

wife Two two yeare old Heifers wth their Increase w^{ch} they the said Lewis and Mary unjustly detaine, and thereupon the said Thomas Harris by James Coursey his Attorney sayth That Whereas the said Desborow Bennet in his life by his last will and Testament Dated the 26th day of Ap^l Anno Domini 1676 did give & bequeath unto the said Thomas Harris one Two Yeare old heifer, and unto his sarvant Susanna Hortly now the wife of the said Thomas Harris one other Two yeare old Heifer to be deliuered to them wthin six Moneths after his decease, and the said Desborow dyed in January following, and his said will proved in due forme of Law as by the said Will Remaining Upon Record may appeare Neverthelesse the said Lewis Nor the said Mary the said Two Heifers to the said Thomas and susanna hath not delivered wthin the time menconed in the said Will nor at any time since though often demanded to the damage of the said Thomas Thomas six thousand pounds of Tobacco. and thereupon brings his ac^{on}

Liber W. C.

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W^{ch} Originall and Count thereupon are palpably Eronious, and the same and all the proceedings thereupon ought to abate and be Quashed

(1)—for that there is variance between the writ and Declaracon, and the Declaracon is not Maintaineable by the writ, for the writ is in ac^{on} of debt, and the declaracon is in action of Detinue for Two Heifers w^{ch} is Variance from and not Mantaineable by the writt

(2) The writ is to answere unto Thomas Harres and susanna his wife in a plea of debt. and the Count is only to answere unto Thomas Harris that they Rend^r unto the said Thomas and Susanna his wife Two two yeares old heifers wth their Increase w^{ch} they the said Lewis and Mary Unjustly detaine, w^{ch} also is Variance from & not Maintaineable by the writt

(3) The said Declaracon is also Vitious for the uncertainty of it saying that they rend^r unto the said Thomas and Susanna Two two yeare old Heifers and their Increase, w^{ch} increase they ought to have ascertained y^e age and Number

(4)—Had the writ and the Count agreed they ought to have set downe the Vallue of them. That is to say Two two yeare old heifers of the vallue of &c

(5)—The ac^{on} is also vitious had the Count and writ agreed as aforesaid for they Could not Joyne in ac^{on} for both together for the wife Could not Joyne in ac^{on} for the legacy given to her husband but it would have been Erro^r nor the husband sue for the Legacy given to the wife without the wife, nor Can the husband and wife Joyne in an Ac^{on} Together for both the Legacyes but it is Erro^r, but here they are Joynt in the Capias for both. and hee single in the Declaracon for both. To answere unto Thomas Harris &c. and the said Thomas by James Coursey his Attorney &c To the damage