

Rules of Law they are to proceed vpon any Appeal from the Lib. H. D.
Commissary Gen^ls Sentence.

I have had no Books to consult, but the Statutes of England & the Acts of Assembly of this Province, and have had very small time to consult them, having been the most of this day either in the House of Burgesses or on a Committee, but by what I can at present collect out of them, this is my Opinion upon the Matter.

1: that as to their Power & Authority, it is exprest & limited in the Commission which I conceive they are guided & limited by, because they are not Nominated either by the Statute of 24th of Henry the 8th nor by the Act of Assembly for the Act directs the Appeal to be made to the Govern^r who in this province is Chief Judge in all Causes both of Law & Equity And he Empowers the Delegates; And powers & Authorities are to be strictly observed and that power I take to be their Bounds.

2: As to their Jurisdiction (with respect to their Commission) I vnderstand it to be extended to the Sentence of the Commissary Generall vpon which the Appeal is made and therein they are Judges of the same matters & things that the Commissary was Judge of contained in that Record for the Act saith that the persons so appointed shall hear & determine the matter &c^a therefore I conceive they are the Judges of it and wherein they find the Commissaries Sentence good they may affirm it in theirs and wherein they find [it] naught alter it and adjudge as the matter in Law & equity appears to them.

3: By what Rules of Law they are to proceed I am not so well satisfied as I would be, but by considering what they may not do it may be collected what they may do And it p. 229 appears beyond dispute with me that they cannot proceed by the Rules of the Common Law first because the Proceedings comes not from a Common Law Court, 2^{dly} because they are to hear & determin the whole matter and it is to be finall which the Court of Common Law cannot do; for a Superiour Court in Common Law cannot hear & determine the whole Cause nor is their Judgm^t finall vnless vnder the limitations of the Act of Assembly but they can only Examin the Judgm^t of the Court whether agreeable to Law or not and to confirm or Reverse it but as to the ffact have nothing to do And I find th^t the Chancellor in a common course of Equity cannot meddle with it but I conceive the Reason to be because of the Statute of the 24th of King Henry which confirms testamentary Causes &c^a to others and prescribes Rules & Methods for Appeals where injury is done But still I perceive those Judges in those matters of which they have cognizance by the said Statute proceed in a course of Equity grounded on the comon