From this judgment there was an Appeal to the King in Council, which came on to be heard the 4th of *May*, 1803, when the judgment of the Court of the Recorder was affirmed.

PLEA SIDE.

JOHNSTON *v.* THE HONORABLE EAST INDIA COMPANY. (1799. *May.*)

An appeal does not lie from an interlocutory order under the Charter of the Cour of the Recorder of Madras.

A PETITION was presented, on behalf of the Defendants, praying leave to appeal from an interlocutory order of the Court, which deprived the Company of the benefit of the plea of the statute of limitations, pleaded (with other special matters) after an enlarged rule to plead on the usual terms.

The petition was supported principally by reference to the Bengal Charter, admitting of an appeal from any order, with which a party might be dissatisfied.

RECORDER.—Under the Bengal Charter, it appears that any suitor, being so inclined, may appeal from a rule, or order, whether interlocutory or final, in any way affecting his interest. Such must be taken to have been the intention of His Majesty, the terms "rules or orders" being specified in the Section of the Charter, allowing of appeals generally.

But the same terms do not occur in the section that provides an appeal, in certain cases, and un-**[19]**der certain restrictions in the Madras Charter, tho' the one was copied, in many parts, from the other. Instead of the words "*rules* or *orders*," others are substituted, *viz.*, "*judgment* or *determination*," which import final decision. It is to be presumed, that, if the same latitude had been intended here, the language would have been the same.

It is clear to me that there can be no appeal under the Madras Charter, while the suit is in progress. It must have reached its end; and then, and not before, the party, dissatisfied with the judgment, may object to any order, by which he can shew that he has been finally aggrieved. It is notorious that infinite delay, expense, and vexation, resulted from the liberty that suitors possessed in the Mayor's Court, of appealing in any stage of a suit; to put an end to this the present Charter was differently worded, it being intended to prevent for the future such an abuse of justice; reserving to parties, if they should have any final ground of complaint, the means of carrying it to the dernier resort of the King in Council, subject to the limitations imposed, with respect to the amount of the sum in dispute, and the time for petitioning.

Prayer of the Petition refused.

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[20] *PLEA SIDE.*

JOHNSTON *v.* EAST INDIA COMPANY. (1799. *July* 1*st.*)

Grain delivered by the Nabob of the *Carnatic*, in discharge of a war subsidy under a particular treaty, held not to be *revenue* in the hands of Government, so as to be within the restriction of the Charter, excluding that particular subject from the jurisdiction of the Court.

RECORDER.

THE general question in this case is, whether the Plaintiff is entitled to a verdict, and for how much?

In a cause of such consequence as the present, it would have been desirable for the Court to have been able to do final and complete justice between the parties, upon grounds satisfactory at least to itself; but of this, the state of the record, and the nature of the evidence does not admit.

The first question is, whether so much of the property in dispute, as is covered by the first plea, relates to matter of revenue, of which it is agreed that this Court cannot take cognizance (a).

The plea states a number of facts, from which this objection to the jurisdiction is said to arise.

The Plaintiff, in answer to it, brings forward no new matter; he does not select from it any particular fact for denial, or take issue upon any one of its allegations; but replies generally to the conclusion of the plea, that the subject in question does not relate to matter of revenue in manner and form as pleaded.

This is, in effect, a demurrer; though, in point of form, an issue having been joined upon it, on the part of the Defendants, they are put upon the proof of their facts.

How far they have or have not succeeded in es-**[21]**tablishing them, it is immaterial to consider, it appearing to the Court, that, whatever may be the merits of the question so far as they are disclosed by the plea, they have no relation to the revenue, in the sense of the Act and Charter which exempt that subject from its jurisdiction.

The Act, (a) from which the Charter is copied, exempting the revenue under the management of the Governor and Council, must be understood to mean the ordinary standing revenue of the Presidency, raised and transmitted to the Treasury by its Collectors; and not parts of the Nabob's revenue, payable to the Company upon contingencies, under particular stipulations.

The subject in question is Grain, and the argument to be collected from the plea, for considering it as Company's revenue is, that it was delivered and received in part-payment of four-fifths of the revenues of the Carnatic, under the war article of the treaty of 1797; and that the Nabob, having had credit given him for it, as such, in account, it thereby became revenue in the hands and under the management of the Governor in Council.

It is, then, an appropriation of so much of the Nabob's revenue for the purpose of a war subsidy; a war subsidy payable out of his revenue, as every subsidy, from one state to another, must issue from the revenues of the State that engages to pay it. But this no more made it Company's revenue, than where a man pays a debt out of his salary, the money so paid becomes salary, in the hands of the **[22]** creditor who receives it. By the payment, the property is changed, and what was salary in the hands of the debtor, becomes an unqualified sum of money in those of the person receiving it. So here, the grain in question, on being transferred, ceased to be revenue, and became subsidy, applicable,

[20] (a) See Charter of Court of Recorder, p. 21. **[21]** (a) 37, G. 3. Ch. 142, Sect. xi.

not to the ordinary purposes of revenue, but to the expenses of the war only, by the particular stipulations of the treaty.

It would seem, therefore, for anything contained in the first plea to the contrary, that the subject-matter of it is within the Court's jurisdiction.

With regard to the rest of the case, to which the statute of limitations has been pleaded, it appears to be taken out of the statute, by what has been passing within six years, previous to the bringing of the action,—*viz.*, 1st, by Mr. Secretary *Jackson's* letter of the 5th *March* 1793; 2d, by the letter from the Directors, of the 1st *June* 1796; 3d, by Mr. Secretary *Webbe's* letter, of the 26th *January* 1797, enclosing an extract of the general letter from England; 4th, and lastly, by the investigation that appears to have taken place in 1797; the whole of which, taken together, form such a recognition of a demand on the part of the Plaintiff, as infers, in point of law, an undertaking by the Defendants to pay whatever might be substantiated against them, either upon an amicable settlement, or in a Court of justice.

It has been held, that the slightest acknowledgment is sufficient to take a case out of the statute of limitations,—as, where Defendant said, " I am ready to account, but nothing is due to you," which is pretty much like the present.

[23] This is said by Lord *Mansfield*, in *Freeman* v. *Fenton*, *Cowp.* 548; where he adds, "and much slighter acknowledgments than this will take a "debt out of the statute;" which is confirmed by Mr. *J. Buller*, in a later case in 2 Term Rep. 762, in which he cites this passage (a).

In the present case, by their letter of 1796, the Defendants expressly direct this Government to revise the Plaintiff's accounts; and a Committee is appointed, and a report made. It seems clear, therefore, here, that the case is out of the statute.

When the statute is pleaded in bar, I apprehend, like any other bar, it admits a cause of action.

This makes it convenient to join the plea of the general issue, which, denying the whole of the declaration, puts the Plaintiff upon all his proofs.

But here, the Defendants stand singly upon the plea of the statute of limitations, which they themselves choose to substitute in place of the general issue.

The case being taken out of the statute, and a cause of action admitted, it is to be seen how the evidence ascertains the quantum of damages, so far as that remains open upon the pleadings.

The charge for clothing certificates has, for want of proof, been abandoned.

The charge for gunnies must be abandoned for the same reason.

Evidence has been given that the article was scarce at the time at *Trichinopoly*, in consequence of which **[24]** the Plaintiff had to send for it to the neighbouring districts. But there is no evidence of what he gave for it, or of what it was in fact worth.

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[23] (a) In 15 *Ves. J.*, p. 192, Lord *Eldon* says, the only safe course for a party to pursue on such an application, is, to be silent. But he says, in all these cases, the construction put on the statute is against the principle of it.

There is evidence of the bazar prices at *Trichinopoly*; but the charge is not founded on the *Trichinopoly* prices, and there is no evidence whatever of the proportion which the prices at the neighbouring bazars bore to that at the *Trichinopoly* bazar.

They might as well have been cheaper as dearer, and that in proportion to the distances;—If dearer, there is nothing to guide the Court in saying how much dearer, except the Plaintiff's own demand; and it is remarkable that, in the account given in by him to Government, he founds his demand as to this article, not upon what he paid for it or on what it was really worth, but upon the allowance made by the Defendants for the same article to other persons in similar situations.

Government having shewn that the charges allowed those persons had reference to peculiar circumstances, the Plaintiff should have come prepared with specific evidence that his were reasonable. But he has offered none, and the Court cannot sustain the demand upon speculative estimates, fallible in their nature, and which afford no criterion for a Court of justice to act upon.

For the like reason of uncertainty, the Court cannot allow the sum charged for a specified quantity of grain, said not to have been carried by the Company to any particular credit.

Videnaida gives an account of a large quantity of grain being stored by the Plaintiff at *Trichinopoly*. He says the renter's people used to attend the storing of it, and that some was brought upon elephants and camels, in the charge of the Nabob's renters.

[25] As there is no proof that the Plaintiff had orders to purchase, nor any satisfactory evidence that he did in fact purchase any, the presumption must be that so much of the grain, at least, thus described by *Videnaida*, was Circar grain, delivered on the part of the Nabob, for the use of the Company.

The statement that it was purchased by the Plaintiff goes to the whole. But neither *Videnaida*, nor *Kistna Row's* receipt afford any satisfactory assurance of the fact to that extent.

Then, if an indefinite quantity of what was so stored must be taken to have been the Circar's, the Court has no evidence of any particular portion that was not so; and, though the plea admits a cause of action, it does not admit the *quantum*, of which the Plaintiff should give clear, unambiguous evidence, as the Defendants are upon the plea precluded from going into the merits.

As to the item of Pagodas 11,385, 33, 77 ascertained, as it is, upon the record, and taken out of the statute of limitations, which is alone objected against it, upon the principle laid down, the Court think the Plaintiff is entitled to such principal sum upon these pleadings, with interest to be computed from 30th *April* 1793, being the date at which it appears to have been transferred to the general books at *Tinnevelly*.

A verdict, therefore, must be entered, in favor of the Plaintiff, for that sum.

From the judgment in this case both parties appealed. No order of the King and Council ever came out. Satisfaction appears entered upon the Roll.

December 31st.