

Lib. H. D. dence to Avert, had I not been an Eye Witness and a hearer of Matters which make it evident; for which digression from the Quære, I humbly beg your Ex^{ncies} pardon.

As to the third Quære, which concerns the particular case of Esq^r Randolph & Blackmore vpon an information exhibited by the s^d Randolph against the Ship Anne whereof the s^d Blackmore was Mast^r for taking severall hogsheads of Tobacco on Board before such Bond given, as the Act of Parliam^t in such case Requires; the said Master coming to Tryall in the Prov^{ll} Court, and it being acknowledged & given for Granted that there was Tobacco taken on Board before any other Bond was given than the Bond then produced in Court & shewed to the Jury, the only question then Remaining to be determin'd was whether that Bond was a sufficient Bond according to the Act of Parliament, which being a Question of Law ought to be Judged off by the Judges, but the Jury taking the s^d Matter of Law vpon themselves found the s^d Blackmore and his said ship, not guilty & consequently Judged the s^d Bond to them produced to be a sufficient Bond in Law, for which Reason the s^d Randolph Appealed to your Excell & Council & Assigned for Error the insufficiency of the s^d Bond according to the Act
 P. 353 of Parliam^t vpon which your Ex^{ncy} & Council thought fit to Judge the s^d Bond insufficient in Law & consequently to Reverse the Judgm^t of the Provinciaall Court whereby the said ship was cleared.

I am therefore of Opinion that vpon the Reversall of the Judgm^t of the Provinciaall Court for the Reason afores^d the ship ought to be condemned, because that whensoever a Writ of Error is brought in a Superiour Court vpon a Judgm^t given in an inferiour Court, if the Judgm^t of the inferiour Court be Reversed for any Errors assigned then and in such Case the Superiour Court ought to give the same Judgm^t as the inferiour Court ought to have given, if such Error had not happened; Now if the Error of Judging the s^d Bond sufficient had not happened in the provinciaall Court but that the s^d Bond had been Judged there insufficient (as your Excell & Council adjudged it) then without all dispute they ought to have Condemned the Ship, consequently your Ex^{cy} & Council having Judged the s^d Bond insufficient, and the not doing so being the Error of the Provinciaall Court, The Judgm^t to be given by your Ex^{ncy} & Council (I humbly conceive) is that the ship be Condemned according to the directions of the Act of Parliam^t and for any person to come now & Alledge in barr of such Judgment that there is Matter of fact to be still inquired into (viz^t whether the said ship tooke in Tobacco before Bond given) is idle fforreign, and now too late to alledge, because it was given for Granted & allowed vpon the Tryall that Tobacco