

and therefore a discontinuance not aided, by any Statute and therefore Erroneous.

3 The Recovery if Legally had ought in this Case to have been of the Goods of the Decd in the hands of the Administrator, but here the Court hath given Judgm^t ag^t the Said Thomas Tench Adm^r etc. for 134^l-11^s- $\frac{1}{4}$ Ster^l and 4000^l Tobbacco debt for Damages which is Less then the p^lt declared for by 8000^l of Tobbacco and there doth not Appear any discount to be made by the p^lt in Court and therefore there was not any ground for Giving this Judgm^t because no Such demand as four Thousand pounds of Tobbacco for which this Judgm^t is given, for Which Reasons the Judgm^t here given is Erroneous.

4 There is a recovery of Cost; but non Constat what Costs was Recovered for it doth not Appear by the Record, and this being a Parcell of the Judgm^t is inseparable from the Judgment And Cannot be Devided, unless the p^lt had released the Same in Court w^{ch} is not done and therefore the Judgm^t is very uncerteine as to the Costs and the Law requireth that things brought to Judgm^t should be very Certain and this Judgm^t [90] is not Soe, and therefore it is Erroneous. for all which Errors and Diverse others as well in the Record and Proceedings as in the Rendring of Judgm^t The Said Thomas Tench prayeth that the Judgm^t af^d by the Prov^l Court given ag^t him may be Reversed Sett aside and holden for None And he to all that he hath lost thereby may be restored

Gouldsborough.

Which Said Reasons being read and fully debated and Argued by the Attorneys on both Sides and by the Court here fully heard and Understood Do adjudge the Same not Good.

It is therefore Considered by the Court here That the Judgment of the Provinciall Court thereon be Affirmed And that a Procedendo issue Accordingly as is Usual in Such Case And that the Said Elizabeth Blakiston Adm^r etc. recover ag^t the Said Thomas Tench Esq^r the Adm^r the Sume of pounds of Tobb^a for her Costs and Charges in this behalfe laid out and Expended.

It is Ordered to be a Standing Rule of this Court that two Severall Reasons for Error Shall not be Assigned under one Paragraph or head but Shall be particularized under Distinct heads.

Moved by M^r William Dent Attorney att Law whether an Executor or Adm^r Shall give Security upon a Writt of Erro^r or an Appeale whereupon it is Ordered That the Act of Assembly for regulating Appeals and Writts of Erro^r be produced here to Morrow morning.

The Court Adjourned till to morrow Morning. Eight a Clock

[91] October the 22^d 1697.

The Court again Satt att the house of S^r Thomas Lawrence Barr^{tt} Secry and

Were p^sent: His Excellency Francis Nicholson Esq^r Cap^t Gen^l; S^r Thomas