

Liber W. C. tenth day of October 1678 sued out of the said County Court of Charles County a Capias, To the sheriffe of the said County directed to take the body of the said Josias and to have him before the Justices of the said County Court the Twelfth day of November then next to answere unto the s^d Garret of a plea of trespas of the case, By vertue of w^{ch} writt the said sheriffe did Returne. That hee had taken the said Josias whose body hee had ready as hee was Required, and the said Court was adjourned to the 26th of November And the said p^{lt} did att the s^d 26th day of November by Nehemiah Blackiston his Attorney file his Declaracon in an Assumpsitt for the said foure hundred Seaventy foure pounds of Tobacco and annexed to his said Declaracon a Coppy of the pticulers of the said Account Comenceing the ffifteenth day of Aprill 1676. and Ending the ffifteenth day of November 1677 being duely proved before the Hono^{ble} William Calvert Esq^r, and that hee had never rec^d satisfaccon And offered himselfe against the said Josias ffendall upon the Accon aforesaid but the said Josias Came not Whereupon itt was ordered by the said County Court That the said sheriffe should bee in Misericordia to bring him the next Court to answere the said Accon,

Att w^{ch} said next Court to witt the fourteenth day of January then next Came aswell the said Garret by his Attorney aforesaid as the said Josias in his proper person, And the said Josias in his proper person aforesaid for plea sayed, that the p^{lt} ought not to have his Accon for that hee was debarred thereof by an Act of Assembly Intituled an Act of Limitacons for Avoyding sundry suite att Lawe

And the Record sayes further w^{ch} said Account being wthin the time Limited in the Act and the p^{lt} not haveing a noate under the said Josias ffendalls hand for the Creditt given nor not able to
 p. 179 prove itt by oath of any other person that Itt was by his order, Itt was the Judgment of the Court That there was noe cause of Accon, Whereupon Itt is Ordered by the Court that the said Josias ffendall should have a Nonsuite against Garret Vanswearingen wth Costs of suite and thereupon the Court Taxes Two hundred seaventy eight pounds of tob. Costs,

W^{ch} said Judgment the said Garret sayth is manifestly Erronious for these Reasons Viz

1. The Defend^t ought to have appeared and pleaded by his Attorney and to haue put in his plea in Writeing under his Attorneys hand, and not in his owne prop pson to plead the said statute in barr Ore tenuo
2. There is noe such Record of any such Act as is mentioned in the said Record of the proceedings, and Judgment aforesaid, Intituled an Act of Limitacons for Avoyding sundry suites att Lawe, but the Act Intended to bee pleaded is Intituled an Act for Limitacon of Certaine Actions for Avoyding suites att Lawe