

afores^d pleaded is not Sufficient in Law to Destroy the Action of him the Said Thomas against the Said Miles So as aforesaid Brought Rich^d Hill Esq^r Disassenting thereunto.

Then Came the Said Miles Burrough by Philip Clark his Attorney and Craved an Appeal to the Governo^r and Council from the Judgm^t and Opinion of this Court Given as aforesaid and it is Granted he the Said Miles having Given Security According to our Act of Assembly of this province in Such Case made and provided

[Seale]

True Copy W: Wriothesley Cłk

[71] MARYLAND SS Reasons for the Appeale of Miles Burrough from the Judgment of four of the Justices of the Provintiall Court Given Against him upon a plea in Abatement of an Action brought by Thomas Tench Adm^r of Lyonel Copley ag^t the Said Burrough

Imp^{rs} The Said Action being brought ag^t the Said Miles Burrough by the Said Thomas upon An Acc^t for Severall Goods Sold by the Said Lyonell to the Said Miles and upon Ballance of Acc^{ts} for the Said Goods and the Ballance Sued for by the Decl^t being 48340 pounds of Tobb^a Whereas by the State of the Acc^t to which the Declar refers it Appears by the Said Tenches own Shewing that the Bałł Due att the time of the bringing the Action was but 40510 pounds of Tobb^a So that the Declaration Charges the Said Burrough with 7830 more then the Acc^t brought to Justify it and to which it refers and which is part of the Record will maintain, for which reason the Said Miles pleaded in Abatement of the Action (as very well he might having all the Authors that ever Writt in our Laws upon that Subject of his Side, out of Some whereof there ha[s] beed [sic] produced to the Court att least fourty Authoritys in Pointe to Justify not onely that Abatement but also Abatements for a farr less Matter the 7830^t tobacco which Cannot be Said to be either a Mistake of the Clerk or Matter of Meer forme, But the Justices of the Said Court (for what reason I will not p^rsume to Determine) overruled the Said plea in Abatement one of them Asking the rest the Question how the płf Should Come by his Debt in Case they Should Adjudge the plea in Abatement Good, Soe that by Chancerising the Matter in a Court of Common Law, and Comeing to the Merritt of the Cause upon a plea in Abatement and before it lay before them two things altogether New and Unknown to Common Law Judicatures) and by Quite Deviateing from the Course of the Law in the Court wherein they Sate Judges, they most Erroneously Adjudged the plea in Abatement not Good that is Say four of them, all the rest being Absent Except M^r Richard Hill who Seeing the Irregularity of their opinions would as Well to Posterity as for the present Make it Appear that he was Clear of a Judgm^t [72] Against there had been So many precedents produced to him in Open Court therefore he Desired his Dissent might be Entred upon Record.