

PLEA SIDE.

BINNY v. WATSON (*August 25th, 1800*)

Bailee without hire, not answerable for the loss of goods kept by him as he kept his own, and which loss he could not prevent.

THE declaration stated, that the Plaintiff being, on the 25th of *July 1793*, possessed of a *tunka* of the Nabob, directed to *Ettabar Cawn*, for 5,000 Pagodas, payable out of the revenues of *Tinnevelly*, on account of a debt due by bond to *Tulloh* for Pagodas 55,445, which *Ettabar* was required to pay to *Tulloh thro' the Plaintiff*; and being desirous of receiving it, addressed himself, for the purpose, to the Defendant, who agreed to apply for and obtain payment. That, in consequence, Grain was delivered to the Defendant to the value of the *tunka*, in discharge of it. The Defendant, in consideration of his agreement, and having possession of the grain, undertook safely to keep it till it could be sold. But that, tho' he had had possession of it at *Calcaud*, he did not safely keep, but by gross negligence suffered it to be taken from him, whereby it was lost.

[59] There were other counts, including money counts, in the declaration. The Defendant pleaded the general issue.

The plaintiff rested his case upon successive letters from the Defendant, the effect of which was to shew that, having undertaken to obtain payment, he had, upon the 27th of *June 1795*, given a receipt to *Ettabar Cawn*, the Nabob's renter of *Tinnevelly*, for the amount in money; and that, in point of fact, as the consideration of that receipt, he had received an assignment of grain to the amount, for which he had not accounted to the Plaintiff. But the same letters, joined to the evidence produced by the Defendant, clearly proved that he had acted for the Plaintiff in the business as a gratuitous agent, without consideration and without any particular instructions; and this with the same care as for himself;—that, in consequence of much attention and assiduity on his part, he had at length succeeded in obtaining an assignment of grain for an amount of *Chuckrums*, covering the claim of the Plaintiff together with one of his own, in the confidence of which proving available, he had, so far as respected the Plaintiff's *tunka*, given the receipt in question, as for so much money paid; that many months elapsed, during which it was impossible for him, owing to the circumstances of the country at the time, to realize the grain, over which he had placed peons; and that the whole, his own, as well as the Plaintiff's, was in this state finally seized by the *Circar*, by means of a force employed for the purpose, which no exertion or precaution on his part could have enabled him to prevent or resist. Under these circumstances, there was a verdict for the Defendant.