

Richard Bennett to recover against the said Frisby for want of Sufficient matter in barr pleaded by them they having pleaded a bond for performance of Conditions in barr which they pretend not in their plea ever to have been ever broken, nor is it Alledged therein that ever the ballance pretended to have been due from the Estate of the said James Frisby Esq^r deced was distributed or Disposed by the Judge in the Condition of the said Bond to her late Majesty Queen Ann mentioned to the said James and Peregrine or to either of them without which it Could be no breach of the Condition that the said Thomas paid not that Summe and so the said Bond not pleadable in barr And for that the said plea Contains not an averment that the Assetts Confessed are chargeable with the said Debt Pleadèd in barr and for that the same is wholly insufficient both in Substance and form.

It. In that it appears not by the said Record that the Def^{ts} prayed the plaintiff in the Original Action shoud reply and yet Judgm^t is given on the Plaintiffs not prosecuting which appears to be only for want of replication.

It. In that the said Def^{ts} alledges the said Action cou'd not be continued till another Court by Act of Limitation etc: whereas it appears not but the said Action might well have Continued so long.

It. In that the said Bennett is called and his Default Entered for want of Replication without any day given after the plea to reply thereto or further to prosecute.

It. In that it Appears by the said Record that the delays that happened were on the Def^{ts} part by the Several Imparlances to further days so that if the said Act of Limitation had taken place it appears to have been by the Def^{ts} own Act and therefore Judgm^t ought to have been given agst him as well for that and for his bad Plea

[477] It. That that there is no Entry of the Cause that moved the Court to give the said Judgm^t by the Common Course of Entrys nor is the Judgm^t warrantable as Enterd being for Costs against the P^{lf} without Alledgeing it to be of his Assent or According to the forme of the Statute.

For all which Errors and many Others in the Record and Process af^d being the said Richard prays that the Judgm^t afs^d may be reversed Annulled and altogether held for none and that to all things which thereby he hath lost may be Restored etc.

Th Bordley.

And the afs^d Richard Bennett having insinuate to the Court here that the said James one of the Adm^{rs} afs^d is Dead therefore Prays his L^dships Writ to forewarne the said Peregrine Frisby the surviving Adm^r of s^d Thomas Frisby to be before his said Lordships Gov^rn: and Councill at Annapolis to hear the Record and proress afs^d and it is granted to him Therefore Command is given to the Sherriff of Cecill County that he shou'd make known to the afs^d Peregrine Frisby the Surviving Adm^r of the said Thomas Frisby that he should be before us in Our High Court of Appeales to be held at the City of Annapolis the fourth Thursday of September then next to hear the Errors