

“ contract, if he have once paid the money stipulated to be paid in pursuance of
 “ it, he shall not have the help of a Court to fetch it back again. If it is not
 “ paid, the party claiming it shall not make a Court of Justice auxiliary to
 “ his corruptness.”—*Procul! O! Procul este profani!* (a)

The consequence is that the original bill must be dismissed; the bond and note to be delivered up to be cancelled, and the securities restored to the original Defendant, as prayed by the cross bill, the costs of the answer to which must be paid by *Park*, the executor, *de bonis suis propriis*, as a punishment for the falsehood contained in it, for which he deserves a greater; and the rest of the costs of the cross suit must be paid out of the estate of the cross Complainant's intestate, who, by his shewing, was a *particeps criminis* in this transaction.

From this decree, there was an appeal on the part of the Plaintiff to the August 16th, King in Council; which, on the petition of the Defendant, 1802. was dismissed with costs, for want of prosecution, having been depending, without being proceeded in, above three years.

[11] PLEA SIDE.

FRANK v. BARRETT. (1799. *Friday, March 15th.*)

Whether a person in the service of the Nabob is entitled to privilege?

THIS was an action of covenant.—The plaint having been filed, and the Defendant served with a summons to appear, he, on the 4th of March, upon filing a certificate from the Nabob, and an affidavit by himself and others, that he was in His Highness's service, as his principal Secretary and English Interpreter, and not concerned in trade, obtained a rule to shew cause, why the proceedings should not be set aside, on the ground of privilege. The Nabob's certificate, (which was in Persian, and proved, as to the signature, by an affidavit sworn to by *John Battley*, his Persian Translator,) was to the following effect. “To all to whom these presents shall come, greeting. We *Omdut ul Omrah Wallajah*, Nabob of the Carnatic, etc., do hereby certify, that *Col. Thomas Barrett*, inhabitant of Madras, has been, for upwards of nine years last past, and is now, really and truly retained in our service; and is now, and hath, for the space of three years and upwards, been our principal, confidential Secretary, and English Interpreter, in the affairs of our Government with the Honorable the United East India Company, and others, with whom we have concerns; and that he hath, for such length of time, and doth now actually perform the duties of such joint offices, and hath and doth receive from us a monthly stipend, or salary, for the discharge thereof. And that his long, able, and faithful ser-[12]vice, as well as knowledge of our private and public transactions, render his continuance in those characters of the utmost importance to us and our affairs. Given under our hand, this 24th day of *Ramzan* 1213 *Hejry*, corresponding with the 2nd day of *March*, 1799.”

Cause was shewn, on an affidavit by the Plaintiff, from which it appeared that, at the time of executing the deed that was the subject of the action,

[10] (a) *Collins v. Blantum*, 2 Wils. 349, 350.

which was for the payment, by instalments, of 11,000 Pagodas, for goods furnished to the Defendant, the latter was, and, for several years subsequent, had continued to be, a merchant and trader; that the goods in question had been obtained by him for the purpose, and in the way of his trade: and that, not having been paid for, he had entered into the service of the Nabob.

Counsel having been heard, the Rule was discharged.

Upon this, the Defendant pleaded his claim. His plea, filed the 6th of April, began by referring to the charters, and acts of Parliament, constituting the Company the governing power in India. It then went on as follows: and the said *Thomas Barrett* further says, that the Nabobs of the Carnatic have been, and still are, acknowledged, recognized, and treated with as independent Sovereign Princes, as well by all the Native Powers in India, as by the Crown of Great Britain, and other sovereign Powers in Europe and elsewhere; and also by the said United Company, acting under the liberties and privileges delegated, and given to them as aforesaid. And the said Nabobs of the Carnatic for the time being, and His present Highness *Omdut ul Omrah Bahader, etc.*, the rightful and lawful Nabob of the Carnatic, and, as such, a sovereign independent [13] Prince (not being a Christian), now holds and enjoys several large territorial possessions, within the places of the trade of the said United Company, and particularly in the Carnatic, over which the said Nabob has, and continues to exercise, sovereign power and authority. And the said *Thomas Barrett* further says, That His said Highness *Omdut ul Omrah Bahader, etc.*, has been, for a long space of time, to wit, for the space of three years last, and upwards, and now is, the rightful and lawful Nabob of the Carnatic; and, during the whole of that time, has exercised, and continues to exercise sovereignty, over the territorial possessions and dominions belonging to him as Nabob of the Carnatic, as aforesaid. And the said *Thomas Barrett* further says, that His said Highness, the Nabob of the Carnatic, in his negotiations and intercourse with the said United Company, acting under the liberties and privileges delegated and given to them by the Crown of Great Britain, and confirmed, as hereinbefore mentioned, and with the Governor and Council of the said United Company, at their Presidency of *Fort St. George, Madras*, (being the Presidency of the said United Company in the Carnatic), does not employ any Vakeel or Ambassador, but resides himself near *Triplicane*, within the limits of *Madras* aforesaid, and of this Honorable Court, by, and with the consent and approbation of the said United Company, as well for his more easy negotiation, and ready intercourse with, and receipt of communications from the said United Company, and their said Governor and Council of *Fort St. George, Madras* aforesaid, as for the better performing and carrying into execution of the Treaties [14] made by himself, and his said late Royal Father, as Nabobs of the Carnatic, as aforesaid, with the said United Company, acting under the liberties and privileges delegated and given to them, as aforesaid, and for the more ready and punctual payment of the monthly subsidy, for maintaining, and keeping up the standing military force, by treaty agreed to be jointly maintained and kept, by His said High-

“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 Maubodu Cawn Jumshare, Jung, Bahadur*, (1803), Post. p.

PLEA SIDE.

CHITTRA PILLAY, EXECUTOR OF *Palanee Aye*, 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,