

putt the matter in question in tryall upon the Court or County nor is it Recorded that the Defend^t lett the judgement goe by default Liber N N

6 Itt is Erred in this, in that itt is Said he made Oath to his account but not that he made Oath that he never received any part or parcell of itt which he ought to haue sworne, otherwise his Oath in his own case is not warranted by Law

7. Itt is erred in this, in that the said account is for three journeys to his house & attendance there six hundred pounds of tobacco, but never alleedges what to doe, nor does the plaintiffe as he ought in such case averr in this Declaracoñ he was a Doctor or Chirurgion or person used or accustomed to attend sick persons, that he had skill in Phisick & was used & wont to Administer Phisick in this Province, & so that the Defend^t desired him to attend him & to Administer Phisick &c And then should haue laid the Defend^{ts} assumpsit in consideracoñ of such attendance or Phisick &c And in fact averred the Administring thereof And in his account ascertained what the same was, & so declared upon a quantum meruit, & so have averred a demand & the Defend^{ts} refusall of pay before he had comēced his suite

Whereupon the said Ralph ffishborne by Robert Ridgely his Attorney aforesaid here came, and the said Ralph ffishborne saith that in the Record & proces & also in the rendring of judgem^t aforesaid itt is manifestly Erred, & assigneth for Errors as afore, & prayeth that the said judgem^t for these Errors & others in the said Record & proces aforesaid be reversed revoaked adnulled & be held for nothing Which Record proces & Errors aforesaid being read & heard, the said Humphry Davenport by Robert Carvile his Attorney saith, that in the Record & proces aforesaid And also in the rendring judgem^t aforesaid itt is in nothing Erred And prayeth that the aforesaid Justices doe proceed as well to the examination of the Record & proces aforesaid as to the aforesaid matter for Errors assigned And the said Ralph ffishborne as above prayeth likewise And hereupon the Record & proces aforesaid to the rendring the judgem^t thereupon And the aforesaid causes & matters above by the said Ralph for Errors assigned being seen, & by the Justices here fully understood & diligently examined And for that itt appeareth to the same Justices by the second reason for Error assigned that in the Record & proces aforesaid as also in the rendring of judgem^t aforesaid itt is manifestly Erred Therefore itt is considered this day to witt the seventh day of June in the yeare aforesaid that the judgm^t aforesaid for the Errors in the Record & proces aforesaid are revoaked adnulled & altogether held for nothing And that the said Ralph fishborne unto all things which he by occasion of the judgm^t aforesaid hath lost be restored And that the said Ralph ffishborne recover against the said Humphrey Davenport the sume of Eighteen hundred twenty seven pounds of tobacco costs of suite