of importance to his clients that the present allegations should be reviewed, he hoped the Court would either grant his motion, or itself look into the allegations.

Mr. Anstruther, for the proponent, opposed the motion for a reference in the first instance. He observed, that references to the Master on the equity side, had been found productive of great delay and injustice to the parties; and deprecated this extension to the Ecclesiastical side of the Court. He went also into **[66]** some detail, to prove that the right was with his clients; and that there was nothing in the allegations, but what the nature of the case required.

RECORDER. The Court is not now trying the right, neither are the allegations so before it, as to enable it to judge of their relevancy. It is to bring their relevancy into judgment, that the present motion is made. If it were the settled course of this Court, to refer on the Ecclesiastical side to the Master, nothing that has fallen would restrain us from pursuing it in the present instance; because, if there are unnecessary delays in the Master's office, it must be the fault of parties themselves, who have the means of obtaining a decision of everything depending there, as soon as the nature of the enquiry will admit: and, if the Master err, a reference to the Court is always open to review and correct.

An instance, it seems, has occurred (of which the Master has been shewing me a note) of a reference to him on the Ecclesiastical side; it was of a matter of evidence; not that that makes any difference; the principle is the same; but that was by consent, and the Court should certainly pause before it establishes a course not pertinent to the jurisdiction in which it is sitting. The Court therefore refer it to *Mr. Compton* to look into *Consent*, and other books of Ecclesiastical law and practice, and see what the course is there; for a course there must be, as no Court will suffer it's records to be improperly filled.

The matter was not brought again before the Court.

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[67] *PLEA SIDE.*

SINGANA CHITTY, ADMINISTRATOR, etc. *v.* PUDDAMANABADOO CHITTY. [12*th February*, 1801.]

No other way of enforcing a recognizance, but by action, or *scire facias*.

Appeal to the King in Council against refusal by the Mayor's Court to compel a witness to be examined at the pagoda. dismissed for want of prosecution.

THIS had been a suit in the Mayor's Court. Issue having been joined, an application was made in that Court to examine a particular witness at the pagoda; which being refused, there was an appeal, first to the Governor in Council. and then home, which was dismissed by the King in Council (22nd April 1796) for want of prosecution, with £50 costs. The general practice of the Mayor's Court had been to compel the unsuccessful party to pay the whole costs incurred by the appeal. In this case, on the application for leave to appeal, a recognizance had been entered into by two persons, to whom it stated that the appellant had been "admitted to bail, to answer such costs "and charges as should be adjudged by His Majesty in Council, in a certain "cause, etc., etc."

A rule was obtained to shew cause, why the persons named in the recognizance should not pay the whole costs, amounting to a sum far exceeding the sum given by the King in Council. But the *Recorder*, the next day, said the rule ought not to have been granted; there being no instance to be met with of enforcing a recognizance by any other mode than that of an action, or a *scire facias*. And the rule was accordingly superseded.

[68] *EQUITY SIDE.*

NARRAIN PILLAY AND OTHERS, EXECUTORS OF PATCHEAPAH *v.* EXECUTORS OF CHITTRA PILLAY. (*13th February*, 1801.)

Upon a bill to be relieved against a judgment at law on a note in writing, the Court will not compel the Defendant in equity to produce it before the Examiner, for the purpose of the suit.

THIS was a suit brought to be relieved against a judgment at law, in an action upon a cadjan instrument, in which the Defendant's testator *Chittra Pillay*, as the executor of a woman of the name of *Payanee*, had obtained a verdict for above 20,000 Pagodas (a). Upon the trial, the instrument having been delivered in, remained, according to the practice of the Mayor's Court, in the hands of the officer of the Court. The bill imputed forgery to it, and that the verdict had been obtained my means of perjury. The parties being at issue, *Mr. Grant*, for the Plaintiffs, now moved that the cadjan might be delivered to them, or handed over to the Examiner of the Court, for the purpose of examination.

He observed, that an execution having issued on the common law side of the Court, and the amount of the judgment having been actually paid by his clients, they were entitled to the possession of the instrument as a voucher, and ought not to be in a worse situation, from the particular practice of the Mayor's Court, which this Court had thought fit to adopt. That the object was to have it examined before the Examiner, in a suit brought expressly to overturn it. That if it related to any collateral point in the cause, the right would be clear; a fortiori here, where the point is the principal one. [69] The bill (he said) states it to be a single cadjan, contrary to the practice of the natives, in the case of large sums; that there are no names of subscribing witnesses mentioned in the body of it, that there has been an erasement upon it, and that it is not in the hand-writing of *Patcheapah*. It may be said, in answer to this, that advantage of all these objections might have been taken at law, but the party ought not to be concluded, in a matter of this magnitude, by inadvertency; and we are better informed now, than we were then, of the nature of these deeds; and, if this cadjan will not bear the light, it shews that it is suspicious.

Mr. Grant then mentioned the case of *Stace* v. *Mabbot* (a), which had been tried five or six times, and where the witnesses must have had an opportunity of seeing the deed.

[68] (a) Vid. ante. p. 15.

[69] (a) 2 Verey, 253.