husband and unknown to the said Latchemeboy
and had entered into a Written Agreement with her
Brother to defraud the said Latchemeboy of her Right
to the said House, by granting a Mortgage of the same
to him with a Power to sue her in the Honble the
Mayor's Court, and that upon the same being put in
Suit she the said Ratnaboy would acknowledge the
Debt and suffer a Decree to pass Against her, by
which Means the House would be levied on and
Sold and the Purchase Money would be paid to her
allowing something to her said Brother for his Trouble,
the said Latchemeboy did also in her said Petition
say and Declare she would prove that no Consideration
on had been paid by your Petitioner to the said Rat-
-boy to entitle him to the Benifit of the said Decree, and
did by every possible Suggestion endeavour to prove

that the said Ratnaboy had not any right to mortgage
sell, or otherwise dispose of the said House, concluding
her said Petition by praying that the Sheriff might be
Ordered to take off his Seals from the said Mortgaged
Premises - And your Petitioner prays leave to shew that
the said Honble the Mayor's Court was pleased to &
restrain the Sheriff from selling the said Mortgaged
Premisses, and Rules were served on your Petitioner
to answer the said Petition, that Accordingly your &
Petitioner did on the Thirteenth Day of March which
was in the year One thousand seven Hundred and
Eighty seven file his Answer to the said Petition, to &
which said Answer your Petitioner sheweth the said
Latchemeboy did file Exceptions on the Tenth day of April
following, and on the Twenty ninth Day of May &
following your Petitioner filed his amended Answer to
the said Petition, in which he stated that he never had
entered into any Combination to deprive the said
Latchemeboy other just Right, that the said Ratnaboy
the above named Defendant being justly and &
truly indebted to him your Petitioner in the Sum of
Fifteen Hundred Pagodas with Interest did Mortgage
to him a certain House and Ground the absolute
and bona fide Property of the said Ratnaboy the
above named Defendant, to gether with the Choultry

Bill

Bill of Sale thereof a true Copy of which was annexed to your Petitioner's said Answer, that the said Ratnaboy being in Possession of the said Bill of Sale and the same being a true and certified One and not surreptitiously or fraudulently Obtained but granted after regular proper Examination by two of his Majesty's Justices vested with full and competent Authority, had an undoubted Right to do with it as she pleased, and its validity could not be questioned your Petitioner further in his said Answer stated that he was entirely unable to &c declare or set forth whether the said Gunga Dut Dava above named was in his Life Time possessed of the House in Question or any Particulars respecting his will, and that he considered the Interrogatories on &c that head foreign to his Claim, and that it was totally and entirely out of his Power to make answer to all the Parts of the Petition of the said Letchemeboy at the Major Part tended to certain Matters which it was &c equally impossible and unnecessary for your Petitioner to know of or interfere in, and therefore prayed that the Sheriff might be directed to Proceed and sell the said House and Ground under and by Virtue of the said Execution so issued — And your Petitioner further sheweth unto this Honble Court that Rules having issued for the Examination of Witnesses he did &c

examine

examine Mr. Joseph Shawe the Register of the Choultry Court, as to the execution and validity of the said Bill of Sale mortgaged to him, who declared the same &c to be a proper, regular Bill of Sale, and According to the Forms of the said Choultry Court. and your Petitioner further sheweth that the said Latchemeboy did &c examine a great Number of Witnesses to endeavour to support her said Petition, that three of the said &c Witnesses, to wit, Vesoovanada Davah, Vencatasha &c Dava and Annaraseram Dugut depose that the Deceased Gunga Dut Davah bequeathed all his Property by his said Will to Ratnaboy the above named Defendant and Latchemeboy the Petitioner that they were present and heard the said will read whereas the said Latchemeboy in her said Petition says that he the said Gunga Dut Davah bequeathed his said &c property to his three Daughters by a former Marriage, to Ratnaboy the above named Defendant and the said Latchemeboy, likewise your Petitioner further prays leave to state that the said Latchemeboy in her said Petition says she will prove that there was not any Consideration given by your Petitioner for the Mortgage Bond given and granted by Ratnaboy the above &c named Defendant to him, but the Two witnesses, that is to say Ballakistna Pundia and Ramanada Buttoo

depose.

depose that they do not believe any Sum of Money was paid by your Petitioner to the said Ratnaboy the above named Defendant, and in like manner the Petition of the said Latchemeboy is Otherwise unsupported by Evidence in many Respects — And your Petitioner prays leave to further State to this Honble Court that publication having passed the said Petition of the said Latchemeboy and the said Answer of your Petitioner thereunto was set down for hearing, and Accordingly come on to be heard on Tuesday the Eleventh Day of March in the present year One thousand Seven Hundred and Eighty eight, when the Honorable the Mayor's Court was pleased to Order and did Accordingly Order that the Petitioner's Petition be held good, and that the Sheriffs Seals be taken off the Premises in dispute, and that the Respondent do pay all Costs of the Suit as by the annexed Order of the said Honble the Mayor's Court will more fully Appear from which said Order so made and passed your Petitioner prays leave to Appeal to this Honorable Court of Appeals for the following Among Other Reasons. —

First ——— Because the Petitioner the said Latchemeboy founds her Claim to the Mortgaged Premisses upon a Title which it does not Appear she possesses, namely Executrix named in the last Will and Testament of Gunga Dut Dava deceased, for in Order to make good such Title she should have produced the said Will, whereas no such will has ever been attempted to be produced consequently she cannot legally claim under such Title. —

Secondly ——— Because the Evidence produced in support of the said Petition is almost entirely deficient, and in many Places contradictory, and in no manner appears to be such a Body of full, clear distinct Evidence as ought to be allowed to Operate against a clear legal Title. —

Thirdly ——— Because the Choultry Bill of Sale is full and complete, executed According to the usual Forms of such Bills of Sale and under the Seal of the Court, that the Seal of the said Court is a Part of the Constitution of the Court itself, and consequently known to every Body, that such Bill of Sale under Seal is therefore full and clear Evidence and deserves full Faith and Credit. —

Fourthly ——— That your Petitioner claiming under such Bill of Sale sets up thereby a better Title and holds a preferable Claim to that Attempted to be set up against him, which in reality does not exist, but is only used to endeavour to deprive your Petitioner of his just Right and Property. —

For

For all which Reasons and for such Others as may be urged at the hearing your Petitioner humbly prays that the said Order so passed by the Honorable the Mayors Court in this Matter on the said Eleventh Day of March may be reversed and set aside, and that the Sheriffe be directed to proceed to sell the Mortgaged Premisses under and by Virtue of the Execution heretofore issued, and that the said Latchemeboy the said Petitioner do pay all Costs of this Petition and Appeal. -

(signed) Pullein Spencer -
Solr. for the Appellant. -

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 11th. Day of March Anno Domini 1788.

Present.

Edwd. Inl. Hollond Esqre. Mayor
Sir Inl. Menzies Vincentio Corbett
& Andrew Ross Aldermen

Looba Row Gopaul Row
vers
Ruttabey

Petition of Latchemeboy Read. -
Amended Answer with Copy of a Bill of Sale annexed Read. -
Interrogatories on the part of the Petitioner Read -
Six Depositions taken thereunto Read. -
Interrogatories on the part of the Respondent with a Bill of Sale annexed Read -
One Deposition taken thereunto Read. -

The Matter in dispute between the Petitioner Latchemeboy and the Respondent Looba Row Gopaul Row coming on to be Argued and Determined this Day in the presence of the Attornies on both Sides on Reading the Petition of Latchemeboy, the Respondents Answer with Copy of a Bill of Sale annexed, the Interrogatories & Depositions on the part of the Petitioner, the Interrogatories & Deposition on the part of the Respondent with a Bill of Sale 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 doth Accordingly Order that the Petitioners Petition be held good, and that the Sheriffs Seals be taken off the Premisses in dispute and it is further Ordered -

Loobarow -

Ordered that the Respondent do pay all costs of & of this Suit—

A true Extract

(signed) George Taylor
Dep.y Reg.r—

Extract from the Minutes of the Court Held at the Town Hall on Tuesday the 7.th Day of October Anno Domini 1788.—

Present—

Edw.d Garrow Esq.r Mayor
George Savage Jos. Dupre Porcher & Andrew Rols Aldermen

Soobarow Gopaulrow

~~Vers~~

Ratnaboy—

Mr. James Stuart Hall for Mr. Pullein Spencer appears to the Petition of Revivor of Sarasooty Boy Executrix of Latchemeboy Deceased and Acquaints the Court that he has no Objection to the matter in dispute between the Petitioner and Respondent being revived Ordered that the same do stand revived accordingly.—

A true Extract

(signed) George Taylor
Dep.y Reg.r—

To the Honble Major General Sir Arch.d Campbell Kn.t
President and Governor in Council of
Fort St. George

In the Court of Appeals—

Between Latchemeboy
Daughter and Heiress of Gungah Dutt Davah Deceased & Surviving Executrix named in his last Will and Testament Petitioner, and Soobarow Gopaulrow Respondent—

In the cause of Soobarow Gopaulrow of Madras Soucar Complainant and Ratnaboy of the same place Inhabitant Defendant.—

The Answer of the said Latchemeboy to the Petition and Appeal of the above named Soobarow Gopaulrow.—

This Respondent not confessing or acknowledging all or any of the matters and things to be true in such manner and form as in and by the said Petition and Appeal is mentioned for Answer thereunto saith—That she does admit that the

the appellant did on or about the Twenty first Day
of November One thousand Seven Hundred and
Eighty Six exhibit and file his Bill of Complaint
Filed in my Office in the Hon^ble the Mayor's Court at Madraspatnam
the 7th April 1788 against the said Ratnaboy the above named Defendant
Chs. S. White Clerk for the Sum therein mentioned upon a Mortgage
Bond said to have been granted by the said Defendant
to the Appellant and that to such Bill the said
Defendant appeared and Acknowledged the same
but she denies that at the time the Defendant
acknowledged the Debt she the Defendant will knew
the justness thereof on the contrary this Respondent
says and insists and has fully proved by the Testi-
-mony of Six different credible Witnesses (as will fully
and at large Appear by the Proceedings in the Hon^ble
the Mayor's Court) that the Debt was not justly due,
that no Money or Other valuable Consideration had
in any shape passed to the said Ratnaboy the Defendant
from the present Appellant, but the whole was a
collusion and meant for no other purpose whatever
than to deprive this Respondent of the house in question
by getting it seized on and sold to satisfy such Debt
and then for the said Respondent and the Appellant
to devide the Spoils between them - and this Respondent
is ready to admit that the Debt being Acknowledged a

Decree

Decree must of course pass and did so accordingly
and Execution issued thereon and the Sheriff by the
contrivance and collusion of the said Ratnaboy the
Defendant and the present Appellant did seize upon
the House in question and the same was about to be
sold if such sale had not been prevented by this
Respondents presenting a Petition to the Hon^ble the
Mayor's Court to prevent the same and this Respondent
also admits that she did Present such Petition on or
about the Day mentioned by the Appellant but says
that some time previous thereto and before the Day
fixt for the Sale the said Ratnaboy the Defendant had
departed this Life - and this Respondent also admits
that she did in her said Petition state that she was
the Daughter and Haires of the said Gunga Dutt
Davah and Surviving Executrix of his Will and did
also allege that her father the said Gunga Dutt Davah
was seized in his life time of the Premisses in question
and being so seized did on or about the Day mentioned
by the Appellant duly make and publish his last Will
and Testament and thereby devised as well as the said
premisses as all his other Estate to his three Daughters
by a former Marriage of whom this Respondent was
the eldest the said Ratnaboy and her Daughter to
hold the same to them jointly during their lives with

benefit -

benifit of survivorship and under an expreſs Direction that the said House and Estate should not be disposed of or Otherwise alined or incumbered to any Other use or purpose and having declared his said Wife the Defendant (since deceased) one of his Executrixes and this Respondent the Other and declared they should act jointly and that no act of the one should be valid without the consent of the Other he delivered the said Will into the hands of the said Ratnaboy the said Defendant (who had pretended to have Mortgaged the premises as is above stated) and departed this life without altering his said Will— And this Respondent also admits that she did in her said Petition state several Other Charges but she denies that they were improper or ill founded or could be so since they materially affected her claim were prove by the most undoubted Testimony and were even admitted by the Appellants answer as will fully appear by the said Proceedings to which she begs leave again to refer— and as such charges have been fully proved and are also admitted by the Appellant this Respondent humbly hopes this Honble Court will allow her to a little inlarge upon them and they will then be better able to judge of their Propriety or Impropriety—

ety— This Respondent says that after the above Statement of the disposel of the said House by her father and the delivery of the Will to the said Ratnaboy the Petition charges that for about two years after the Death of this Respondents father the five Legatees lived peaceably together in the said House and enjoyed his Estate in common agreeably to his last intentions— but about this time the said Ratnaboy thro' the advice of evil disposed Persons and without the consent of this Respondent or the Other Legatees procured a Choultry certificate of the said House made out in her own Name alone and was about to Sell it before they knew any thing of the matter— That upon being informed thereof they directly applied to Mr. Sadleir the Justice of the month who having examined into the whole matter and found it as herein stated directed the Choultry Register to fix an advertisement upon the House referring to the Will and declaring that the said Ratnaboy had surreptitiously obtained the said certificate in her own Name but that notwithstanding it did not belong to her alone but jointly to all the Legatees and that therefore all Persons were to take notice not to purchase or lend money thereupon— The Petition then States that the said Ratnaboy being thus defected

in-

in her first design she was next advised to give a
fictitious Mortgage Bond to some person who might
sue her thereupon and upon her Acknowledging the
Debt Obtain a Decree and sell the said House as in
fact she has attempted to do the Petition then adduces
a Number of Circumstances and Dates clearly proving
that this pretended Mortgage and the Proceedings
thereon were merely Collusive and intended for this
indirect and unjust purpose and no Other and then
prays a stay of such sale which the Honble Court
thought proper immediately to grant and the Appellant
was required to answer the said Petition all which
will more fully and at large appear by the Proceedings
in the said Honble the Mayor's Court to which this
Respondent humbly implores a particular reference
as she is unwilling to enlarge further here upon the
Several things therein contained tho they are all of them
very material for the consideration of this Honble
Court and clearly evince the unjustifiable and unfair
Proceedings of the Appellant — And your Petitioner
further Answering to the said Petition and Appeal
says that she also admits that the Appellant did
on the Day by him set forth file his Answer to
the Petition which Answer being very imperfect
irregular and unsatisfactory this Respondent admits

that

that she did file her exceptions thereto and that
thereupon the Appellant thought proper to Amend his
Answer and to pay Costs for his former one and this
Respondent admits that such Amended Answer
stated "that the Appellant had not entered into any
"Combination to deprive this Respondent of her Right
"that the said Ratnaboy was justly indebted to him in
"the Sum of Money sued for and had Mortgaged the
"House for payment of it that she had the Certificate
"of the House that the same was not Obtained preceps
"titiously and its validity could not be questioned"
And she also admits that he declined making any
Answer to the Several charges of this Respondents
Petition and that issue being joined a Considerable
number of Rules passed for the examination of Witnesses
to proved the several facts stated and this Respondent
says that in pursuance thereof and of the facts stated
in his Answer the Appellant ought to have adduced
some Testimony of the several Assertions in his
Answer and particularly that the Proceedings were
not Collusive, that the Money for which the Bond
was given was really paid, and that the Choultry
Certificate was not surreptitiously Obtained — instead
of which his only Evidence is Mr. Shaw who was
not Register of the Choultry Court at the time the

Certificate

certificate was Obtained and does not pretend or can be supposed to know any thing of Ratnaboys Right thereto, but only as to the formality thereof which is not disputed, but the Right alone of the said Res= =pondent to Obtain the same and that she had not Obtained it in an improper manner and & this Respondent says that it was the more incum= =bent on the Appellant to prove there different & Charges as the answer on there Occasion is never given in upon Oath nor was the Appellants Answer in the present case and therefore any Assertion it contains that is not Afterwards proved can have no manner of weight— and this Res= =pondent says that on the contrary on her part she produced six Different Witnesses to support the truth of her Petition, all of them Merchants and Soucars of Other respectable People of the Guserat Cast to which her father belonged and she says and insists that there is not a Single fact she has advanced but is fully expressly and clearly proved by the concurrent Testimony of these Witnesses as will fully appear by the Depositions themselves— and this Respondent further says that the difference & taken notice of by the Appellant of some of the & Witnesses saying that the Deceased having left

his

his property to Ratnaboy and Letchemeboy and not to the said Ratnaboy and Letchemeboy and the Other three Legatees being his three other Daughters is totally immaterial since it is well known that when there are Executors to a Will the Estate must be in fact left to them and they are to devide it among the different Legatees which is what is expressly asserted by the & Different Witnesses as will appear by the Depositions— and therefore she denies that her evidence adduced & differs in the least from her Petition and she also says that even admitting this Variance still they prove that she had a Right jointly with Ratnaboy and that therefore Ratnaboy could not Obtain a Certificate & Mortgage it in her own Name alone— And as to there not being any Consideration it is positively proved as far as a Negative can be that is by the belief of Credible Witnesses and it became the Duty of the Appellant to prove the Contrary who had the affirmative on his side and who had undertaken to do so by his Answer, and as he did not so, her certainly by all the Rules of Law and Reason admitts that there was not a single Pagoda lent upon the Mortgage but that the whole was a Collusion as is charged by the Petitioner — and this Respondent admits that the said Proceed= =ings were heard on the Day mentioned by the & Appellant=

appellant and that they were thereupon pleased to make the Order stated in the Appellants Petition and this Respondent humbly insists that upon such Proceedings they could make no other Order agreeably to the Rules of Law of Equity or of Justice and that for the following among Other Reasons.—

1.st ——— Because this Respondent does not found her claim to the House in question merely as the Executrix named in her father's Will (which however she has fully proved she was) but as the Legatee in that Will and also as the Eldest Daughter and heiress of her father, and as having been born and living all her life in the House, so that whether there was a Will or not she was justly entitled thereto—but she also insists there was a Will and she did Sue out a Citation to the said Ratnaboy in her life time to bring in the same to be proved in the Honble the Mayor's Court as by the Records thereof will appear and she says and humbly insists that it is a most unheard of Proceeding in the appellant to set up that as a Plea which he well knows has totally arisen from the unfair Procedure of the person under whom the appellant claims and which it was totally out of this Respondent's power (as the Will was not in her possession) to effect without the concurrence

of

of the said Ratnaboy is a most barefaced instance of seting up an illegal act to justify another, expressly contrary to that well known Maxim in the English Law that no one shall take advantage of their own wrong doing.—

2.d ——— Because the Testimony she has adduced instead of being deficient as is asserted by the Appellant is in every respect clearfull consistent, and directly supports the several charges of her Petition, and for this she wishes no other proof than an attentive perusal of the several Depositions taken being very well satisfied to let them speak for themselves.—

3.rd ——— Because the Choultry Certificate is not complete nor was it considered so, either by the Honble the Mayor's Court—the Magistrate Mr. Sadleir who examined into the Proceedings and Ordered the advertisement annulling the same to be fixt upon the House or Mr. Wm Ross the then Register of the Choultry Court who drew out and fixt up such advertisement—And because it is a most unheard of Proceeding for the appellant to set up the formality of this Paper against this Respondents right without adducing a single Witness to do away the shameful manner in which it is charged and admitted to have been obtained and it is a direct attempt to turn those

salutary

salutary Regulations which the Legislature has thought fit to establish for the furtherance of Justice and ascertaining Propriety into Instruments for the Perversion of Justice, and invalidating the best founded Rights—

4thly ..... Because the Appellant ought not to thing of even holding such a Bill of Sale after the manner it appears to have been obtained and it is still worse in him to talk of having a Preferable claim after being charged with and not denying his never having lent a Single Pagoda upon the Mortgage and that the whole was a Collusion— That even if he had advanced the money he did it after the Advertisement with his Eyes Open and must take the Consequences but as he did not and as the said Respondent is dead, were the Appellant to Succeed, he would by these unjust Proceedings sell the House and get all the Mortgage Money for nothing and the family of the Person whose it is allowed to have been would be turned out to Starve and be deprived of all the property their father had left them So confident is this Respondent this Honble Court will never countenance and humbly hopes to discourage the like unfair Proceedings in future they will please to shew their displeasure against the Appellant by taxing him with exemplary costs.—

For all which reasons and for such Other or may be urged at the hearing this Repliant humbly prays that the said Order so passed by the Honble the Mayors Court in this matter may be affirmed and that the said Appellant may be ordered to pay exemplary Costs for his litigious and Oppressive Proceedings.—

(signed) Peter Walker.
Attorney for Respondt.—

Court of Appeals
at
Madraspatnam
} ss. Saturday the 30th May
Anno Domini 1789

Between Looba Row Gopaul Row
of Madras Soucar Appellant and
Sarasooty Boy Executrix of
Latchemyboy deceased Respondent—

This Cause coming on this day to be heard and Debated before this Court by the attornies on both

both sides upon hearing the Petition of Appeal and Answer and the Several Exhibits of the Honble the Mayors Court to gether with the Order of the said Court given in this Cause on Tuesday the 11th day of March Anno Domini 1788. upon due Consideration had of the Matters therein Severally Contained and of the & Pleadings and Arguments used by the Attornies on both sides This Court doth think fit to Order and & Decree and doth Accordingly Order and Decree that the said Order of the Honble the Mayors Court do stand Affirmed and that the Appellants Petition be hence dismissed with Costs.—

A Copy

To

To the Kings most Excellent Majesty

in Council.—

Between Lachemeboy Daughter and Heiress of Gungah Dut Davah Deceased and Surviving Executrix named in his last Will and Testament Petitioner and & Soubarow Gopaul Row Respondent in the Cause of Soobarow Gopaul Row of Madras Soucar Complainant and Ratnaboy of the same place Inhabitant Defendant.—

The Humble Petition and Appeal of the above named Respondent.—

Most Humbly Sheweth—

That your Petitioner did on the twenty first Day of November which was in the Year of our Lord One thousand Seven hundred and Eighty six & file his Bill of Complaint in the Honble the Mayors Court at Madraspatnam against Ratnaboy the above named Defendant for the Sum of One thousand five hundred Star Pagodas being the Amount of a certain Mortgage Bond given and granted by the & said

Filed in my Office the 12th June 1789. Chs. N White Clerk.

said Defendant to your Petitioners to which the said Defendant did appear and well knowing the said Debt to be justly due did acknowledge the same and a Decree did Accordingly pass against her and Execution issued thereon and by Virtue of such Execution the Sheriff did seize upon the mortgaged Premises and advertize the same to be sold under and pursuant to the said Writ of Execution on a certain day your Petitioner further prays leave to shew unto your Majesty in Council that previous to the day so appointed for the said Sale to wit on the Twenty first day of December in the same year One thousand seven hundred and Eighty six a Petition was filed in the said Mayor's Court by a person of the name of Lachemeboy who pretended she was daughter and Heiress of Gungah Dut Davah deceased the Husband of the said Defendant Ratnaboy and Surviving Executrix named in his last Will and Testament and did further in and by the said Petition state and say that her Father the said Gunga Dut Davah was in his life time seized and possessed of the said mortgaged Premises and other Effects to a large Amount and being so possessed did some time in or about the Month of July which was in the year One thousand Seven hundred and Eighty one duly

Make.

make and publish his last Will and Testament and thereby devised his whole Estate to his three Daughters by a former Marriage of which the said Lachemeboy was the Eldest his then Wife Ratnaboy the Defendant above named and a Daughter he had by her to hold the same to them jointly for the term of their natural Lives with benefit of survivorship and under an Expr[illegible] declaration that the said House and Effects should not be disposed of or Otherwise al[illegible] to any Other use whatever and having named his said Wife the said Defendant one of his Executrixes and the said Lachemeboy the Other and declared that they should act jointly and that no act of the one should be valid without the Other, he delivered the said Will into the hands of the said Ratnaboy the Defendant above named so duly executed and departed this life on the Evening of the said day) your Petitioner further prays leave to state that the said Lachemeboy did in her said Petition make several improper and ill founded Asertions such as that the above named Defendant had by the advice of some Evil disposed Persons obtained a Choultry bill of Sale of the said house in her own name after the Death of her said Husband and unknown to the said Lachemeboy and had

entered.

said Defendant to your Petitioner to which the said Defendant did appear and well knowing the said Debt to be justly due did acknowledge the same and a Decree did Accordingly pass against her and Execution issued thereon and by Virtue of such Execution the Sheriff did seize upon the mortgaged Premises and advertize the same to be sold under and pursuant to the said Writ of Execution on a certain day your Petitioner further prays leave to shew unto your Majesty in Council that previous to the day so appointed for the said Sale to wit on the Twenty first day of December in the same year One thousand seven hundred and Eighty six a Petition was filed in the said Court by a person of the name of Lachemeboy who pretended she was daughter and Heiress of Gungah Dut Davah deceased the Husband of the said Defendant Ratnaboy and Surviving Executrix named in his last Will and Testament and did further in and by the said Petition state and say that her Father the said Gunga Dut Davah was in his life time seized and possessed of the said mortgaged Premises and other Effects to a large Amount and being so possessed did some time in or about the Month of July which was in the year One thousand Seven hundred and Eighty one duly

make

make and publish his last Will and Testament and thereby devised his whole Estate to his three Daughters by a former Marriage of which the said Lachemeboy was the Eldest his then Wife Ratnaboy the Defendant above named and a Daughter he had by her to hold the same to them jointly for the term of their natural Lives with benefit of survivorship and under an Express declaration that the said House and Effects should not be disposed of or Otherwise aliened to any Other use whatever and having named his said Wife the said Defendant one of his Executrixes and the said Lachemeboy the Other and declared that they should act jointly and that no act of the one should be valid without the Other, he delivered the said Will into the hands of the said Ratnaboy the Defendant above named so duly executed and departed this life on the Evening of the said day your Petitioner further prays leave to state that the said Lachemeboy did in her said Petition make several improper and ill founded Asertions such as that the above named Defendant had by the advice of some Evil disposed Persons obtained a Choultry bill of Sale of the said House in her own name after the Death of her said Husband and unknown to the said Lachemeboy and had

entered.

entered into a written agreement with her Brother to defraud the said Latchemeboy of her right to the said house by granting a Mortgage of the same to him with a power to sue her in the Honble the Mayor's Court and that upon the same being put in Suit he the said Ratnaboy would Acknowledge the debt and suffer a Decree to pass against her by which & means the House would be levied on and sold and the Purchase Money would be paid to her allowing something to her said Brother for his trouble the said Latchemeboy did also in her said Petition state she would prove that no Consideration had been paid by your Petitioner to the said Ratnaboy to entitle him to the Benefit of the said Decree and your Petitioner sheweth that she did by every possible & Suggestion endeavours to prove that the said Ratnaboy had not any Right to Mortgage sell or Otherwise disposed of the said House concluding her said Petition by praying that the Sheriff might be Ordered to take off his Seals from the said Mortgaged Premises and your Petitioner further Sheweth that the said & Honble the Mayor's Court were pleased to restrain the Sheriff from selling the said Mortgaged & Premises and Rules were served on your Petitioner to Answer the said Petition that accordingly your

Petitioner

Petitioner did on the thirteenth day of March which was in the year of Our Lord One thousand Seven & hundred and Eighty seven file his Answer to the said Petition in which he stated that he never had entered into any Combination to deprive the said Lachemeboy of her just Right that the said Ratnaboy the abovenamed Defendant being justly and truly indebted to your Petitioner in the Sum of One thousand five hundred Pagodas with Interest did Mortgage to him a certain House and Ground the absolute and bona fide property of the said Ratnaboy the above named Defendant together with the Choultry Bill of Sale thereof a true Copy of which was annexed to & your Petitioners said Answer that the said Ratnaboy being in Possession of the said Bill of Sale and the same being a true and certified One and not Surreptitiously or fraudulently Obtained but granted after a regular and proper examination According to the Custom in such Cases by two of his Majestys Justices & vested with full and Competent Authority the said Ratnaboy had an undoubted Right to do with it as she pleased and its validity could not be questioned your Petitioner further in his said Answer stated that he was entirely unable to declare or setforth whether the said Gunga Dut Davah was in his life time possessed

L.

of the House in Question or any particulars respecting his will and that he considered the Interrogatories on that head foreign to his blaim and that it was &c totally and entirely out of his Power to make Answer to all the Parts of the Petition of the said Latchemeboy as the Major part tended to certain Matters which it was equally impossible and unnecessary for your &c Petitioner to know of or interfere in and therefore &c Prayed that the Sheriff might be directed to proceed & sell the said House and Ground under and by Virtue of the said Execution so issued and your Petitioner &c further humbly Sheweth unto your Majesty in Council that Ruler having issued for the Examination of Witnesses he did examine Mr. Joseph Shawe the Register of the Choultry Court as to the Execution and Validity of the said Bill of Sale Mortgaged to him who declared the same to be a proper and regular Bill of Sale According to the Forms of the said Choultry Court and your &c Petitioner further humbly Sheweth that the said Latchemeboy did examine a great number of Witnesses to endeavour to support her said Petition that three of those Witnesses to wit Vesoovenada Davah Vencatasha davah and Amaraseram dugat depose that the deceased Gunga Dut Davah bequeathed all his property by his said Will to Ratnaboy the above named &c

Defendant.

Defendant and Latchemeboy the Petitioner that they were present and heard the said Will read Whereas the said Latchemeboy in her said Petition says that he the said Gunga Dut Davah bequeathed his said Property to his three Daughters by a former Marriage to Ratnaboy the above named Defendant and the Said Latchemeboy and your Petitioner Prays leave to state also that the said Latchemeboy in her said Petition says she will prove that there was not any consideration given by your Petitioner for the Mortgage Bond given and granted by Ratnaboy the above named Defendant &c which She hath not proved nor could she have proved and your Petitioner further Sheweth that the Petition of the said Latchemeboy is unsupported by Evidence in many Other Points and the Testimony is various and Contradictary and your Petitioner most humbly sheweth unto your Majesty in Council that Publication having passed the said Petition of the said Latchemeboy and the said Answer of your Petitioner thereunto was set down for hearing and did Accordingly come on to be heard on Tuesday the Seventh day of March in year of Christ One thousand Seven hundred and Eighty Eight when the said Mayors Court were pleased to Order and did Accordingly Order that the Petitioners Petition be held good and that the Sheriffs Sealer be

taken.

taken off the Premises in dispute and that the Respondent do pay all costs of the Suit—

From which said Order and Decree of the said Mayor's Court your Petitioners did Appeal to the Honble the Court of Appeals as he conceived the said Decree to be contrary to the Principles of Substantial Justice for the following Among Other Reasons.—

First— Because the Petitioner the said Latchemeboy founds her Claim to the Mortgaged Premises upon a Title which it does not Appear She professes namely executrix named in the last Will and Testament of Gunga Dut Davah deceased for in Order to make good such Title She should have produced the said Will whereas no Such Will has ever been attempted to be produced consequently She cannot legally claim under such Title.—

Secondly— Because the Evidence produced in Support of the said Petition is almost entirely deficient and in many places contradictory and in no manner appears to be Such a Body of full Clear distinct Evidence as ought to be allowed to Operate against a Clear legal Title. —

Thirdly— Because the Choultry Bill of Sale is full and complete executed According to the usual forms of Such Bill of Sale and under the Seal of the Court of that

that the Seal of the Court is a part of the Constitution of the Court itself and consequently known to every Body that Such Bill of Sale under Seal is therefore full and Clear Evidence and Deserves full faith and credit. —

Fourthly— That your Petitioner claiming under Such Bill of Sale sets up thereby a better Title and holds a Preferable Claim to that Attempted to be Set up or against him which in reality does not exist but is only used to endeavour to Deprive your Petitioner of his Just Right and Property—

To which said Petition and Appeal the Petitioner Latchemeboy did put in his Answer Setting forth many evasive matters and things which your Petitioner did not nor doth by any means admit and your Petitioner Sheweth that the said Petition and Answer came on to be heard and Determined on the Thirteenth day of May last by the said Court of Appeals at Madras who were pleased to confirm the Decree of the said Mayor's Court with Costs of Suit in the said Court of Appeals to be paid by your Petitioner all which will more fully and at large Appear by Reference to the Several Proceedings had in the above Cause in the said Mayor's Court and Court of Appeals to which

said.

said Several Proceedings and to each of them Respectively your Petitioner prays leave to refer and to have Such full and ample benefit of them and each of them as if they and each of them were herein before fully Stated and setforth as part of this Appeal.—

From which said Decree of the said Mayor's Court and Court of Appeals your Petitioner most humbly Appeals to your Most Excellent Majesty in Council for the reasons Assigned in your Petitioners said Appeal to the Court of Appeals at Madras as above Stated and for the following Among Other Reasons.—

First.—— Because it would tend much to the encouragement of Perjury and the Practice of Litigation on Factitious Testimony if Deeds under Seal were to be Set aside on the Faith of Oral Evidence, especially in such a case as the one in Question where the very Title so set up is founded on a Solemn Paper to Wit the Will of a Deceased Person and no such Will produced at the Hearing of the cause or ever proved in the Records of any Court or even its exact Contents unequivocally established by an uniform Chain of unimpeachable Testimony.—

Secondly.— Because Pundiah Sadasevah Rajaram one of the Neighbours who Certified to the Property of the House being in Ratnaboy as having known her above Twenty Years is more deserving of Credit than his Son Balakistnah Pundiah who in the face of Such Evidence could venture to Assert that the House was the Property of Latchemeboy and others as Heiresses of Gunga Dutt Davahs Estate.—

Thirdly.— Because that as the Titles to a considerable Portion of the Property in Madras are founded on Choultry Certificates under the Hands and Seals of the Justices According to the like form in such cases a decision against your Petitioner may Open a Road to endless Litigations respecting Property.—

Fourthly.— Because the advertisement by Order of the Justice and signed by the Register of the Choultry Court to prevent the Sale or Mortgage of the House in Question on account of its being the Joint Property of the said Coheiresses has not been produced, nor an Entry thereof proved in the Choultry Records, nor any Examination made of the said Anthoney Sadlier the Justice by whose Order it is Stated to have been done, so that the best Evidence of the Fact hath not been adduced, and in no case could it be more necessary than where it tends to Set aside the Magisterial Act of the said Anthony Sadlier

under

under his Hand and Seal after duly enquiring &c
into the Merits of the Cause.—

For all which Reasons and such Others as may be Offered at the Hearing of this Cause your &c Petitioner most humbly prays that your Most Excellent Majesty in Council will be pleased to reverse the &c said Orders or Decrees of the Mayor's Court and Court of Appeals at Madras and that the House in Question be Ordered to be sold to Satisfy the Decree of the said Mayor's Court of the Twenty first day of November in the year of Christ One thousand Seven Hundred and Eighty Six and that the said Latchemeboy be Decreed to pay all Costs of Suit.—

(signed) Stephen Popham
Attorney for Respondt.

Court of Appeals
at
Madraspatnam } ss. Saturday the 30th May
Anno Domini 1789

Between Looba Row Gopaul Row of Madras Soucar Appellant and Sarasooty Boy Executrix of Latchemeboy deceased Respondent.

This Cause coming on this day to be heard and Debated before this Court by the Attornies on

on both sides upon hearing the Petition of Appeal and Answer and the Several Exhibits of the Honble the Mayor's Court together with the Order of the said Court given in this Cause on Tuesday the 11th day of March Anno Domini 1788. upon due Consideration had of the Matters therein Severally &c contained and of the Pleadings and Arguments used by the Attornies on both sides This Court &c doth think fit to order and Decree and doth Accordingly Order and Decree that the said Order of the Honble the Mayor's Court do stand Affirmed and that the Appellant's Petition be hence dismissed with Costs

pleur

(signed) Chas. N. White
Clerk

To

To the Hon^ble Major General
Sir Archibald Campbell K. B.
President in Council

In the Court
of
Appeals

Fort S^t George

Between Antonio de Souza of Madras
Merchant Complainant and Nina-
apah Moodeliar of the same Place
Merchant Defendant.—

The Humble Petition and Appeal of the
above named Complainant.—

Sheweth

That your Petitioner did on or about the 20th
Twentieth day of November which was in the Year
of Our Lord One thousand Seven Hundred and
Eighty Seven Exhibit a Bill of Complaint — in
the Hon^ble the Mayor's Court at Madraspatnam
against the said Ninaapah Moodeliar for the
recovery of the Sum of Two thousand three Hundred
and thirty four Star Pagodas Thirty Seven fanams
and Forty three Cash being the ballance of an
Account Copy whereof was annexed to your Petitioners
said Bill of Complaint which said Account arose
from Costs incurred by Your Petitioner in —

Filed in my Office the 29th Sept. 1788.
Ch. Nthite
Clerk.

Ans^d —

Answering

Answering an Appeal of the said Ninaapah Moodeliar
from the decision of Your Hon^ble Court of Appeals to
His Majesty in Council in a certain Suit and Cross
Suit wherein the said Ninaapah Moodeliar was —
Complainant and Cross Defendant and your —
Petitioner was Defendant and Cross Complainant — To
which said Bill of Complaint the said Ninaapah
Moodeliar did on or about the Eleventh day of —
February last past file his Answer whereby he pretend-
ed that your Petitioner's Action was ill founded and
urged therein several Evasive pretences why he should
not Pay the Amount of the Sum Sued for or any —
part thereof because it happened that by the Order
of His Majesty in Council affirming the Decree
of Your Hon^ble Court no mention happened to be
made of Costs — Your Petitioner sheweth that he filed
his Replication insisting Among Other things that
his Action was well founded and that altho' Costs
were not mentioned yet they are always understood
to follow the Decree unless where the Contrary be
expressed by reason of special Circumstances
arising out of the Case —

Your Petitioner sheweth that the said —
Ninaapah Moodeliar filed his Rejoinder urging
therein the same frivolous pretences as are set forth in

his

his Answer and Issue was thereupon joined and Witnesses examined to prove the payment by your Petitioner of the Sundry Items expressed in his Account Current and that such Items were incurred by reason of the said Appeal of the said Ninapah Moodeliar from the decision of your Honble Court and after Publication was passed and the said Cause was set down for hearing and the same came on to be heard by and before the said Mayor's Court on &c Tuesday the Sixteenth day of this Instant September when the said Court did think proper to Order and Decree and did Accordingly Order and Decree that your Petitioner's said Bill of Complaint be dismissed with Costs to be paid by your Petitioner as by the said Decree herewith lodged for the Inspection of this Honble Court of Appeals and Prayed by your Petitioner to be taken as part of this his Petition and Appeal may Appear.—

From which said Decree of the said Mayor's Court your Petitioner doth Appeal to this Honble Court as he conceives the same Erroneous and that your Petitioner is much aggrieved thereby for the following Among other reasons.—

First..... Because the Costs in question were incurred by your Petitioner as above stated by the said Ninapah Moodeliar appealing from the decision of your Honble Court and your Petitioner is therefore intitled thereto According to the Common Rules of Equity as well as by Law altho' no mention was made of Costs by the Decree of His Majesty in &c Council for the Law says that "If the Plaintiff or &c "Defendant prevails in the Suit they shall be allowed Wood's Inst. 601 "their Costs that is Legal Costs of the Suit"—

Second.— Because the said Maxim of Law is inforced by the Statute of the 3d Henry 7 Chapter 10 expressly made for the purpose in Cases where before such Act no Costs were given in Writs of Error (which are Appeals from Judgments of Inferiot Courts) but &c only a Reversal or Affirmance of the former Judg: ment.—

Your Petitioner therefore saith that the Omitting to mention Costs in the Decree of His &c Majesty in Council must in all presumption &c have been an Error in drawing up the said Decree of which Error your Petitioner contends the said &c Ninapah Moodeliar hath taken an unwarrantable advantage by contesting your Petitioner's present &c claim on such Ground.—

For which reasons and such Others as &c may be Offered at the Hearing your Petitioner prays

that

that the said Decree of the Mayor's Court of the Sixteenth Instant may be reversed and that your Petitioner be Decreed the full Sum sued for with Costs to be paid by the Defendant.—

(signed) Stephen Popham

Attorney for Appellant.—

Mayor's Court at Madraspatnam } { Tuesday the 16th day of September Anno Domini 1788.—

Present

Edward Garrow Esquire Mayor
William Webb } Vincentio Corbett } Aldermen.

Between Antonio de Souza of Madras Merchant Complainant and Nineapah Moodeliar of the same place Merchant Defendant.—

This Cause coming on to be Heard and Debated this Day in the Presence of the Attornies on both Sides on Reading the Complainants Bill with Copy of an Account annexed The Defendants Answer with two Exhibits annexed, The Replication, the Rejoinder, The Interrogatories and Depositions with two Exhibits marked A and B annexed and an

Order.

Order of his Majestys in Council. 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 Complainants Bill do stand Dismissed with Costs.—

Pleur.

(signed) George Taylor

Depy Regr.—

In the Honble the Court of Appeals at Madraspatnam.—

The Answer of Nineapah Moodeliar Respondent to the Petition and Appeal of Antonio De Souza Appellant.—

In the Cause wherein the said Antonio de Souza is Complainant and the said Nineapah Moodeliar is Defendant.—

The said Respondent admits that the Appellant did, some time on or about the Twentieth day of November which was in the year of Our Lord One thousand seven hundred and Eighty Seven, exhibit a Bill of Complaint in the Honble Mayors Court

Court against this Respondent for the Recovery
Filed in my Office of the Sum of Two thousand three hundred and thirty
the 31st Oct. 1783. four Pagodas Thirty Seven fanams and Forty three
Chas. N. White Clerk cash being the Balance of an Account Current &
Copy whereof was annexed unto the said Bill &
the Appellant did in his said Bill charge that the
same arose from Costs decreed unto him by His
Majesty in Council from the decision of this Hon^ble
Court which Order of His Majesty in Council the
Appellant did say was in the possession of him the
said Appellant. And this Respondent Sheweth that
he did Appear by his Attorney to the said Bill and
Did pray Oyer of the said Order of His Majesty in
Council which this Respondent did find was dated
on the Thirty first day of July One thousand seven
Hundred and Eighty Two but that not any Costs were
decreed thereby on the Contrary the said Order did
Setforth that on the Second day of November One
thousand seven hundred and Seventy Six that
a certain Cause and Cross Cause did come on to be
heard in the Mayor's Court between the said Res-
pondent and the Appellant in the Mayor's Court at
Madras and that the said Court decreed that the
now Appellant should pay unto this Respondent
Two thousand Pagodas and Interest and Costs of Suit

and

and that the Cross Bill should Stand dismissed
with Costs to be paid by the now Appellant And
further that the now Appellant finding himself Aggriev-
ed by the said Decree did on the twentieth day of
December One thousand seven Hundred and Seventy
Six Appeal therefrom to this Hon^ble Court which on
the twenty first day of May One thousand seven
hundred and Seventy Eight reversed the Decree in
the said Mayor's Court and Ordered that each party
should pay his own Costs in both Courts And that
a certain Bill of Exchange in Question should be
delivered up to the now Appellant by this Respondent
And the said Order further sheweth that this Respon-
dent conceiving himself to be aggrieved by the said
Decree of this Court appealed therefrom to His
Majesty in Council praying that the same might
be reversed and the Original Decree of the Mayor's
Court confirmed And the said Order did further
more shew that the Lords of the Committee in
Obedience to His Majesty's Orders of Reference had on
the aforesaid day taken the said Petition and Appeal
into Consideration and heard all parties concerned
therein by their Council did thereupon Agree humbly
to report as their Opinion to His Majesty that the
said Decree of the Court of Appeals at Madras of the

Twenty

Twenty first of May One thousand seven Hundred and Seventy Eight should be Affirmed and the &c Petition and Appeal therefrom dismissed — and &c lastly the said Order sheweth that His Majesty in Council did Approve of the said Report — and where: =of the President and Council of the Court of Appeals, the Mayor's Court at Madraspatnam and all &c Others whom it might concern, were to take notice and govern themselves Accordingly — And this &c Respondent did put in his Answer to the said Bill denying to stand indebted unto the Appellant in the said Sum of Two thousand three Hundred and thirty four Pagodas Thirty seven Fanams and forty three Cash or in any Other Sum or Sums of &c Money whatsoever of war most unjustly set forth by the Appellant in his Bill of Complaint, and in the Account Current thereunto Annexed. —

And Among Other things this Respon: =dent did in his said Answer Observe, that the &c Order of His Majesty in Council doth Only award and direct that the Decree of this Court of Appeals &c should be Affirmed — and therefore if the Appel: =lant did mean to commence his Action upon the Grounds of the said Order of His Majesty in Council, his demand was not warranted, &c

because.

because no Costs are therein Awarded to be paid to the Appellant, nor any thing but the Affirming of the Decree of this Honble Court, and therefore that no more can be implied, than what is absolutely and litterally expressed, and that the Appellant Presuming to imply a Right given to him, in the said Decree, to Costs, is an Attempt to Act Contrary thereto, by demanding, under the Decree, what is &c not given to him thereby, and that it cannot be Otherwise presumed than that His Majesty in Council, would have expressly added Costs, or &c Such Costs as He might see fitting, if it was the intention of granting the said Decree, that any Costs should be demanded upon it — And that &c therefore, he this Respondent was advised that the said Mayor's Court could not take notice and govern themselves by any thing, but what was &c fully and litterally Directed and expressed in the said Decree — and that if it was the meaning of the Appellant to avail himself of any right by implication, there not being any expressly given in the said Decree, he must certainly fail therein, and in course in the Demand which he had created upon such unwarrantable Grounds — And this Respondent did also setforth, that if it was the

Meaning

meaning of the Appellant to Ground his said Action upon a supposed injury, that he was &c equally ill advised— Because as Costs are a part of the Relief prayed in every Action, they make an essential part of the Action and of the consequent Decree, which is the only Evidence of a part having prevailed in such Action and &c upon which only he can proceed for recovery by Execution or Action— And cannot be allowed to Split and devide his Decree by different modes of recovery— And therefore if the meaning of the Appellant had been to ground his Action upon a Supposed injury— the strongest plea that could be made against it, was the Decree of His Majesty in Council, upon the whole of the proceedings of this Court and the Mayor's Court in the Suit before referred to, wherein no Costs are given &c and of course not any supposed to be given &c— And this Respondent did pray to be dismissed with his reasonable Costs and Charges— And &c this Respondent sheweth that the Appellant did put in a Replication to the said Answer pretending that the said Decree of His Majesty in Council, &c Affirming the Decree of this Court did thereby virtually Decree that the Appellant should pay

Costs

Costs— erroniously giving for a reason, that Costs always follow a Decree on every Occasion, unless the Contrary be expressed— and the Appellant as a proof thereof did exhibit his own Conduct on an Occasion of a similar nature, Alledging that he had lately paid Costs on an Appeal in a Cause &c wherein His Majesty in Council determined Against him, Altho the Decree was worded in similar terms to that, which is his Title to his present demand altho the Appellant hath not proved any Custom usage or Practice by which he was compelled to act in that manner— And this Respondent saith that there are many Cases of Decrees granted by his Majesty in Council, wherein Costs are awarded, and several Decrees from His Majesty in Council, adjudging Costs were shewn to the Mayors Court at the hearing of the said Cause and the same &c may Appear also to this Honble Court upon reference thereto if they shall so judge necessary— unto which said Replication this Respondent did rejoin, insisting that the explanation of the said Decree of His Majesty in Council was improperly undertaken to be made by the Appellant, Because the said Decree was Sufficiently explanatory of itself, and that &c nothing therein contained could be taken by implication

=tion — The said Decree being direct and conclusive in affirming the aforesaid Decree of this Court without mentioning that Costs should be Otherwise paid in this Court or upon the said Appeal to His Majesty in Council — And that the Appellant might with equal Right and justice Demand the Costs he has been at in the Mayors Court, and in this Court, as to demand the pretended Costs he has been at in the Appeal to the King in Council, under pretence that Costs do always follow the Decree, unless the Contrary be expressed which this Respondent did say, he was &c advised, to be erroneous, and that on the Contrary no Costs, or Other Costs, shall be received upon a Decree than such as are awarded and particularly adjudged in such Decree — And this Respondent did also say that if the Decree could allowably admit of any explanation in the said Court respecting Costs it must be, that explanation which is given and declared touching the same in the Decree of the Court of Appeals affirmed by the Decree of His Majesty in Council, by which Decree each party is decreed to pay his own Costs in both Courts That is to say in the Mayors Court and Court of Appeals — And Consequently that the best implication that the Decree of his Majesty in Council would bear was, that each party should

Also.

also pay his own Costs upon such further Appeal and this Respondent did also Observe that whatever the Appellant might have done in any instance wherein a Similar or Other Demand might have been made on him, the same had no connexion with him this Respondent because if the Conduct of Private Persons in the Management of their Affairs and particularly in that part thereof which relates to the Expounding of Decrees, was to be &c admitted as a Precedent for a Court of Justice to regulate themselves by every Man would seek to establish his Right by his own Errors, and &c thereby produce that disorder and irregularity, &c which is the Object of the Courts of Law and Equity to Remedy and remove — And this Respondent &c did also say that the Appellants Complaint of injury was improperly made out of time Because the matter if injury if any there was, hath already been determined upon the Ultimate Appeal to His Majesty in Council, whose Decree must be supposed and taken for granted as containing every Relief and Remedy which His Majesty with the advice of his privy Council have in their &c Wisdom and Justice, judged to be equitable and expedient thereon — and this Respondent Sheweth

That.

that upon these proceedings Issue did join and Rules did pass for the examination of Witnesses, and Witnesses were examined by the Appellant to some immaterial points, and Publication did pass, and this Cause was sett down for hearing; and did come on to be heard by the said Mayors Court on Tuesday the Sixteenth day of September last past, where the said Court did think proper to Order and Decree and did Accordingly Order and Decree, that the Appellants said Bill be dismissed with Costs to be paid by the said Appellant as by the said Decree before this Honble Court may Appear.—

And this Respondent Saith that the said Decree of the Mayors Court was grounded upon the Right and Justice of the Cause before them. And the Appellant cannot therefore be aggrieved thereby, and the reasons given by the Appellant for having so Appealed are very futile and Groundless — And this Respondent in Answer thereunto Saith.—

To the First. — This Respondent saith, that he ought not to pay the Appellant demand of Costs, because — Costs in question were incurred by his having Appealed from the Judgement of this Honble — Court — Because his having Appealed therefrom is a Common Right allowed of and sanctioned by Charter,

Charter, and he ought not to Pay Costs for insisting on a Right, which the Law gives him and to which Act of Appeal no Costs or penalty is consequent except the payment of such Costs as may be — adjudged by His Majesty in Council And this Respondent Saith, that the practice of the Mayors Court is founded upon that of the High Court of Chancery, and the Appellant is not According thereto entitled to any Other Costs than such as — may be Awarded by the Mayors Court, the Court of Appeals and by the Order of His Majesty in — Council, and not any Costs having been awarded thereby to the Appellant he cannot in Law Equity or reason be entitled to receive any from this Respondent the said Order directing that the Decree of this Court shall be Affirmed — Consequently that the — Costs are directed by His Majesty's Order to paid by each party in like manner as they are directed to by the Decree of this Honble Court.—

To the Second — This Respondent Saith that there are many Statutes by which Costs are given besides the 3. of Henry the 7. and many Others which restrain Costs, But the said Statutes are not meant to explain Judgements in respect of Costs, but as a Direction how Judgements shall be executed in

Respect

Respect of Costs, in such Cases, But this Respondent saith, that not any of the said Statutes have any thing in Common with the Order of His Majesty in Council, now before this Honble Court, nor can the same be explained thereby or by any direction, than that which it points to, by the Affirmance of the Decree of this Honble Court — and this Respondent can by no means admit that the Omission to mention Costs in the Decree of His Majesty in Council can be presumed to be an Error, nor that this Respondent hath taken any advantage of such pretended Error, by Contesting the Appellants Demand, which this Respondent saith is every way irregular, informal, Defective and unwarrantable, as to the Charges themselves, and upon the grounds on which they are made. —

This Respondent therefore prayeth that the Appellants Petition and Appeal may be dismissed and that the Decree of the Mayors Court may be affirmed with Costs in that Court also. —

(signed) Henry Dilbury
Attn for Respt.

Court

Court of Appeals
at
Madraspatnam } ss

Saturday the 30th May
Anno Domini 1789.

Between Antonio DeSouza
of Madras Merchant Appellant
and Nyniapah Moodelliar of
the same place Merchant Respondent. —

This Cause coming on this day to be heard and Debated before this Court by the Attornies on both sides upon hearing the Petition of Appeal & 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 16th day of September Anno Domini 1788. upon due Consideration had of the Matters therein Severally Contained and of the Pleadings and Arguments used by the Attornies on both Sides This Court doth think fit to Order and Decree and doth Accordingly Order and Decree that the said Decree of the Honble the Mayors Court do Stand Affirmed and that the Appellants Petition be hence Dismissed with Costs. —

By the Court

To

To the Honble Major General Sir Archibald Campbell
K. B. President in Council Fort St. George

In the Honble the
Court of Appeals

Between Jacob Franco Junior Francis Franco &
Elias Lindo Junior Executors of Raphael Franco Esqr. late
of London Merchant Deceasd Surviving Partner of
Jacob Franco Mosh Franco and Raphael Franco late
of London Merchants and Copartners by their attorneys
Thomas Pelling and John de Frois of Fort St George
Merchants Complainants and Sir John McPherson
Baronet late of John McPherson Esqre one of the
Members of the Supreme Council at Calcutta and
formerly of Fort St George William Petrie of Fort St George
aforesaid Esqre And Antonio De Souza of Madras
Merchant Defendants

The Petition and Appeal of the said Complainants

Shew

That your Petitioners by their said attornies did some
time on or about the Nineteenth of February in the Year of Our
Lord One Thousand Seven hundred and Eighty Seven as Executors
as aforesaid Exhibit a Bill of Complaint in the Mayors Court at
Madraspatnam against the abovenamed Defendants for the
Sum of Six Thousand and Sixty two Pagodas Eleven fanams and
Fifty Cash Current Money of Madras together with Interest
thereon

Filed in my Office
the 12th November
1788
Charles F. White
Clk

thereon from the twenty Seventh day of January One Thousand
Seven hundred and Seventy three. which they the said Defendants
unjustly Detained from your Petitioners for this your Petitioners
Shew. that the abovenamed Jacob Mosch and Raphael Franco
Deceased did in their lives time to wit in the Year One Thousand
Seven hundred and Seventy One and One Thousand Seven
hundred and Seventy two make sundry Consignments of Coral
Beads unto Francis Jourdan and William Martin Goodlad and
Among others of two Chests of Coral Beads by the following Ships One
by the East India Companys Ship the Nottingham Marked
ME. No1 and One by the East India Companys Ship Duke of
Albany Marked ME No3 and your Petitioners Shew that the
said two Chests of Coral Beads were received by and came to the
possession of the said William Martin Goodlad Deceased in the
said Year of Our Lord One Thousand Seven hundred and Seventy
two. the said Francis Jourdan being at that time absent at
Masulipatam and your Petitioners shew that the said William
Martin Goodlad did sell and dispose of the said two Chests of
Coral Beads Marked ME No1 per Nottingham and ME No3.
per Duke of Albany. the neat proceeds of which said two Chests of
Coral Beads so sold and disposed of by the said William Martin
Goodlad did Amount to the Sum of Six Thousand and Sixty two
Pagodas Eleven fanams and fifty Seven Cash the Amount Sales
whereof were transmitted unto the said Jacob Mosch and Raphael
Franco

Franco. by the said William Martin Goodlad, by letter dated the Second day of October One Thousand Seven hundred and Seventy two. One whereof under the date of the Nineteenth of July One Thousand Seven hundred and Seventy two and one under the Date of the Seventh day of September One Thousand Seven hundred and Seventy two Copies whereof are annexed unto your Petitioners said Bill Marked A and B and your Petitioners shew that the said William Martin Goodlad departed this life without having made any returns or remittances for the Amount of the Sale of the said two Chests of Coral Beads or of either of them or any part thereof to Wit on or about the Twenty fourth day of January One Thousand Seven hundred and Seventy three having first duly made and Executed his last Will and Testament in Writing, and thereof did Nominate and Appoint his Executors the said Defendants, who did Severally duly prove the said last will and Testament in the said Mayors Court and Severally take upon themselves the burthen and Execution thereof

And your Petitioners shew that the said Defendants did well know that the said William Martin Goodlad had made Sales of the said two Chests of Coral Beads, and that he had made any returns or remittances for the same and your Petitioners shew, that the Honble East India Company's Ship the Nassau, being under dispatch at the time of the Death of the said William Martin Goodlad, and the Register of Diamonds and precious Stones Licenced by the then President and Council to be Shipped on the said Ship Nassau for England being then open they the said Defendants, did apply to Mr. Charles Oakley Secretary to the said President and Council by letter bearing date the Twenty seventh day of the said Month of January One Thousand Seven hundred and Seventy three, to Register a Bulse of Diamonds Marked ME No. 1. to the Value of Six Thousand and Sixty two Pagodas Eleven fanams and Fifty Seven Cash, by them the said Defendants consigned unto the said Jacob Moses and Raphael Franco being as is in the said letter fully expressed and Declared, in full return for two Chests of Coral Beads under the same Mark Nos. 1. and 3. per Ships Nottingham and Duke of Albany One Thousand Seven hundred and Seventy two being in full return for the aforesaid two Chests of Coral Beads sold by the said William Martin Goodlad in his life time Copy of which said letter so sent with the said Bulse of Diamonds Marked C your Petitioners did annex unto their said Bill and your Petitioners shew that the said Bulse of Diamonds Marked as aforesaid, and to the Value aforesaid was conformable to the directions of the said Letter duly Registered in the Names of the said Jacob Moses and Raphael Franco Durand, Copy of an Extract from the said Registry and Marked D Your Petitioners did Annex unto their said Bill, your Petitioners shew that the said Registry was afterwards closed on the Twenty Ninth Day of the said Month of January and your Petrs shew that the said Bulse of Diamonds having been in the manner

Manner aforesaid Registered in the Name, and as the property of the said Jacob Mosch and Raphael Franco, the same was thereby become the Right and property of the said Jacob Mosch and Raphael Franco Notwithstanding which your Petitioners did Shew, that the said Defendants did after the said Registry had been closed as aforesaid under certain pretences withdraw the said Bulse of Diamonds from the Registry of the said President and Council and did instead of causing the same to be transmitted on board the said Ships Nassau to the said Jacob Mosch and Raphael Franco they the said Defendants did Apply and convert the same to their own use and Advantage so that the said Jacob Mosch and Raphael Franco were thereby deprived of their said property in the said Bulse of Diamonds and did not receive any remittance by the said Ships Nassau or by any other means on Account of the said two Chests of Coral Beads In full Return for which the said Bulse of Diamonds was purposely and expressly Registered to the great loss detriment and injury of the said Jacob Mosch and Raphael Franco and your Petitioners as Executors as aforesaid to the full Amount and Value of the said Bulse of Diamonds being the Sum of Six Thousand and Sixty two Pagodas Eleven fanams and fifty Seven Cash and Interest thereon from the Twenty Seventh day of January One Thousand Seven hundred and Seventy three the day on which the same was Registered in the Names and as the property of the said Jacob Mosch and Raphael Franco and your Petitioners Shew that the said Jacob Mosch & Raphael Franco did frequently in their lives time and yours Petitioners as Executors as aforesaid by their Attorneys frequently Apply to and demand Payment of the said Defendants for the Amount of the said Bulse of Diamonds to Wit the Sum of Six Thousand and Sixty two Pagodas fifteen fanams and fifty seven Cash and Interest thereon from the time that the said Bulse of Diamonds was Registered as aforesaid and your Petitioners well hoped that they the said Defendants would readily have Complied with such their reasonable request as in all Right and Justice they ought to have done And your Petitioners also prayed for a Decree for the above Sum with interest and costs to which said Bill of Complaint there was a joint and Several Plea and Answer filed by William Petrie and Antonio DeSouza Some time on or about the fifteenth May One Thousand Seven hundred and Eighty Seven Alledging that if your Petitioners or their Testators ever had any Cause of Suit against the said Defendants for or concerning the Matters and Transactions in the said Bill of Complaint mentioned which the Defendants did in no Sort Admit the Same did Accrue and Arise above six Years before filing the said Bill and above Six Years before Serving the Defendants with any Process to Appear to and Answer the Same and the said Defendants for further Plea

said

said that they did aver that they did not at any time within
Six Years before the filing Your Petitioners Bill nor within
Six Years before the Defendants were Served with Process to
Appear and Answer thereto ever promise or Agree to come to
any Account for or to pay or in any wise Satisfy your Petr.
or their Testator. any money for or concerning the matters and
Transactions in the said Bill of Complaint contained charged
or Alledged on the contrary the Defendants did say and Aver
that the Testator and his then Partners did in their life time
by John Maxwell Stone and James Hodges their Attornies
duly constituted make a Demand by Letter dated the
fifteenth day of December which was in the Year of Our Lord
One Thousand Seven hundred and Seventy three upon the
said Defendants of the precise Sum of Six Thousand and
Sixty two Pagodas Eleven fanams and fifty Seven Cash now
Sued for and the Defendants did by a written Answer to such
Letter Subscribed by them respectively and dated the Second
day of July which was in the Year of Our Lord One Thousand
Seven hundred and seventy four and Addressed to the said
John Maxwell Stone and James Hodges deny that the said
Testator and his said Partners had any right whatever to
make such Demand on the Defendants and positively
refused to pay the same and did at the same time declare
to them. that if they thought they could in any manner

Substantiate

Substantiate such Claim they most Zealously and Speedily wished
it might be brought before a Court of Law, where they were ready to
Meet it as a Copy of the said Letter of the Defendants did Annex unto
their said Answer Marked A taken from the Book of Correspondence
of the Estate of the said William Martin Goodlad the Original
whereof being transmitted to the said John Maxwell Stone and
James Hodges the then Attornies of the said Jacob Franco Mendes
Franco and Raphael Franco and the Defendants further said
that Notwithstanding such positive denial of such demand
and refusal to Satisfy the same given by them to the said
Complainants Testator and his then Partners they did not
think proper to take any Steps at Law or otherwise against
the said Defendants to Substantiate their demand from the
date of such Correspondence to the time of filing the present
Bill a period of thirteen or fourteen Years and therefore the
Defendants did plead the Act of Parliament or Statute of
Limitation made in the Sixty first Year of Reign of King James
the first and prayed that the benefit of the said Act of Parliament
for limitation of Actions may be allowed to them and the
Defendants in no wise waving the benefit of the said Plea but
fully relying thereon for further Plea said that it appeared by
your Petitioners Bill of Complaint that the pretext and
intent thereof was to Compel the Defendants to pay out of their
respective Individual Estates the Sum of Six Thousand and

Sixty

Sixty two Pagodas Eleven fanams and fifty Seven Cash being a Debt Supposed to be Originally Contracted by their Testator the said William Martin Goodlad and they said and averred that by the law of this land no one shall be Compelled to pay the Debts of another as his Executor out of his own Estate unless it shall appear that he has Committed some waste of such his Testators Estate or has entred into some promise or Agreement in writing and Subscribed the same with his Proper Name and thereby promised to pay the same out of his own Estate and because your Petitioners have not in their said Bill of Complaint pretended to say that the Defendants have in any Manner wasted the Estate of their said Testator or promised by writing under their hands to pay his Debts the Defendants did therefore plead such Law in Bar to their Present Suit as also the Act of Parliament passed in the Twenty Ninth Year of King Charles the Second entitled an Act for the preventing of frauds and perjuries whereby it is enacted that no Action shall be brought to Charge any Executor upon any promise or Agreement to Answer Damages out of his own Estate unless the Agreement upon which such Action is brought or some Memorandum or Note thereof shall be in writing Signed by the said Party to be charged therewith or some other person by him lawfully Authorized all which Matters the Defendants did ironously Aver and plead in Bar to your Petitioners said Bill and his just demand and prayed Judgement of the said Mayors Court whether they need make any other or further Answer thereto, and that they might receive the full benefit thereof, and the Defendants relying thereupon for Answer to the Tenour of your Petitioners Bill of Complaint did Admit that the said Jacob Franco Moseh Franco and Raphael Franco did make Consignments to the said Francis Jourdan and William Martin Goodlad of two Chests of Coral as Stated in your Petitioners Bill of Complaint and they did also Admit that the said two Chests of Coral were received by the said William Martin Goodlad in the Absence of the said Francis Jourdan and Sold by him and the Account of Sales thereof was transmitted to the said Raphael Franco and Moseh Franco Agreeably to the Copies thereof Annexed to your Petitioners Bill of Complaint and the Amount thereof was Six Thousand and Sixty two Pagodas Eleven fanams and fifty Seven Cash and that the said William Martin Goodlad did not remit any part thereof to the said Jacob Franco Moseh Franco and Raphael Franco and they Admitted that the said William Martin Goodlad did depart this life at or about the time mentioned in your Petitioners said Bill of Complaint having first duely made his Will and Appointed the Defendants the Executors thereof who proved the same and took

took out probate thereof and they do also Admit that the Honble Companys Ship the Nassau was under dispatch at or about the time of the death of the said William Martin Goodlad and that they had reason to believe that he had not made any reason or remittance for the said two Chests of Coral and that they did also admit that having reason to believe from the hasty Examination which the time allowed them to make into the Affairs of the said William Martin Goodlad that his Estate would be sufficient to paly all his Debts and being desirous as far as in them lay to save the Credit of their Deceased friend among his friends and Relations in Europe and to testify their Attention and punctually in the trust they had taken upon themselves they did altho with considerable inconvenience to themselves having advanced out of their own pockets the greater part of the Purchase Money procure a Bulse of Diamonds and under the Impressions of the Solvency of the said Testators Estate and their Zeal to have his Memory respected and their regret for his Death they did intend if they could have done it with Safety to themselves to have remitted the said Diamonds to the said Jacob Franco Mosely Franco and Raphail Franco in return for the said two Chests of Coral and did make application to the Secretary of the President and Council of Fort St. George in writing to Require a Bulse of Diamonds of that Value the Defendants Admitting the Exhibit Marked C annexed

to

to your Petitioners Bill of Complaint to be Copy of the letter written and Subscribed by the Defendants as Executors of the said William Martin Goodlad to the said Secretary and they also Admitted that the same was Registered According to their Application that is by them as the Executors of the said William Martin Goodlad but they know not how it could be said that such Register was dated as the said Article was the only one Mentioned in such Register and that very Register was afterwards withdrawn by the said Defendants as Executors of the said Estate and the Defendants also denied that they could be said to have made any remittance because the said Diamonds never left Madras nor were ever even out of the Actual possession of the said Defendants they having only made the Registry thereof in Order to entitle them to send the Diamonds on board the said Ship Nassau had not the interference of the Attorney of Francis Joudan the Surviving Consignee prevented their being sent as is stated in the letter of the said Defendants to the said Jacob Franco Mosely Franco and Raphael Franco Copy whereof B. as extracted from their Book of Correspondence Annexed unto the said Answer

But the Defendants Acknowledge that had no such interference taken place by the Representatives of your Petitioners Testator and his then Partners to wit the Attorney of Francis Joudan the Surviving Consignee as therein after set forth they did intend under the impressions before expressed to have

remitted

remitted the said Diamonds in return for the said Coral and the Defendants further setforth that they had already fully explained the Motives that induced them to take the steps they did towards the intended remittance Namely the belief of the Solvency of their Testators Estate their desire to preserve the Memory of their departed friend unblemished and that laudable Ambition which every honest mind feels to Obtain by Meritorious Actions the Good Opinion of others, but they denied it was from any interested Views to obtain the Consignments of the said Jacob Franco Moseh Franco and Raphael Franco as their Correspondence with them wherein Nothing of that sort is mentioned will sufficiently Testify especially the latter part of the said letter Marked B wherein the Matter of the remaining Chest of Coral is mentioned and still no Request made to have the Management thereof for they expresly say as follows. If the above two Chests should remain in our Charge we shall dispose of them for the best we can and make you proper remittances if the Attorney of Mr. Jourdan should have the Management of the business we make no Doubt they will do as much for your interest And the Defendants did also Admit that at the time they intended to remit the said Diamonds they certainly did believe that their Testators Estate was sufficient to pay his Debts or they would not have done what they did and the

Defendants

Defendants further said that the said Diamonds would certainly have been remitted to the said Jacob Franco Moseh Franco and Raphael Franco if Paul Benfield of Fort St George Esqr the Attorney duely Constituted of the said Francis Jourdan then Absent from Madras and who was the Surviving Consignee of the said Jacob Franco Moseh Franco and Raphael Franco had not on behalf of the said Francis Jourdan as Surviving Consignee laid Claim to the exclusive Management of the said Consignments and the remittance and every other act to be done respecting the Same and had Actually threatened the Defendants with a Suit of Law if they persisted in acting therein upon which it was Agreed by the said Paul Benfield as the Attorney and on the part of the said Francis Jourdan the Surviving Consignee of the said Jacob Franco Moseh Franco and Raphael Franco and the Defendants as Executors of the said William Martin Goodlad to submit the same to the Arbitration of John Holland Moses de Castro and John de Fries of Fort St. George Merchants being persons supposed to be most conversant in matters of that Nature whose determination thereon was that the Right to the Management of such Consignment upon the death of the said William Martin Goodlad devolved to his Surviving Consignee the said Francis Jourdan and not to the Defendants as the Executors of the said William Martin Goodlad whereupon the

Defendants

Defendants with drew the Registry of the said Diamonds which had been before made in the Secretarys Office of Fort St George in pursuance and performance of the Award to which as Executors of the said William Martin Goodlad they had Submitted and which if they had not done they might have been compelled thereto by the said Frances Jourdan the Surviving Consignee and the Representative in this transaction of the said Jacob Franco Mosch Franco and Raphael Franco and the Defendants for further Answer said that by the same Dispatch they did Acquaint the said Jacob Franco Mosch Franco and Raphael of every thing they had done as well as of every thing they intended to do and the Defendants Admitted that the Exhibit referred to by your Petitioners said Bill of Compliant was a true Copy of the Register therein Referred to and the Defendants Admitted that upon withdrawing the said Register they did sell and dispose of the Diamonds and did replace the Money in the same hands from whence it had been received the greater part whereof Returned into the hands of the Defendant Antonio DeSouza who had advanced it and they also Admitted that they had not since sent any remittance on Account of the said Coral to the said Jacob Franco Mosch Franco and Raphael Franco nor could they as they said they Conceived either with propriety or Safety have done so after the determination given, that the said Frances Jourdan was to have the Managment of the said Consignment and as to such Consignment was the only legal Representative of the said Jacob Franco Mosch Franco and Raphael Franco with whom and with whom alone they were to Account for any demand that might arise in consequence of such Consignment upon the Estate of the said William Martin Goodlad and they further said that under the impression of the said Frances Jourdan being the proper Representative of the said Jacob Franco Mosch Franco and Raphael Franco the said Antonio DeSouza being the acting Executor did hand over into the possession the Sum of Coral remaining unsold and the balances due from the Coral Merchants on Account of the sales made by William Martin Goodlad in his life time and which had not been collected previous to his decease as by the Copy of the Accounts Current thereof Marked C Hereunto Annexed may Appear but they said that as to the Monies received by the said William Martin Goodlad during in his life time and which by the said Account C Appears to be five Thousand Star Pagodas they had not yet been able to discharge the same or any part thereof as upon a more deliberate investigation of the affairs of their Testator they soon discovered from the

Amounts

Amount of several Demands with which they were not before
Acquainted and the Insufficiency of many Debts to the Estate
which they hoped were good that the Estate would ultimately
be involved whereof they duly informed the said Jacob Franco
Moseh Franco and Raphael Franco in their Subsequent Letter
to Europe as by the Copies thereof taken from the said Book of
Correspondence the said might Appear Marked D and E which
the Defendant did annex unto this said Answer and in
confirmation thereof they said that the Specialty Debts of the said
Estate to a considerable Amount are far from being Yet fully paid
off but the Defendants did say that admitting all that they
have Admitted they did by no means allow nor did it Appear
from your Petitioners own Statement of their Concern that
either by Law in Equity or Conscience your Petitioners have
entitled themselves to Recover the said Sum of Money or any
part thereof from them the Defendants and did prove
erroneously to Assert that your Petitioners had not entitled
themselves by Law because they say that it Appears from your
Petitioners own Statement and the facts admitted by both
your Petitioners and the Defendants that the only reason of
the said Jacob Franco Moseh Franco and Raphael Franco
not receiving the said remittance of the said Diamonds did
not arise from any Omission or misfeazance of the Defendants
as they did in fact therein more than their duty required of
them

them but it evidently Originated from the Interference and positive
acts of the said Paul Benfield who had no Authority whatever
to interfere but such as was derived from the said Francis Jourdan
who again derived his Authority from the trust Reposed in him
by the Original Consignment of the said Jacob Franco Moseh
Franco and Raphael Franco and therefore the Interference and
prevention of the said remittance was clearly an Act of the legal
Representative of the said Jacob Franco Moseh Franco and
Raphael Franco and consequently an Act of their own and
the Defendants further said that all personal property
Jointly belonging to two or more persons must Necessarily
upon the Death of one of the partners wholely belonging to the
Survivors or the Dead mans part must go to his Executors and
first if it belongs to the Survivor the Award of the said Arbitrators
was certainly right as well as the consequent Acts of the said
Francis Jourdan as the Surviving Consignee and on the other
hand if it does not survive but go to the Representative of the
Dead man the present Suit of your Petitioners is misconceived
for they have brought it as Executor of a Surviving partner so
that quo quâ viâ dato that is which ever way it be taken the
Law must be positively Against them and the Defendants
further said that in every transfer of Property by the Nature
of things as well as by Law there must be two parties the one
to part with and transfer such property and the other to

Agree

Agree to and Receive it for otherwise the Transfer cannot be
Compleated nor the property pass from one party and be
Received by the other and the Defendants said that in the
present transaction there were not two parties but only one
who under certain Circumstances was desirous and intended
to transfer the said property but before the other party
had Agreed thereto or received the same the Circumstances
were Materially altered and they had no longer the desire
or the power to transfer the same and the Defendants
further said that by Virtue of the Award of the said
Arbetrators the Defendants as Executors of the said William
Martin Goodlad were to Account for and pay over the
proceeds of the said Consignment to the said Surviving Consignee
Francis Jourdan or his Representatives and to no one else
therefore they cannot even as Executors pay it to your Petitioners
but upon its being paid to the said Francis Jourdan or his
Representatives they are to account for the same to the said
Jacob Franco Moseh Franco and Raphael Franco and the
Defendants as Executors of the said William Martin
Goodlad did said they certainly intend as soon as they have
Assets Sufficient and they have Satisfied such Debts as
have a preferable Claim to pay over to such persons as
may be intitled thereto the Amount of such legal Demand
as may arise from the said Consignment upon the Estate

of

of the said William Martin Goodlad and the Defendants further
said that for the Reasons already Advanced and from the Highest
Consideration of the Nature of the Transaction it is absurd to
Consider, that the mere Registry of the Diamonds in the manner
Stated which was merely an Official Notice of an intention to
do an Act Vested the property in the said Jacob Franco Moseh
Franco and Raphael Franco for no act was done as no Diamonds
were delivered to the Commander of the Ship Nassau or Bill of
Lading Signed and therefore no transfer made by the Defendants
in favour of the said Jacob Franco Moseh Franco and Raphael
Franco wherefrom the Defendants erroneously say that the
Assertion of your Petitioners, whereby they did Urge that by the
act of Delivery of the said Diamonds they became irrecoverably
devested from the Estate and Absolutely Vested in the said
Jacob Franco Moseh Franco and Raphael Franco and the
Defendants further said that they had Applied the principal
part of the Assets which had come to their hands towards
paying of the Specially Debts thereof in the manner Required
by Law and the Tenor of the Oath which the Defendants as
Executors had taken by which they swear to pay off the debts
of their Testator as far as the Estate will extend and the law
oblige and that they have done so as far as the payments
have hitherto been made by the Acting Executor and have

Committed

committed no waste or other defaults in the Management thereof as by the accounts of the Estate this day delivered on Oath by the Defendants and now of record in the said Mayors Court might Appear and the Defendants did therefore pretend that the present Suit of your Petitioners to charge them personally with the Payment of so large a sum of Money is illegal and unjustifiable and seems inspired by that Spirit of Litigation and wish to Vex and Oppress individuals so clearly manifested in the former Suit carried on in this Honble Court for the same sum of Money instead of waiting patiently as it is their duty to do till the Defendants have been enabled to pay off the Specialty Debts of the Estate and such others as may have a preferable Claim and may afterwards have Sufficient funds of the Estate to pay the Representatives of the Surviving Consignee such Sum as may Appear to be due to them and the Defendants did further set forth that if the Law on a Misconceived Nicety of which the Defendants did say your Petrs built this fabrick of Litigation is so clearly and pointedly against them much less could they expect any relief from a Court of Equity whose Decisions tho' extended beyond the limits of the Law are still confined to other limits beyond which they do not extend for the only objects of Equity are said to be fraud Accident and trust but here no fraud has been

been Committed no Accident has happened no breach of trust has been made unless it was a fraud in the Defendants to Attempt to save the said Jacob Franco Moseh Franco and Raphael Franco all their evident just an Accident which was frustrated by the Voluntary and premeditated Act of their Legal Representative and a breach of Trust in the Defendants in not having discharged this Simple Contract Debt of the Testator in preference to all his Specialty and other preferable Debts or incase of its insufficiency out of their own Pockets and the Defendants said John McPherson did file a General Plea and Answer and your Petitioners shew that they did Reply unto the said Answers fully refuting and setting aside the same as not containing in fact any thing material wisely as an Answer to the facts charged in the said Bill of Complaint but the same was rather compound of ill founded inferences from law and Misconceived Motions of the Equity and your Petrs did therefore pray as in and by their said Bill of Complaint and the Defendants did Rejoin and issue did Join thereupon and your Petitioners conceiving that they were entitled to have the Depositions of the Defendants given in the former Cause before alluded to have been commenced by the said Jacob Moseh and Raphael Franco against the said Francis Jourdan as also the Depositions of such other Witnesses as were examined and were since dead or absent your Petitioners did pray to have the benefit of such Depositions at the hearing of this Cause in the said

Mayors

Mayors Court who did Order Accordingly and your Petitioners shew that issue did Join thereupon and Rules did pass for the examination of Witnesses but no further Witnesses were produced or examined on the part of your Petitioners or of the said defendants and Publication did pass in the said Cause and the same was afterwards sett down for hearing and did come on to be heard on Saturday the first of this present Months of November when your Petitioners shew that the said Mayors Court were pleased to Order and Decree and did Accordingly Order and Decree that your Petitioners Bill of Complaint should stand dismissed with Costs

By which said Decree your Petitioners do conceive that they are Aggrieved and do therefore Appeal Humbly to this Honble Court and your Petitioners do for cause of their so Appealed say

First That Appears by the proceedings and it is so acknowledged and Admitted by the Defendants that the said William Martin Goodlad did sell two Chests of Coral the property of the aforesaid Jacob Moreh and Raphael Franco in July and in September one thousand Seven hundred and Seventy two that he the said William Martin Goodlad did in his life time in Writing undertake to make returns for the said Coral by the Companys Ship the Nassau in January following but that the said William Martin Goodlad departed this life without having compleated his

said Undertaking to make returns by the said Ship to wit on the twenty fourth day of January One Thousand Seven hundred and eighty three that the said William Martin Goodlad having so died the defendants her Executors did undertake to fulfill the said undertaking which was so left unperformed by the said Deceased and with an astonishing expedition and Alacrity procured Diamonds to the Amount of the Account Sale of the said two Chests of Coral and in full returns thereof individually to wit the Sum of Six Thousand and Sixty two Pagodas Eleven fanams and fifty Seven Cash that having so procured the said Diamonds for and on behalf of the said Jacob Moreh and Raphael Franco they did form a Bulse or Package thereof and that they did identify the same to be the Property of the parties by marking the same with the very same Mark as the Mark of the Chests of Coral Beads of which they were so prepared to be sent in return and in full Value for that after the Defendants had so purchased the said Diamonds and had made up the Bulse or Package thereof did proceed by the usual and only legal means of conveying the same to the said Jacob Moreh and Raphael Franco and thereby fulfill the Object of the Consignment of the said two Chests of Coral sold and realized by said William Martin Goodlad and compleat and perform the undertaking which the said deceased and by reason of his death not himself able to do the said Defendants did therefore formally address a Letter

Severally

Severally Signed by them to the Secretary of this Presidency for the Purpose of Registring the same as the property of the said Jacob Moseh and Raphael Franco and declared therein to be in full return for two the aforesaid individual Chests of Coral Beads and expressed to be under the same Mark as the said Chests of Coral which said letter was dated the twenty Seventh day of the said Month of January and your Petitioners shew that the said Bulse of Diamonds was According to the said Act and Declaration of the Defendants publickly Registered by the said Secretary of the said Presidency That the said Bulse of Diamonds was consigned by the said Defendants to the said Jacob Moseh and Raphael Franco to the Value of Six Thousand and Sixty two Pagodas Eleven fanams and fifty Seven Cash in full return for the aforesaid two Chests of Coral your Petitioners shew that the said Defendants having thus discharged the debt owing by the said William Martin Goodlad to the said Jacob Moseh and Raphael Franco as his Executors they were not at liberty again to revoke and amend what they had so done by any act which tended to the prejudice of the said Francos and your Petitioners shew that it appears by the proceedings that the Defendants had full Consideration in

present

Present and in future for what they so did first the Debt due by the Deceased for the Amount of the said two Chests of Coral Secondly by the undertaking of the Deceased in Writing to discharge the same by the Ship Nassau in January the first was a Consideration in their hands as Executors the Second was a Condition created by themselves independent of the former by their Acceptance to take upon themselves what the deceased could not perform and for the performance of which they did Value to themselves certain Consideration which are not unusual and which are good and binding in the law the Defendants acknowledging that they did undertake to discharge the said Deceaseds Debt to the said Jacob Moseh by making of the said Remittance for the honor of the Deceaseds Memory and with the View that by shewing their punctuality in that instance that the said Francos would be induced to continue to them their future Consignments of Coral and in the hope that they would therefrom derive great advantages to themselves And your Petitioners shew that it appears that the said Considerations had their full weight and Validity with the Defendants for a Considerable space of time and untill they pretend that Paul Benfield the Attorney of Francis Joudan the Surviving Consignee of the said two Chests of Coral

did

did Claim a right as such to make the said Returns and Remittance and not the Defendants that the Defendants were not Satisfied with the Right of such Claim made by the said Paul Benfield and did therefore Refuse to comply therewith untill the said Paul Benfield did threaten to prosecute them if they did dispatch the said Bulse of Diamonds but it afterwards appears that the said Defendants did themselves apply to have the said Bulse of Diamonds withdrawn and did Accordingly withdraw the same without any Just Cause or Reason for their so doing and did afterwards convert the same to their own use by selling the same by which act your Petitioners have Charged themselves to be injured and have therefore brought their said Action

Second. Because it appears by the proceedings, that the said Jacob Moseh and Raphael Franco had an Actual and Legal Right in the said Bulse of Diamonds and that by the purchase thereof and the many Subsequent acts of the Defendants that your Petitioners had not only acquired an implied and conditional property, but a declared and Acknowledged property under the hand writing of the Defendants that no Notice was Required to be given to the said Jacob Moseh and Raphael Franco for the purpose of obtaining their Acquiescence in the said Returns or Remittances because their directions to the said William Martin Goodlad do make the same unnecessary and the said Deceased had himself undertaken that he would make such Returns and Remittance and the same was afterwards in law Complicated by the Defendants that the Defendants insisting that such Notice was Requisite to effect a transfer of Property is inconsistent because no trade could be carried on between the Europe and the East Indies if such formalities were Required to be Observed and your Petitioners therefore say that as an Acceptance to do a duty for another may be done without the party to be discharged thereby or the person paid or Acquitted thereby having an immediate knowledge thereof in like manner your Petitioners say the defendants are Responsible for their Acceptance to discharge the debt due by the Deceased to the said Jacob Moseh and Raphael Franco in the manner they have done and which act your Petitioners say was grounded upon and Subsequent to an Original duty in them as Executors

Thirdly Because the interference of the said Paul Benfield instead of being a Motive with the Defendants for withdrawing the said Bulse

Bulse of Diamonds if the same was a legal interference was rather an Acceptance on behalf of the said Francos to receive and convey the same to them as having a preferable right to act therein, which circumstance doth clarly do away the Objection of the said Defendants that there was not any one to Accept and receive the said property because the said Paul Benfield did demand the same According to the Defendants own Shewing as having become the property of the said Francis and your Petitioners shew that the Right of Property was not ever Disputed but Admitted all that was indispute was the Right of Conveying the said property to the said Francis

Fourthly Because if the said interference of the said Paul Benfield was not a legal interference the said Defendants were not bound to attend thereto much less had they cause to be intimidated by the said Paul Benfields threats to commence an Action against them for what could the said Action be the threat of which did so much alarm them but for the delivery of the said Bulse of Diamonds it seems therefore upon the first Ground of the Defendants Stating this Case that they were willing to deliver up the Bulse of Diamonds if the Right of remitting the same should also be determined to be in the said Paul Benfield but afterwards they withdraw the said Bulse of Diamonds and convert the same to their own use not upon any deception that they had a right so to do but merely an Account of the interference of the said Paul Benfield which they do Acknowledge to be the Sole Cause for their not transmitting to the Francis the said remittance therefore your Petitioners shew that According to the Defendants own Shewing they must and are bound by one or other of the two that of the interference being legal or of it being illegal

Fifthly Because it appears that the said Diamonds were purchased with your Petitioners Money as it is not certainly shewn what part thereof was advanced by the Defendants and William Petrie one of the said Defendants deposeth that the said Diamonds were actually purchased with money the property of your Petitioners it is any rate clear that the whole of the Money was due whatever part thereof might have been at the time of the Purchase of the said Diamonds actually received and the Application of such part as was actually in the hands of the Defendants to any other Money Necessary if the same was indeed Necessary to make up the full Amount of the said Sum of Six thousand and Sixty two Pagodas Eleven fanams and fifty

Seven

Seven Cash the Value of the Diamonds doth unquestionable make the said Diamonds the property of your Petitioners in the first instance which was confirmed by many other Subsequent Steps which placed the Question of Property beyond all doubt—

Sixthly Because it appears by the Defendants own Shewing that they did on the Twenty Seventh day of January in the said Year One Thousand Seven hundred and Seventy three sell Coral to the Amount of four Thousand One hundred and fifty Six Pagodas Ninety four fanams and twenty eight Cash as the factors of the said Francois which is a confirmation of the other Acts done by the Defendants to establish a property in them your Petitioners to the said Bulw of Diamonds and the Defendants in pursuance of the same line of Action did apply a part of the said Money in the purchase of Diamonds in October following on Account of your Petitioners which your Petitioners Observe is a very Mysterious Conduct on their behalf because the Defendants would make it Appear that they had before Purchased Diamonds to a greater Amount than they say they had in their hands and they afterwards sell your Petitioners Property and purchase therewith Diamonds to a less amount than they had money in their hands which gives as appearance of things which cannot be explained but by certain facts or the Motives upon which they are grounded are only known to the Defendants themselves but from this last instance of caution in the Defendants there is every reason to presume that they were equally cautious in the first and that your Petitioners were really and bonâ fide entitled to receive the said Diamonds and their not having received them being occasioned by the Defendants they are in consequence responsible to your Petitioners for the same both as an Omission and Misfeasance—

And Lastly your Petitioners shew that the Defendants cannot avail themselves of the permission of Government to withdraw the said Bulw of Diamonds because whatever means they might make use of to obtain the delivery of their said letter back to them by which they did register the said Diamonds in the Name of the said Francois the same were in their lawfull nor just and your Petitioners shew that the said Original letter in the hands of Government is an evidence against the legality of the said Means consequently Government could not legally allow of what the Defendants could not legally Demand and your Petitioners have been informed that this is the only instance of a Register of Diamonds having been withdrawn and in all probability may never be again allowed of and your

Petrs.

Petitioners say, that they have been evidently injured by the conduct of the Defendants towards them in the manifold instances now shewn to this Honble Court and in many others in the course of the proceedings whereto your Petitioners pray leave to refer and to have the full benefit of at the hearing of this their Petition and Appeal.

From all which premises considered your Petitioners humbly pray that this Honble Court will reverse the Decree of the Mayors Court which comes herewith and with Costs in both Courts and to grant your Petitioners such further & other Relief in the premises as to this Honble Court shall seem Meet.

/Signed/ Henry DuPuy
Attorney for Petitioners

Mayors Court

Mayors Court at Madraspatnam — Saturday the 1st November Anno Domini 1788.

Present

Edward Garrow Esqr. Mayor
James Ball — Sir John Menzies
Robert Ewing — George Savage
Vincentio Corbett — Josias du Pre Porcher
Andrew Ross & Robert Mitford
Aldermen

Between Jacob Franco Junior Francis Franco and Elias Lindo Junior of London Merchants three of the Executors appointed by the last will and Testament of Raphael Franco Esquire late of London Merchant Deceased the Surviving partner of the House of Trade of Jacob Moseh and Raphael Franco and which said Will was by them duly proved in the Prerogative Court of the Archbishop of Canterbury of their attornies Thomas Pelling and John de Freis of Fort St. George Merchants Complainants &

Sir John Macpherson formerly of Fort St. George Esqr now one of the Members of the Supreme Council

at

at Calcutta William Petrie of Fort St. George Dec.r and Antonio DeSouza of Madras Merchant 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 with four Exhibits Marked ABC&D annexed the Joint and Several Plea and Answer of William Petrie and Antonio DeSouza the Seperate Plea and Answer of Sir John Macpherson by his attorney Charles Oakeley the Replication with Exhibit Marked No 1 annexed. The Rejoinder the Interrogatories and Depositions on the part of the Complainants with three Exhibits Marked ABC&E annexed On Hearing the Pleadings made use of by the Attorneys and on due Consideration had thereon This Court doth think fit to Order and Decree and doth Accordingly Order and Decree that the Complainants Bill do stand Dismissed with Costs.

Wm
/Signed/
George Taylor
Dupy Agt

To

To the Honble Major Genral Sir Archibald Campbell
K. B. President in Council
Fort St. George

In the Honble the Court of Appeals

Between Jacob Franco Junior Francis Franco and Elias Linde Junior Executors of Raphael Franco late of London Merchants Deceased Surviving Partner of Jacob Franco Moses Franco and Raphael Franco late of London Merchants & Copartners by their Attorneys Thomas Pelling and John de Friis of Fort St. George Merchants Complainants and Sir John Macpherson Baronet late John Mc Pherson Esqr one of the Members of the Supreme Council at Calcutta and formerly of Fort St. George aforesaid Esquire and Antonio DeSouza of Madras Merchant Defendants

The Answer of the abovenamed defendants to the Petition and Appeal of the abovenamed Complainants.

These Respondents for Answer to the said Petition and Appeal or unto so much thereof as these Respondents are advised is material for them to make Answer unto they Answer and say that

Filed in my Office the 10. December 1788
Chas N. White Clk

that it is true that the Appellants by their said Attornies did on or about the Nineteenth day of February which was in the Year of our Lord One Thousand Seven hundred and Eighty Seven file their Bill of Compliant in the Mayors Court at Madras Patnam against these Respondents for the Recovery of the Sum of Six Thousand and Sixty two Star Pagodas Eleven fanams and fifty Seven Cash Current Money of Madras together with Interest thereon from the twenty Seventh day of January which was in the Year of Our Lord One Thousand Seven hundred and Seventy three which the Appellants charged to be due to them by these Respondents by reason that the abovenamed Jacob Franco Morch Franco and Rabbiah Franco Deceased did in their Lifes time to Wit in the Years of Our Lord One Thousand Seven hundred and Seventy One and One Thousand seven hundred and Seventy two Make Sundry Consignments of Coral Beads unto Frances Jourdan and William Martin Goodlad then of Fort St. George Merchants and among others of two Chests of Coral Beads by the following Ships One by the East India Company's Ship the Nottingham Marked MÆ N°1 and one by the East India Company's Ship Duke of Albany Marked MÆ N°3 and that the said two Chests of Coral Beads were

Recived

Recived by and came to the possession of the said William Martin Goodlad Deceased in the said Year of Our Lord One Thousand Seven hundred and Seventy two the said Francis Jourdan the other Consignee Jointly with the said William Martin Goodlad being at that time absent at Masulipatam and that the said William Martin Goodlad did sell and dispose of the said two Chests of Coral Beads Marked MÆ N°1 per Nottingham and MÆ N°3 per Duke of Albany and that the Neat proceeds thereof did Amount to the said Sum of Six Thousand and Sixty two Pagodas Eleven fanams and fifty Seven Cash and that the Account Sales thereof were transmitted unto the said Jacob Franco Morch Franco and Raphael Franco by the said William Martin Goodlad as by the letters in the said Petition and Appeal are particularly Set forth Copies thereof being annexed in the Appellants said Bill Marked A and B all which facts these Respondents have Admitted and do Admit altho' they deny that by force thereof or of any other act of these Respondents in the premises they are liable to the Appellants for the said Sum of Six Thousand and Sixty two Pagodas Eleven fanams and fifty Seven Cash or any part thereof as they hope hereafter to shew to the

Satisfaction

Satisfaction of this Honble Court these Respondents further
Admit that the said William Martin Goodlad departed this
life at the time mentioned in the said Petition and Appeal
without having previously made any Returns or Remittances for
the Amount of the Sale of the said two Chests of Coral Beads
or of either of them or any part thereof and these Respondents
Admit that the said William Martin Goodlad duly made
and executed his last will and Testament in writing
previous to his Death and thereof did Nominate and appoint
these Respondents as his Executors who proved the Same in the
said Mayors Court and did Severally take upon themselves the
burthen and Execution thereof

These Respondents admit that they well
knew that the said William Martin Goodlad had made Sales of
the said two Chests of Coral Beads and that he had not
made any Returns or Remittances for the Same and that the
Honble East India Companys Ships the Nassau being under
Dispatch at the time of the Death of the said William
Martin Goodlad and the Register of Diamonds and
precious Stones licensed by the then President and Council to
be Shipped on the said Ship Nassau for England being then

open

Open these Respondents did Apply to Mr. Charles Oakely Secretary
to the said President and Council by letter bearing date the Twenty
Seventh day of the said Month of January One Thousand Seven
hundred and Seventy three to Register a Bulse of Diamonds
Marked ME No. 1 to the Value of Six hundred and Sixty two
Cagoas Eleven fanams and fifty Seven Cash by these Respondents
Consigned unto the said Jacob Franco Moseh Franco and Raphael
Franco being as in the said letter fully expressed and declared
in full Return for two Chests of Coral Beads under the same
Mark No. 1 and 2 per Ships Nottingham and Duke of Albany and
in full Return for the aforesaid two Chests of Coral Beads so
Sold by the said William Martin Goodlad in his life time and
they Admit that the Copy of the said letter as sent with the said
Bulse of Diamonds is the same which is Marked C and annexed
unto the said Bill and these Respondents further Admit that
the said Bulse of Diamonds marked as aforesaid and to the
Value aforesaid was conformable to the direction of the said letter
duly Registred in the Names of the said Jacob Franco Moseh
Franco and Raphael Franco Deceased and that the Copy of an
Extract from the said Registry Marked D is also annexed unto
their said Bill and these Respondents further Admit that the

said

Said Registry was afterwards closed on the Twenty Ninth day of the said Month of January the said Bales of Diamonds having been previously Registered in the manner aforesaid - And these Respondents do also admit that they soon afterwards withdrew the same from the Registry of the Said President and Council for the Reason hereinafter set forth and these Respondents also Admit that they did not afterwards make any remittance by the Said Ship Nassau or by any other Means on Account of the Said two Chests of Coral Beads - these Respondents further Admit that the Said Jacob Franco Mosh Franco and Raphael Franco did frequently in their lives time and the Appellants as Executors as aforesaid by their attorneys afterwards apply to and demand payment of these Respondents for the Amount of the said Bales of Diamonds, to Wit the Sum of Six Thousand and Sixty two Pagodas Eleven fanams and fifty Seven Cash and Interest thereon from the time that the said Bales of Diamonds was registered as aforesaid which these Respondents refused to pay and therefore the Appellants filed their Bill and prayed for a Decree for the above Sum with Interest and Costs - To which said Bill of Complaint these Respondents admit that a joint and several Plea and Answer was filed by two of these Respondents to wit William Petrie and Antonio De Souza some time on or about the

the fifteenth May One Thousand Seven hundred and eighty seven alledging that if the Appellants or their Testators ever had any Cause of Suit against these Respondents for or concerning the Matters or transactions in the Said Bill of Complaint mentioned the same did accrue and arise above Six Years before filing the said Bill and above Six Years before Suing these Respondents with any process to Appear to and Answer the same and these Respondents do admit that for further Plea they did aver that they did not at any time within Six Years before the filing the Appellants's Bill nor within Six Years before these Respondents were served with process to Appear to and Answer thereto ever promise or agree to come to any Account for or to pay or in any wise satisfy the Appellants or their Testators any money for or concerning the Matters and transactions in the said Bill of Complaint contained on the Contrary these Respondents did state that the Testators and his then partners did in their life time by John Maxwell Stone and James Hodges their Attornies duly constituted make a Demand by letter Dated the fifteenth day of December which was in the Year of Our Lord One Thousand Seven hundred and Seventy three upon these respondents of the precise Sum of Six Thousand and Sixty two Pagodas Eleven fanams and fifty

Seven

Seven Cash now sued for and these Respondents did by a written
Answer to such letter Subscribed by them respectively and dated
the Second day of July which was in the Year of our Lord One
Thousand Seven hundred and Twenty four and Addressed to the
said John Maxwell Stone and James Hodges deny that the
Testator and his said Partners had any right whatever to make
such demand on these Respondents and positively refused
to pay the Same and did at the same time declare to them
that if they thought they could in any Manner substantiate
such Claim they most Zealously and Speedily wished it
might be brought before a Court of Law where they were ready
to meet it and these Respondents admit that a Copy of the said
letter of these Respondents was annexed unto their said Plea and
Answer. And these Respondents did further in their said
Answer Set forth that Notwithstanding their refusal to
Satisfy such demand the Appellants did not think proper to
take any Steps at Law or otherwise against these Respondents
to Substantiate their Demand from the date of such
Correspondence to the time of filing the present Bill a period of
thirteen or fourteen Years and therefore these Respondents did
plead the Act of Parliament or Statute of limitation made

Ex

in

in the twenty first year of the Reign of King James the first
and prayed that the Benefit of the said act of Parliament for
Limitation of actions may be allowed to them - and these
Respondents in no wise waving the Benefit of the said Plea
but fully relying thereon for further plea Said that it
appeared by the appellants Bill of Complaint that the
purport and intent thereof was to compell these Respondents
to pay out of their respective Individual Estates the Sum
of Six thousand and Sixty two Pagodas Eleven fanams and
fifty Seven Cash being a debt supposed to be originally
contracted by their Testator the said William martin Goodlad
and these Respondents did say and over that by the Laws
of the Land no one shall be compelled to pay the debts of
another as his Executors out of his own Estate unless it shall
appear that he has committed some waste of such his
Testators Estate or has entered into some promise or agreement
in Writing and Subscribed the same with his proper name
and thereby promised to pay the same out of his own Estate
and therefore as the said appellants had not in their said
Bill of Complaint pretended to say that these Respondents
had in any manner wasted the Estate of their said Testator
or promised by writing under their Hands to pay his
debts these Respondents did plead such law in Bar to
their present Suit as also the act of Parliament passed in
the twenty ninth year of King Charles the Second Entitled
an act for the prevention of frauds and perjuries - whereby

it

it is Enacted that no action shall be brought to charge any Executor upon any promise or agreement to answer Damages out of his own Estate unless the agreement upon which such action is brought or some memorandum or note thereof Shall be in writing Signed by the said Party to be charged therewith or some other person by him lawfully authorised - all which matters these Respondents did aver and plead in Bar to the appellants said Bill of Complaint and his pretended demand and humbly prayed Judgment of the said mayors Court whether they need make any other or further answer thereto and that they may receive the full benefit thereof and these Respondents by no means waving their said Plea but fully relying thereupon for answer to the Residue of the appellants Bill of Complaint these Respondents did admit the several Facts in the Petition and appeal and hereinbefore in part stated respecting the said Consignment to the said Francis Jourdan and William martin Goodlad and that the same were received by the said William martin Goodlad in the absence of the said Frances Jourdan and sold by him and the account Sales thereof transmitted to the said Jacob Franco mosch Franco and Raphael Franco and that the said William martin Goodlad died without remitting any part thereof having previously as aforesaid made his Will and appointed these Respondents Executors who proved the same and acted as Executors of the said Deceased - and these Respondents did also admit

that

that the Honble Companys Ship the nassau was order dispatch at or about the time of the Death of the said William martin Goodlad and that he had not made any return or remittance for the said two Chests of Coral and that having had reason to believe from the hasty Examination which the time allowed them to make into the affairs of the said William martin Goodlad his Estate would be Sufficient to pay all his debts and being desirous so far as in them lay to save the Credit of their Deceased friend among his friends and relations in Europe and to testify their attention and punctuality in the Trust they had taken upon themselves they did altho with considerable inconvenience to themselves having advanced out of their own pockets the greater part of the purchase money) procure a Bulse of Diamonds, and under the Impressions of the solvency of the said Testators Estate and their Zeal to have his memory respected, and their regret for his death they did intend if they could have done it with safety to themselves to have remitted the said Diamonds to the said Jacob Franco mosch Franco and Raphael Franco in return for the said two Chests of Coral and did make application to the Secretary of the President and Council for that purpose as stated by the Petitioners - and that the same was registered accordingly - but they cannot admit that the Registry thereof was so far closed as to transfer the property to the said Jacob Franco, mosch Franco

and

and Raphael Franco as the Bulse was afterwards
returned to these Respondents as Executors of the said
Estate — and these Respondents Denied that they could
be said to have made any remittance because the said
Diamonds never left madras nor were ever out of the
actual posession of these Respondents they having only
made the Registry thereof in order to entitle them to
send the diamonds on board the said Ship Nassau had
not the interference of the attorney of Francis Jourdan
the surviving Consignee prevented their being sent as is
stated by these Rispondents in their said answer —
But these Respondents acknowledged that had no
such interference taken place they did intend under
Estate of the said William martin Goodlad and their
regard for his memory to have remitted the said
Diamonds in return for the said Coral — and these
Respondents denied that it was from any Interested
views to obtain the Consignment of the said Jacob Franco
moseh Franco and Raphael Franco as their
correspondence with them wherein nothing of that sort is
mentioned did sufficiently testify especially the latter
part of the Letter of these Respondents which is as
follows — If the above two Chests should remain in
our charge we shall dispose of them for the best we
can and make you proper remittance if the attorney
of

of Mr. Jourdan should have the management of the
business we make no Doubt they will do as much for your
Interest —

and these Respondents did state that they were
actually threatened with a Suit at Law if they persisted
in acting any further respecting the said Coral Consignment
and that such reference respecting the right of the
future management was had thereon as is stated by the
Petitioners and that the determination made by the
Referees was in favor of the Surviving Consignee
whereupon these Respondents with drew the Registry
of the said Diamonds in pursuance and performance
of the award to which as Executors of the said William
martin Goodlad they had Submitted and these
Respondents admit that by the same dispatch they
acquainted the said Jacob Franco moseh Franco
and Raphael Franco of every thing they had done as
well as of every thing they intended to do and also of every
Particular which in any wise related to the above
Transaction as stated in their said answer — —

and these Respondents did admit that upon with[illegible]
drawing the said Register they did sell and dispose
of the diamonds and did replace the money in the
same hands from whence it had been received, the
greater part whereof returned into the hands of
antonio de Souza who had advanced it and they

also

also admitted that they had not since sent any remittance on account of the said Coral to the said Jacob Franco moseh Franco and Raphael Franco nor could they as they conceived either with propriety or safely have done so after the determination given that the said Francis Jourdan was to have the management of the said Consignment and therefore as to such Consignment was the only legal Representative of the said Jacob Franco moseh Franco and Raphael Franco with whom and with whom alone they were to account for any demand that might arise in consequence of such Consignment upon the Estate of the said William martin Goodlad and these Respondents admit that under the impression of the said Francis Jourdan being the proper Representative of the said Jacob Franco moseh Franco and Raphael Franco the said antonio de Souza being the acting Executor did hand over into his possession the Two Chests of Coral remaining unsold and the Balances due from the Coral merchants on account of the Sales made by William martin Goodlad in his life time and which had not been collected previous to his decease as by the answer of these Respondents may appear ——

But these Respondents said that as to the monies received by the said William martin Goodlad during his life time and which by the account annexed to their answer appears to be Five thousand Pagodas they had not yet been able to discharge the same or any part thereof for the reasons stated in their said answer whereof they duly informed the said Jacob Franco moseh Franco and Raphael Franco in their subsequent Letters to Europe and in confirmation thereof these Respondents said the specially Debts of the said Estate to a considerable amount are far from being fully paid off

But these Respondents humbly submit that admitting all which they have in their said answer admitted they do by no means allow, nor did it appear from the said appellants own Statement of their concern that either by Law in Equity or Conscience they have entitled themselves to recover the said Sum of money or any part thereof from these Respondents for the reasons stated in the answer of these Respondents and hereinafter setforth — These Respondents further admit that Sir John macpherson did by his attorney Charles Oakely file a Separate Plea and answer and they further admit their having prayed that by Force and Virtue of the several Pleas by them pleaded and by reason of the Sundry matters stated in their answer they might be dismissed with Costs — To which Plea and answer of the said William Petrie and Antonio de Souza these Respondents admit that the appellants filed

their

also admitted that they had not since sent any remittance on account of the said Coral to the said Jacob Franco moseh Franco and Raphael Franco nor could they as they conceived either with propriety or safely have done so after the determination given that the said Francis Jourdan was to have the management of the said Consignment and therefore as to such Consignment was the only legal Representative of the said Jacob Franco, moseh Franco and Raphael Franco with whom and with whom alone they were to account for any demand that might arise in consequence of such Consignment upon the Estate of the said William martin Goodlad and these Respondents admit that being the proper Representative of the said Jacob Franco moseh Franco and Raphael Franco the said antonio de Souza being the acting Executor did hand over into his possession the Two Chests of Coral remaining unsold and the Balances due from the Coral merchants on account of the Sales made by William martin Goodlad in his life time and which had not been collected previous to his decease as by the answer of these Respondents may appear.

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their

their Replication urging therein the same frivolous pretences as are Setforth in their Bill of Complaint and prayed as in and by their said Bill of Complaint — To which said Replication these Respondents filed their Rejoinder and issue did join thereupon and these Respondents admit that the appellants did pray that the said mayors Court would permit them to have the benefit of Certain Depositions as had bun given in the former Cause before alluded to have bun commenced by the said Jocob Franco, mosch Franco and Raphael Franco against the said Francis Gourdan at the hearing of this Cause in the said mayors Court and that the same was ordered accordingly — These Respondents also admit that Rules passed for the examination of Witnesses but no further Witnesses were produced or examined on the part of the appellants or of these Respondents whereupon Publication was passed and the said Cause was set down for hearing and came on to be heard on Saturday the first day of november last when the said mayors Court were pleased to order and Decree and did accordingly Order and Decree that the appellants Bill of Complaint should be Dismissed with Costs —

From which said Decree the appellants have appealed to this Honble Court under pretence that they

they are aggrieved — But these Respondents do humbly insist that the said decree is according to the Principles of Law and reason and therefore ought to be affirmed by this Honble Court for the Reasons stated in these Respondents Plea and answer and their Rejoinder which are as follows —

Firstly — Because by the act of Parliament passed in the twenty first year of the Reign of King James commonly called the Statute of Limitations the appellants are effectually barred from any Right of action against these Respondents —

Secondly — Because by the act of Parliament passed in the twenty ninth year of King Charles the Second Entitled an act for the prevention of Frauds and Perjuries these Respondents are not chargeable by the appellants for any act charged to be done by them as Executors of the said William martin Goodlad —

Thirdly — Because the appellants have not entitled themselves by Law for it appears from their own Statement and the facts admitted by both the appellants and these Respondents that the said Jocob Franco, mosch Franco and Raphael Franco not receiving the said remittance of the said Diamonds did not arise from any omission or misfeazance of these Respondents as they did in fact therein more than their duly required of them but it evidently

evidently originated from the Intedference and positive acts of the said Paul Benfield who has no authority whatever to interfere but such as was derived from the said Francis Gourdan who again derived his authority from the Trust reposed in him by the original Consignment of the said Jocob Franco moseh Franco and Raphael Franco and therefore the interference and prevention of the said remittance was clearly an act of the Legal Repnesentative of the said Jocob Franco moseh Franco and Raphael Franco and consequently an act of their own.

Fourthly--- Because for the Reasons already advanced and from the Slightest Consideration of the nature of the Transaction it is absurd to consider that the mere Registry of the Diamonds in the manner stated which is merely an official notice of an intention to do an act vested the property in the said Jocob Franco moseh Franco and Raphael Franco for no act was done as no Diamonds were delivered to the Commander of the Ship nafse or Bill of Lading signed and therefore no transfer made by these Respondents in favour of the said Jocob Franco moseh Franco and Raphael Franco so that the assertion of the appellants whereby they urge that by the act of delivery of the said Diamonds they became irrecoverably divested from the Estate and absolutely Vested in the said Jocob Franco moseh Franco and Raphael Franco on which alone they found their right of action is unfounded as the Diamonds were never out of the possession of these Respondents.

Fifthly Because these Respondents have applied the principal part of the assets which came to their hands as Executors of the said William martin Goodlad towards paying off the Specialty debts of the Estate in the manner required by Law and by the Tenor of the Oath which these Respondents as Executors have taken by which they swore to pay off the debts of their Testator as far as the Estate would Extend and the Law oblige and as they have done so as far as the payment had hitherto been made by the acting Executors and having not committed any waste or other default in the management thereof as by the accounts of the Estate delivered on Oath the same day that these Respondents answer were filed and now of Record in the said mayor's Court may appear the present Suit of the appellants to charge them personally with the Payment of so large

large a Sum of money is illegal and unjustifiable and seems to arise from the same spirit of Litigation and wish to vex and oppress — individuals so clearly manifested in the former suits carried on in the said mayors Court for the same Sum of money instead of waiting — patiently as it is their duty to do till these — Respondents have bien enabled to pay off the specialty debts of the Estate and such others as may have a preferable Claim and may afterwards have sufficient Funds of the Estate to pay the Representatives of the surviving Consigne such — Sum as may appear to be due for them. —

Sixthly — Because that if the Law on a misconceived nicety of which the appellants have built this fabrick of Litigation is so clearly and pointedly against them much less can they expect any relief from a Court of Equity whose decisions tho' extended beyond the Limits of the Law are still confirmed to other Limits beyond which they do not extend for the only objects of Equity are said to be Fraud accident and Trust but here no fraud — has bien committed no accident happened no — Breach of Trust has bien made unless it was a fraud in these Respondents to attempt to serve the said

said Jacob Franco moseh Franco and Raphael Franco at their Evident risk an accident that such attempt was frustrated by the Voluntary and — premiditated act of their legal Representative and a Breach of Trust in these Respondents in not having discharged this simple Contract Debt of the Testator in preference to all his Specialty — and other preferable debts or in case of its — insufficiency out of their own Pockets. —

Seventhly — Because that if from this Technical and legal Equity the appellants should appeal to that more refined Species of it which arises from the operation of Sentiment and conscience To the same Tribunal These Respondents might with equal safety appeal for surely after the liberal and generous manner they acted after the attention manifested to the appellants — Property in preference to their own so far would a Court of Conscience or general Equity be from deciding in favor of the appellants that the more liberal and extended their rule of — Judging might be the more reason would they have to disapprove of the illeberal and —

ungenerous

ungenirous procedure of the appellants in this personal attack on the property of these Respondents as individuals.

Eighthly — These Respondents in answer to the fifth reason of the appellants wherein they say that William Petrie one of the Defendants deposeth that the said Diamonds were actually purchased with money the Property of the appellants say that the Evidence of the said William Petrie, which these Respondents pray leave to observe was given about Six years after the Transaction in question, states it is so long since that he cannot answer if the Bulse was to go by the nasse — that he cannot answer to the Tenor of a certain Letter, to which he is interrogated, as the Correspondence was carried on by mr. de Souza and that he believes the Executors purchased the said Bulse with money or property belonging to the Estate of the said William Martin Goodlad — so that the appellants have in the first place mistated the Evidence of the said William Petrie as to the Person or Estate whence the Diamonds were purchased, and these Respondents pray leave in the next place to observe that the only Variation in the Evidence of the said William Petrie and antonio de Souza is that the former thought the money which purchased the Bulse of Diamonds came from the Estate of William martin Goodlad while antonio de Souza says it was principally advanced by him which Variation is accounted for by the length of time as stated by William Petrie and by that part of his Evidence which states that the Correspondence was kept by antonio de Souza — the facts being that antonio de Souza was the acting Executor and therefore the only person who could after so long a lapse of time speak with accuracy respecting a minute detail of the Transactions of the Executors-

Ninthly — These Respondents in answer to the Sixth reason of the appellants say it appears by the answer of these Respondents to this Suit of the appellants that as soon as the Referees determined

Determined that the future management of the said Coral Consignments of the said Jocob Franco moseh Franco and Raphael Franco should vest in Paul Benfield attorny to Francis Jourdan the Serviving Consignee thise Respondents by antonio de Souza the acting Executor did hand over to the said Francis Jourdan the Two Chests of Coral remaining unsold and the Balances due from the Coral merchants an account of the Sales made by William martin Goodlad in his life time and which had not been collected previous to his Decease.

Whence these Respondents humbly contend that their Conduct as Executors has been precisely legal throughout while their first intentions sufficiently manifest their wish for pay due regard to the Interests of the Constituents of their Deceased Friend and to the memory of the Testator as far as they could have gone without an injury to themselves or a Breach of their duty as Executors.

For all which Reasons and such others as may be offered at the Hearing these Respondents pray that the Decree of the said mayors Court be Confirmed by this Honble Court and that the appellants Petition and appeal be Dismissed with Costs.

/ Signed /
Stephen Popham
Attorney for Respondents

Court of Appeals

Court of Appeals
at
Madraspatnam

Saturday the 30th May
Anno Domini 1739

Between Jacob Franco Junior
Francis Franco and Elias
Lindo Junior Executors of
Raphael Franco late of
London Merchant Deceased
the surviving partners of
Jacob Franco Mosch Franco
and Raphael Franco
late of London Merchants
and Copartners by their
attorneys Thomas Pelling
and John De Fries of
Fort Saint George
Merchants appellants
and Sir John Macpherson
Baronet formerly of
Fort Saint George Esq.
now one of the Members
of the Supreme Council at
Calcutta

Calcutta William Petrie of
Fort Saint George Esq.
and Antonio de Souza of
Madras Merchant
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 Saturday the 1st day of November Anno Domini
1738 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 Honble the Mayors Court do stand
affirmed and that the appellants Petition be
hence dismissed with Costs.

Test /Signed/ Chas N White
Clk

Saturday

Saturday the 8th August 1789

Present

The Honble John Hollond

James Henry Casamajor & Edwd J. Hollond

To the Honble Major General Sir Archibald Campbell

K. B. President in Council

Fort Saint George

In the Honble the

Court of Appeals

Between Tellasinga Pillah of

Madras Inhabitant Petitioner

and Comarapen of the same place

Inhabitant Respondent

In the Cause

Wherein Joseph deCruz and

Addyapah Complainants ~~and~~

and the said Comrapah Defendant

Filed in my Office

the 1st Sept. 1788

Chas. F. White

Clk

The Humble Petition and Appeal of the said Petitioner Tellasingapilla

Sheweth

That some time on or about the Month of November

which

Saturday

Edwd

which was in the Year of our Lord One thousand Seven Hundred and Eighty Two Your Petitioner did file a Petition in the Honble the Mayors Court at Madraspatnam setting forth among other things that some time on or about the Month of October then last past the Attorney at Law of the said Defendant did take out of the Honble Mayors Court a Warrant of Execution against the said Addyapah One of the above named Complainants to enforce the payment of a certain Sum of Money for his Attorneys fees By virtue of which said Warrant of Execution the Sheriff of the Town of Madraspatnam did Seize and Sequester certain Houses and Grounds the property of and belonging to the above named Addyapah One of the Complainants as aforesaid and particularly Two Houses and Grounds laying and being at Peddy Naickspilla in Satanah Sagarjens Street between the Houses of School Auromogam Moodelliar and Vanyan Yellapah and the said Sheriff did Accordingly Advertize that One of the said Houses and Ground would be Sold by publick Outcry on Monday the Seventeenth of the Month of November after and that the other House and Ground would be Sold on Tuesday the Twelfth the Day following which said premisses and all the Appurtenances thereunto belonging Your Petitioner did Shew were Mortgaged and assigned over by the said Addyapah unto Your Petitioner as and for a Security for the Payment of the principal Sum of Five hundred and forty Pagodas with Interest which Sum Your Petitioner did charge as he hath fully and clearly proved was lent and Advanced by Your Petitioner unto the said Andyapah at his Special Instance and request And Your Petitioner did refer for the particulars of the said Loan and the Mortgaged premisses Your Petitioner did Shew were fully Setforth and discribed in the Original Mortgage Deed in the Malabar Language in Your Petitioners Possession and ready to be produced when the said Court Should require the Same a True translation whereof was Annexed for the Inspection of the said Court And which Your Petitioner did pray Might be Admitted as part of his said Petition Your Petitioner further Shewed that no part of the principal Sum of five Hundred Pagodas or any part of the said Interest had been paid since the Day of the Date of the said Mortgage Deed But that the Same did remain due unto Your Petitioner And Your Petitioner Sheweth that he did therefore pray the said Honble Mayors Court that the Sheriff of the Town of Madraspatnam might be directed to take off his Seals and be

be restrained from Selling the premisses and that the said Premisses Might remain and be as a Security unto Your Petitioner for the purposes the same were Mortgaged- and that the said Sheriff might be further directed to pay the Costs of Your Petitioners said Application and Petition-

And your Petitioner sheweth that it Appeared by the said Mortgage Bond translation whereof was as aforesaid Annexed unto the said Petition the Original thereof was fully proved at the hearing that the same was Dated on the Eighth Day of February One thousand Seven hundred and Eighty Two that the said Addyapah One of the aforenamed Complainants did borrow and Receive of and from Your Petitioner the Sum of Five Hundred Pagodas that at the time of executing the said Mortgage Deed the said Addyapah did delivet unto Your Petitioner a Choultry Bill of Sale and Certificate of a House he had bought from one Canaca Vybogapilla thereby Mortgaged which Appear upon the proceedings to be Numbered 8161 and 8162. But that House not being a Sufficient Security the said Addyapah did further Covenant and Agree in the following Manner to wit: that having thro the Means of Pawny Narrain pulla Mortgaged to Mr. Savage Executor of Madam Pawny the Choultry Bill of Sale of his House and also the Choultry Bill of Sale of Sydaporam Condapons House and borrowed Money thereon that so Soon as the said Condapun should pay that Money- and redeem the Bill of Sale of his House that then he the said Addyapah would pay the Sum with Interest which he had borrowed and Redeem the Bill of Sale of his Own House and would then Mortgage it to Your Petitioner for the aforesaid Five Hundred Pagodas- And Your Petitioner Sheweth that it is also expressed in the said Mortgage Deed that in default of the said Addyapah paying the said Sum and Interest which he had borrowed from Mr Savage and Redeem the said Bill of Sale- That Your Petitioner Should be at liberty to do so And to keep the Said Bill of Sale- The particulars of which said Deed are Shewn at Large in the Evidence on behalf of Your Petitioner whereto he prayeth leave to refer-

And Your Petitioner Sheweth that Commapen the above named Defendant on whose behalf the said Warrant of Execution did issue, did take up the said Petition and did make himself Respondent by putting in an Answer thereto the said Respondent in his said Answer Admitting that he did some time on or about the

the Month of October which was in the aforesaid Year of Our Lord One thousand Seven hundred and Eighty Two by the Means of his Attorney at Law issue from out the said Honble. Mayors Court a Warrant of Execution against the Effects of the said Addyapah to enforce the payment of a certain Sum of Money for his said Attornies Fees by Virtue of which said Warrant of Execution the Sheriff of the Town of Madraspatnam did Seize and Sequester certain Houses and Grounds the property of and belonging to the above said Addyapah One of the Complainants in the above Cause and particularly Two Houses and Grounds situate lying and being at Pedda Mucks pettah at Satana Lagayers Street as discribed by Your Petitioner in his said Petition and the said Respondent did in his said Answer deny that the said premisses and all the Appurtenances were Mortgaged and Assigned over by the said Addyapah unto Your Petitioner as and for a Security for the payment of the principal Sum of five Hundred Pagodas with Interest which Sum the Respondent did Say it was pretended to be lent and Advanced by Your Petitioner unto the said Addyapah at his Special instance and request— And the Respondent did say that he was ready to prove the said Matters and did pray that the Sheriff

might

might be directed to proceed in the Sale of the Premisses aforesaid — Upon which said Petition and Answer Your Petitioners Sheweth that issue did join and Rules did pass for the Examination of — Witnesses and Witnesses were examined on Behalf of Your — Petitioner and the Respondent And Your Petitioner Sheweth that the said Respondents answer being General did only put Your Petitioner on the proof of the Mortgage Deed of the said Addyapah and Your Petitioner did proceed so to do in that Manner commonly practised in Such Cases in the said Mayors Court and Your Petitioner Sheweth that he did for that end examine Munnada Nineapen and Tyode the Subscribing Witnesses the said Mortgage Deed to prove the due execution thereof And Your Petitioner Sheweth that the said Subscribing Witnesses being so examined and the Original Mortgage Bond being at the same time produced to them did depose that the Mortgage Bond or Deed or Cadjan Writing was executed in their presence by the said Aulvar Addyapen and that they were Subscribing Witnesses to the Signing and execution thereof and that their Names sett and Subscribed thereto are of their own proper hand Writings that each doth know the others hand Writing and they do Severel Acknowledge their

Names

Names Subscribed as a Witness to the said Deed - and that each did see each Other Sett and Subscribe his Name as a Witness thereto - Your Petitioner did also examine Vaudyar Venicatachalatter who drew out or wrote the said Mortgage Bond or Deed or Cadjan Writing and which he deposes that he did at the desire and with the Consent of the said Addyapah and he also deposes that he did see Addyapah Sett and Subscribe his Name thereto in the presence of the aforenamed Subscribing Witnesses and that each of their Names thereto Sett and Subscribed as a Witness is severally of their proper hand Writing And Your Petitioner Sheweth that he did also examine Narrain pillai thro whose Means and Agency Your Petitioner did lend the said Money on the Mortgaged Bond in question - He deposes that he knows that the Consideration therein expressed to Wit the Sum of Five Hundred Pagodas was actually paid by the Petitioner to the Complainant the day the Mortgage Bond was granted at the House of Pellasinga pillah - He did also depose that Neither principal nor interest of the said Five Hundred Pagodas had been received and that the Choultry Certificate or Bills of Sale or title Deeds shewn to him at the time of his examination Marked No. 8161

and

and 8162 were both delivered at the time of Signing and executing the aforesaid Mortgage Bond - He did further depose that the Bills of Sale Marked No. 1925 & 2498 also shewen to him at the time of his examination on behalf of Your Petitioner are the Bills of Sale referred to in the Mortgage Bond - That is to say the Bills of Sale which were said to be Mortgaged to Mr. Savage as executor to Madam Powney And the reversion whereof was Mortgaged to Your Petitioner He also Deposes that he received the said Bills of Sale or title Deeds for and on account of the Petitioner by Vertue of the aforesaid Mortgage Bond - and that he so received them from Condapen / the Person named in the said Mortgage Bond / in the presence of Iyapah Moodelliar Mr. Savages Dabash That he received the said Bills of Sale by Vertue of an order from the Petitioner to whom he afterwards Delivered them And Your Petitioner prays to observe that no body of Evidence can be more uniform nor explicit to prove the Right which Your Petitioner had under the said Mortgage Bond upon which his Petition was founded -

And Your Petitioner Sheweth that Notwithstanding the Respondent had pleaded or answered Generally denying Your Petitioners right Nevertheless he hath attempted to

take

take an advantage in the examination of Witnesses to produce as Evidence many matters not contained in the said answers nor in any sense connected therewith as this Honble Court will observe by the Depositions before them — which he — Makes no doubt will meet with their attention to the extraordinariness of such a proceeding — The first Evidence produced on Behalf of the Respondent is Joseph Debruz the person who was condemned in the payment of Costs jointly with Addyapah out of whose Effects and Estate the Respondents hath sought to levy the Amount of the Execution in Question This Witness Saith that a Warrant of Execution was had to enforce payment of the said Decree whereupon he saith he told the said Addyapah that he must give him the Bills of Sale of his two Houses Situated at Pedda Naicks pettah to indemnify him to pay the Court Charges — He also Saith that Addyapah at first promised to give them but that he Nevertheless did not Comply with his Request but Ran away from the place and this Witness continues to — depose that the Warrant of Execution was Served upon him but that not having Effects Two Houses belonging to the said Addyapah were Sealed up by Order of the said

Honble

Honble the Mayors Court in Order to enforce the said Decree — Your Petitioner prayeth leave to Observe in respect of this — Deposition that the same is contradictory and untrue — First Your Petitioner Sheweth that the same is Contradictory because the Deponent being equally bound by the Judgement of the Mayors Court could have no more Right to call upon — Addyapah to indemnify him for any part thereof wherein he was involved than it is to be supposed the said Addyapah could see Reason to indemnify him for or that he would for that purpose promise to give him the Bills of Sale of his two Houses the same is untrue Witness to appear by the Course of the Evidence that the said Two Houses were Mortgaged and also by the Assertion of the said Joseph Debruz on Oath — that the Warrant of Execution was Served upon him Because Your Petitioner Sheweth that the said Warrant of Execution was not Directed to Seize the Effects of Joseph Debruz as it Ought to have been jointly with that of the said Addyapah but that the said Warrant of Execution was partially directed to the Sheriff to levy or cause to be levied the Sum of Five hundred and fifty Seven Pagodas and Twenty four fanams for Costs of Suit of the Goods and Chattels of the said Addyapah Only

without

without joining the said Joseph Debruz in the said writ - which Your Petitioner Sheweth was an act that in the first instance — Vitiated all proceedings upon the said Writ of Execution the said Joseph Debruz being evidently alive the time of issuing out the Same because he was an Evidence for the Respondent thereafter and in Support of what Your Petitioner hath Said of the informality of the Said Execution Your Petitioner is advised to refer to Bacons abridgement Volume the 2d page 358 Title Execution — And Your Petitioner Sheweth that the irregularity of the Execution and the Omission to insert therein the Name of the said Joseph Debruz Against whom Judgement was given jointly with the said — Addyapah and his afterwards becoming a forward and Willing Witnesses Against the Said petition and thereby aiding to procure the full Satisfaction of the said Judgement Out of his the said Addyapahs Effects doth furnish More than presumptive proof that the Same is a Commutation of Offices between the said Joseph Dabruz and the Respondent to favor their Several Designs and Interests — And your Petitioner Sheweth that if it had been made any part of the proceedings that the said Joseph Dabruz had asked Your Petitioner if he had lent the said Addyapah any Money Your Petitioner could certainly have shewn to the Court

that

that the said Joseph Dabruz never did speak to your Petitioner on the Subject and that your Petitioner is not directly or indirectly acquainted with such a person Chungleroy the Next Evidence Deposeth that the Complainants Meaning the Said Joseph Debruz and Addyapah not Satisfying the Respondent According to the Decree in Question - that he took out a Warrant of Execution against the Complainants Effects by Virtue of which Said Warrant the Sheriff did Seize two Houses belonging to the Complainant Addyapah - The same Witness goes on to dispose that he doth know the Nature of the Petition to the Said Honble Mayors Court which the Deponent Saith is for the purpose of Opposing the Decree of the Said Court which is not the Case because Your Petitioner hath not any thing to do with the said Decree the purport of his Petition being against the Execution of a Warrant against certain effects of the said Addyapah in which he had an interest He also Saith that Your Petitioner setforth in his Said Petition that, that the aforesaid two Houses were his — property by the said Addyapah having Mortgaged the Same to him and the Deponent also Saith that there was another Petition filed by George Savage Thomas Powney and

James

James Henry Casamajor as Executors of the late Mary Powney was the property of the said Deceased by the said Bill of Sale having been Mortgaged to the said Deceased by the said Addyapah and Sydaperam Candapen for five Hundred Pagodas which said Petition the said Deponent Saith the Respondent did answer and that the said Petition was thrown out on the Twenty fifth day of February One Thousand Seven hundred and Eighty Two and that the Respondent was thereupon put in Possession of the said House the property of Addyapah

Your Petitioner prays to observe that the present is a very forward Witness He attempts to Shew that there were two concurrent Petitions and by Declaring that one of them had been Dismissed after answer and that the Respondent was in consequence thereof put in Possession of the Disputed premisses and he would make it understood that the said Dismission was upon the Merits whereas Your Petitioner Sheweth the said Petition of the said Executors of the said Deceased was dismissed by Consent and after as Your Petitioner hopes to shew to the Satisfaction of this Honble Court that the said Mortgage was paid or at least as nearly as a suit and uncolorable inference can do so- And Your Petitioner Sheweth that the said Petition was so dismissed by consent on or about the fourteenth day of February One thousand Seven hundred and Eighty three, and not One thousand Seven hundred and Eighty Two, as this Witness hath Sworn to And Your Petitioner Sheweth that the Respondent was not nor could not in the Nature of practice be put into Possession of the said premisses

The same Witness also deposes to a direct Negative by declaring that the premisses and Possessions of the said Addyapah are free of all Incumbrances whereas it appears by the Mortgage Bond copy of a Translation whereof is annexed unto Your Petitioners Petition that the said Addyapahs House under the discription of being bought from Canaca Vybogapilla was thereby Mortgaged to Your Petitioner and the Title Deeds whereof N°. 8161 & 8162 are proved to have been delivered at the time of Signing and executing the said Bond and as that circumstance tends to Substantiate one part of Your Petitioners Claim upon Addyapah it tends at the same time to clear up that respecting which the Respondent is more particularly disputing with him to wit that of Title Deeds

Deeds N°1925 & 2493 delivered to Narrain pillah on behalf of your Petitioner Sydaporam Condapen after the former Mortgage had been paid off and discharged— And Your Petitioner Sheweth that this Evidence is fully Refuted by Evedence on the part of Your Petitioner Namely Munnada Nineapah Jyode Vaudyar Vencatachatier and Narrain pillah who depose directly to the Execution of the said Addy apahs Bond to Your Petitioner as also to the Consideration therein Declared

And Your Petitioner Sheweth that the Deposition of the said Chingleroyen is upon the Gross very much infavour of Your Petitioners said Claim and tends to Support the Evidence of Narrain pillah and Sydaporam Condapen and clearly to Shew that the aforesaid Petition of the said Executors of Mary Powney was not with drawn untill after that the Mortgage Bond given to them by Addy apah and the said Sydaporam Condapen had been paid off and discharged by the said Condapen and that the said Condapen did come to the possession of the Bills of Sale in dispute to wit N°1925 & 2493 in Consequence of having so redeemed the Same And it appears by the said Deposition that after the aforesaid Petition was withdrawn for Your Petitioner doth contend that it was not Dismissed but

but by Consent that Your Petitioner did Send the said Narrain Pillah to the said Condapen who had in the Manner aforesaid Redumed the said Title Deeds and did ask him for the Same which Your Petitioner Sheweth is exactly what he was entitled unto— And Your Petitioner Sheweth that the pretended Conversation which the said Chingleroy Setts forth to have passed between the said Narrain pilla and the said Sydaporam Condapen is not Grounded on any part of the proceedings or the Matters relating thereto and it was not probable that the said Narrain pillah could say that he was afraid that he your Petitioner had — But it rather appears by the said Deposition that the said Sydaporam Condaporam Delivered the said Bills of Sale to the said Narrain pillah because he knew that Your Petitioner on whose behalf he Demanded them was entitled thereto— The Same Witness Setts forth that Your Petitioners Bond is Dated the Eighth Day of February One thousand Seven hundred and Eighty Two and the Bond to the Executors of the said Mary Powney doth bear date the Tenth day of the said Month of February One thousand Seven hundred and Eighty Two By which

the

the Evidence would seem to infer that Your Petitioners Bond being dated previous to the Bond of the said Addyapah to the Executors of the said Mary Powny that it was not possible that your — Petitioner could have Reversion in the premisses which were Mortgaged after the date of your Petitioners Bond—

But Your Petitioner is advised that he cannot have any thing to do with nor can he be affected by any Deed than that under which he Grounds his Claim - That the Deed omentioned to have been given by the said Addyapah and Condapun to the said Executors of Mary Powny was not part of the proceedings as it produced and proved by Witnesses in Order that this Horible Court can judge thereby whether it is true that the same was Dated on the Tenth or on any other day of February or — Month of the Year One thousand Seven hundred and Eighty two or in any other Year But all that is produced is a Copy of a Copy of a Translation Which is to Slender Evidence to be put in Competition with an Original Deed proved by Subscribing Witnesses and confirmed by a Variety of other Witnesses— Your Petitioner therefore with Submission presumes that such Dark and Distant Testimony as the Copy of a copy of the Translation of a Deed whereto Your Petitioner is not a party shall not be

permitted

nor ought not to be affected by the paper Writing Exhibited by the Respondent as if the same was the Bond under which your Petitioners Claim was founded whereas in fact the same is not any more than a Copy of a Copy of a Translation of such a paper and that not proved in any of those Degrees and cannot therefore be placed in Competition with an Original Deed produced and proved as such in the most Solemn Manner &c Your — Petitioner Saith that so far from the said paper writing Appearing to be a Bond he is humbly of Opinion that the same ought not to have been Attended to much less be contrasted with this — Duing which time Your Petitioner Sheweth the same was open to every Scrutiny whether by Answer or Otherwise— And if the Respondent would have availed himself fairly of any inconsistence in the Dates of the said Bonds it Should have been by way of Answer when your Petitioner Might have had it in his power to clear up the same if the Original had been produced which it was impossible for him otherwise to have done and which he could not have done from the Copy of the Copy of a Translation even had the same been made part of the proceedings because the explanation of any inconsistency in the date of the said Bond could only be made

from

the Evidence would seem to infer that Your Petitioners Bond being dated previous to the Bond of the said Addyapah to the Executors of the said Mary Powney that it was not possible that your Petitioner could have Reversion in the premisses which were Mortgaged after the date of your Petitioners Bond.

But Your Petitioner is advised that he cannot have any thing to do with nor can he be affected by any Deed than that under which he Grounds his Claim. That the Deed omentioned to have been given by the said Addyapah and Condapun to the said Executors of Mary Powney was not part of the proceedings nor is it produced and proved by Witnesses in Order that this Honble Court can judge thereby whether it is true that the same was Dated on the Tenth or on any other day of February or Month of the Year One thousand Seven hundred and Eighty two or in any other Year But all that is produced is a Copy of a Copy of a Translation Which is to Slender Evidence to be put in Competition with an Original Deed proved by Subscribing Witnesses and confirmed by a Variety of other Witnesses— Your Petitioner therefore with Submission presumes that such Dark and Distant Testimony as the Copy of a Copy of the Translation of a Deed whereto Your Petitioner is not a party shall not be

permitted

nor ought not to be affected by the proper Writing Exhibited by the Respondent as if the same was the Bond under which your Petitioners Claim was founded whereas in fact the same is not any more than a Copy of a Copy of a Translation of such a proper and that not proved in any of those Degrees and cannot therefore be placed in competition with an Original Deed produced and proved as such in the most Solemn Manner & Your Petitioner Saith that so far from the said proper writing appearing to be a Bond he is humbly of Opinion that the same ought not to have been attended to much less be contrasted with the aforesaid Deed regularly produced and made part of the proceedings during which time Your Petitioner Sheweth the Same was open to every Scrutiny whether by Answer or Otherwise— And if the Respondent would have availed himself fairly of any inconsistence in the Dates of the said Bonds it Should have been by way of answer when your Petitioner Might have had it in his power to clear up the same if the Original had been produced which it was impossible for him otherwise to have done and which he could not have done from the Copy of the Copy of a Translation even had the same been made part of the proceedings because the explanation of any inconsistency in the date of the said Bond could only be made

from

from the Original in the Malabar Language the original Translation was liable to Errors and the Copy from the Copy of the Translation to quadruple Error – that it was not the Duty of your Petitioners to clear up such inconsistency if any there was even had the same been made part of the proceedings But it was the duty of the Respondent to have cleared up that difficulty if any there was to the Court all that your Petitioner had to do was to prove his own Mortgage which he conceives he hath done in the most ample and unequivocal Manner – that there was a previous Mortgage to your Petitioners in the name of the Executors of Mrs Powney is fast beyond all dispute by the Bond given by Addyapah to your Petitioners proved in the Manner which hath been Observed – That such previous Mortgage in the Names of the said persons was paid off and discharged and the title Deeds No. 1925 82 498. Redeemed by such payment is also proved by the person who paid the Money and Received the said title Deeds in consequence to wit by Sydaporam Condapen one of the Respondents own Witness – And that such title Deeds were afterwards claimed by your Petitioners and were delivered to Narrain pillah on his behalf by the said Sydaporam Condapen under the Right which your Petitioners was entitled to demand them – To wit the said Mortgage Bond given unto

unto Your Petitioner by the said Addyapah is also fully proved by the said Narrain pillah and Sydaporam Condapen – Respecting which your Petitioner prays to Observe that these are not simple circumstances which cast a mere glimmering on truth but are insurmountable facts which establish it beyond the power of doubt Error or falsehood to misconstrue mislead or deny

And Your Petitioner further saith that the Respondent hath not in the Smallest Degree undertaken to to disprove the regularity of the Mortgage of the House and Ground bought from Canaca Vyboga pillah the Title Deeds whereof Marked Number 8161 and 8162. were delivered and fully proved to have been delivered on the day of the Execution of Addyapah's Bond to your Petitioner and there is no dispute or contradiction of their having coming regularly into the hands of Your Petitioner thro' the Means of Narrain pillah – And therefore that part of the said Bond being allowed and admitted the other parts thereof must in consequence be admitted and allowed of And your Petitioner pray also to observe the General unfairness of the Respondent in putting in a General Answer to Your Petitioners Petition and examining thereupon a Variety of Witnesses the Matters quite foreign and of a Nature no way admissible

Admissible as creditable Evidence— And Your Petitioner hath—
in the former part of his Petition pointed out the intricacy of the
Respondents Conduct in the proceedings who under the Cloak of—
Complaint and grievance conceals the most artfull and Deep design
of imposing on the Justice of the Court— And Your Petitioner hath
great Reason to believe from the whole of the proceedings and—
particularly from the said Joseph Debruz not being joined in the
said Warrant of Execution and his being thereafter an Evidence
in favor of the Respondent and by the said Warrant being in the
name only of the said Addyapah that there is a Combination
between the said parties for the purpose of Vitiating the said
Addyapah's Bond that the Decree in question may be satisfied
from the produce and Sale of the premisses thereby Mortgaged—

All which Matters Your Petitioner humbly
refers to the Consideration of this Honble Court upon the facts—
Stated and proved before them and to the Variety of other Degrees
of Evidence all tending to confirm the truth and Justice of Your
Petitioners Demand—

And Your Petitioner Lastly prays that this
Honble Court will be pleased to reverse the said order of the said
Mayors Court of the twenty third August last with Costs in
both—

both Courts and that this Honble Court will be pleased to grant
such further and other relief unto your Petitioner in the premisses
as to them in their Wisdom may seem meet—

/Signed/
Henry DuPuy
Attorney for the Petitioner

Extract

Extract from the Minutes of a Court Held at the Town Hall on Saturday the 23d. day of August Anno Domini 1788

Present

Edward Garrow Esquire Mayor
James Call William Webb
Sir John Menzies Jos: DuPre Porcher
and Andrew Ross Aldermen

Joseph debruz and Addyapah
vers
Comrapen

Petition of Tellesinga pillah with Translate of a Mortgage Bond Annexed Read

Answer of Comrapen Read

Interrogatories on the part of the Petitioner with a Cadjan and a Translate thereof Marked A Annexed Read

Three Depositions taken thereunto Read

Additional Interrogatories on the part of the Petitioner with four Exhibits Annexed Read

One Depositions taken thereunto Read

Exceptions of the Petitioner to the Interrogatories to and the Depositions of Chungleroy and Joseph debruz Read - Answer thereto Read - the Petitioners Exceptions and the Respondents Answer coming on to be

Argued

Argued and Determined and the Court having had due Consideration thereon are of Opinion that the Exceptions are not well founded it is therefore Ordered that they be overruled with Costs - The Mayor and Messrs. Aldermen Call and Webb dissent to the Deposition of Joseph Debruz being read as it appears from the Proceedings that he is interested in the Event of the Cause - Interrogatories on the part of the Respondent Read — Four Depositions taken thereunto Read - the Witnesses N. 3, 4, 6, 7, did not appear for Examination two Exhibits on the Part of the Respondent Read —

The Petition of Tellesinga pillah and the Respondents Answer thereto coming on to be Argued and Determined this Day in the Presence of the attornies on both Sides and the Court having had due Consideration thereon doth think fit to order and doth accordingly Order that the Petitioners Petition be dismissed with double Costs of Suit the Bond under which the Petition claims being dated two Days previous to the date of another Bond to which it refers and therefore appears to be a Collusion —

A true Extract

(Signed) James Taylor
Regr.

True copy

(Signed)

Henry DuPuy
Attorney for Petitioner

Extract

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 29th day of November Anno Domini 1785

Present

Philip Stowey Esquire Mayor
William Webb and Venuntio Corbet
Aldermen

Joseph debruz and Audeyapah
vers
Natchiapah administrator of Comarapah Moodelly Deceased

The Attorney for the Respondent Natcheapah appears and prays that the Petitioner Tellesinga Pellah may Shew cause why this Matter should not Stand Revived Mr. Henry Dupuy Appears for the Petitioners and has no Objection to the Suit Standing revived Ordered Accordingly

A true Extract

/Signed/ George Taylor
Dpty. Regr.

True copy

/Signed/
Henry Dupuy
Attorney for the Petitioners

By

By the Mayors Court of Madraspatnam

By the Mayors Court

L.S.

Whereas it appears to this Court by inspection of a Decree in this Court and the proceedings thereon that Audyapah of Madras Inhabitant was adjudged and Decreed to pay to Comrapah Moodelly of the same place Inhabitant the Sum of 557 Pagodas and 24 fanams for costs of Suit which the said Audeapah hath not hither to done. These are therefore to require you without delay to levy or cause to be Levyed the said Sum of 557 Pagodas & 24 fanams for costs of Suit of the Goods & Chattels of the said Audeapah and to that end if necessary You are to cause Sale to be made of Such Goods or Chattels and to have the Money before the Mayors Court at Eight of the Clock in the forenoon on the 22d day of November Next to render the said costs to the said Comrapah Moodelly and to render the Overplus /if any be/ to the said Audeapah Given under the Hands and Seals of Edward Garrow Esquire Mayor of Madraspatnam and of Mr. Wm. Webb One of the Aldermen of Madraspatnam and under the Seal of the said Court this 24th day of October Anno Domini 1782

/Signed/ E. Garrow Mayor of Madraspatnam (L.S.)
/Signed/ Wm. Webb One of the Aldermen of Madraspatnam (L.S.)

To the Sheriff of Fort St. George
Town of Madraspatnam
the Districts thereof
/Signed/ James Taylor
Regr.

True copy /Signed/
Henry Dupuy
Attorney for Petitioner

In

In the Court of Appeals

Between Tellesinga pillah of Madras Inhabitant Petitioner and Comorapen of the same Place Inhabitant Respondent

In the Cause

Wherein Joseph Debruz and Addyapah Complainants and the said Comorapen Defendant

The Answer of Comorapen Respondent to the Petition and Appeal of Tellesinga Pillah

The said Respondent not confessing or Acknowledging all or any of the Matters or things to be true as in and by the said Petition and Appeal are mentioned and Setforth for Answer thereunto Says that he admits that some time on or about the Month of November which was in the Year of Our Lords 1782 the Appellants Tellesinga pillah did file a Petition in the Honble the Mayors Court at Madraspatnam Setting forth among other things that some time on or about the Month of October then last past the attorney of the Respondent did take out of the Honble Mayors Court a Warrant of Execution Against the said Addyapah One of the above named Complainants to enforce the payment of a certain Sum of Money for his Attorneys Fees by virtue of which said Warrant of Execution the Sheriffs of the Town of Madraspatnam did seize and Sequester certain Houses and Grounds the property of and belonging to the above named Addyapah one of the Complainants as aforesaid and particularly two Houses and Grounds lying and being at Peddanaicks Pettah in Patanah Lagayen Street between the Houses of School Auromagam Moodelliar and Vanyan Yellapah and the said Sheriff did accordingly advertize that one of the said Houses and Ground would be Sold by Public Outcry on Monday the 17th of the Month of November after and that the other House and Ground would be Sold on Tuesday the 12th the day following which said Premisses and all the Appurtenances thereunto belonging the Appellant endeavoured to shew were Mortgaged and Assigned over by the said Addyapah unto the Appellant in and for a Security for the payment of the principal Sum of five hundred and forty Pagodas which is neither fully or clearly proved as is represented by the Appellant which the Respondent trusts he will afterwards amply explain to the Honble Court. This Respondent further admits that

Filed in my Office
the 3d October 1788
Chas Ir White
Clk

that he did take up the said Petition and did make himself Respondent by putting in an Answer thereto this Respondent in his said Answer admitting that he did some time on or about the Month of October which was in the aforesaid Year of Our Lord 1782 by the Means of his Attorney at Law issue from out of the said Honble Mayors Court a Warrant of Execution against the Effects of the said Addyapah to enforce the payment of a certain Sum of Money for his said Attorneys Fees by Vertue of which said Warrant of Execution the Sherriff of the Town of Madraspatnam did Seize and Sequester certain Houses and Grounds the property of and belonging to the above said Addyapah One of the Complainants in the above Cause and Particularly two Houses and Grounds Situated lying and being at Pedda Naicks Pettah at Satana Lagayens Street as described by the Appellant in his said Petition and this Respondent further admits that he did in his Answer deny that the said Premises and all the Appurtenances were Mortgaged and Assigned over by the said Addyapah unto the Appellant as and for a Security for the payment of the principal Sum of five hundred Pagodas with Interest which Sum this Respondent Admits he did say it was pretended to be lent and Advanced by the Appellant unto the said

Addyapah

Addyapah at his special Instance and Request and this Respondent admits he did say that he was ready to prove the said Matters and did pray that the Sherriff might be directed to proceed in the Sale of the Premises aforesaid and this Respondent further admits that upon the Petition and Answer that Issue did join and that Rules did pass for the Examination of Witnesses and that Witnesses were examined on Behalf of the Appellant and this Respondent further admits that the Appellant did examine Munnada Ninagun and Iyade the Subscribing Witnesses to the said Mortgage Deed to prove the due Execution thereof but this he also admits that Munnada Ninagun and Iyade deposed to the due Execution of the Mortgage Deed Yet this Respondent most positively denies that their Depositions afford any such Proof as the Appellant wishes they should have the Appearances of indeed the Depositions afford no Proof whatever that the Mortgage Deed had existence before the Writ of Execution and this Respondent Must Observe that the Interrogatories then exhibited by the Appellant are beyond all Measure limitted and confined they Only enquire in a loose Manner from the Evidence the simple answer I have Subscribed my

name

name as a Witness to the Execution of the Bond but the Interro-
-gatories by no means question when and where – This Respondent
further Answering saith that had the Interrogatories boldly
Demanded – Was it not previous to the Writ of Execution that You
Subscribed Your Names as Witnesses to the due Execution of the
Mortgage Deed it then would have most Obviously appeared
that their Subscribing their Names as Witnesses was Subsequent
to the Writ of Execution

This Respondent further admits that the
Appellant did also examine Vaudy at Vencatachalatier who drew
out or wrote the said Mortgage Bond or Deed or Cadjan writing
and the Respondent also admits that he deposed that he did
so at the desire and with the consent of the said Addy apah – and
this Respondent also admits that he deposed that he did see
Addy apah Sett and Subscribe his name thereto in the presence
of the aforenamed Subscribing Witnesses and that each of their
Names thereto Sett and Subscribed as a Witness is Severally of
their proper hand Writing – but this Respondent can by no means
admit or allow that this Deposition tends to throw any Light
upon the Matter further than that the Bond was duly executed
for the Interrogatories exhibited to the said Vaudy at Vencatachalatier

are

are Loose and Vague to the Last degree and carefully Avoid –
Demanding whether the Mortgage Bond or Deed or Cadjan Writing
was duly executed by him previous to the Writ of Execution
issued which in fact renders the Deposition equally nugatory
as those of the Subscribing Witnesses

This Respondent further admits that the
Appellant did examine Narrain Pillah and that he deposed
that he knew that the Consideration expressed in the Mortgage
Bond was paid by the Appellant to the Complainant and that
he also Deposed that the Choultry Certificates or Bills of Sale
or Title Deeds shewn to him at the Time of his Examination
Marked N° 8161 and 8162 were both Delivered at the Time of
Signing and Executing the aforesaid Mortgage Bond and that
he did further Depose that the Bills of Sale Marked
N° 1925 and 2698 also shewn to him at the time of his
examination on behalf of the Appellant on the Bills of Sale
referred to in the Mortgage Bond as the Petition of the
Appellant expresses them – the Bills of Sale which were
Mortgaged to M^r Savage as Executor to Madame Powney
and the Reversion whereof was Mortgaged to the Petitioners and
the Respondent further admits that the said Narrain Pillah

also

also Deposed that he received the said Bills of Sale or Title Deeds for and on account of the Petitioner by virtue of the aforesaid Mortgage Bond and that he so received them from Condapen the Person named in the said Mortgage Bond in the presence of Iyapah Moodelliar Mr. Savages Dubash and that he received the said Bills of Sale by Virtue of an Order from the Appellant to whom he afterwards delivered them this Respondent never can however admit that the Body of Evidence which the Appellant lays so very much Stress on as being uniform and explicit to prove his Right under the Mortgage Bond upon which the Petition was founded is by any Means Strong or forcible on the contrary it appears lame in every respect and futile in every Instance- for the Evidence given by Narrain Pillah goes to prove the Execution of the Mortgage Bonds Yet the Respondent cannot possibly allow that such Bonds ever were in legal existence for he trusts he will prove beyond a Shadow of Doubt by Evidence most incontrovertible that these Bonds were only Instruments framed by the confederate Friends of Addyapah to protect his property against the due Execution of the Law- this Respondent previous to his entering further into the Merits must beg leave positively to deny that he Attempted to take any Advantage whatever

whatever in the examination of Witnesses from his having pleaded or answered generally denying the Appellants Right or to produce as Matters any thing whatsoever that was not connected with such Sense of Justice to himself as it is natural for every Man to wish for- This Respondent therefore hopes that such Observation of the Appellant will so far from meeting the Attention of the Honble Court to its extraordinariness be treated with that want of Notice which it so richly merits-

This Respondent further answering begs leave to state to the Honble Court that Addyapah the Complainant who has been Originally the Means of bringing forward this Petition and Appeal did file a Bill against Your Respondent for a certain Sum of Money in the Honble the Mayors Court which after a certain Period came to be heard when so slender was the Subject for Litigation and so very ill founded appeared the Claims of Addyapah that the Honble the Mayors Court not only gave a Decision in favor of Your Respondent but awarded to him as a Compensation for a most Vexatious and Vindictive Prosecution Double Costs of Suit- Your Respondent further begs leave to shew that the time allotted by Law for the payment of the said Costs of Suit being expired he

also Deposed that he received the said Bills of Sale or Title Deeds for and on account of the Petitioner by virtue of the aforesaid Mortgage Bond and that he so received them from Condapen the Person named in the said Mortgage Bond in the presence of Iyapah Moodelliah Mr Savages Dubash and that he received the said Bills of Sale by Virtue of an Order from the Appellant to whom he afterwards delivered them this Respondent never can however admit that the Body of Evidence which the Appellant lays so very much Stress on as being uniform and explicit to prove his Right under the Mortgage Bond upon which the Petition was founded is by any Means Strong or forcible on the contrary it abounds in every respect and futile in every Instance- for tho the Evidence given by Narrain Pillah goes to prove the Execution of the Mortgage Bonds Yet the Respondent cannot possibly allow that such Bonds ever were in legal existence for he trusts he will prove beyond a Shadow of Doubt by Evidence most incontrovertible that these Bonds were only Instruments framed by the confederate Friends of Addyapah to protect his property against the due Execution of the Law- This Respondent previous to his entering further into the Merits must beg leave positively to deny that he attempted to take any Advantage whatever

whatever in the examination of Witnesses from his having pleaded or answered generally denying the Appellants Right or to produce as Matters any thing whatsoever that was not connected with such Sense of Justice to himself as it is natural for every Man to wish for- This Respondent therefore hopes that such observation of the Appellant will so far from Meeting the Attention of the Hönble Court to its extraordinariness be treated with that want of Notice which it so richly merits-

This Respondent further answering begs leave to state to the Hönble Court that Addyapah the Complainant who has been Originally the Means of bringing forward this Petition and Appeal did file a Bill against Your Respondent for a certain Sum of Money in the Hönble the Mayors Court which after a certain Period came to be heard when so slender was the Subject for Litigation and so very ill founded appeared the Claims of Addyapah that the Hönble the Mayors Court not only gave a Decision in favor of Your Respondent but awarded to him as a Compensation for a Most vexatious and Vindictive Prosecution Double Costs of Suit- Your Respondent further begs leave to shew that the time allotted by Law for the payment of the said Costs of Suit being expired he

he did Apply to the said Addyapah for the payment thereof which being refused him a warrant of Execution was prayed for and granted when the Sherriff proceeded to sequester the prosperty of the said Addyapah and Advertized the Property for Sale- this Respondent further Sheweth that there then came forward a Petition Accompanied with a Cadjan Mortgage Bond or Deed filed- with no other Intent than to stop the Sale of the above Premises and to prevent the Sherriff putting in Execution the Decree of the Hōnble the Mayors Court— This Respondent will in an Ample Manner fully shew and prove he trusts to the Satisfaction of the Hōnble Court that the Subsequent Proceedings have been equally a Collusion of Parties as a Confederacy formed of the Friends of Addyapah to save and protect his prosperty- This Petition Your Respondent Sheweth was carried forward by the above Named Narrain Pillah who is father in Law of the Appellant & in whose Evidence he the Appellant reposes so much trust The Petition States that the said Addyapah had borrowed upon Bond from Messrs Savage Casamajors and Powney Executors of the Late Mary Powney the Sum of five hundred Pagodas and that this Cadjan Bond or Deed was executed on the 10th day of February which Period was many Months

Previous

Previous to the Writ of Execution- And the Petition prayed that the Seals of the Sherriff might be taken off the Sequestered —— Premises— This Respondent further saith that the Petition and Mortgage Bond being carefully examined the Bond was traced and found to have its origin from much Inequity for in fact no such Bond ever had bona fide been executed nor had Messrs Savage Casamajors and Powney as executors aforesaid of Madam Powney ever lent Money to the said Addyapah nor had they ever dealings of any Nature with him- This Respondent further Sheweth that every Circumstance which he has advanced was proved to the full Satisfaction of the Hōnble the Mayors Court and the Petition thrown out with Double costs awarded to your Respondent as appears by a copy of the Decree Dated 25th February 1783 which Your Respondent Annexes to this his Answer for the Inspection of this Hōnble Court— This Respondent further Sheweth that the Schemes of the afore named Narrain Pillah being thus fully Detected. and a Scene of much Iniquity laid Open. from which detection and Defeat of Hopes This Respondent had reason to suppose that no other Attempt would have been made to prevent the said Sequestered Premises being Sold.- But the discomposure of the said Narrain Pillah did not in fact prevent it for This

he did Apply to the said Addyapah for the payment thereof which being refused him a Warrant of Execution was prayed for and granted when the Sherriff proceeded to sequester the property of the said Addyapah and Advertized the Property for Sale- This Respondent further Sheweth that there then came forward a Petition accompanied with a Cadjan Mortgage Bond or Deed filed- with no other Intent than to stop the Sale of the above Premises and to prevent the Sherriff putting in Execution the Decree of the Honble the Mayors Court— This Respondent will in an ample Manner fully shew and prove he trusts to the Satisfaction of the Honble Court that the Subsequent Proceedings have been equally a Collusion of Parties as a Confederacy formed of the Friends of Addyapah to save and protect his property- This Petition Your Respondent Sheweth was carried forward by the above Named Narrain Pillah who is father in Law of the Appellant & in whose Evidence he the Appellant reposes so much trust The Petition stated that the said Addyapah had borrowed upon Bond from Messrs. Savage Casamajors and Powney Executors of the Late Mary Powney the Sum of five hundred Pagodas and that this Cadjan Bond or Deed was executed on the 10th day of February which Period was many Months

previous

Ex.

Previous to the Writ of Execution- And the Petition prayed that the Seals of the Sherriff might be taken off the Sequestered — Premises- This Respondent further saith that the Petition and Mortgage Bond being carefully examined the Bond was traced and found to have its origin from much Inequity for in fact no such Bond ever had bona fide been executed nor had Messrs. Savage Casamajors and Powney as executors aforesaid of Madam Powney ever lent Money to the said Addyapah nor had they ever dealings of any Nature with him- This Respondent further Sheweth that every Circumstance which he has advanced was — proved to the full Satisfaction of the Honble the Mayors Court and the Petition thrown out with Double Costs awarded to your Respondent as appears by a Copy of the Decree Dated 25th February 1783 which Your Respondent Annexes to this his Answer for the Inspection of this Honble Court- This Respondent further Sheweth that the Schemes of the afore named Narrain Pillah being thus fully Detected and a Scene of much Iniquity laid Open, from which detection and Defeat of Hopes This Respondent had reason to suppose that no other Attempt would have been made to prevent the said Sequestered Premises being Sold- But the discomfiture of the said Narrain Pillah did not in fact prevent it for This

Respondent

Respondent sheweth that the Appellant who is Son in Law to the said Narrain Pillah stept forward to save the Property of Addyapah and to Effect which he presented a Petition to the Honble the Mayors Court Annexing thereto a Mortgage Bond on the aforesaid sequestered Premises which said Bond has an allusion to that Bond of Messrs Savage Casamajors and Powney as Succeeding in a reversionary Right to the aforesaid Premises That is to say the Bond Obtained by the said Narrain Pillah for the said Messrs Savage Casamajors and Powney had the first Claim to the Property but that Bond being done away as aforesaid the Claim of Tellesinga Pillah the Appellant then came in. Your Respondent Annexes Copys of the two Mortgage Bonds for the Inspection of the Honble Court Your Respondent Sheweth it always happens that the best concerted Schemes when founded on Iniquitous principles are Marked with some Inconsistencies at once to detect and Defeat them - and this Respondent Sheweth that such is notoriously the Case with the Appellant Tellesinga Pillah as Appears by the Date of the said Mortgage Bond or Deed as will very palpably be Conspicuous to this Honble Court for the Bond of the said Narrain Pillah Agreable to the Tenor of it has the first Claim to the

Sequestered

Sequestered Property and Your Respondent sheweth that this Mortgage Bond or Deed of the said Narrain Pillah is Dated on the 10th of February when Your Respondent Sheweth that the Mortgage Bond or Deed of the Appellant Tellesinga Pillah Alludes to the said Mortgage Bond or Deed of the said Narrain Pillah or that of the said Messrs Savage Casamajors and Powney as Succeeding to it by Reversion when in Fact and Truth this Mortgage Bond or Deed is Dated the 8th day of the Same Month which is two days previous to the One it has allusion to. This Respondent Sheweth that Such a Strange Inconsistency as has been so Obviously pointed Out to this Honble Court Appears Sufficient without the aid of further answer to give Impressions not a little unfavourable to the Litigious Views of the Appellant. Your Respondent further Sheweth that the Mortgage Bonds or Deed of the said Appellant Tellesinga Pillah was upon Bills of Sale No. 8161 and No. 8162. a Property Actually not worth 70 Pagodas which this Respondent hopes will appear an Additional Proof that the said Mortgaged Bond or Deed was not a Bona fide one, but Merely framed to answer Sinister Views for can it possibly be imagined that any Man conversant in Business or having an Eye to his own Interest would ever loose

Sight

Sight of it so very much as to grant the Loan of five hundred Pagodas upon a Property actually not worth Seventy— this Respondent trusts these Matters so Obvious in themselves will clearly Appear palpable to the Honble Court to the — destruction of the Appellants Vindictive and unparallelled Litigious Inclinations— this Respondent further Sheweth that the Affidavit of Condapen very fully proves that the Said Mortgage Bond or Deed of Messrs Savage Casamajor and Powney was executed without the Knowledge of these Gentlemen as before Mentioned by— himself and Addyapah and by them given to the Said Narrain Pillah Father in Law to the Appellant and the bosom Friend of the Latter for the express purposes of preventing the Sequestration of the said Addyapahs — Property— This Respondent further Sheweth that (that) Such a Testimony as that of Condapen can never be doubted for it will not be controverted that the the said Condapen was most firmly attached to the Interest of the said Andeapah as well from Motives of a selfish nature as from belonging to the same cast and this Respondent Sheweth that the Interest of Andeapah of course became Secondary and every Worldly consideration Yielded to conscience when the

the Solemn and Sacred Oath peculiar to his religion came to the administered to him and Your Respondent further admits that he examined in his behalf Joseph de Cruz but the Respondent very positively Denies that the Deposition given by him is either — contradictory or untrue— For the Respondent Sheweth that he the said Joseph Debruz is a most interesting Evidence for it was to be Supposed from his constant Dealings with Andeapah he would have learnt as much as possible on that Side of the Question but the Solemn Oath he took rendered him candid and his Testimony so far from being either Contradictory or untrue Your Respondent Sheweth fully Serves to elusidate this Affair— And Your Respondent Sheweth that Joseph Debruz — having heard that the said Appellant Tellesinga Pillah had filed a Petition he the Deponent went to the said Appellant and requested to know if he had lent any Mony on the Bills of Sale of the Houses of Andeapah when the Said Appellant Tellesinga Pillah Declared he had not the unsuspecting Appellant conceived — there was no harm in disclosing a Secret to one whom he supposed to be united in the above Mentioned Confederacy And Your Respondent further Sheweth that in this Evidence the Mistake of the said Appellant to the said Joseph Debruz was a very

happy

happy One as it greatly enlightens the Matters but he can never allow nor can he observe the Smallest Contradiction or the Shadow of an Untruth in the Whole of it- nor can Your Respondent upon referring to Bacons abridgement Volume the 2.d Page 358 title Execution Observe any thing therein contained which either proves Informality of the above Mentioned Execution or Appear at all to the point Your Respondent therefore Cannot by any Means admit any Irregularity of Execution nor allow that the Omission of the name of the said Joseph Debruz against whom Judgement was given Jointly with the said Addyapah Furnishes any Presumptive Proof that the same was a Commutation of Offices between the said Joseph Debruz and the Respondent to favor Several Designs and Interests nor can Your Respondent ever admit any Improsperity in the said Joseph Debruz - afterwards becoming as the Appellant is pleased to say a forward and willing Witness against the aforesaid Petitioner nor can Your Respondent ever admit that the Deposition of the said Joseph Debruz acted thereby further to procure full Satisfaction of the said Judgement of the said Addyapahs Effects than was Just proper and necessary nor can Your Respondent allow that such advances of the

Appellant

Appellant furnish any presumtive Proof whatever- and Your Respondent further Admits that Chingleroy was the next Evidence and that he deposed that after the Dismission of the Petition of Messrs Savage Casamayor and Powny which Petition was Dated the 25th day of February 1789 that he the Deponent was present when the said Narrain Pillah came to Condapen to ask him for the Bills of Sale N.o 1924 and 2498 which Property had been Mortgaged to Messrs Savage Casamayor and Powney Agreeable to the fabricated Bond which had been produced by the Said Narrain Pillah for these Gentlemen and he further Deposed that Condapen then asked the Said Narrain Pillah what his Reasons were for wanting to possess the Bills of Sale when he the said Narrain Pillah replied that his Son in Law the present Appellant was a foolish Man and that he had Only taken the Bills for those Houses Advertized on the 12th at the time he sent the 500 Pagodas and that he believed in the Petition which he had filed he Mentioned having Possession of Your Bill of Sale Advertized on the 11th in Consequence of which the said Bills of Sale were Delivered to the said Narrain Pillah by the said Condapah Your Respondent therefore is Surprized

that

that the Appellant Should Stamp the aforesaid Deponent Chungleroy with the Epithet of a very forward Witness — for Your Respondent humbly thinks that the Deposition of the said Chungleroy is ingenerous and Candid and indeed such as the Interrogatories — Exhibited to him Obliged him to reply to in a proper and fair Manner. Your Respondent cannot then allow that the said Deponent Chengleroy is in any ways a more forward Witness than any Other produced. Neither is it possible that Your Respondent can ever admit that there is any Refutation of the said Evidence from the Depositions which the Appellant again brings forward as taken on his part Namely that of Muninada Nimiapah Iyode Vaudeyar Vencatalum and Narrain Pillah for it has been already Clearly and Obviously Demonstrated to the Honble Court that allowing they did depose to the Execution of the said Addey appahs Bond to the Appellant and also to the Consideration therein Contained Yet that such Depositions were from the loose and lame Interrogatories Exhibited of no Effect or avail for such Depositions by no Means go to prove that the Mortgage Bond or Deed was in Existence previous to The Writ of Execution —

And Your Respondent Cannot admit or indeed can he

Observe

Observe in what part or parts the Deposition of the said Chengleroy is so much in Favor of the Appellants Claim or in what Degree it Tends to Support the Evidence of Narrain Pillah and that of Sydaporam Condapun nor Does the said Deposition of the said Chungleroy even Distantly Shew that the aforesaid Petition of the said Executors of Mary Powney untill after that the Mortgage Bond given to them by Addyapah and the said Sydaporam Condapun had been paid off and Discharged by the said Condapun nor can Your Respondent Admit that the said Condapun did come to the — posession of the Bills of Sale in dispute to wit N.° 1925 and 2498 in Consequence of having so Redeemed the same — and Your — Respondent Cannot help expressing much astonishment that the Appellant Should term any thing Setforth by the said Deponent Chengleroy pretended as the Appellant is pleased to call the Conversation which passed between the said Narrain Pillah and the said Sydaporam Condapen and that such — Conversation was not Grounded on any part of the proceedings on the Matters Relating thereto nor does the Respondent See any Improbability that the said Narrain Pillah would say that he was Affraid that the Appellant had Setforth in the Petition to the Honble Mayors court that he was in posession of the Bills of

Sale

Sale of the House in Question- it on the Contrary Appears palpable by the said Deposition of Chingleroy that he did say so- the Conclusion therefore Drawn by the Appellant that the said Sydaporam Andapen Delivered the said Bills of Sale to the said Narrain Pillah because he knew in whose Behalf he Demanded them was entitled thereto is equally erroneous as Strange- And Your Respondent Admits that the said Witness Chingleroy did Setforth that the Appellants Bond was Dated the 8th Day of February 1782 and the Bond to the Executors of the said Mary Powney doth bear Date the 10th Day of the said Month of February 1782 as Your Respondent has before Setforth which Certainly by Inference Destroys entirely the Claim of the Appellant for it is beyond Possibility that the Appellant could have Reversion in Premises Mortgaged after the Date of the Appellants Bond and Subsequent to the writ of Execution- And Your Respondent Observes Nothing any wise Dark and Distant in the Testimoney which the Appellant says is the Copy of a Copy of the Translation of a Deed Appears- for the Deed under which your Respondent Groands his Claim invalid in every respect and which is therefore not at all Slender Evidence but equal to a Competition with the Deed of the Appellant and Your Respondent can by no Means admit that the Bond or Deed

under

under which the appellant grounds his Claims proved either in a full and clear Manner or Otherwise and Your Respondent trusts that it will evidently Appear to the Honble Court from what has been Above Observed that the whole took place a Considerable time after the writ of Execution had been issued Consequently that the Sale of the Above Premises by the Sheriff Ought not to have been put a Stop to as it prevented Your Respondent Receiving the Just Costs Awarded to him by the Honble the Mayors Court and Your Respondent in Opposition to the Conclusion Drawn by the Appellant will lay more weight upon a Circumstances which he has already Mentioned and in which so much Inconsistency Appears and Draw an Inference therefrom- In the 1st place the Bond of Messrs Savage Casamajor and Powney has a prior Claim to the property of Audeapah although it is Dated two Days after that of the Appellant Tellesinga pillah In the Next place the Bond of the Appellant Tellesinga pillah has an Allusion to that Bond of Messrs Savage Casamajor and Powney- Your Respondent therefore hopes that if Judgement can be had from dates and Conclusions Drawn therefrom the Inference is Natural that no such Bond at the time existed and Your Respondent is humbly hopeful that an Inconsistence so very Glaring will Operate to the Total Annihelation of the Appellants

Claim

Claim- And Your Respondent admits that Malleya Butcher was Examined on his part and that he deposed that he did not believe the Property of Audeapah to be in any Respect incumbered but Denies that the said Deponent did not give reasons for his Belief- for he says in express terms that he always understood from the People acquainted with Audeapah that his affairs were unincumbered and free from every Mortgage and he further deposes that the said Mortgages were framed and Ante Dated expressly to prevent the Sequestration of the Property and Your Respondent prays to Observe that the Exordium passed by the Appellant upon his Friends of being Men of Family and — Fortune is too Rediculous to discreminate Evidence for admitting that these Friends of the Appellant are men of Family and Fortune and that the Deponent Malleyn is by the Natural — Opposition of Character removed from any Equality Yet your Respondent thinks it absurd to the last Degree that such an Observation should be made by the Appellant for the purpose of invalidating the Evidence given upon Oath by Malleyn who answered in the fairest and Most impartial manner to the Interrogatories exhibited to him and which the Law Obliged him to do without Reservation and Your Respondent prays to

Observe

Observe that in the whole Course of an unjust and unparallelled Prosecution he has displayed no unworthiness which can Sanction the Observation of the Appellant who says that the Deposition of Malleyn the said Joseph Debruz and the said Changleroy can only Serve as Evidence of the — Unworthiness of the Respondent in Contesting a Just Right in the Appellant and of the unworthy Means Your Respondent has had Recourse to. to Support himself therein for Your Respondent has availed himself of no Subterfuge whatever but has openly examined the Abovementioned Witnesses to prove his own Rights and invalidate the Claims of the Appellant which have been so litigiously brought forward and — Unworthily pursued and Your Respondent further admits that the last Witness produced by him is Sydaporam — Condapun who Deposed that having Occasion for Money he Mortgaged his House Bill of Sale to Addyapah for — 500 Pagodas- that the said Addyapah had also Occasion for Money and that he Mortgaged his the said Deponents House Bill of Sale together with his own to George Savage Thomas Powney and Henry Casamajor as Executors of Mary Powney Deceased thus Your Respondent prays to Observe that

the

the Claims of the Appellant receive no Additional Ground from the Evidence of the said Sydaporam Condapah altho the Appellant Says that the said Evidence proves the Grounds on which the appellant laid his Claim and that the Subsequent part proves the Demand of the Bills of Sale No. 1925 & 2498 from the said Sydaporam Condapah after they had Redeemed by him Under and by Virtue of the Right of Reversion therein given him by Addyapah's Bond to him and as the Appellant Says in the Manner Setforth and proved by him the Appellant and that the said Condapah did deliver the Same unto the Appellant thro the Hands of Narrain pillah Your Respondent prays to Observe that the said Evidence so far from favoring the Views of the Appellant Greatly Militates against them and Supports and Strengthens the prospects of Your Respondent for it Must Obviously be conspicuous to this Honble Court that the said Narrain pillah having Appeared so particularly active on the said of the Appellant Suffices very amply to expose his Intentions for Your Respondent prays a Retrospect to the Last Petition which was Dismissed with Costs Awarded to your Respondent in the Honble the Mayors Court and it will there be found that the said Narrain Pillah Father in Law to the said Appellant

Appellant was by far the Most forward in the Confideracy that upon the Death of Condapah he is accused of having received from Addyapah and the said Condapah a Mortgage Bond in the Name of Mess.rs Savage Casamajor and Powney for the Sum of 540 Pagodas which Mortgage Bond was never in Reality given by the said Addyapah as was proved by the Decision of the Honble the Mayors Court but was Merely a Fabrication of the said Confederacy to Stay the Proceedings of the Law and Your Respondent prays to Observe that all this has been proved beyond the Shadow of Doubt which of Course Annihilates the pretended Legality of the said Appellants Bond for Your Respondent humbly insists that he the Appellant clearly appears to have been the Kinsman the Creature and easy Dupe of the said Narrain pillah and your Respondent further admits that during these proceedings the said Comarapah Moodelly departed this Life and Natcheapah Moodelly Obtained Letters of Administration to his Estate and Effects and thereupon the said Natcheapah Moodelly as Administrator to the said Comarapah Moodelly did think Necessary to have the said Petition and Answer revived in the Honble the Mayors Court and did therefore

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on the 29th day of November 1785 pray that the said Appellant — Revived
Might Shew Cause why this Matter Should not Stand, and the Appellants Attorney not having any Objections thereto the same was by the said Honble Court Ordered accordingly this Respondent admits that some time after which Publication did pass in the Said Matter and the Same was Sett down for hearing and did untimately came on to be heard by the Said Honble the Mayors Court on the 23d day of the Month of — August last past when the said Honble Court did think fit to Order and did Order Accordingly that the Petition of the Appellant Should be Dismissed with Double Costs of Suits the said Court Giving for Reason for their Said Order that the Bond under which the Appellant Claimd being Dated Two Days previous to the Date of another Bond to which it referred and that therefrom Appeared to be a Collusion as by Copy of the said Order hereunto Annexed for the Inspection of the Honble Court which Your Respondent begs leave to Annex for the Inspection of the Honble Court By which Order of the said Honble Mayors Court this Respondent Conceives the said Appellant is not in the least Aggrieved nor had he any just Cause to Appeal therefrom or the Contrary that the said Order or Decree of the said Honble

the

the Mayors Court is Just just and Equitable and which this Respondent humbly hopes this Honble Court will be pleased to Confirm Notwithstanding any thing alledged or Asserted to the Contrary by the said Appellant Inregard to what is Advanced by the Appellant that the Said Honble Mayors Court ought not to have dismissed the said Appellants Petition and thereby rendered invalid and Vitiated and of no Effect the Mortgage Bond given and granted him by the 2d Addyapah of the Premisses in Question and Allowing of the Seizure thereof under the Warrant of Execution which as an act of the said Court the Appellant prays to annex to this Petition of Appeal a Copy thereof as also of the said Order of the said Court of the said 23d day of August aforesaid and the Appellant pretended to Shew to this Honble Court that the Utmost that the said Court Ought to have done was to direct that the said Premisses Should be Sold by the Sheriff and that from the product thereof the Appellants Bond Should be Discharged and the Overplus if any to be Appropriated and go — towards the Satisfaction of the said Decree- Because the Appellant Shewed that having fully and legally by good and Sufficient Evidence as the Appellant expressed it proved the Original Mortgage Bond or Deed upon which he grounded his Claim that he Cannot or Ought —

not

not to be Affected by the People writing exhibited by his Respondent as if the same the appellant said was the Bond under which his the Appellants Claims was founded whereas in fact the Appellant Advanced the same is not any more than a Copy of a Copy of a Translation of Such a Paper and that not proved as the Appellant Observed in any of these Degrees and Cannot therefore be placed in Competition with an Original Deed produced and proved as much in the most Solemn Manner and Your Respondent Saith that the Appellant further Said that so far from the said Paper Writing Appearing to be a Bond he was of Opinion that the Same Ought not to have been attended to much less Contrasted with the aforesaid Deed of him the Appellant as he said regularly produced and made part of the Proceedings during which time he the Appellant pretended to Shew the same was Open to every Scrutiny whether by answer or Otherwise and Your Respondent Shews that the said Appellant endeavoured to demonstrate that if he the Respondent which have availed himself fairly of any inconsistence in the Dates of the said Bonds it Should have been by way of answer when the Appellant Might have had it in his power to clear up the same if the Original had been

been produced which it was impossible for him Otherwise as he the Appellant Declared in his said Petitions of Appeal ever to have done - and which the Appellant further Declared Your Respondent could not have done from Copy of a Copy of a Translation even had the same been Made part of the proceedings because says the Appellant the Explanation of any Inconsistency in the date of Your Respondents Bond could Only be made from the Original in the Malabar Language the Original Translation was liable to Error and the Copy from the Copy to Quadruple Error and Your Respondent Shews that the Appellant in his said Petition of Appeal Says that it was not the duty of him the Appellant to clear up Such Inconsisting if any there was even had the same been made part of the proceedings But the Appellant wished to make it the Duty of Your Respondent to clear Up that difficulty if any there was and that all that the Appellant had to do was to prove his own Mortgage which Your Respondent most positively denies that the Appellant has Done in an Ample or unequivocal Manner for Your Respondent humly conceives that the reason given by the Appellant for Appealing from the Decision of the Honble the Mayors Court is to the last degree frivolous and

Nugatory

Nugatory and he trusts that he has already in the Most clear
distinct and Sufficient Manner demonstrated to this Honble Court
by the most credible Evidence that he the Respondent had a
previous Right to the Premises and that the Mortgage Bond on
which Your Respondent grounds his Claim is beyond all possible doubt
a Bond or Deed legally executed and bearing date two days previous
to the Mortgage Bond of the Appellant and Your Respondent shews
that his reasons for Answering generaly to the Petition of the Appellant
in the Honble the Mayors Court was from a perfect Conviction of the justness
of his Claim and a strong desire to bring Matters to an equitable
Decision as Soon as possible- And Your Respondent Shews that
the Appellant by his Petition of Appeal betrays the most litigious
Vindictive Spirit for it must be most Obvious to this Honble Court
from the Body of Evidence in favor of your Respondents Claim &
which is composed of Witnesses equally ingenuous as disinterested
that it has its Basis on the Most incontrovertible legal
Grounds and strictest Justice. Your Respondent must therefore
Observe to the Honble Court that what the Appellant says in
regard to his having put beyond all dispute that there was
a previous Mortgage Bond to the Appellant in the name of
the Executors of the said Mary Powney by the Bond given by

Addyapah

Ex?

Addyapah to the Appellant is neither Substantiated by Evidence
nor indeed does there even Appear a Shadow of Proof to that Effect
Your Respondent conceives that the Translation of the Bond is so
well Attested to be a true one that there Appears no just or good reason
in the Appellants Observation that Such Translation of the said
Bond was liable to Error and that it being the Copy from the Copy of the
Translation to quadruple Error and Your Respondent denies that Such
previous Mortgage in the names of the said Persons was paid off and
discharged and the Title Deeds N 1925 and 2698 redeemed by such
Payment is also proved by the Person who paid the Money and received
the said Title deeds in consequence to wit by Sydaporam Cundapun
One of your Respondents Own Witnesses- And as the Appellant says
that Such Title Deeds were afterwards claimed by him the Appellant
and were delivered to Narrain pillah on his behalf by the said
Sydaporam Condapun under the Right which the Appellant was as he
Says entitled to demand them to wit the said Mortgage Bond
given unto the Appellant by the said Addyapah is also fully proved
by the said Narrain pillah and Sydaporam Condapun which your
Respondent prays to observe are really Simple Circumstances as he hopes
from the Evidence he has produced will Appear so to the Honble Court
and from what the Appellant wishes to demonstrate that they do not

east

east a mere Glimmering on Truth but are insurmountable Facts which establish it beyond the power of doubt Error or Falsehood to Misconstrue Mislead or deny- for Your Respondent Shews that he has Opposed Evidence strong and powerful to weaken and invalidate these so much boasted of insurmountable Facts and Your Respondent trusts that the full Evidence he has brought forward to establish his Claims will Operate to the Conviction of the Honble Court that they are beyond doubt fair and just. Your Respondent Saith that the Appellant is very wrong in Advancing that Your Respondent hath not in the Smallest degree undertaken to disprove the Regularity of the Mortgage of the House and Ground brought from Canaca Vibogapillah the title Deeds whereof Marked Nos 8161 and 8162 were as the Appellant says delivered and fully proved to have been Delivered on the Day of the Execution of Addyapahs Bond to the Appellant and that there is no dispute or Contradiction of their having come regularly into the hands of the Appellant thro the Means of Narrain Pillah and that therefore Saith the Appellant that part of the said Bond being allowed and admitted and that the other parts thereof Must as the Appellant expresses in his Petition and Appeal in Consequence be Admitted and Allowed of Your Respondent Saith that the ingenuous Depositions Affair and Just Witnesses which he is hopeful he has proved

proved them to be to this Honble Court will totally destroy the contradictory Observations of the said Appellant And Your Respondent further Shews that the Appellant has Commented much upon the General unfairness of your Respondent in putting in a general Answer to the Appellants Petition and examining thereupon a variety of Witnesses to Matters as the Appellant says quite foreign and of a Nature no ways Admissible as creditable Evidence and Your Respondent Shews that the Appellant also Advanced that in the former part of his Petition of Appeal that he pointed out the Intricacy of Your Respondents Conduct in the proceedings and said that under the Cloak of Complaint and Grievance that Your Respondent concealed the most artful and Deep design of imposing on the Justice of the Court But Your Respondent Saith that his Reason for putting in a general answer was from a conscious Rectitude and a perfect Conviction of the Justice of his Claim and from an Ardent wish to bring a disagreeable and Vendictive Suit in which he was involuntarily drawn to a Speedy Conclusion and Your Respondent denies any Intricacy of Conduct for he has most fairly and Openly in the whole Course of the litigious unprecedented proceedings of the Appellant Shewn a Candar and Moderation when Contrasted with the unwarrantable vendictive Spirit of the Appellant which Your

Respondent

Respondent trusts will Amply Suffice to expose the dark and artful Designs which he conceals of imposing on the Justice of the Honble Court and your Respondent shews that the Appellant has no reason to believe and is not entitled to Suspect that any part of the proceedings from the said Joseph Debruz not being Joined in the said Warrant of Execution and his being thereafter an Evidence in favor of your Respondent and by the said Warrant being in the name of the said Addy alone that there is a Combination between the said Parties for the purpose of Vitiating the said Addy alone Bond that the Decree in Question may be Satisfied from the produce and Sale of the premisies thereby mortgaged Your Respondent will not comment upon the general unfair and improper Conclusions which the Appellant has Drawn from well Substantiated Facts and the most clear and Just Evidence he trusts that the Penetration of this Honble Court will at once see thro a Veil so than as that made use of by the Appellant to hide the most deep and marked Inequitous artful designs - This Respondent having as he conceives clearly Shewn the Justice of his Claim and refuted every thing contained in the Petition of the Appellant he humbly hopes this Honble Court will not find any Cause to reverse the said Decree of the said Honble Mayors Court or to comply in any Respect with the Prayers of the said Appellant in his said Petition

and

and Appeal on the Contrary this Respondent most humbly hopes and prays that this Honble Court will be pleased to confirm the said Decree and dismiss the said Petition and Appeal with Costs to be paid by the said Appellant both in the Mayors Court and in this Honble Court and this Respondent doth lastly pray such further and other general relief in all and singular the Premises as to this Honble Court shall seem Meet and be agreable to Equity and good Conscience

/Signed/

Charles Inglis

Attorney for the Respondent

Extract

Extract from the Minutes of a Court Held at the Town Hall
Tuesday the 14th Day of January Anno Domeni 1783

Present

William Webb Esqr Mayor
Benjamin Robuck
and Edward Prowd
Aldermen

Joseph Debruz
& Audiapah
vers
Comrapen

The Attorney for Comrapen prays that the Petitioners
Powney and Others may Deliver into Court the Original Title Deed
Mentioned in their Petition Ordered Accordingly

A true Extract
/Signed/
James Taylor
Regr

A true copy
/Signed/ Charles Inglis
Attorney for Respondent

Extra

Extract from the Minutes of a Court Held at the Town Hall
on Tuesday the 25th Day of February Anno Domini 1783

Present

William Webb Esqr Mayor
Edward Garrow and James Call
Aldermen

Joseph Debruz and
Audeapan
vers
Comrapah Moodelly

The attorney for the Respondent Comrapah Moodelly
acquaints the court that he did on the 14th Day of January Last prays
that the Petitioners George Savage and Others Executors of Mary
Powney Deceased might produced unto this Court the Original
Mortgage Bond and the Bill of Sale of a Certain House and Ground
the property of Audeapah which they have neglected doing He
therefore prays that the Petitioners Petition Do Stand dismissed
with Costs to which the attorney for the Petitioners Consents Ordered
Accordingly

A True Extract
/Signed/ James Taylor
Regr

A true Copy
/Signed/ Charles Inglis
attorney for the Respondent

Translation

Translation of a Mortgage Bond Dated the 2d. February 1782

I Aulvar Audepun of Madras do give this Mortgage Bond to Tellesinga pilla Son of Poovalantangel Aestnapilla of the Same place that is to Say — My House Situated at Pedda Naicks Pettah in Satany Loguans Street and between the House of Schoob Armogam Moodelliar and Vauneah Yellapens behinds to which House I have Bought a House from One Canaca Vyboga pillah the Choultry Bill of Sale of which and Certificate I have mortgaged to You and Borrowed and Received of you the Sum of the Mortgaged premises is insufficient therefore I do further Agree Viz.t — Through the Means of Powney Narrain pillah have Mortgaged to Mr. Savage Executors of Madam Powney the Choultry Bills of Sale of my House and the Choultry Bill of Sale of Sydapparam Condapen's House and Borrowed Some Money when the Said Condapen pay the Money and — Redeem the Bill of Sale of his House than I will pay the Sum with — Interest I Borrowed and Redeem the Bill of Sale of my House and I will Mortgage to you for the Said 500 Pagodas indefault of which than you will pay the Sum with Interest what I been Borrowed of Mr. Savage and Redeem the Said Bill of Sale.s if you keep it Yourself then I promise to pay you the Sum that You will pay to Mr. Savage and 500 Pagodas which you lent to me together with Such

Interest

Interest as may be come due thereon at the rate of 12 ℔ Cent Pannum on or before the 30th. of September 1783 and Redeem the Mortgage — Premises Indefault of the Said payment then you are empowered to Sue me in the Honble Mayors Court and Sell the Mortgage House and Recover your Money thus I do give this Mortgage Bond by my Consent

Witnesses Mannaddy Naineapah Moodelly and Valoodelumbadoo Iyode Moodelly by their knowledge Drawn by Vaudeas — Vencatachullatier of Esandoo —

Witnesses (signed)

Mannaddy Naineapah

Iyody

A true Copy

(Signed) James Taylor
Regt

(Signed) Aulvar Audyapen

A True Translation as near as can be from the Malabar Language

Interpreter

A true Copy

(Signed) Charles Inglis
Attorney for the Respondent

(Signed) Henry Dupuy
Attorney for the Petitioner

Translation

Translation of a Mortgage Bond Dated the 10th of February 1782.

We Sydapooram Condapen and Aulvar Audeapen Moodelliar do give this Mortgage Bond to Thomas Powney James Henry Casamajor and George Savage of Madras Gentleman the Executor of Mary Powney that is to say on Our Urgent Occasion we have Mortgaged to you a Choultry Bill of Sale of the House being in favor of the said Condapen and Two Old Bill of Sale for the Same also Two Title deeds of the Said Aulvar Audeapah Moodelliar's House and Two Title deeds for the Same in all five Paper Bill of Sale and Two Cadjan Bill of Sale on the Mortgage of the said Title deeds we have Borrowed and Received of You the Sum of 540 Five hundred and forty Pagodas Current Money of Madras for which Sum we promised to pay Interest every four Months Once 12 P Cent P annum and the principal we agree to pay on Demand Jointly and Seperately Thus we do give this Mortgage Bond by Our consent Witnesses Naydeavoyal Narrain Pulla and Eynen by their Knowledge Drawn by Condapen Conacpillah of Vadatoor

[Signed] Condapen
Aulvar Audeapen

Witnesses

Naydeavoyal Narrain

Eyanen

A true Copy
[Signed]
James Taylor
Regr

A true Copy
[Signed]
Charles Inglis
Attorney for the Respondent

[Signed] Stephen Popham
Attorney for the Petitioner

Extract

Extract from the Minutes of a Court Held at the Town Hall on Saturday the 23d. day of August Anno Domini 1788

Present

Edward Garrow Esquire Mayor
James Call William Webb
Sir John Menzies Jos. DuPre Porcher
and Andrew Ross Aldermen

Joseph deBruz and Addyapah

Comrapen

Petition of Tellesinga pillah with Translate of of a Mortgage Bond

Answer of Comrapen Read

Interrogatories on the part of the Petitioner with a Cadjan and a translate thereof Marked A Annexed Read

Three Depositions taken thereunto Read

Additional Interrogatories on the part of the Petitioner with four Exhibits Annexed Read

One Deposition taken thereunto Read

Exception of the Petition to the Interrogatories to and the Depositions of Chingleroy and Joseph Debruz Read Answer thereto Read The Petitioners Exceptions and the Respondents Answer Coming on to be Argued

argued and Determined and the Court having had due Consideration thereon are of Opinion that the Exceptions are not well founded it is therefore Ordered that they be overruled with Costs - Mayor and Messrs. Aldermen Call and Webb dessent to the Deposition of Joseph Debruz being Read as it Appears from the Proceedings that he is interested in the Event of the Cause Interrogatories on the part of the Respondent Read Four — Depositions taken thereunto Read - the Witnesses No. 3 4 6 and 7 did not Appear for Examination two Exhibits on the part of the Respondent Read —

The Petition of Tellesinga pillah and the Respondents Answer thereto Coming on to be Argued and Determined this day in the Presence of the Attornies on both Sides and the Court having had due — Consideration thereon doth think fit to Order and doth accordingly Order that the Petitioners Petition be dismissed with double Costs of Suit the Bond under which the Petition Claims being Dated — Two Days previous to the date of another Bond to which it refers and therefore appears to be a Collusion —

A True Extract
[Signed] James Saylor
Regr.

A true Copy
[Signed]
Charles Inglis
Attorney for the Respondent

Court

Court of Appeals
at
Madraspatnam

Saturday the 8th. August
Anno Domini 1789

Between Tellesinga pillah of Madras — Inhabitant Appellant and Natchapah moodely Administrator of Comrapah 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 Several Exhibits of the Honble the Mayors Court together with the Order of the said Court given in this Cause on Saturday the 23d. Day of August Anno Domini 1788 upon due Consideration had of the Matters therein Severally — contained and of the Pleadings and Arguments used by the Attornies on both Sides This Court doth think fit to Order and Decree and doth Accordingly Order and Decree that the said Order of the Honble the Mayors Court do stand Affirmed and that the Appellants Petition be hence Dismissed with Costs —

Pleas
[Signed] Chas. N. White
Clk.

To

To the Honble Major General Sir Archibald Campbell
Kt. B. President in Council

Fort Saint George

Between Paupoo Reddy Veerabadra
Naick Petitioner and Comrapen Respondent

In the cause

Joseph Debrez and Addyapah Complainants
vers
Comrapen Defendants

The Humble Petition of Poncala Narsimmaloo Administrator
of the Estate and Effects of the above Named Paupoo Reddy
Veerabadra Naick Deceased

Sheweth

That the said Paupoo Reddy Veerabadra naick
did Some time in and about the Month of November which was in
the Year of Our Lord 1782 exhibit a Petition in the Honble the
Mayors Court at Madras Setting forth that some time in the months
of October in the said Year the Attorney at Law of the said Defendant
Comrapah did issue out of the said Court a Warrant of Execution against
the Effects of Addyapah One of the above named Complainants to enforce
the payment of a certain Sum of Money for his the said Attorneys Fees
By virtue of which said Warrant of Execution the Sheriff of the
Town of Madraspatnam did Seize and Sequester Houses and Grounds
the

Filed in my Office
the 4. Sept. 1788
Chas. Whitehill
Clk

which it Referred and that therefrom appeared to be a Collusion
as may Appear by Copy of the said Order hereunto Annexed

By which said Order Your Petitioner doth find
himself aggrieved and doth therefore Appeal therefrom to this Honble
Court and for Cause of Appeal Sheweth that the said Honble Mayors
Court ought not to have dismissed Your Petitioners said Re
and thereby render invalid and Vitiated and of no Effect the
Mortgage Bond given and granted him by the said Addyapah
of the premisses in question and allowing of the Seizure thereof
under said Warrant of Execution which as an act of the Sd
Court Your Petitioner prays to annex hereunto a Copy
as also of the said Order of the said Court
Third day of August aforesaid and
Sheweth that the Almost that th
was to direct that the said premi
by the Sheriff and that from th
Bond should be discharged and
Appropriated and go towards th
Because Your Petitioner Shew
legally by good and Sufficient
Mortgage Deed upon which h

Describes in the
Language then in the
oduced when thereto required
es did Annex unto his said
declare that no part of the
ras or any part of the Interest
the said Mortgage Deed but
Petitioner — the said Petitioner
wn of Madraspatnam
might

To the Honble Major General Sir Archibald Campbell
K. B. President in Council

Fort Saint George

Between Pauper Reddy Veerabadra
Naick Petitioner and Comrapen Respondent

In the Cause

Joseph Debruz and Addyapah Complainants
vers
Comrapen Defendant

The Humble Petition of Poncala Narsimmaloo Administrator
of the Estate and Effects of the above Named Pauper Reddy
Veerabadra Naick Deceased

Sheweth

That the said Pauper Reddy Veerabadra naick
did Some time in and about the Month of November which was in
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Mayors Court at Madras Setting forth that some time in the month
of October in the said Year the Attorney at Law of the said Defendant
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By virtue of which said Warrant of Execution the Sheriff of the
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Filed in my Office
the 4. Sept. 1788
Chas. B. White
Clk

which it Referred and that therefrom appeared to be a Collusion
as may Appear by Copy of the said Order hereunto Annexed

By which said Order Your Petitioner doth find
himself Aggrieved and doth therefore Appeal therefrom to this Hon
Court and for Cause of Appeal Sheweth that the said Honble may
Court ought not to have dismissed Your Petitioners said Pe
and thereby render invalid and Vitiated and of no Effect the
Mortgage Bond given and granted him by the said Addyapa
of the premisses in question and allowing of the Seizure thereof
under said Warrant of Execution which as an act of the Sd
Court Your Petitioner prays to annex hereunto a Copy
as also of the said Order of the said Court
described in the
third day of August aforesaid and
Language then in the
Sheweth that the Almost that th
oduced when thereto required
was to direct that the said premi
er did annex unto his said
by the Sheriff and that from th
declare that no part of the
Bond should be discharged and
as or any part of the Interest
Appropriated and go towards
the said Mortgage Deed but
Because Your Petitioner Shew
Petitioner — the said Petitioner
legally by good and Sufficient
n of Madraspatnam
Mortgage Deed upon which h
might

Petitioner thro the hands of the said Narrain pillah

And Your Petitioner Sheweth that during these proceedings the said Comrapah Moodelly departed this life and Natchapah Moodelly took out Letters of Administration to his Estate and Effects and thereupon the said Natchapah Moodelly as administrator to the said Comrapah Moodelly did think Necessary to have the said Petition and answer Revived in the said Honble Mayors Court and did therefore on the Twenty Ninth Day of the Month of November One thousand Seven hundred and Eighty five pray that your Petitioner might Shew Cause why this Matter Should not Stand Revived And Your Petitioners

Sheweth may not having any Objection thereto the Same was by the said

Filed in my office the 4. Sept. 1788
Chas. B. White
Clk

d accordingly Some time after which publication did did Son
aid Matter and the Same was Ordered for hearing
the Year
ately come on to be heard by the said Mayors
Mayors wenty third day of the Month of August last
of Octobr
aid Court did think fit to order and did accordingly
Comrapah
Petitioners Petition Should be Dismissed with
the Effects
ut the said Court giving for Reason for their
the payment
e Bond under which Your Petitioner Claimed
By virtue
ys previous to the Date of another Bond to
Town of
which

person as also that of the said Joseph Dabruz and Chinglroyen can Only Serve as Evidence of the unworthiness of the Respondent in contesting a Just Right in Your Petitioner and of the unworthy Means he has had Recourse to Support himself therein — The Last Witness produced by the Respondent is Sydaporam bondap He Deposes that he had Occasion for money and he Mortg his House Bill of Sale to Addyapah for Five Hundred Pagodas that the said Addyapah had also Occasion for Money and he Mortgaged his the said Deponents House Bill of Sale toge with his own to George Savage Thomas Powney and Hen Cassamayor as Executors of Mary Powny Deceased — Th the Bond became due he took up the Mortgaged in the Possession of his own Bill of Sale Language then in the of Addyapah — Thus for Your Pe produced when thereto required the said Evidence proves the Petitioner did annex unto his said grounds his Claim and the fol Declare that no part of the of the Bills of Sale N° 192582 pagodas or any part of the Interest Cundapah after they had been of the said Mortgage Deed but Virtue of the Right of Rever said Petitioner — the said Petitioner Bond to him in the Manner the Town of Madraspatnam and that the said Petitioner might

permitted to infringe or invalidate in any respect that Deed under which he Grounds his Claim and which he has proved in that fullest and clearest Manner that was possible.

Mallyen — Deposes that he doth not believe that the Possession of Addyapah to be in any respect incumbered without giving any Reason for his belief But he Saith afterwards that Since the advertisement affixed upon the Doors of the House of the said Addyapah he hath understood — from common report that the House was Mortgaged to the Petitioner He also Speaks from the information of Chenglroyen and Natchapen Brothers to the Respondent that Marrain [illegible] in order to stop the Sale of the said House did — this [illegible] present Suit by false pretences of your Petitioner did [illegible]tgage upon it —

Filed in my office the 4. Sept. 1788 Chas. Whitehill Clk

the Year [illegible] Your Petitioner prays to observe that Mayors [illegible] of Mallyen a Butcher is very unlikely to of October [illegible] Evidence against that of Men of Family and Comrapah &c he must be two distantly removed by the the Effects of [illegible] of their Characters to become in the — the payment of [illegible]rmed of their Transactions in life whether By vertue of the said Desposition of the said Town of Mad[illegible] person

the property of and belonging to the said Addyapah One of the said Complainants and particularly a house and Gorund Situated lying and being at Pedda naicks petta in Sairvey haurens pullian Pagodas Street between the houses of Nandyanpauthum Vencatashen and Tolly caura Veerapernah which said premisses Your Petitioner did Shew and all the Appurtenances thereunto belonging the said Petitioner did Shew were and then were mortgaged and Assigned Over by the said Addyapah unto him the said Petitioner as and for a Security for the more punctual payment of the principal Sum of Two hundred Star Pagodas with Interest which Sum was lent and Advanced by the said — Petitioner at the special instance and request of the said Addyapah The particulars of which Loan and the mortgaged premisses the said Petitioner did Shew were fully Setforth and described in the Original Mortgage Bond in the Malabar Language then in the Said Petitioners Possession and ready to be produced when thereto required a true Translation whereof the said Petitioner did annex unto his said Petition and the said Petitioner did also Declare that no part of the said principal Sum of Two hundred Pagodas or any part of the Interest had been paid Since the Day of the Date of the said Mortgage Deed but that the Same was then due unto the said Petitioner — the said Petitioner did therefore pray that the Sheriff of the Town of Madraspatnam

might

might be directed either to pay off the full amount of the said Petitioners Mortgage or to take off the Seals of his Office from the aforementioned premisses and be restrained from Selling the Same and that the said Premisses might be and remain a Security unto the said Petitioner as of Right pursuant to his Mortgage and that the Sheriff might be further directed to pay the Costs of his Said Petition— And Your Petitioner Sheweth that the Above named Defendant Conrapen did make himself Respondent to the Said Petition of the Said Petitioner by putting in an answer thereunto and afterwards an Amended answer— The Said Respondent Admitting that his Attorney at Law did take Out a Warrant of Execution for the purposes Mentioned in the said Petition and the Respondent did also Unnecessarily Setforth the Nature and Ground of the Decree whereon the said Warrant of Execution did issue which said Decree the Respondent said was granted on or about the 2d Day of July which was in the Year of Our Lord 1782— And the said Respondent did also Assert to the Said Mayors Court that the Above named Joseph Debruz and Addyapah having failed to Satisfy or fulfill the said Decree at or before the expiration of the days from

from the Date thereof which he said was the term allowed by the said Court to Satisfy and fulfill the Decrees thereof He the Respondent did proceed to take out a Warrant of Execution Against the Effects of the said Joseph Debruz and Addyapah in Order to enforce the fulfilling of the said Decree and the said Respondent did also say that under and by Virtue of the aforesaid Warrant of Execution the Sheriff did in due form of Law Seize a certain house or houses and Ground the property of the said Addyapah One of the Abovenamed Complainants and did afterwards proceed according to Law to levy from the said premisses the payment of the Costs which the said Complainants had been adjudged to pay by advertizing the said premisses to be Sold by — publick Auction— And the said Respondent did also Setforth Sundry Matters in his said Amended Answer which were quite foreign to the Matter in Question By Alledging that the Sale of the Said Premisses was Stayd by Pawney narrain pillah and Triplicane Mootiah who the Respondent did falsely alledge had in the name of the Said Petitioner Paupoo Reddy Veerabadra Naick filed a Petition in the said Mayors Court Whereas the Said Petitioner had not any Interest Concern or knowledge

knowledge of the said persons in the matters relating to the said Demand on the said Addy apah

The Said Respondent doth then proceed upon Other Grounds by Asserting that he had been informed and did verily believe that the Mortgage Bond exhibited and produced by the said Petitioner as a foundation for his Claim was not Signed and executed by the said Addy apah or that he had ever recieved the Sum of 200 Pagodas from the said Petitioner as a Consideration thereof

And Again the Respondent Said that the Cadjan Bill of Sale produced by the said Petitioner had been Signed and Informed by the Justice as the other Bills of Sale of the said Addy apah had been and that he knew that the said Addy apah did enjoy the Mortgaged premisses without any regular Bill of Sale and that he had so enjoyed them for Nine Years past

And Again the Respondent Saith that the said Petitioner had no right to Advance or take a Mortgage from the said Addy apah while his house was under the Seal of the said Mayors Court and if the said Petitioner did accept Mortgage that he could not hold the same

Effectually

Effectually untill payment Should have been made of the Respondents Demand - and gives for Reason Because the Warrant of Execution was granted by the said Mayors Court at the expiration of fourteen days from the Second Day of July and the Bond of the said Petitioner was Dated Subsequently To Wit on the 7th Day of August thereafter and for a proof whereof the Respondent did refer the said Mayors Court to a Copy of the said Decree and to a Copy of the said Bond which he respectively Annexed as part of his answer - And the Respondent did Attempt to Prove a Certain Report and Sanny who Sett and Subscribed their names as Witnesses to the Execution of the said Bond were as he was informed persons Dependant upon and Connected with the said Addy apah - And the Respondent did therefore pray that the said Petition might be Dismissed with Costs

And Your Petitioner Sheweth that I have did join upon the aforesaid proceedings According to the practice of the said Honble Mayors Court and Rules did

pass

pass for the examination of Witnesses but your Petitioner
Sheweth before all the Witnesses had been examined on behalf
of the said Petitioner and Respondent the said Petitioner
and also the said Respondent Departed this life
And Your Petitioner Sheweth that Natchapah Moodelly
did take out Letters of Administration to the Estate
of the said Comrapen and Your Petitioner did take
out Letters of Administration to the Estate of the said
Pauspoo Reddy Veerabadra Naick. And Your Petitioner
Sheweth that the said Natchapah Moodelly did on the
22d. Day of November which was in the Year of Our Lord
1785 did move in the said Honble Mayors court that
Your Petitioner as Administrator of the said Pauspoo
Reddy Veerabadra naick might Shew cause by the
Next Court Day why the aforerecited Petition and Answer
Should not Stand received And Your Petitioners Attorney
then Appearing and Assenting to the said Petition and
Answer being received the same was Ordered Accordingly
as may more particularly and at Large Appear by a Copy
from the Minutes of the said court hereunto Annexed for
the inspection of this Honble court

and

And Your Petitioner Sheweth that upon being
informed of the Nature of the Respondents Answer the said
Deceased did inform himself of the exact date of the said Warrant
of Execution Asserted to have been taken out Jointly against
the said Two Complainants Joseph Debruz and Addyapah
when he found that instead of the said Warrant being jointly
Against the Effects of the said Joseph Debruz and the said
Addyapah pursuant to the Joint Decree wherein they were
condemned in the payment of Costs as aforesaid and that the
said Warrant of Execution was issued fourteen Days after the second
Day of July aforesaid which would have been on the Sixteenth
of the said month of July that the said Warrant of Execution was not
Joint against both the said Complainants According to the Judgement
of the said Court but that the same was partial being Only against
the said Addyapah which was illegal and Contrary to the
Course and practice of the Law as may Appear upon reference
being had to Bacons Abrigement Volume the 2d. page 358 and 359
under Title Execution and further more that the said Warrant was not as was
positively Asserted by the Respondent issued out and dated fourteen days after
the said Second Day of July but that the same was not Dated
Otherwise than on the 24th. Day of October following which

Circumstances

Circumstances being directly Contrary to what the Respondent had Set forth of the said Petitioners Mortgage Bond being dated after the Date of the said Warrant of Execution while the said Mortgaged Premisses were under the seal of the said Court — The Petitioner did not with draw his Petition as he certainly would have done in the event of the Case being as was stated by the Respondent and did therefore proceed to prove his Mortgage Bond given and granted him by the said Addyapah of the premisses in dispute which he hath Accordingly done by the Depositions of Mootiah and Samy in the usual form made and manner and the Petitioners sheweth that the Tendency of the Respondents Evidence strictly calls for the Observation of this Hon^ble Court as it shews a manner of establishing Evidence as novel as it is ineffectual to the design it is intended which is by producing persons who are set up as Enquirers of the Deceased touching his Interest in the Matter in dispute the result of which enquiry the first Deponent Videnada Moodelly saith was that the Deceased said that Addyapah had not Mortgaged his house — and in a Subsequent Disposition this intelligent person says that he doth not know whether Addyapah was indebted unto the said Deceased Petitioner in the months of July or August 1782 And to the last Interrogatories he deposes that he hath heard that there was no proper Bill of Sale in the name of Chunana Condapen or Addyapah — Nevertheless the Respondents admits may insist on the properly being in Addyapah —

Chengalroy Confirms the Evidence produced on the part of the Petitioner in proof and Support of the Mortgage Bond under which he claims the premises in question — the said Deponent declaring that Addyapah did on the 7^th^ day of the month of August 1782 draw out and execute a Bond in the name of the said Petitioner in his life time — and that a Padjan Bill of Sale of a certain house and ground the property of Chanaura Condapen was Mortgaged and assigned over by the said Addyapah after the Decree and Warrant of Execution was issued against the effects of the said Addyapah Your Petitioner prays to Observe that this latter part of the said Disposition Confirms the Error of the Respondents answer which Your Petitioner hath fully proved to be quite otherwise than as the real state of facts are —

The

Circumstances being directly Contrary to what the Respondent had Setforth of the said Petitioners Mortgage Bond being dated after the Date of the said Warrant of Execution while the said Mortgaged Premisses were under the seal of the said Court — The Petitioner did not with draw his Petition as he certainly would have done in the event of the case being as was stated by the Respondent And did therefore proceed to prove his Mortgage Bond given and granted him by the said Addyapah of the premisses in dispute which he hath Accordingly done by the Depositions of Mootiah and Samy in the usual form made and manner and the Petitioners sheweth that the Tendency of the Respondants Evidence strictly calls for the Observation of this Honble Court as it shews a manner of establishing Evidence as novel as it is ineffectual to the design it is intended which is by producing persons who are sett up as Enquirers of the Deceased touching his Interest in the Matter in dispute the result of which enquiry the first Deponent Vidanada Moodelly saith was that the Deceased said that Addyapah had not Mortgaged his house — and in a Subsequent Disposition this intelligent person says that he doth not know whether Addyapah was indebted unto the said Deceased Petitioner in the months of July or August 1782 And to the last Interrogatories he deposes that he hath heard that there was no proper Bill of Sale in the name of Chunana Condapen or Addyapah — Nevertheless the Respondents admits may insist on the properly being in Addyapah —

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The

The same Evidence then follows the mode of Deposition of the said Videnada Moodelly by going to enquire as he saith with another person from the Petitioner Pauloo Reddy Veerabadra Naich on the part of the Respondent Comrapah Moodelly to enquire if the Petitioner had lent any Money to Addyapah on his House and Ground and he depose that he said he knew nothing About the Matter- but that the Mortgage Bond in Question had been executed by addyapah and Triplicane Mootiah without his knowledge or Consent which Matters the said Chingbry takes the advantage of Setting forth to the last general Interrogatory without being particularly interrogated thereto and the Same Evidence extends his Willingness to Serve the cause of the Respondent his brother by entering into matters of Quite a different Nature and which have no Connection with the present Matter before the Court in the present instance further than the same is involved in the same Warrant of Execution of which the Respondent would wish to advantage himself at any rate and by any means to the prejudice of Others

The next Evidence Callatty pillah under takes to swear that he hath heard that Addyapah was not indebted unto the Petitioner Pauloo Reddy Veerabadra naich on or about the month of July or August 1782 And Dasery Chitty goes further by swearing to a positive Negative that addyapah was not indebted unto Pauloo Reddy Veerabadra Naich in July and August 1782

Your Petitioner Sheweth that the said Evidence have Deposed to the certainty of what they say did not exist which is an impossibility for any One to swear to and a belief of a negative Ought and it is requisite in Law to be Supported by some Reasons to induce Such a belief and Your Petitioner Sheweth that upon the aforegoing Evidence publication did pass and the said Petition and Answer was Sett down for hearing and Your Petitioner attorney in proof and Confirmation of the said Petition Setting forth that the said Warrant of Execution did issue Some in or about the month of October 1782. and in refutation of the respondents answer Setting forth that the said Warrant of execution did issue fourteen Days after the Second Day of July 1782 did on the 15th day of April in this present Year of Our Lord 1783 Move the said Honble. Mayors Court on behalf of Your Petitioner praying that the Sheriff might be Directed to produce the Warrant of Execution issued against the Complainants for Costs at the time of the hearing this matter when the said Court were pleased

to

to Order Accordingly- And Your Petitioner Sheweth that the said Matter did come on to be heard on Saturday the 23d day of august last past when Your Petitioners Attorney did produce to the said Honble Mayors court the Original Warrant of Execution which they were pleased to Judge they could not read or enter upon- because as Your Petitioner presumes the same had not been made part of the proceedings which were produced at the Different Judges Chambers for their perusal previous to hearing of the said Petition and Answer- On which said 23d day of August last past the said Petition and Answer Coming on to be heard as aforesaid the said Honble Mayors court did think fit to Order and did Accordingly Order that the said Petitioners Petition Should be Dismissed- Without taking notice that the said Petition and answer had been received by Your Petitioner as Administrator of the said Paupoo Reddy Veerabadra naick and by the said Natchiappah as Administrator of the said Comrapen- because as Your Petitioners presumes the motion to revive the said Petition and answer as aforesaid were not made part of the proceedings in the manner aforesaid

By which said Order of the said Honble Mayors

Mayors court Your Petitioner as Administrator of the Estate and Effects of the said Paupoo Reddy Veerabadra naick doth conceive himself to be Aggrieved and doth therefore Appeal therefrom to this Honble court and for cause of Appeal Sheweth that the said Petitioner having in his life time Setforth his Right in the premisses under Dispute in the usual manner and form the prayer of the Petition Ought as Your Petitioner conceives to have been allowed of and granted Because altho the Respondent hath made use of so many different pleas in Support of his pretended Right to be paid out of the premisses in Question Your Petitioner Sheweth that the same are untrue and contradictory and the Respondent hath not Setforth any matter in his Answer which can Upon any Ground of Law Equity or reason Set aside Your Petitioners Claim under the said Mortgage- Because it Appears by the said Petitioner that the Deceased did truly Setforth that the said Warrant of Execution did issue in the month of October the Respondent did in his answer Declare that the said Warrant did issue in July that is to say fourteen Days after the Decree of the Honble Mayors Court of the second of the said Month and that the Mortgage Deed was executed after that the Seal of the said Court had been affixed to the premisses thereby Mortgaged Viz on the Seventh Day of August in the said year and this Error is confirmed by

by the Evidence of Thangalroy - whereas it appears by the said Execution that the same did not issue untill the 24th day of October following according as the Petitioner had Setforth in his Petition and as the same Appears by a Copy thereof hereunto Annexed for the inspection of this Honble Court and Your Petitioner prays that if the Respondent Should deny that the same is true Copy that this Honble Court will order the Sheriff to produce the Original Because According to the practice the Court may refer and referred to their own Acts even without Order as of Course as may appear upon reference to moselys reports Page 188 — And Your Petitioner Sheweth that the said Mortgage being Dated and executed previous to the date and issuing out of the said Warrant of Execution doth bind the premisses thereby Mortgaged Because it is enacted by the 29th of Charles the 2d Chap. the 3 Paragraph the 16th That no Writ of Fiere Facias or other writ of Execution shall bind the property of Goods against whom such Writ of Execution is said forth but from the time that such writ shall be Delivered to the Sheriff or under sheriff as Coroner to be executed and for the better manifestation of the said time the Sheriff under Sheriff as Coroner their Deputies and Agents shall upon receipt of any such Writ without

without Fee for doing the same endorse upon the back thereof the day of the month and year whereon he as they received the same Whereby it appears that the said Deceased's Mortgage upon the premisses in Question was and is gone being long previous to the said Writ of Execution being issued Dated and Delivered to the Sheriff — And of Course the said Transaction between the Deceased and the Addyapah in his life time was a good Bona fide and legal transaction - And your Petitioner sheweth that the whole of the Respondents Conduct and Dealings in the matters now before the Court have been very irregular and illegal and the Respondent must have ben influenced by some motive to himself best answers to take out the said Execution partially against the Addyapah Only which Circumstance Your Petitioner doth only Observe to point out to the Court the General Design of the Respondent being guided by a Wilfull Determination to carry into Execution his Views of getting himself unjustly paid From funds which have already been Appropriated and Secured for other purposes.

And Your Petitioner doth deny that any part of the proceedings on behalf of the Deceased Petition and marked with or do in the Smallest Degree shew a Design or Contrivance

Contrivance to do wrong as to impede Justice but on the Contrary that they are marked with and do shew all the Simplicity of truth and Justice in as much as the proceedings of the Respondent are marked with and shew Evidently that he had only in view to perplex and render intricate the matters in question by Asserting of matters in his Answer which were void of foundation and by producing Evidence equally irregular and informal as they were untrue artificial and Contrived to answer his unjust Designs and purposes - And Your Petitioner Sheweth that notwithstanding the said Joseph Debruz who was Jointly Decreed to pay the Costs of Suit upon the aforesaid Decree of the 2d. day of July with the Addyapah has been left out of the said Execution contrary to Law and practice he hath reason to believe from the proceedings and Evidence thereupon that the same is done by the Contrivance of the said Joseph Debruz who hath in another matter before this Honble Court given Evidence in favor of the Respondent upon the same Execution and of the Respondent and of the said Addyapah to vitiate and Sett a Side his Just and Lawfull Act and Deed whereby he hath mortgaged the premisses in Dispute and instead of keeping the same as a Security for the payment of his Just Debts to cause the same unlawfully and fraudulently to be Appropriated to Satisfy the said Decree -

All which matters Your Petitioner doth pray Leave to refer to the Consideration of this Honble Court humbly praying that the Order of the said Mayors Court of the 23d. August last may be reversed with Costs and that this Honble Court will by their Decree revive the said Matter According as the same hath been already revived in the said Mayors Court under their Order of the 22d. day of November 1785 - The aforesaid Order being an Act of the said Court in this Matter Your Petitioner may according to practice refer thereto in this his Appeal and to give your Petitioner as Administrator as aforesaid such further and other Relief in the premisses as to them in their Wisdom May Seem Meet -

/Signed/

Henry Despuy

Attorney for the Petitioner

Extract

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 15th day of April Anno Domini 1788

Present

Mr. James Ball Senior Alderman
George Savage and Andrew Ross
Aldermen

Joseph Debruz and Audeyapah
vers
Comrapen

The Attorney for the Petitioner Poncala Narsimadoo Administrator of Pappoo Reddy Veerabadrah Deceased Appears and prays that the Sheriff may be directed to produce the Warrant of Execution issued against the Complainants for Costs at the time of the Hearing of this Matter— Ordered Accordingly

A true Extract

/Signed/ George Taylor
Dupt. Regr.

True Copy /Signed/ Henry Dupuy
Attorney for the Petitioners

Extract

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 22d. day of November Anno Domini 1785

Present

Philip Stowey Esquire Mayor
Edward Garrow and George Savage
Aldermen

Joseph debruz and Audeyapah
vers
Comrapah Moodelly

The attorney for the Respondent Natchapah Moodelly Administrator of Comrapah Moodelly Appears and prays that the Petitioner Poncala Narsimmalow Administrator of Pauppoo Reddy Veerabadroo Naick may Shew Cause by next Court day why the Petition and Answer Should not Stand revived— Mr. Hy. Dupuy Appears for the Petitioner and acquaints the Court that he has no Objection to the Petition and Answer— Standing revived Ordered Accordingly

A true Extract

/Signed/ George Taylor
Dupt. Regr.

True copy /Signed/ Henry Dupuy
Attorney for the Petitioners

Dy

By the Mayors Court at Madraspatinam

By the Mayors Court } Whereas it appears to this Court by inspection of a Decree in this Court and the proceedings thereon that Audeapah of Madras Inhabitant was Adjudged and Decreed to pay to Comrapah Moodelly of the Same place Inhabitant the Sum of 557 Pagodas and 24 fanams for Costs of Suit which the said Addeyapah hath not hitherto done - These are therefore to require you without delay to levy or cause to be levyed the said Sum of 557 Pagodas and 24 fans. for Costs of Suit of the Goods and Chattles of the said Audeapah and to that end if necessary You are to cause Sale to be made of such Goods or Chattles and to have the Money before the Mayors Court at Eight of the Clock in the forenoon on the 22d. Day of novembers next to render the said Costs to the said Comrapah Moodelly and to render the Overplus if any be to the said Audeyapah Given under the Hands and Seals of Edward Garrow Esqr. Mayor of Madraspatnam and of Mr. William Webb One of the Aldermen of Madraspatnam and under the Seal of the Said Court this 24th Day of Octobr Anno Domini 1782

(Signed) E. Garrow Mayor of Madraspatnam (L.S.)

(Signed) Wm. Webb One of the Aldermen of Madraspatnam (L.S.)

To the Sheriff of Fort St. George Town of Madraspatnam and the Districts thereof

(Signed) James Taylor Regr.

True Copy (Signed) Henry Dupuy Attorney for the Petitioner

Extract from the Minutes of a Court Held at the Town Hall on Saturday the 23d. day of August Anno Domini 1788

Present

Edward Garrow Esquire Mayor

James Call William Webb

Sir John Menzies Josias DuPre Porcher

and Andrew Ross Aldermen

Joseph debruz and Addyapah

vers

Comrapen

Petition Pappoo Reddy Verrabadra Naich with Translation of a Mortgage Bond Annexed Read

Amended Answer of Comrapen Read

Interrogatories on the part of the Petitioner with Copy of a Cadjan Exhibit and Translate thereof Marked A Annexed Read

Two Depositions taken thereunto Read

Exceptions of the Petitioner to the Interrogatories to and the Depositions of Chingleroy and Natcheapah the Administrators of the Said Comrapen Read - & Answer thereto Read - the Petitioners Exceptions and the Respondents answer coming on to be Argued and Determined and the Court having had due Consideration thereon are of Opinion that the Exceptions are not well founded

it

it is therefore Ordered that they be Overruled with Costs – Interrogatories on the part of the Respondent Read Four Depositions taken thereunto The Witness N°. 4. did not appear for Examination –

The Petition of Pauspoo Reddy Veerabadra naick and the Respondents answer thereto Coming on to be Argued and Determined this Day in the presence of the Attornies on both sides and the Court having had due Consideration thereon doth think fit to Order and doth accordingly Order that the Petitioners Petition be Dismissed with Treble Costs of Suit –

A True Extract

(Signed) James Taylor
Regr

True Copy

(Signed) Henry Dupuy
Attorney for the Petitioners

In

In the Court of Appeals

Between Pauspoo Reddy Veerabadra
Naick Petitioner and Comrapen –
Respondent

In the Cause
Joseph Debruz and Addyapah –
Complainants –
Vers
Comrapen Defendant –

The Answer of Comrapen to the Petition of Poncala Narsimalow Administrator of the Estate and Effects of the above named –
Pauspoo Reddy Veerabadra Naick Deceased –

The said Respondent not Confessing or acknowledging all or any of the matters or things to be true as in and by the said Petition and Appeal are mentioned and Setforth for answer thereunto Filed in my office the 21. Oct. 1788 Saith that very true it is that the said Pauspoo Reddy Veerabadra Chas. Dr White Naick did some time in and about the Month of November which was in the Year of our Lord One thousand Seven hundred and Eighty Two Exhibit a Petition in the Honble the Mayors Court at Madras Setting forth that some time in the month of October of the said Year the Attorney at Law of this Respondent

did

did issue Out of the said Court a Warrant of Execution against the Effects of Addyapah One of the above named Complainants to inforce the payment of a certain Sum of money for his the said — attorneys Fees and this Respondent further admits that by virtue of the said Warrant of Execution the Sheriff of the Town of Madraspatnam did Seize and Sequester Houses and Grounds the property of and belonging to the Said Addyapah One of the Said Complainants and particularly a House and Ground Situated lying and being at Peddy Naicks Pettah Survey howrens Pelliar Pagodas Street Between the House of Nandyampauhum Vencatashen and Totty caura Veerapermaul which said premisses and all the Appurtenances thereunto belonging the said — Petitioner did shew were and then were Mortgaged and Assigned Over by the said Addyapah unto him the said Petitioner as and for Security for the more punctual payment of the principal Sum of Two hundred Star Pagodas with Interest which Sum was lent and advanced as the Petitioner stated at the Special Instance and request of the said Addyapah The Particulars of which Loan and the mortgaged Premisses the said Petitioner did attempt to Shew were fully Set forth and Described in the Original Mortgage Bond in the Malabar

Language

Ea?

Language and then as advanced by the said Petitioner on his the said Petitioners Possession and as he further advanced was Ready to be produced when thereto required a True Translation — whereof the said Petitioner did say he annexed unto his said Petition and this Respondent Saith that the said Petitioner did also — Declare that no part of the Said principal Sum of Two hundred Pagodas or any part of the Interest had been paid since the Day of the Date of the said Mortgage Deed but that the same was then due unto him the said Petitioner and this Respondent further Saith that the Said Petitioner did therefore pray that the Sheriff of the Town of Madraspatnam Might be directed either to pay off the full Amount of his the said Petitioners Mortgage or to take off the Seals of his Office from the aforementioned premisses and be restrained from Selling the Same and that the said Premisses might be and Remain a Security unto him the said Petitioner as of right pursuant to his Mortgage and that the Sheriff might be further Directed to pay the Costs of his Said Petitioners Petition and this Respondent — further Admits that Comrapen made himself Respondent to the Said Petition of the Said Petitioner by Putting in an answer thereto and afterward an Amended answer Admitting that his Attorney at Law took Out from the Honble the Mayors Court a Warrant of Execution

Against

against the Effects of the said Audeapah. One of the above Complainants to enforce the payment of a certain Sum or Sums of Money for his the said Attornies Fees by virtue of which Warrant of Execution the Sheriff of the Town of Madraspatnam might have Seized and — Sequestered certain Houses and Grounds the property of and belonging to the above said Audeapah One of the Complainants and particularly a House and Ground Situated lying and being at Pedda naigues Pettah in — Seervey havons Pellear Pagoda Street between the Houses of Nandeampauhum Vencatashen and Tollycaury Veerapermaul but this Respondent Says that Comrapen in and by his said answer Absolutely Denied that the said Premisses and all the Appurtenances thereunto belonging were the property of him the said Petitioner by Virtue of or under any — pretended Mortgage whatsoever because the said Premises the said Comarapen Respondent Setforth were Subject and liable to Satisfy in whole or in part as far as their Value at a due Sale might extend the Demand as the said Comarapen Respondent Setforth for Fees due to his Attorney by virtue of the Execution already Mentioned- And this Respondent further saith that Comarapen in his said answer also Setforth that Joseph Debruz and — Audeapah the above mentioned Complainants did file in the Honble the Mayors Court a Bill of Complaint against him the

Said

said Comarapen for the Recovery of Payment of the Sum of — One Hundred and twenty four Pagodas and thirty Eight fanams which they the said Complainants did pretend was due to them from the said Comarapen as he Stated in his said answer and this Respondent saith that to this Bill of Complaint the said Comarapen put in his answer and Stated his Objections to such the Demand of the said Complainants and afterwards the usual Proceedings were had in the said Cause Issue was joined Witnesses were examined Publication passed and the said Cause came on to be heard before the said Honble the Mayors Court on or about the Second Day of July which was in the Year of Our Lord One thousand Seven hundred and Eighty Two, when the said Honble the Mayors Court was pleased to dismiss the said Bill of Complaint with double Costs of Suit as more fully and at large appears by a Copy of the — Decree of the said Honble the Mayors Court which the said Comarapen Respondent annexed to his said answer and prayed that the same might be admitted and taken as part thereof and this Respondent further answering saith that the said Comarapen further Setforth that the said Joseph Debruz and Audeapah having failed to Satisfy or fulfill the said

Decree

Decree at or before the expiration of Fourteen Days from the Date thereof which is the term Allowed by the Honble the Mayors Court to Satisfy and fulfill the Decrees thereof the Said Comarapen Respondent did proceed to take Out a Warrant of Execution Against the Effects of the said Joseph Delcruz and Audeapah in Order to enforce the fulfilling of the said Decree under and by virtue of which warrant of Execution the Sheriff of the Town of Madraspatnam and the Districts thereof did in the due form of Law Seize and Sequester a Certain House or Houses and Ground the property of Audeapah One of the above named Complainants and did afterwards proceed according to Law to levy from the said Sequestered Premises the payment of the Double Costs with which the said Complainants had been taxed by the Honble the Mayors Court in manner already Mentioned by advertising the said Sequestred Premises to be Sold by public auction- And this Respondent further Saith that the said Comarapen Setforth in his said answer that the said Sequestered Premises was Stayed by Pouney Narrain Pillah and Triplicane Mootiah who in the name of One Passpoo Reddy Veerabadra maick did file a Petition in the Honble the Mayors Court Setting forth that the said Sequestered

Premises

Premises were the Property of the said Petitioner Alledging that the same had been Mortgaged to him by the said Audeapah for the Sum of Two Hundred Pagodas which Said Claim this Respondent said in his answer he hoped and Doubted not to be able in due time to prove to be very ill founded and made with a Design to Defraud and wrong the said Comarapen Respondent of his just Right and Property in and to the said Premises by Vertue of the said Decree of the said Honble the Mayors Court and the execution granted in Consequence thereof and this Respondent further Answering Saith that the said Comarapen gave for reasons first that he had been informed and had great reason to believe that the Mortgage Bond exhibited and produced by the said Petitioner as a foundation for his Claim was not signed and executed by the said Audeapah or that the said Audeapah did ever receive the Sum of Two Hundred Pagodas from the said Petitioner as a Consideration thereof and this Respondent further Answering Saith that the said Comarapen also Setforth in his said answer that the Cadjan Bill of Sale produced by the said Petitioner had not been Signed and Confirmed by the Justices as the other

Bills

Bills of Sale of the said Audeapah have been, and the said Respondent did further Say that he knew that the said Audeapah did enjoy the said pretended Mortgaged Premises without any regular Bill of Sale and did so enjoy the said Premisses for Nine Years previous to the period at which he gave in his answer to the Petition of the said Petitioner in the said Honble the Mayors Court and that the truth was that the said Petitioner had produced a Cadjan Bill in Favor of one Sanara Condapah who pretended that he had lent to Audeapah the Sum of Two Hundred Pagodas upon the Security of the said pretended Bill which said Sum the said Respondent Comarapun said in his said answer that the said Petitioner had no Right to Advance or to take a Mortgage from the said Audeapah for the Same while his House remained under the Seal of the said Honble the Mayors Court and the said Respondent Comarapun also setforth that if the Petitioner did accept such Mortgage he could not hold the same effectually untill Payment Should have been made of this Defendants demand for Fees due as aforesaid to his Attorney at Law because the Warrant of execution was granted by the Honble the Mayors Court at the expiration of Fourteen

Days

Days from the said Second day of July One thousand Seven Hundred and Eighty Two and the Bond of the Petitioner was dated Subsequently on the Seventh day of August thereafter as may more fully and at large Appear by Reference had to a Copy of the said Decree and to a Copy of the said Petitioners Bond hereunto Respectively Annexed for the inspection of this Honble Court and the said Respondent Comarapun in and by his said answer further Setforth that Triplicane Mootiah and Sawmy who had Set and Subscribed their Names as Witnesses to the due Execution of the said Bond were as he had been informed personally Defendant upon and Connected with the said Audeapah who had been the acting Parties in procuring the said Mortgage Bond to be drawn out in the name of Papapoo Reddy Verabadra Naick the Ostensible this in fact as this Respondent Said the Concealed Petitioner and without Knowledge of the said Papapoo Reddy and the said Respondent Comarapun in his said answer did pray that the said Petition might be Dismissed with Costs- and this Respondent further admits that I Jsaw did join upon the aforesaid Proceedings According to the Practice of the said Honble the Mayors Court and this Respondent also admits that Rules did pass for the examination

of

of Witnesses and this Respondent also admits that before all the Witnesses had been examined on Behalf of the said Respondent Comarapun and the said Petitioner the said Petitioner and also the said Comarapun Departed this Life and this Respondent also admits that Natchapah Modelly did take out Letters of Administration to the Estate of the said Comarapun and this Respondent likewise admits that the Petitioner did take out Letters of Administration to the Estate of the said Passpoo Reddy Veerabadra Naick and this Respondent admits that he did by his attorney on the Twenty Second Day of November which was in the Year of Our Lord One thousand Seven hundred and Eighty five move in the said Honble the Mayors Court that the Petitioner as Administrator of the said Passpoo Reddy Veerabadra Naick might Shew Cause by the Next Court day why the aforerecited Petition and answer Should not Stand revived and the Attorney of the Petitioner then Appearing and Assenting to the said Petition and answer being revived the same was Ordered accordingly as may more particularly and at large appear by a Copy from the Minutes of the said Court which this Respondent hereunto Annexes for the inspection of this Honble Court and this Respondent further says that Admitting that the

the Deceased did inform himself of the Date of the Warrant of Execution and that such warrant of Execution was in point of legal Nicety and Agreeably to the Strict Rules of Common Law Defective Yet this Respondent Submits to this Honble Court and humbly insists that those Nice legal Distinctions cannot have any weight in their Decision upon the Cause before them the Object for them to enquire into in Order to do Substantial Justice is to investigate whether there was or was not any fraudulant or Collusive Practice respecting the Mortgage and as the Defendant from the Moment the Decree past Must have known that an execution would also pass and that in Consequence of such execution his Property would be seize it matters little when the mortgage was executed as it was Subsequent to the Decree and it surely matters little less whether the Warrant of Execution was taken out against One or two Persons for this Respondent Saith that Should this act be allowed it Must be Obvious to every One that a very easy Method is at One Opened for evading the Judgements of the Honble the Mayors Court by the Defendants passing away their Property as soon as a Decree is given against them and thereby avoiding any Effectual Execution on any Decree This Respondent Says that this is not Only Agreeable to

reason

reason and Conscience but also to Law Since from the time the Judgement or Decree is given against a Man all his Property is from that Moment bound by such Judgement or Decree and being Subject to Satisfying it and no Plea can be Successfully used that because the execution was not taken Out at the Moment which was nessesary that is to say at the expiration of the Fourteen Days allotted by the Honble the Mayors Court can any ways tend to render valid the mortgage in Question for as such Bond was in fact Dated on the Seventh day of August and the Decree of the Honble the mayors Court was granted on the Second day of July the Conclusion is natural that such Bond is not a bonafide one but Merely framed Subsequently to the Decree to answer Sinister purposes and Defeat the Decisions of Equity and Justice this Respondent therefore humbly trusts that such act of the Petitioner being Obviously of a fraudulent Nature it will appear so to this Honble Court to the Total Distruction of the Appellants unjust Claim and this Respondent also Says that by the Appellants own Shewing Pauspoo Reddy Veerabadra Naick knew perfectly well at the time he executed the Bond that the Decree had passed against him and it must also be Supposed that the Petitioner who

who Accepted the Bond knew of this Decree and that it was a Matter of Collusion between them unless it be proved that he did really and bonafide advance the Money Stated to have been borrowed by the Bond for if no Consideration passed the use and purpose of the Bond was vested in the person who executed it and the Obligee had it Merely in trust for the Obligor and therefore the Property not being Altered it remained as much as ever Subject to the Satisfying this Decree and therefore was properly Seized on by the Sheriff for that purpose and this Respondent further Says in answer to the Several reasons Suggested by the Appellant in Support of his Appeal In the first place that the Several Pleas made use of by him are not contradictory or untrue but all of them tend to prove the Ground of this Respondents Answer and must Convince every One upon a due Consideration of the Several matters Alledged that the mortgage and all the proceedings thereon was a Connivance and Collusion to deprive this Respondent of any good effect from the Decree he had Obtained In the Second place that upon the proceedings before the Honble the Mayors Court it did fully Appear and was not Contradicted by any Evidence that the Warrant was prayed for before the mortgage Bond was executed

and

and the Sheriff Setting always as an Officer of the Mayors Court is of course to take notice of Such Warrant tho it may be different in England— and if the Fact is that the Warrant was not Delivered to the Sheriff till after the date of the Mortgage it Cannot be of any Effect now as it did not Appear so at the Hearing of this Cause and the Appeal States that the Appellant is Aggrieved by the Order of the Mayors Court upon the Hearing— whereas he now wiges that had he done so and so he might perhaps have gained his Cause and therefore it appears that if he is Aggrieved it has been his own neglect and he has no Reason or title to Complain of Such Aggrievance or to blame any body but himself but this Respondent Absolutely insists that he has been no ways Aggrieved and that he never did advance a Single Pagoda to the Deceased at or before the Executing the Mortgage but the whole Proceedings as he has so often said before was a Collusion Trick and Connivance to Save his Property from the Execution and this Respondent says that in regard to the Decree being joint the Execution Should be so too. It Cannot be considered but as a technical Nicety and of no Sort of Consequence— because Whether the Execution is joint or not it is certain the Separate Property of each of the Defendants may be Seized and Sold and technical Nicetie[s] where no real— Injustice is done but on the contrary where it is for the— Furtherance of Justice or in the present— The executing the Sentences of a Court of Justice have ever been disregarded in the Courts of Equity at Home and Still much more So in the Courts here where they have ever marked with the Inattention they deserve the Narrowness and Illiberality of Such Quibbles and nice Distinctions— another Instance— of this litigious wish to involve the plain and Simple— Proceedings of the Courts here in the Mazes and Intricacies of the Law at Home is the Application of an act of— Parliament cited by the Appellant to the present Question— The Learning of Fieri Facias and the Binding of Goods thereby may possibly be very ingenious and prove the Zeal and attention of the Opposite Attorney in favor of his Client but as far as this Respondent has been able to learn the Delivery of the Writ to the Sheriff is only of Consequence when there is— more than One Judgement there the Law declares that whoever has Delivered the Writ to the Sheriff first shall have the Benefit of the Goods Seized but the Goods always

continue

continue Subject to the Judgement from the time of the passing of the Judgement as may be seen by the Second Volume of Burrows Reports Page 722 and in many other Books of the Law - And this Respondent insists that it never has been the Practice of this Hönble court nor is it Consistent with reason that any Paper not produced before the Hönble the Mayors court should be allowed to be produced before this court tho' such Paper cannot in any Respect affect the Question to be Decided which is Simply whether there was or was not a Collusion in giving the said Mortgage - this Respondent insists there was - The Evidence he has produced supports it and the Hönble the Mayors court were not Only Unanimously Convinced of such Collusion but in Order to Shew such Conviction and to mark the Displeasure they felt and the Ideas they entertained of the Transactions they punished the Petitioner by Condemning him in Treble Costs of Suit of which but few Instances exist upon the Records and these few Only in the most glaring attempts to pervert the Instruments of Justice to the worst purposes This Respondent having as he Conceives done away the elaborate Arguments of the Appellant to Establish an unjust Claim he humbly hopes this Hönble court will not find any Cause to reverse the said Decree of the Hönble the Mayors court or to comply in any respect with the prayers of the said Appellant in his said Petition and Appeal - on the Contrary this Respondent most humbly hopes and prays that this Hönble court will be pleased to confirm the said Decree and Dismiss the said Petition and Appeal with Costs to be paid by the said Appellant both in the Mayors court and in this Hönble court and this Respondent doth lastly pray such further and other general Relief in all and Singular the Premisses as to this Hönble court shall seem meet and be Agreeable to Equity and Good Conscience

[Signed]

Charls Inglis

Attorney for the Respondent

Mayors

Mayors Court at
Madraspatnam

Tuesday the 2d Day of July
Anno Domini 1782
Present
Edward Garrow Esquire Mayor
William Webb and William Oram
Aldermen

Between Joseph Debraz
and Audeapah of Madraspatnam
Inhabitants Complainants
and Comarapah Moodelly of
the same place aforesaid
Inhabitant Defendant

This Cause Coming on to be Heard and Determined this Day in the presence of the attornies on both sides on Reading the Complainants Bill with Copy of an Account Current Annexed The Complainants Affidavit The Defendants Answer with an account Annexed the Replication The General Rejoinder The Interrogatorys and Depositions on the part of the Complainants The Interrogatorys and Depositions on the part of the Defendants with a Cadjan and Translate thereof 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 Complainants Bill do Stand Dismissed with Costs and It is further Ordered and Decreed that the Complainants be Taxed with double Costs of Suit

Vizr

(Signed)
James Taylor
Regr

A true Copy

(Signed)
Charles Inglis
Attorney for the Respondent

Extract

Extract from the Minutes of a Court Held at the Town Hall on Tuesday the 22d Day of October — Anno Domini 1782

Present

Edward Garrow Esquire Mayor
Benjamin Roebuck and Edwd Trowd
Aldermen

Joseph Debruz & Audeapah
vers
Comarapah Moodelly

Warrant of Attachment Returned Endorsed not to be found
Warrant of Execution for Fees against the Complainants —
prayed for and Granted —

A True Extract

/Signed/ James Taylor
Regt

A true Copy

/Signed/ Charles Inglis
Attorney for the Respondent

Translation

Translation of a Mortgage Bond Dated 7th August 1782

I Aulvar Adeapen of Madras do give this mortgage Bond to — Pappoo Reddy Veerabadra Naick of the same place that is to say —

On my Urgent Occasion I have mortgaged to you the Bill of Sale of the House granted to me by Saunaura — Cundapen as there was no Choultry Bill of Sale for the said House and Borrowed and Received of you the Sum of /200/ Two — Hundred Star Pagodas Current Money of Madras which Sum I promise to pay You on or before the 7th of October next with Such Interest as may become due thereon at the rate of 12 ℔ — Cent ℔ Annum Indefault of the said payment then I bind — myself to Sell the said House and Discharge the said Debt Thus I do give this Mortgage By my Consent Witnesses — Teroovalloney Mootiah Moodeliar and Chinnacavanum Sawmy Pillah by their Knowledge Drawn and Signed by the said — Aulvar Audeapen —

Witnesses signed
Mootiah
Sawmy

True copy
Hos Dupury
Atty Pet.

A True translation as near as can be from the Malabar Language
Soobaroyam
Interp.

A true Copy /Signed/ Charles Inglis
Attorney for the Respondent

Extract

Extract from the Minutes of a Court Held at the Town Hall on —
Tuesday the 22d day of November Anno Domini 1785

Present

Philip Stowey Esquire Mayor
Edward Garrow and George Savage
Aldermen

Joseph Debruz and Audeapun
~~vers~~
Comarapah Moodelly

The attorney for the Respondent Natchiapah Moodelly administrator of Comarapah Moodelly Appears and prays that the Petitioner Poncala Narsimadoo Administrator of Paupa Reddy Verrabadra Naick May Shew Cause by next Court Day why the Petition and Answer Should not Stand revived — Mr. Henry Dupuy Appears for the Petitioner and Acquaints the Court that he has no Objections to the Petition and Answer Standing Revived Ordered Accordingly

A true Extract

/Signed/ George Taylor
Dupy Regr

A True Copy

/Signed/ Charles Inglis
Attorney for the Respondent

Extract