

Liber W. C. Record to be all the Evidence in the case does not at all warrant the verdict of the said Jury

And therefore the said Henry Mitchell prayeth the said proceedings in the said County Court be sett aside & quashed and that he to all things w^{ch} he hath lost by occasion of tthe premisses may be Restored

p. 587 And the said Walter Davis by Christopher Rousby his Attorney cometh & defendeth the force and Injury when &c. and Prayeth Liberty to Imparle hereunto untill the next Provinciaall Court and it is granted unto him the same day is given unto both partyes

Now here at this day to wit the Nineteenth day of October in the Eighth year of the Dominion of the Right hono^{ble} Charles Lord Baltemore &c Annoq̄ Doni 1682 Came aswell the said Henry Mitchell by George Parker his Attorney as the said Walter Davis by Charles Boteler his Attorney and the said Walter Davis by his said Attorney saith

(1st)—That the Declaraçon is not sett forth in such words as the said Henry observes to the Court and settts downe in his first pretended reason but is Plaine to another Sence & effect Viz That Mitchell at the time of fileing the Declaraçon stood indebted to Davis foure hundred and foure Pounds of Tobacco for that he the said Mitchell had taken away and disposed of a hogshead of Tobacco of the like Quantity wch he had formerly payd to Davis as by the Record fully appeares.

(2^{dly}) The said Walter Davis Saith that although it had indeed been the better way for him to have brought his acçon upon the Act Imposing a penalty upon Such who shall dispose of Tobacco Seized and Received by sheriffes & others &c. because thereby he might have recovered greater damages against the said Mitchell Yett that act Does not hinder a man from takeing such Course as he might have done before the Act for his Remidy If he pleaseth Soe to doe

(3^{dly}) The said Walter sayth the whole matter or Cause is brought before the Justices here by appeale and not by writ of Error And soe the Justices are not strictly tyed up to the Error^{rs} Assigned but have liberty to Consider of the whole merrit of the Cause and to give Judgment thereupon, & though Issue doe not appeare to be Joyned formally Yett it seemes it was agreed upon and the County Court thereupon gave Order for a Jury wch was Impannelled and Sworne according to the usuall Practice of the same Court, And the Complaint being for Mitchells takeing and disposing of a hogshead of Tobacco wch he had before payd to him the said Davis And Mitchell pleading that he did not take and dispose of the Same And the Jury finding for the p^{lt} there is good reason Davis should have his Reparation And the ill or misjoyning of Issue is helped after verdict by the Statute of the 31th Henry the 8th Chap: the 30th