

2. The Writt and Declar Vary in the Summe of 20000^t of Tobbacco the Damages laid by the Writt being 80000^t of tobb: and the Damages in the Decl being but 60000 pds of Tobbacco which in any Court of Common Law is Sufficient Variance to Abate the Action

3. The Said Thomas in his Acc^t wherewith he Charges the Said Miles as Adm^r of the Said Copley incerts an Article Viz^t a brass Kettle and Skillet which was Sold to the Said Miles by the Said Thomas after the Death of the Said Lyonell, for which he ought to have brought a Separate Action and that in his own Name and not as Adm^r of the Said Copley, for that was a Debt made by himsele and therefore Could not be Coupled in one Action with the Debts made by the Said Copley in his life time therefore Erroneous.

4. The Cause of Action by the Said Declar. is laid to be nine Months and five Days after the Action Commenced as Appears by the Record therefore Erroneous for all wth Errors and Imperfections the Said Miles prays that the Judgement of the Said Court in Overruleing the Said plea in Abatement be reversed And that the Action of the Said Thomas Against him the Said Miles may Abate and be Dismissed without Day

Clark Attor[ney]

Miles Burrough v Gov^r Copleys Adm^r

Now att this Day to Witt att a Court held befor his Ex^{ty} the Governo^r Sr Thomas Lawrence Col George Robotham Col Charles Hutchins Thomas Brook Esq^r James Frisby Esq^r

A Precept Transmitted to the Prov^l Court to try a Certain Matter of fact in one of the reasons in this Cause Assigned was produced and read with the Said Courts Judgm^t and proceedings had as followeth Viz^t:

[73] MARYLAND ss. William the third by the grace of God of England Scotland France and Ireland defender of the faith etc. to the Justices of the Provinciaall Court in our Province of Maryland Greeting Whereas Miles Burrough Late of the City of S^t Marys Inholder did appeale from a Certain Judgm^t given ag^t him by the Justices of our S^d Court the Second day of October 1695 upon plea of Abatem^t of an Action brought by Thomas Tench Adm^r of his Ex^{ty} Lyonel Copley Esq^r dec^d unto our Gov^r and Councill Constituted a Court for hearing Appeals and Writts of Erro^r etc. which S^d Judgm^t and proceedings thereon together with Certaine Reasons filed for the Appeale being Laid before our Said Governo^r and Councill for their Opinion and finall Judgment to be Given in the premisses the third reason by the Said Miles Assigned for Erro^r was that the Said Thomas in his Acc^o wherewith the Charges the Said Miles as Adm^r of the S^d Copley Inserts and Article, Viz^t A Brass Kettle and Skillet which was Sold to the Say'd Miles by the S^d Thomas after the death of the Said Lyonel for which he ought to have brought a Separate Action and that in his Own name and not as Adm^r of the Said Cop-