

him the 10th day of Aprill before the Making of the Said Lease Could not be a Trespass for by the pl^{ts} own Showing the terme was to begin the Last day of February before the Making of the Lease and if the Def^t Ousted him upon the Tenth day of Aprill before the Lease was made this Could not be any Trespass because the Lease Could not Extend to Possession Past, but to that which was to Come and meerly Void as to the time Past, And the Pl^t in this Case hath not Given the Def^t any Rule to Confess the Lease Entry and Ejectment and to insist upon the Title of the Land onely as is the Usuell Course and Practice to doe; And therefore the Defend^t hath not by way of Rule Confest the Lease etc. and therefore for the incerteinties af^a the Judgment and all the Proceedings thereunto are Erroneo[us]

2^{dly} The Def^t Appeared and Imparled, And it Appareth by the Record That att the time of the Imparleance there was but 3 Justices and therefore no Court, for not less than four by the Comission Constituted a Court and therefore Error

3^{dly} It Appareth by the Record the pl^t moved the Said three Just[ices] for a Speciall Warrant to Resurvey the Land in Question [124] which was Granted to him, and they not being a Court had no power or Authority So to do and therefore the proceedings Erroneous.

4^{thly} It Appareth by the Record That there was but three Justices that Took the returne of the Resurvey and but three Justices When the Issue was Tryed, and they not having power So to doe, not being a Court renders the Proceedings Erroneous.

5^{thly} One of the Jury that was to direct, and who was Sworne and did direct the Surveyor to resurvey the Land upon the first Warr^t of Resurvey Viz^t Andrew Tonnard was not a Freeholder and therefore Error

6^{thly} The Record Sayth that Command was Given to the Sherriffe of St Marys County to Cause to Come here twelve etc. it doth not Appear who Gave that Command nor when or where it was Given, and if but three Justices gave that Command they had no power to award a Venire facias not being a Court and therefore Error

7^{thly} The Jury att the Barr which tryed the issue Joined found a Speciall Verdict Viz^t we of this Jury do find that the Land Called Wattson doth run from the first bounded Tree Seaventy five perches North East and by North from thence North West and by West three hundred and Twenty Perches to the New bounded Oak from thence with a Straight line to the first bounded Tree of the Land Called Cudlington from thence with a Straight Line to the first Bounded Tree of the Said Land Called Wattson and if the Trespass Comitted be within the Said Lines then we find for the Pl^t if not we find for the Defend^t Henry Mitchell foreman, There was not any Judgment Given upon this Verdict nor was there any Curia Advisare Vult Entred thereon as ought to have been, but onely that Judgm^t upon the Verdict was deferred and respited but Shows not to what time whether to