

“ness and the said United Company, for the protection and support of the
 “dominions and territories of His said Highness, as Nabob of the Carnatic, and
 “of the territorial possessions of the said United Company, in the Carnatic,
 “And the said *Thomas Barrett* further says, that, for a long time, to wit, for the
 “space of six years previous to the ascension of His said Highness, the present
 “Nabob of the Carnatic, to the Musnud of His Royal Father, he the said
 “*Thomas Barrett* was in the service and employ of His said Highness, as
 “his European Interpreter, and principal Secretary; and, on the ascension
 “of His said Highness to the Musnud of his said Royal Father, to wit in
 “the month of *October*, in the year of our Lord Christ 1795, the said *Thomas*
 “*Barrett* was continued in such service, and hitherto hath been, and still
 “is really, and *bonâ fide*, the European Interpreter, and principal Secretary
 “to His said Highness, as Nabob of the Carnatic, and otherwise; and acts
 “as such, in the affairs and concerns of His government, and in his inter-
 “course, and concerns with the said United Company, acting under the liber-
 “ties and privileges so delegated and given to them as aforesaid, and with
 “their Governor and Council of *Fort St. George, Madras*, aforesaid, and with
 “others. And the said *Thomas Barrett* has, [15] from the period last mentioned,
 “and does now daily attend, in exercising the duties of those offices, at the
 “Durbar, or residence of His said Highness, near *Triplicane* aforesaid, and is
 “paid for the same, by His said Highness, a monthly stipend, or salary. And
 “the said *Thomas Barrett* further says that, since his first entering into the
 “service of His said Highness, as before mentioned, he has not traded in any way
 “whatever, nor is he now a trader of any sort, or liable to be described as such;
 “nor has he, the said *Thomas Barrett*, been engaged in any mercantile concerns,
 “for the space of eleven years now last past.” The plea concluded, that, by rea-
 son of all and singular the premises aforesaid, by the law and custom of nations,
 and the statute made in the seventh year of the Reign of Queen Anne, intituled
An Act for preserving the privileges of Ambassadors, and other public Ministers
of foreign Princes and States, the said *Thomas Barrett* is not liable, nor ought
 he to answer the said plaint.

The suit stopped here, the Defendant satisfying the demand, without any further proceeding.

See the case of *Boojunga Row v. Abdul Mauboodu Cawn Jumshare, Jung, Bahadur*, (1803), Post. p.

PLEA SIDE.

CHITTRA PILLAY, EXECUTOR OF *Palanee Ayeé*, DECEASED v. NARRAIN
 PILLAY AND IYAH PILLAY, EXECUTORS OF *Patcheapah*.

(April and May, 1799).

THE testatrix of the Plaintiff was the widow of *Patcheapah*, the testator of the Defendants.

[16] The testator of the Defendants, a rich Dubash, in the service of some of the Company's Civil Servants in the *Tanjore* country, having no issue by his then wife, sometime in 1787, became desirous of another; but, being illegitimate,

and of a low caste, his alliance had in general been refused by all to whom he had addressed himself for the purpose. The Plaintiff's testatrix, having lost her father in her infancy, was living under the protection of the family of the Plaintiff, to which she was related, when *Patcheapah*, availing himself of an opportunity, by a stratagem got her into his possession. Various endeavours were used, on the part of the family, to get her back; but they were rendered abortive, by the influence that *Patcheapah* possessed with the Rajah of the country in which her person had been thus violated. Under these circumstances, combined with a promise of settling upon her the greatest part of his fortune, having been prevailed with to become his wife, they were publicly married, to the degradation of her family, in the eyes of the Natives, being of a high and respectable caste. The promise of a settlement had been frequently repeated after the marriage, when, sometime about *September* 1791, the Horse of Tippoo Sultan, with whom the English were then at war, having made great ravages in the Carnatic, and a report prevailing that they were approaching the Presidency, *Patcheapah*, at this time living in its neighbourhood, prepared to send his valuables, including the jewels of *Palanee Aye*, for safe custody to the house of *Narrain Pillay*, one of the Defendants. *Narrain Pillay*, related to *Patcheapah's* first wife, was hostile to *Palanee Aye*, who, therefore, dreading the deposit of her property in his hands, remonstrated [17] with *Patcheapah* upon his intention, reminding him, at the same time, of the settlement promised, but never made. To quiet her fears, he had a list of the jewels immediately taken down upon a cadjan, to which he subjoined, in his own hand, an engagement for them, as also for 20,000 Pagodas, as a provision for her. The cadjan was dated the 9th of *Paratasy*, of *Verodeeroota* year answering to A.D. 19th *September* 1791. The obligatory part of it purported to be in the hand-writing of *Patcheapah*. Not long after, *Patcheapah* died, leaving property to the amount of several lacs of Pagodas. *Falanee Aye* survived him but a short time; upon whose death, a demand for the amount of the cadjan having been made and refused, a suit was brought in the *Cutcherry* to enforce it. The *Cutcherry* was established during the administration of Lord *Hobart*, for the trial of suits between Natives, the Mayor's Court not being competent to the purpose, unless where the Defendant had consented to give it jurisdiction. The authority by which the *Cutcherry* was erected was always questioned. Its functions ceased on the publication of the Charter of the Court of the Recorder, the 1st of *November*, 1798. Of all causes depending in the *Cutcherry* at the time, the deposits and papers were, by an order of Government, returned to the parties, who were left at liberty, as they might be advised, to renew their suits in the Court of the Recorder.

Under these circumstances, the present suit was instituted. It was much contested, as well upon the trial, as in various other stages. "An *audita querela* was brought; and a bill in equity (a) sub-[18]sequently filed, to be relieved from its effect. The facts of the case being substantiated, there was a verdict for the Plaintiff, upon which judgment was entered for Pagodas 23,953-3-0.

[17] (a) Post. p.

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 Court 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 under certain restrictions in the Madras Charter, though 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.

[20] PLEA SIDE.

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

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.