

without an apparant infringm<sup>t</sup> upon the s<sup>d</sup> Statute, which is evident by the reason my Lord Cooke gives in his Comments upon the s<sup>d</sup> Statute fol: 419: Viz<sup>t</sup> that they are p<sup>r</sup>sumed to be men of integrity indifferency, Skill and knowledge, therefore this Commission being granted contrary to the Express intent of the s<sup>d</sup> Statute it is Erronious and Void and consequently all the proceedings thereupon likewise Erronious.

2 Though the s<sup>d</sup> Commission were legall and not contrary to the s<sup>d</sup> Statute, the s<sup>d</sup> information and Judgm<sup>t</sup> thereupon is Erronious in this that the Statute of the 3<sup>d</sup> of Henry the 7<sup>th</sup> upon which the s<sup>d</sup> information is principally brought cannot maintain the Same First because the clause of the s<sup>d</sup> Statute ag<sup>t</sup> which the breach is Supposed to be made requires absolutely and expressly 3: Conditions to make goods forfeited both within the letter and meaning thereof, the first is that all goods which this Statute can by any construction be extended to, must be First brought into Some Port within the Realm of England, the Second is that they must be Entered in the book of the Customer of Such Port where they are soe brought, and the Kings Dutys thereof to the s<sup>d</sup> Customers contented or therefore with him agreed the third is that all that being done, they must be carried to Some other Port within the Realm of England. Now it is not as much as once alleadged in the s<sup>d</sup> information that the beer informed ag<sup>t</sup> was first brought into any Port within the Realm or (if the Statute could be extended into this Province) it is not alleadged as is [sic] ought to be to bring the beer within the Statute that it was first brought into Some Port within the Province, and according to the Second Condition required by the Statute, that there it was Entered in the booke of the Customer and the Kings Duty paid or Agreed for, neither according to the Third condition it is alleadged in the s<sup>d</sup> information, that the two former conditions being performed the beer was Carried from the port where it was first Entered into Some other port of the Realm or even of this Province therefore the information failed in the essentiall parts thereof, and consequently it is palpably Vitious therefore the Judgm<sup>t</sup> given thereupon is erronious and contrary to all Law and Justice was the demurrer made to it for the afores<sup>d</sup> and Severall other defects overruled.

3. It is Error in this that the s<sup>d</sup> Statute of the Third of Henry 7<sup>th</sup> can by no legall nor equitable construction be extended into this Province Especially in relation to Beer, first because the s<sup>d</sup> Statute being made (as may appear by the pening thereof) particularly for the Trade of the Realm of England, and even before any of the American plantations were [55] Sealed [sic], and it being a penall Law must be taken Strictly and according to the Letter, it were absurd to think it Should extend to a place not in being at the time of the making thereof, and whose circumstances and exigencies doe farr differ from those of the Realm of England, wherein and for w<sup>ch</sup> it was made and more absurd it were to think or Judge it Should extend to a liquor not in being Even in the Realm of England at the time of the Enacting thereof