

And this he is ready to verify and Demands Judgm^t if the S^d Thomas Tench his Appeale afores^d ag^t him the Said William Hopkins to Maintain and Prosecute Ought and that from the Said Appeale and Errors thereupon Assigned to maintain and Prosecute he may be barred and Excluded.

An the Said Thomas Saith that the plea and the Matter therein Contained is not Sufficient in Law to debarr the Said Thomas from his Appeale afores^d Nor this hon^{ble} Court from hearing and Determining the Same Neither is the Said Thomas by the Laws of the Land bound to make any reple to the Same and therefore doth Demurr in Law thereunto and for Cause of demurrer According to the forme of the Statute in that Case made and Provided, Saith.

1st The Statute of Appeals and regulating Writts of Error doth not debarr the Prov^l Court from hearing any of them att any time but onely Saith that No Appeals Shall be granted etc. Unless Such person or persons etc. Shall give Security etc. but granting the Appeale and thereupon the Staying the Execution is the Act of the County Court for which they onely are Answerable and cannot thereby lessen the Prerogative of the Prov^l Court therefore to plead the Actions of the County Court in barr of the Prov^l Courts Proceedings is Apparent Error^r

2^d If the Prov^l Court had no power to hear and determine the Cause the Defendant ought not to have pleaded to the Cause before them but to have [106] moved it and inform'd their Hono^{rs} that there is a Mives Curie [sic] for his pleading before them is a granting a Power and Jurisdiction to Trye it Especially beginning as he doth wth a Protestation of a Nulla Est Errata which is the very point in issue So that the Contents of the Plea overthrows the Intent thereof which is Error And this he is ready to averr and Prayeth Judgm^t of the Said Plea.

3^d The plea in Manner and forme as it is pleaded is no barr to the Action nor doth any ways Answer the Charge thereof for the pl^t Chargeth the def^t with So much Tobb^a for diverse Goods etc. Sold and delivered and Tobb^a paid for him the defend^t rates the Statute of Usury and then Protests there was a Concord between them that the pl^t Should give Longer day for paym^t or lend the remainder of the Tobbacco for a Year and that he tendered Security and was Still ready to give it according to the directions of the Said Act Whereas the Act doth Not Oblige any Man to Send his Money Nor the borrower to give Security Neither is the defend^t Charged any thing for loan of any Tobbacco but purely for So much Tobbacco as the goods were Sold to him for but if there had been an Agreem^t of further day to be given by the p^t to the def^t he ought to have pleaded that without Mentioning this Act of Assembly which hath no Relation thereto and the pleading thereof is Apparent Error^r and Vitious

4^{thly} If there had been any thing in that Act to barr the p^t the def^t Ought to have pleaded in fact to have been Soe but he hath not averr'd any thing in