

Liber N N non est factum & bring Speciall matter in evidence, but his plea ought to have beene that it was not the Act & Deed of Charles Delaroch for that the bond was delivered only as an escrowle upon a condition not performed & the plaintiff ought to have had liberty to have replied to that plea that it was not delivered as an escrowle and prayed the inquiry of the Country or he might have demurred to such plea and putt himselfe upon the judgment of the Court, from both w^{ch} he was barred by that plea of non est factum. which was legally & Sufficiently proved.

3^{dly} The verdict Ought to have been Speciall and the jury ought to have putt themselves upon the judgment of the Court in matter of Law, that if they but found the bond to be an escrowle & so delivered they found it Soe & not otherwise.

4^{thly} Besides the mischeife of introducing an ill president of questioning the consideration of bonds or bills legally executed, which is unjust & against Law, when the Law allowes so many Speciall pleas, as, that it was, p dures, p minas, as an escrowle or gained by some other fraud or Collusion. This was of proceeding leaves the plaintiff remedylesse in the recovery of a just debt, which neither Law nor equity can or will permit—ffor he cannot bring his action On his accompt which he is ready to prove every particular of & the rates & prices at which they were delivered at & for which the bond was made & given & had he come with his accompt so proved by his Owne Oath the Court must have given judgment for him but now if he brings an action of assumpsit on his accompt they may plead the bond given for Satisfaction & this judgment on it in discharge of the debt.

The def^t might in Equity have beene releived against the bonds penalty, but if this be admitted the plaintiff has no benefitt in Law or Equity which he prayes the consideration of the Court and judgment for his debt

Ro: Carvile.

Which being read & heard the Court will advise hereupont before they passe judgment whereupon day is given to both parties here untill the morrow & order that Copy of the reasons aforesaid be given the def^{ts} Attorney.

Att which Said morrow to wit the Seventh day of December in the yeare aforesaid came the partyes aforesaid by their Said Attornyes The Court haveing considerably weighed the whole matter & more especially the Oath of the said John Deery are of Opinion that it is a good bond, whereupon it is granted by the Court here that the said John Quigley recover against the estate of the said Charles Delaroch the summe of twelve thousand foure hundred twenty One pounds of tobacco the Principall debt aforesaid Seaven hundred thirty five pounds damages occasioned by detention of the debt aforesaid & thirteen hundred ninty nine pounds of tobacco costs of suite.