

Calvert
Papers.

Counsel for the Tenant & M^r Attorney Bordley for the Proprietor; The Def^{ts} Counsel opened the several Points, said taken from an opinion of M^r Dulany, on the Affair of his Lordships Escheats; And then applied themselves not only in matter of fact & Evidence but likewise in matter of Law to the Jury, without paying the least regard to the Court, whose Province is to determine matters of Law, the Court taking no Notice of them for Endeavouring to deprive them of their Jurisdiction; M^r Bordley being Possessed of their argument of Law & Learning & the several points from Henley & Pratt, he replied; taking the matters of Law from the Decision of the Jury & Lodging them before the Court; moved the Court as it was a matter of the utmost importance both to the Proprietor & the Province; And that as the Jury had a right to determine the matters of fact & the Bench the matters of Law, & upon both which their determinations, each Branch of the Court would determine what was within its own Province to determine; And therefore prayed the Bench to direct the Jury to find a special Verdict, which would contain the facts, that the Bench might at a future day after all parties had proper time to consider them, determine the Law resulting from those facts, this he insisted & did claim as a matter of right & not of favour & that by this means the whole case would be put into the only proper light for an Appeal if either party should be dissatisfied with their Honours Decision, this application produced a violent opposition from the other side as unfair, for making a motion for a Special Verdict, till he got from them all their Authorities upon the several Points; to which he answered it was owing to their unfairness by their address to the Jury the Law, which they ought to have addressed to the Court; And after much dispute on both sides, their Honours of the Bench directed the Jury to find a Special Verdict. This point gained they drew each their own part of that Verdict & M^r Attorney finding by theirs that they incerted two Steps of their Title under the original Patentee (for whose Dying without Heirs it was insisted had Escheated the Land) as proved to the Jury of which they had not offered one title of Evidence; He objected to those facts standing as part of the Verdict; And after much altercation their Honours of the Bench did think it unreasonable that they should incert any facts as proved, to which no sort of Evidence had been given; This drove them to some sort of proof; in doing of which their Honours made them Ample amends for laying them under this Necessity. For in the first place instead of obliging them to produce either Deeds or Wills to show these two several transfers, as they ought to have done, they premitted them to prove them by Witnesses; In the next place